

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 19 2014

OFFICE OF  
MANAGING DIRECTOR

Kris Phillips, President  
Phillips Broadcasting, LLC  
Post Office Box 3847  
St. Augustine, FL 32080

Licensee/Applicant: **Phillips Broadcasting, LLC**  
Waiver Request: Late Payment Penalty and  
Charges, Inadvertence.  
Disposition: Denied (47 C.F.R. §§ 1.1157(c)(1),  
1.1166)  
Stations: WFOY-AM and WAOC-AM  
Fee: Fiscal Year (FY) 2010 Regulatory Fee Late  
Payment Penalties  
Date Request Filed: May 15, 2013  
Date Regulatory Fees Paid: May 1, 2013  
Date Late Penalties Paid: May 1, 2013  
Fee Control No.: RROG-13-00015163

Dear Ms. Phillips:

This responds to Licensee's *Request*<sup>1</sup> for waiver of the statutory penalty, interest and penalty charges, and collection charges (*penalties*) that accrued because Licensee did not pay its Fiscal Year (FY) 2010 regulatory fee. For the reasons stated herein, we must deny the *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,<sup>2</sup> and "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."<sup>3</sup>

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which we must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. §§ 1.1157(c)(1)<sup>4</sup>

<sup>1</sup> Email from Kris Phillips, President, Newstalk 1240 WFOY ([kris@1240news.com](mailto:kris@1240news.com)) to ARINQUIRIES ([ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov)) (May 15, 2013), (*Request*).

<sup>2</sup> 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

<sup>3</sup> 47 C.F.R. § 1.1164; 47 U.S.C. § 159(c)(1).

<sup>4</sup> 47 C.F.R. 1.1157(c)(1) ("Any late filed regulatory fee payment will be subject to the penalties set forth in section 1.1164.").

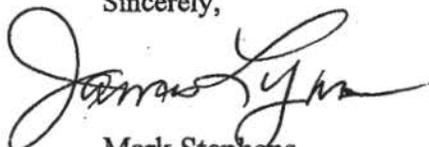
1.1164, as well as interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2010, payment was due no later than August 31, 2010.<sup>5</sup> Licensee's payment was not received and credited until May 1, 2013, thus Licensee failed to meet its obligations. Licensee asserts that it failed to pay the regulatory fees because of serious personal events that resulted in the "FY 2010 regulatory fees [falling] through the cracks."<sup>6</sup>

When we evaluate such matters, we consider whether the *Request* petitioning for a waiver of the statutory penalty and accrued interest, penalty, and charges of collection establishes the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty. We are sympathetic to the details of Licensee's disclosure; however, the explanation does not present legal grounds or "clear mitigating circumstances"<sup>7</sup> to waive collection of the regulatory fees and associated interest and penalties.

The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. If we are to waive the penalty, it is "only in the most extraordinary circumstances,"<sup>8</sup> which Licensee did not establish. Although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on matters such as an employee's inability to perform duties or the amount of time after the deadline within which the regulatee satisfies its payment obligations. Indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period.<sup>9</sup> Furthermore, the penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. Thus, we deny the *Request*.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

  
FAR: Mark Stephens  
Chief Financial Officer

<sup>5</sup> See FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time, *Public Notice*, DA 10-1451 (Aug. 9, 2010).

<sup>6</sup> *Request*.

<sup>7</sup> See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

<sup>8</sup> *McLeodUSA Telecommunications Services, Inc.*, *Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

<sup>9</sup> See *XO Communications, LLC* (OMD, Nov. 10, 2010).