

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

MAY 19 2014

OFFICE OF  
MANAGING DIRECTOR

Anna Rose Stern, Esq.  
Lead Corporate Counsel  
Truestone, LLC  
13873 Park Center Road  
Suite 300N  
Herndon, VA 20171

Licensee/Applicant: **Truestone, LLC**  
Waiver Request: Late Payment Penalty  
Disposition: Denied (47 C.F.R. §§ 1.1157(c)(1), 1.1164)  
Station: N/A  
Fee: Fiscal Year (FY) 2013 Regulatory Fee Late Fee  
Date Request Filed: Dec. 12, 2013  
Date Regulatory Fee Paid: Nov. 4, 2013  
Date Late Penalty Fee Paid: Nov. 4, 2013  
Fee Control No.: RROG-13-00015509

Dear Counsel:

This responds to Licensee's *Request*<sup>1</sup> for waiver and refund of the penalties for late payment of FY 2013 regulatory fees. Our records indicate that the FY 2013 regulatory fees and assessed penalty were received and credited on November 4, 2013. For the reasons stated below, we 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 may be made before it is late, *i.e.*, a deadline, after which the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164 will be imposed, and interest, penalties, and chares of collection will accrue under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2013, the deadline for paying regulatory fees was September 20, 2013.<sup>4</sup> Unfortunately, we did not receive and credit Licensee's payment until November 4, 2013. Thereafter, Licensee asked for a waiver and refund of the statutory penalty.

<sup>1</sup> Letter from Anna Rose Stern, Esq., Lead Corporate Counsel, Truestone, LLC, 13873 Park Center Road, Herndon, VA, 20171, to Jon Wilkins, Managing Director, FCC, Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12<sup>th</sup> St., SW, Washington, DC 20554, (Dec. 12, 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 C.F.R. § 1.1157(c)(1); 47 U.S.C. § 159(c)(1).

<sup>4</sup> See FY 2013 Regulatory Fee Due No Later Than September 20, 2013, 11:59 PM Eastern Time (ET), *Public Notice*, DA 13-1796 (Sep. 4, 2013).

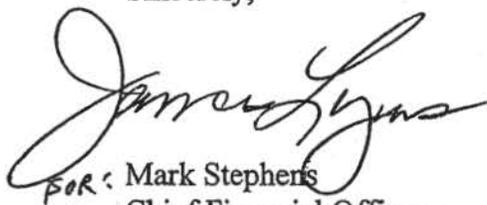
The Commission repeatedly has held that “[l]icensees are expected to know and comply with the Commission’s rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances.”<sup>5</sup> The Commission does not send reminder notices by mail or email, hence the absence of such notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.<sup>6</sup>

Even so, Licensee requests a waiver of the charges and a refund on the grounds that “notification [from the FCC] was sent to [Licensee’s identified point of contact, a senior corporate attorney,<sup>7</sup> but a]t the time of notification [the attorney] was not an employee of [Licensee], and had not been for approximately two (2) years. As a result, [Licensee] did not receive notice in a timely manner, and therefore was not afforded sufficient time to submit payment by the September 20<sup>th</sup> due date.”<sup>8</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. Licensee’s *Request* does not. 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. Indeed, 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, the amount of time after the deadline within which the regulatee satisfies its payment obligations, or the absence of a reminder notice.

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

Sincerely,



FOR: Mark Stephens  
Chief Financial Officer

<sup>5</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>6</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972, ¶ 16 (2009); *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10307-09, ¶¶ 18-27 (2009); *Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009); *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291, ¶ 37 (2010).

<sup>7</sup> The identified corporate attorney is reported as Licensee’s point of contact on the Commission Registration Number System (FRN). As set forth at 47 C.F.R. § 1.8002, anyone doing business with the Commission must obtain a 10-digit unique identifying number, and registrants are required to keep current information in the registration system on line or by filing the appropriate FCC Form 161. In the *Request*, Licensee fails to state clearly whether the registration information has been corrected.

<sup>8</sup> *Request* at 1.