

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

FEB 20 2014

OFFICE OF
MANAGING DIRECTOR

Oscar Reid
General Manager
WZLA-FM Radio
112 N. Main Street
Abbeville, SC 29620

Licensee/Applicant: **WZLA-FM Radio**
Waiver Request Late Payment Penalties and
Charges; 47 C.F.R. §§ 1.1164, 1.1166, 1.1910,
1.1940
Disposition: Dismissed and Denied
Station: WZLA-FM
Fee: Fiscal Year (FY) 2010, and FY 2012
Regulatory Fees and Late Payment Penalties
Date Request Filed: May 29, 2013
Date Regulatory Fees Paid: Not paid
Date Regulatory Late Penalties Paid: Not paid
Fee Control No.: RROG-12-00015214

Dear Mr. Reid:

This responds to Licensee's *Request*¹ for waiver of the penalties and charges imposed for failing to pay Fiscal Year (FY) 2010 and FY 2012 regulatory fees. For the reasons discussed below, we dismiss and, in the alternative, deny the *Request*. The full amount of the delinquent fees and all accrued charges are due.

¹ Email from Oscar Reid, WZLA Radio (z93@wctel.net) to ARINQUIRIES (arinquiries@fcc.gov)(May 29, 2013)(*Request*).

The Commission's records show that Licensee failed to pay the FY 2010 regulatory fees when due. Thereafter, on March 26, 2013, the Commission notified² Licensee that its account was delinquent and that Licensee was required to pay the fees plus accrued charges.³ Because Licensee is delinquent in paying the FY 2010⁴ and FY 2012⁵ regulatory fees, under our rules,⁶ we dismiss the *Request*. In the alternative, even if Licensee had paid the fees and charges, and then requested a refund, we would deny the *Request*.

The Commission's Demand Letter provided unequivocal notice to Licensee of both the basis for the delinquency arising from not paying the fee and accrued charges, and the consequences of such delinquency, which, in part, include the Commission withholding action on any application for relief and continuing to "accrue [charges] until the Debt is paid in full or [Licensee] sign[s] an approved written installment plan."⁷ Rather than pay, Licensee requested a waiver of the statutory penalty and other charges, which left Licensee in a delinquency status. Thus, under 47 C.F.R. §§ 1.1164(e) and 1.1910, we dismiss the *Request* and demand immediate payment. Moreover, under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940, we continue to assess interest, penalties, and charges of collection. This ends the matter, however, as a courtesy, we will explain why, in the alternative, Licensee did not establish "extraordinary circumstances"⁸ for a waiver and refund, which is the basis for denial.

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,⁹ 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."¹⁰

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 the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164, as well as interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For example, as explained, above, for FY 2010, the deadline was August 31, 2010, and for FY 2012, the deadline was September 13, 2012. Because we did not receive Licensee's payments by the specified dates, we assessed the mandatory statutory penalty, and

² Demand Letter from Federal Communications Commission, Washington, DC 20554 to WZLA FM Radio, 112 N. Main St., Abbeville, SC 29620 (March 26, 2013) (Demand Letter).

³ See 31 U.S.C. § 3717, 47 U.S.C. § 159(c)(1).

⁴ See FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time, *Public Notice*, DA 10-1451 (Aug. 9, 2010).

⁵ See FY 2012 Regulatory Fees due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012).

⁶ 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment."), 1.1910.

⁷ Demand Letter.

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

⁹ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

¹⁰ 47 C.F.R. § 1.1164; 47 U.S.C. § 159(c)(1).

when the debts remained delinquent we assessed the additional required charges. Now, Licensee asks us to waive these required statutory charges.

In requesting a waiver, Licensee failed to state clearly the grounds. Nonetheless, we looked to Licensee's brief assertion that "we should not have to pay a fine for something we didn't know we owed"¹¹ as asserting either the absence of an invoice or lack of knowledge that the fee was due. Neither assertion is a legal ground or clear mitigating circumstance to waive collection of the penalty.

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."¹² As we discuss below, the Commission does not send reminder notices by mail, so 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.

For example, on May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency's Fee Filer system.¹³ The Commission explained that, "[c]onsistent with [its] proposal to require mandatory use of Fee Filer ... pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail."¹⁴ On July 31, 2009, the Commission released its order adopting these proposals,¹⁵ and notifying regulatees that "because all pre-bills will be loaded into Fee Filer, once Fee Filer becomes operational, this will be the signal by which licensees can view their pre-bill information online."¹⁶ Thereafter, the Commission issued a public notice informing regulatees that use of Fee Filer was mandatory in FY 2009 and that "regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer."¹⁷ Finally, on September 2, 2009, the Commission released a third public notice that "**HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.**"¹⁸

Similarly, in 2010, the Commission's final order on the FY 2010 regulatory fees reaffirmed that regulatees should "check[] the Commission's website periodically beginning in July" in order to "ascertain the fee due date, and receive instructions on how to access Fee Filer,

¹¹ Request.

¹² 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).

¹³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972, ¶ 16 (2009).

¹⁴ *Id.* at 5973, ¶ 20.

¹⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10307-09, ¶¶ 18-27 (2009) (*FY 2009 Regulatory Fees NPRM*).

¹⁶ *Id.* at 10309, ¶ 26.

¹⁷ *Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

¹⁸ *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

view their bill, and make a fee payment.”¹⁹ This notification was part of the Commission’s increased effort to notify licensees that hardcopy bills will no longer be mailed.²⁰

Every licensee is obliged to make the fee payment by the deadline. 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 inadvertent failure to follow the Commission’s requirements or based on a particular passage 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.²¹ 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. If the penalty it is to be waived, it is “only in the most extraordinary circumstances,”²² which Licensee did not establish. Moreover, the Commission has “reject[ed] the contention that the size of the penalty was disproportionate to the lateness. Congress mandated that an additional charge of 25 percent would be assessed as a penalty for all late payments of fees required by Section 9.”²³ Thus, we deny the *Request* and demand full payment.

Refer to the Commission’s fee filer website to determine a payoff, and thereafter make full payment without delay. Because Licensee is delinquent in paying a non-tax debt, under 47 C.F.R. § 1.1910, Licensee is subject to the Commission’s red-light rule, and the Commission will withhold action on any application filed or pending, and then dismiss. *See* 47 C.F.R. §§ 1.1108, 1.1109, 1.1116, and 1.1118. Any Commission action taken prior to the payment of delinquent non-tax debt owed to the Commission is contingent and subject to rescission. Failure to make payment on any delinquent debt is subject to collection of the debt, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Improvement Act, 31 U.S.C. § 3717. Moreover, the Commission may collect amounts due by administrative offset.²⁴

Interest and penalties continue to accrue from the date of delinquency, and under the law,²⁵ we will apply debt collection procedures.²⁶ Moreover, under 31 U.S.C. § 3711(g), without further notice, and usually within 180 days or less of delinquency, we will transfer the delinquent debt to Treasury, which will initiate collection action through private collection activities and assess additional charges. In addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs.

¹⁹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291, ¶ 37 (2010).

²⁰ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923, ¶ 12 (2010).

²¹ *See XO Communications, LLC* (OMD, Nov. 10, 2010).

²² *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

²³ *In re NTT America, Inc.* 21 FCC Rcd 8088, 8090 (2006).

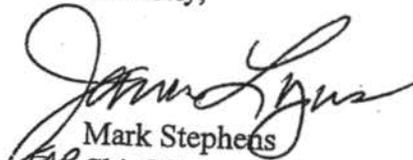
²⁴ 47 C.F.R. § 1.1912.

²⁵ *See* 47 C.F.R. § 1.1901, *et seq.*

²⁶ *See* 31 C.F.R. § 3717.

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

Sincerely,


Mark Stephens
FOR Chief Financial Officer