

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

FEB 06 2014

OFFICE OF
MANAGING DIRECTOR

Chris Garra
Staff Accountant
ZGS Communications, Inc.
2000 N. 14th Street, Suite 400
Arlington, VA 22201

Licensee/Applicant: **ZGS Broadcasting of Tampa, Inc.**

Waiver Request: Late Payment Penalty; 47 C.F.R. § 1.1164(e)

Disposition: Dismissed and Denied

Station: WGES-AM

Fee(s): Fiscal Year (FY) 2010 Delinquent
Regulatory Fees and Charges

Date Request Filed: Jun. 4, 2013

Dates of Partial Payment: Jun. 3, 2013

Fee Control No.: RROG-12-00015230

Amount Due: See Fee Filer

Dear Mr. Garra:

This responds to Licensee's *Request*¹ for waiver of the penalties and charges for late payment of the Fiscal Year (FY) 2010 regulatory fees. For the reasons discussed below, we dismiss and, in the alternative, deny the *Request*.

The Commission's records show that Licensee failed to pay the FY 2010 regulatory fees when due. Thereafter, on May 15, 2013, the Commission sent Licensee a Demand Letter² itemizing the unpaid regulatory fees plus the statutory late payment penalty and the accrued statutory interest, penalties and charges of collection³ for a total due of \$6,733.22. On June 3, 2013, Licensee made a partial payment⁴ that omitted an amount equal to the statutory penalties and the accrued, but unpaid charges, and Licensee asked the Commission to waive those amounts. Unfortunately, that partial payment did not resolve Licensee's delinquency and red

¹ Letter from Chris Garra, Staff Accountant, ZGS Communications, Inc., 2000 N. 14th Street, Suite 400, Arlington, VA 22201 to FCC, Attn: Revenue and Receivables Operation Group, 445 12th Street, S.W., Room 1-A821, Washington, DC 20554 (May 20, 2013)(rec'd May 28, 2013)(*Request*).

² Demand Letter from Federal Communications Commission, Washington, DC 20554 to ZGS Broadcasting of Tampa, Inc., 2000 North 14th St., Suite 400, Arlington, VA 22201 (May 15, 2013) (Demand Letter).

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

⁴ Our records show Licensee paid \$4,600.00 toward the outstanding delinquent debt of \$6,733.22. See 47 C.F.R. § 1.1940(f), which sets out how partial payments are applied to outstanding debts.

light⁵ status. Indeed, because the partial payment first applied to the penalties and accrued charges, it left the regulatory fee account delinquent.⁶ Hence, under our rules,⁷ we dismiss and, in the alternative, 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."⁸ In response, Licensee made a partial payment, which the Commission applied as set forth at 47 C.F.R. § 1.1940(f), first to outstanding penalties and administrative cost charges, second to accrued interest, and finally to the outstanding balance.⁹ Thus, Licensee continued with an unresolved delinquency. Accordingly, as required by 47 C.F.R. §§ 1.1164(e) and 1.1910, we dismiss the *Request* and demand immediate payment, and under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940, we assess interest, penalties, and charges of collection. Moreover, because Licensee did not establish "extraordinary circumstances"¹⁰ for a waiver, even had Licensee first paid the full amount due and then requested a waiver and refund of the statutory penalty for late payment, the accrued interest, penalties, and the charges of collection, we would deny the *Request*.

Our dismissal ends the matter, and we need not address the merits of Licensee's waiver; however, as a courtesy we considered the content of Licensee's request for a waiver, and, as discussed below, nonetheless deny relief.

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,¹¹ 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."¹²

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 FY 2010, the deadline was August 31, 2010.¹³ Thereafter, because we

⁵ 47 C.F.R. § 1.1910.

⁶ 47 C.F.R. §§ 1.1157(c)(1), 1.1164(c).

⁷ 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.

⁸ Demand Letter.

⁹ 47 C.F.R. § 1.1940(f) ("partial ... payments ... shall be applied first to outstanding penalties and administrative cost charges, second to accrued interest, and third to the outstanding principal.").

¹⁰ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

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

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

¹³ See FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time, *Public Notice*, DA 10-1451 (Aug. 9, 2010).

did not receive Licensee's payments by the specified date,¹⁴ we assessed the mandatory statutory penalty, and when the debt remained delinquent we assessed the additional required charges. Licensee's partial payment left a delinquent balance that raises the procedural barrier and is the basis for dismissal. Even so, we considered the content of Licensee's submission.

Licensee failed to state clearly the grounds for seeking a waiver. Nonetheless, we looked to Licensee's brief assertion "that it was not aware that WGES-AM was not current on its fee payment"¹⁵ 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."¹⁶ 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.¹⁷ 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."¹⁸ On July 31, 2009, the Commission released its order adopting these proposals,¹⁹ 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."²⁰ 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."²¹ Finally, on September 2, 2009, the Commission released a third public notice that "**HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.**"²²

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,

¹⁴ Our records show a partial payment was received on Jun. 3, 2013.

¹⁵ *Request*.

¹⁶ 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).

¹⁷ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972, ¶ 16 (2009).

¹⁸ *Id.* at 5973, ¶ 20.

¹⁹ *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*).

²⁰ *Id.* at 10309, ¶ 26.

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

²² *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.”²³ This notification was part of the Commission’s increased effort to notify licensees that hardcopy bills will no longer be mailed.²⁴

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.²⁵ 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,”²⁶ 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.”²⁷ 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 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.²⁸

Interest and penalties continue to accrue from the date of delinquency, and under the law,²⁹ we will apply debt collection procedures.³⁰ 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.

²³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291, ¶ 37 (2010).

²⁴ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923, ¶ 12 (2010).

²⁵ *See XO Communications, LLC* (OMD, Nov. 10, 2010).

²⁶ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

²⁷ *In re NTT America, Inc.* 21 FCC Rcd 8088, 8090 (2006).

²⁸ 47 C.F.R. § 1.1912.

²⁹ *See* 47 C.F.R. § 1.1901, *et seq.*

³⁰ *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,

A handwritten signature in black ink, appearing to read "Mark Stephens". The signature is written in a cursive style with a large initial "M".

Mark Stephens
For: Chief Financial Officer