



Federal Communications Commission
Washington, D.C. 20554

MAY 08 2019

Ms. Peggy Farra
VP Tax and Treasury
ABILITY Network Inc.
100 N 6th St., Suite 900A
Minneapolis, MN 55403-1516

Licensee/Applicant: **ABILITY Network Inc.**
Waiver and Refund Request: Late Payment Penalty
Disposition: **Denied** (47 C.F.R. §§ 1.1157(c)(1),
1.1164)
Fee: Fiscal Year (FY) 2016 Regulatory Fee Late
Fee
Date Request Filed: November 21, 2016
Date Regulatory Fee Paid: November 17, 2016
Date Late Penalty Fee Paid: November 17, 2016
Fee Control No.: RROG-CRSR16P829760

Dear Ms. Farra:

This responds to the request of ABILITY Network Inc. (ABILITY) for a waiver and refund of the penalties assessed and paid for late payment of its Fiscal Year (FY) 2016 regulatory fees (Request)¹. 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,² and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."³ Specifically, "[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."⁴

¹ Letter from Peggy Farra, ABILITY Network Inc., 100 North 6th St., Suite 900A, Minneapolis, MN 55403-1516, to Marlene H. Dortch (November 15, 2016, *rec'd* November 21, 2016) (*Request*).

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

³ 47 U.S.C. §159(c)(1); 47 C.F.R. §§ 1.1157(c)(1); 1.1164.

⁴ 47 C.F.R. § 1.1164.

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. §§ 1.1157(c)(1) and 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 2016, the deadline for paying regulatory fees was September 27, 2016.⁵ Unfortunately, ABILITY did not pay its FY 2016 regulatory fees until November 17, 2016.⁶ Thereafter, ABILITY asked for a waiver and refund of the statutory penalty.

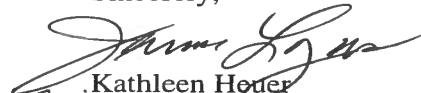
ABILITY requests that we waive and refund the late payment charges because the employees responsible for paying the company's annual regulatory fee obligation left the company and no one remaining within the organization knew how to pay the FY 2016 regulatory fees by the deadline.⁷

When we evaluate such matters, we consider whether the request establishes the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty payments.

ABILITY's Request does not present valid grounds for relief. As the Commission has repeatedly held, "[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."⁸ 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, but include mistakes made by and circumstances within the control of the regulatee, as was the case here.

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

Sincerely,


Kathleen Heuer
Chief Financial Officer

⁵ See Effective Date of FY 2016 Regulatory Fees and Multi-Year Wireless Fees, *Public Notice* (September 22, 2016).

⁶ ABILITY also paid the late payment penalty and accrued interest on the delinquent regulatory fee on November 17, 2016.

⁷ Request.

⁸ 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).