



Federal Communications Commission
Washington, D.C. 20554

MAY 08 2019

Mr. Riccardo Ferranti
American Phone Services Corp.
P.O. Box 696
Alpharetta, GA 30009-0696

Licensee/Applicant: **American Phone Services Corp.**
Waiver and Refund Request: Late Payment Penalty
Disposition: **Dismissed and Denied** (47 C.F.R. §§ 1.1157(c)(1),
1.1164)
Fee: Fiscal Year (FY) 2016 Regulatory Fee Late Payment Penalty
Date Request Filed: October 24, 2016
Date Regulatory Fee Paid: October 14, 2016
Date Late Penalty Fee Paid: October 14, 2016
Fee Control No.: RROG- PGC2883368

Dear Mr. Ferranti:

This responds to the request of American Phone Services Corp. (American Phone) for a waiver and refund of the penalty assessed against American Phone for late payment of its Fiscal Year (FY) 2016 regulatory fees (Request)¹. For the reasons stated below, we dismiss and 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 Riccardo Ferranti, American Phone Services Corp., P.O. Box 696, Alpharetta, Georgia 30009-0696, to Marlene H. Dortch, Office of the Secretary (October 18, 2016, *rec'd* October 24, 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.

deadline for paying regulatory fees was September

27, 2018.⁵

American Phone did not pay its FY 2016 regulatory fees until October 14, 2016.⁶ Nonetheless, pursuant to its Request, American Phone asks that we waive and refund the late payment penalty on the grounds that the Commission's Fee Filer system is so confusing that American Phone were unable to determine how to pay the fees online by the September 27, 2016 deadline.⁷

Currently, American Phone is delinquent in payment of debt owed to the Commission. Specifically, American Phone has failed to pay debts owed to the Commission's Telephone Relay Service and the North American Numbering Plan.⁸ Under Commission rules, American Phone is thus "red lighted" and the Request is hereby dismissed without further consideration by the Commission.⁹

As an alternative and independent basis for our decision, we deny the Request on the merits. The Commission has repeatedly 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."¹⁰ Thus, when we evaluate waiver requests, 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. The Request does not.

Each year the Commission publishes straightforward instructions for navigating Fee Filer to pay regulatory fees. In 2016, those instructions were published on September 6, 2016, three weeks before the fees were due to be paid.¹¹ Had American Phone consulted the instructions, it would have quickly found the information –payment instructions- it sought and timely paid its regulatory fee obligation. We note also that the instructions and the process for determining regulatory fee amounts and for payment through the Fee Filer system have remained the same for a number of years,¹² and that American Phone timely paid its regulatory fees using the Fee Filer system in FY 2014 and FY 2015.

Accordingly, American Phone's request for waiver and refund of the late payment penalty it paid with its FY 2016 regulatory fee payment is also denied on the merits.

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

⁶ American Phone paid the late payment penalty on October 14, 2016 as well.

⁷ *Request*.

⁸ Multiple notices regarding the delinquent debt have been sent to American phone by email and U.S. mail. The TRS and NANP debt has now been referred to the United States Treasury for collection. Information regarding American Phone's red light status may be found by logging on to Commission's Red Light Display System. For more information regarding the debt transferred to the United States Treasury, contact the Treasury at (888) 826-3127.

⁹ 47 C.F.R. §1.1910(b)(2).

¹⁰ 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).

¹¹ See Payment Methods and Procedures For Fiscal Year 2016 Regulatory Fees, *Public Notice* (September 6, 2016).

¹² *Id.* ("The use of the online Fee filer system for filing regulatory fees has not changed since the process was first initiated in FY 2009...")

Sincerely,


Kathleen Heuer
FOI: Chief Financial Officer