



Federal Communications Commission  
Washington, D.C. 20554

March 8, 2019

Mr. Steve McLernon  
Vice President, Tax  
Cogent Communications  
2450 N Street, NW, 4<sup>th</sup> Floor  
Washington, D.C. 20037

Licensee/Applicant: **Cogent Communications**  
Waiver and Refund Request: Fiscal Year (FY) 2018  
Regulatory Fee Late Payment Penalty  
Disposition: **Denied** (47 C.F.R. §§ 1.1157(c)(1),  
1.1164)  
Date Request Filed: November 6, 2018  
Date Regulatory Fee Paid: October 23, 2018  
Date Late Penalty Fee Paid: November 1, 2018  
Fee Control No.: RROG- PGA3169524 and  
PGA3173669

Dear Mr. McLernon:

This responds to the request of Cogent Communications (Cogent) for a waiver and refund of the penalties assessed and paid for late payment of its Fiscal Year (FY) 2018 regulatory fees (Request)<sup>1</sup>. 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 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."<sup>3</sup> 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."<sup>4</sup>

<sup>1</sup> Letter from Steven McLernon, Cogent Communications, 2450 N St., NW, 4<sup>th</sup> Floor, Washington, DC 20037, to Marlene H. Dortch (October 30, 2018, *rec'd* November 6, 2018) (*Request*).

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

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

<sup>4</sup> 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. For FY 2018, the deadline for paying regulatory fees was September 25, 2018.<sup>5</sup> The Commission did not receive payment of Cogent's FY 2018 regulatory fees until October 23, 2018.<sup>6</sup> Cogent then asked for a waiver and refund of the statutory penalty.

Cogent requests that we waive and refund the late payment penalty, citing internal administrative errors for its inadvertent failure to pay the FY 2018 regulatory fees by the deadline.<sup>7</sup>


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 payment. The Request does not.

Repeatedly, the Commission 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>8</sup>

Cogent does not present valid grounds for relief. The penalty required by 47 U.S.C. § 159(c)(1) is 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 Cogent has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

  
Kathleen Heuer  
For: Chief Financial Officer

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<sup>5</sup> See Effective Date of FY 2018 Regulatory Fees and Multi-Year Wireless Fees, *Public Notice*, DA 18-952 (September 14, 2018).

<sup>6</sup> Cogent paid the late payment penalty on November 1, 2018.

<sup>7</sup> Request.

<sup>8</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).