



MAY 08 2019

Federal Communications Commission  
Washington, D.C. 20554

Diane Balk  
Financial Accountant  
South Dakota Network, LLC  
2900 West 10<sup>th</sup> Street  
Sioux Falls, SD 57104

Licensee/Applicant: **South Dakota Network, LLC**  
Waiver and Refund Request: Late Payment Penalty  
Disposition: **Denied** (47 C.F.R. §§ 1.1157(c)(1), 1.1164)  
Fee: Fiscal Year (FY) 2018 Regulatory Fee Late Fee  
Date Request Filed: October 17, 2018  
Date Regulatory Fee Paid: October 21, 2018  
Date Late Penalty Fee Paid: October 21, 2018  
Fee Control No.: RROG-PGA3163260

Dear Ms. Balk:

This responds to the request of South Dakota Network, LLC (South Dakota) for a waiver and refund of the penalty assessed against it 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 fee payment is received late or it is incomplete, to assess a penalty equal to twenty five percent (25%) of the amount of the fee which was not paid in a timely manner.<sup>3</sup>

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

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<sup>1</sup> Letter from Diane Balk, Financial Accountant, South Dakota Network, LLC, 2900 West 10<sup>th</sup> Street, Sioux Falls, SD 57104 to Marlene H. Dortch, Secretary, Federal Communications Commission (October 11, 2018, *rec'd* October 17, 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.

South Dakota now requests that we waive and refund the twenty five percent (25%)

penalty on the grounds that its failure to pay the FY 2018 regulatory fees by the payment deadline was due to its confusion about how to determine the amount South Dakota owed for FY 2018 regulatory fees, when the fees were due and how to pay those fees on line.<sup>5</sup> Among other things, South Dakota states that it logged on to the Fee Filer system several times before the September 25, 2018 deadline but was unable to correctly navigate the Fee Filer system to determine and timely pay the amount it owed in FY 2018 regulatory fees.

When we evaluate such matters, we consider whether the Request establishes the existence of bank error<sup>6</sup> or presents legal grounds or clear mitigating circumstances to waive collection of the penalty payments. South Dakota's Request does not.

Just as it does every year, the Commission published straightforward instructions for navigating Fee Filer to determine and pay FY 2018 regulatory fees. This year, those instructions were published on August 30, 2018, nearly a month before the fees were due to be paid.<sup>7</sup> In its Request, South Dakota concedes that once it read the instructions fully, albeit after the payment deadline, it was able to pay the fees. Thus, it follows that had South Dakota read the instructions fully before the deadline, it would have paid the fee on time. 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<sup>8</sup> and that South Dakota timely paid its regulatory fees in Fiscal Years 2015, 2016 and 2017.

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>9</sup>

South Dakota 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 includes mistakes made by and circumstances within the control of the regulatee, as was the case here. Accordingly, South Dakota’s request for a waiver and refund of the 25 percent penalty payment is denied.

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<sup>4</sup> See Effective Date of FY 2018 Regulatory Fees and Multi-Year Wireless Fees, *Public Notice* (September 22, 2016).

<sup>5</sup> *Request*.

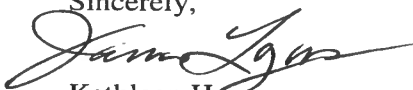
<sup>6</sup> 47 C.F.R. § 1.1164; *see also NTT America, Inc.*, 21 FCC Rcd 8088 (2006).

<sup>7</sup> See Payment Methods and Procedures For Fiscal Year 2018 Regulatory Fees, *Public Notice* (August 30, 2018). On page 1 of the Public Notice, we noted “bills are available for viewing in the ‘Regulatory Fee’ link of Fee Filer”. (emphasis added) The same information appears on page 3 of the Public Notice: “After logging in with an FRN and password, the “Regulatory Fees” option should be selected to display billed and non-billed regulatory fees.” (emphasis added). s

<sup>8</sup> See e.g., Payment Methods and Procedures For Fiscal Year 2015 Regulatory Fees, *Public Notice*, DA 15-1013 (September 11, 2015).

<sup>9</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).

Sincerely,

  
For: Kathleen Heuer  
Chief Financial Officer