



MAY 08 2019

Federal Communications Commission
Washington, D.C. 20554

Mr. Patrick R. Pfeiffer
Vice President/General Manager
Chesterman Communications of Jamestown, Inc.
2400 Eighth Avenue Southwest
Buffalo Mall, Suite D1
Jamestown, N.D. 58401

Licensee/Applicant: **Chesterman Communications of Jamestown, Inc.**
Station/Call Sign: KSJB-AM, KSJZ-FM
Waiver and Refund Request: Late Payment Penalty
Disposition: **Denied** (47 C.F.R. §§ 1.1157(c)(1), 1.1164)
Fee: Fiscal Year (FY) 2017 Regulatory Fee
Date Request Filed: October 26, 2017
Date Regulatory Fee Paid: October 20, 2017
Date Late Penalty Fee Paid: October 20, 2017
Fee Control No.: RROG-PGC3013483

Dear Mr. Pfeiffer:

This responds to your request on behalf of Chesterman Communications of Jamestown, Inc. (Chesterman) for a waiver and refund of the penalty assessed for Chesterman's late payment of its Fiscal Year (FY) 2017 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

¹ Letter from Patrick R. Pfeiffer, Chesterman Communications of Jamestown, Inc. (October 20, 2017, rec'd October 26, 2017) (*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.

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

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 2017, the deadline for paying regulatory fees was September 26, 2017.⁵ Unfortunately, Chesterman did not pay its FY 2017 regulatory fees until October 20, 2017.

Chesterman requests that we waive and refund the late payment penalty because you, who ordinarily pays the regulatory fees, were out of the office for a medical emergency during the month of September and forgot to pay the fees.⁶

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. The Request does not.

Repeatedly, the Commission has held that “[I]licensees 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.”⁷

While we sympathize with your plight at the time, the stations apparently continued to operate in your absence and other station employees, including the bookkeeper who reminded you of the obligation⁸, could have paid the stations’ FY 2017 regulatory fees by the September 26, 2017 deadline. 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 licensee, as was the case here.

⁴ 47 C.F.R. § 1.1164.

⁵ Although the Commission extended the September 26, 2017 deadline to September 29, 2017 for regulatees affected by Hurricanes Harvey, Irma and Maria in certain states and territories, the extended deadline did not apply to Chesterman. *See Effective Date of FY 2017 Regulatory Fees and Multi-Year Wireless Fees, Public Notice* (September 22, 2017); *Regulatory Fee Filing Window for Those Regulatees Affected by Hurricane Maria is Extended to Friday, September 29, 2017, Public Notice*, DA 17-940 (September 27, 2017).

⁶ *Request*.

⁷ *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).

⁸ *Request*.

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

Sincerely,



Kathleen Heuer
Chief Financial Officer