

Mr. Charles Wong
Managing Director
Silkwave Africa, LLC
12020 Sunrise Valley Drive, Suite 100
Reston, VA 20191

May 13, 2021

Licensee: Silkwave Africa, LLC
Waiver/Refund Request: FY 2018 Late Payment Penalty
and Interest
Disposition: Dismissed and Denied (47 U.S.C. § 159A,
47 CFR §§ 1.1164, 1.1166, 1.1910, and 1.1940)
Date of Request: January 14, 2019
Date Regulatory Fee Debt Paid: January 31, 2019
Fee Control No.: RROG-2019-16601B

Dear Mr. Wong:

This responds to the January 14, 2019 request of Silkwave Africa, LLC (Silkwave) for waiver of the penalty and accrued interest assessed against Silkwave as a consequence of late payment of its Fiscal Year (FY) 2018 regulatory fees (the Request).¹

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 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 manner³ and on the delinquent debt until it is paid in full.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 and interest. For FY 2018, the deadline for paying regulatory fees was September 25, 2018.⁵ Silkwave did not pay its FY 2018 regulatory fee until several months after the payment deadline, thus incurring the late payment penalty and interest. Section 1.1166 of the Commission's rules requires that a waiver request filed without payment of a fee must be filed with the Commission's Secretary, to the attention of the Managing Director, by mailing or delivering a copy of the filing to the Commission's Office of the Secretary at the Commission's Washington, D.C. address.⁶

We dismiss the Request on procedural grounds because it was not filed in accordance with section 1.1166 of the Commission's rules. Specifically, the Request was improperly addressed to the Revenue & Receivables Operation of the Office of the Managing Director and was erroneously mailed to the Commission's post office box in St. Louis, Missouri.⁷

¹ Letter from Charles Wong, Managing Director, Silkwave Africa, LLC, 12020 Sunrise Valley Drive, Suite 100, Reston, VA 20191 to the Office of Managing Director, Revenue and Receivables Operation, P.O. Box 970014, St. Louis, MO 63197-0014 (Jan. 14, 2019, *rec'd* in the FCC's Office of Managing Director on Apr. 8, 2019) (Request).

² 47 U.S.C. § 159(a).

³ 47 U.S.C. § 159(c) now codified at 47 U.S.C. § 159A(c); 47 CFR § 1.1164.

⁴ 31 U.S.C. § 3717; 47 CFR § 1.1940.

⁵ *Fee Filer is Open for Payment of FY 2018 Regulatory Fees*, Public Notice (Aug. 30, 2018), <https://www.fcc.gov/document/fee-filer-open-accepting-fy-2018-regulatory-fee-payments>.

⁶ 47 CFR § 1.1166.

⁷ Request; 47 CFR § 1.1166.

We also dismiss the Request pursuant to sections 1.1164 and 1.1910 of the Commission's rules, because at the time the Request was filed, Silkwave had not paid its past due FY 2018 regulatory fee debt and was on red light.⁸

As an alternative and independent basis for our decision, we deny the Request on the merits. Silkwave states that it did not receive notice that its FY 2018 regulatory fee was due until its outside legal counsel, to whom a past due notice for payment of the fee was mailed, forwarded the delinquency notice to Silkwave. Silkwave states that its counsel is listed as its primary contact in the Commission's database; that although Silkwave requested that its counsel update the Commission's database to list Silkwave as the primary contact, its counsel did not; and that counsel's failure to update the database and its failure to timely forward the delinquency notice caused Silkwave's late payment of its FY 2018 regulatory fee.⁹

When we evaluate requests to waive the late payment penalty and accrued interest, we consider whether the Request establishes the existence of bank error¹⁰ or presents legal grounds or clear mitigating circumstances¹¹ to waive collection of the penalty payment and accrued interest. The Request does not.

Each year the Commission publishes notice of the deadline in advance of the deadline. In FY 2018, the Commission published several notices of the deadline in August and September of that year.¹² Silkwave had access to that information, and simply failed to account for it and to pay its fees on time. That its counsel belated forwarded the delinquency notice to Silkwood is immaterial.¹³

The penalty required by 47 U.S.C. § 159A(c) 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, the Request is denied.

⁸ 47 CFR §§ 1.1164 and 1.1910.

⁹ Request.

¹⁰ 47 CFR § 1.1164; *see also*, *NTT America, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 8088 (2006).

¹¹ *See Sitka Broadcasting Co., Inc.*, Memorandum Opinion and Order, 70 FCC 2d 2375, 2378, para. 6 (1979), *citing Lowndes County Broadcasting Co.*, Memorandum Opinion and Order, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, Memorandum Opinion and Order, 23 FCC 2d 868 (1970); *see also NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

¹² *See, e.g., What You Owe – International and Satellite Services Licensees for FY 2018*, Public Notice (Aug. 30, 2018), <https://www.fcc.gov/document/fy-2018-international-and-satellite-services-fact-sheet>; *Payment Methods and Procedures for Fiscal Year 2018 Regulatory Fees*, Public Notice (Aug. 30, 2018), <https://www.fcc.gov/document/fy-2018-payments-and-procedures-fact-sheet>; *The Effective Date of FY 2018 Regulatory Fees and Multi-Year Wireless Fees is September 18, 2018*, Public Notice, 33 FCC Rcd 8740 (OMD 2018).

¹³ The past due payment notice was issued more than three months after the Sept. 25, 2018 deadline and was, as its title suggests, simply notice that payment of the debt was overdue.

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

Sincerely,

James Lyons

James Lyons
Deputy Chief Financial Officer