

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Aerco Broadcasting Corp.
Application for Review
Fee Control No. 00000CDMC-99-026

MEMORANDUM OPINION AND ORDER

Adopted: July 25, 2001

Released: July 30, 2001

By the Commission:

1. The Commission has before it an Application for Review filed on behalf of Aerco Broadcasting Corp. (Aerco). For the reasons set forth below, we deny Aerco's request.

2. Aerco seeks review of a decision entered by the Managing Director denying its request for waiver of the late charge penalty for late payment of the Fiscal Year (FY) 1998 regulatory fees. Aerco was assessed a late charge penalty for failure to make payment of its FY 1998 regulatory fee in a timely manner in accordance with the Commission's rules. In its subsequent waiver request, Aerco argued that the Commission's rules requiring a penalty of 25 percent of the amount of the fee not paid in a "timely manner" were too strict. The waiver request noted that Aerco's payment was mailed on September 16, 1998, in time for delivery by the deadline of September 18, 1998, and the effects of a hurricane which struck Puerto Rico, where Aerco is located, a few days after the check was mailed, could have delayed delivery of the payment due to preparation for the hurricane. In denying Aerco's request, the Managing Director determined that Aerco had failed to indicate or substantiate that it had met its obligation to make payment in accordance with the Commission's rules and that Aerco had provided no persuasive basis for questioning the validity of the late charge penalty.

3. We conclude that the Managing Director's decision is correct. The late fee was charged in accordance with Section 9(c)(1) of the Act. Section 9(c)(1) states:

The Commission shall prescribe by regulation an additional charge which shall be assessed as a penalty for late payment of fees required by subsection (a) of this section. Such penalty shall be 25 percent of the amount of the fee which was not paid in a timely manner.

4. Nothing in the statute or its legislative history supports Aerco's claim that the Commission's rules implementing Section 9(c)(1) are inconsistent with Congress' intent because the rules do not account for circumstances such as whether payment is one day or one year late, payment is late or not made at all, the station is located outside the continental United States, or mail delivery of payment may have been delayed due to hurricane. To the contrary, as stated in the Managing Director's decision, the rules fully comport with Section 9(c)(1), which requires the Commission to assess a late charge penalty of

1 47 U.S.C. § 159(c)(1).

25 percent on any regulatory fee not paid in a timely manner. Moreover, the rules and statute do account for more serious violations. In addition to setting the late charge penalty amount, the statute itself provides additional penalties for fees that are not paid at all. Section 9(c)(3) authorizes the Commission to revoke an existing license or other authorization for nonpayment of a regulatory fee.<sup>2</sup>

5. In the rulemaking that implemented Section 9(c)(1), the Commission also rejected arguments, similar to Aerco's, that it consider a regulatory fee payment to be timely submitted if the payment is postmarked by the date it is due.<sup>3</sup> Instead, the Commission determined that a regulatory fee is untimely paid when it is not received at the lockbox bank by the payment date, citing the need to process payments efficiently.<sup>4</sup> To the extent Aerco believes the Commission should adopt more lenient rules for stations outside the continental United States, Aerco's proposal is more appropriately raised in a petition for rulemaking.

6. In addition, Section 1.1158 of the Commission's rules permits payment of regulatory fees in forms that would not be affected by extrinsic factors, such as the uncertainties associated with the timing of mail delivery or the possibility of approaching weather conditions that might slow delivery.<sup>5</sup> The rules allow electronic transfer of funds, thus providing greater certainty of timely delivery. This permits licensees to account for individual circumstances in choosing how to meet their obligations to make payment in a timely manner.

7. ACCORDINGLY, IT IS ORDERED that the Application for Review filed by Aerco Broadcasting Corp. on December 21, 2000 IS DENIED.

8. IT IS FURTHER ORDERED that Aerco IS DIRECTED to submit payment in the amount of \$1,352.75 and Form FCC 159 within 30 days from the release of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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<sup>2</sup> 47 U.S.C. § 159(c)(3).

<sup>3</sup> *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, MD Docket No. 94-19, Report and Order, 9 FCC Rcd 5333, 5353 (1994).

<sup>4</sup> *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, MD Docket No. 94-19, Report and Order, 9 FCC Rcd 5333, 5353 n.23 (1994)

<sup>5</sup> 47 C.F.R. § 1.1158.