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BEFORE THE

Federal Communications Commission

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WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION

In re the Matter of	)	
	)	
Assessment & Collection of	)	MD Docket 96-186
Regulatory Fees for Fiscal	)	
Year 1997	)	
	)	
	)	
	)	

TO: The Managing Director

PETITION FOR REDUCTION IN REGULATORY FEES AND REQUEST FOR REFUND

Pan Caribbean Broadcasting Corp. ("Licensee"), pursuant to Section 1.2 of the Federal Communications Commission's Rules, hereby petitions for a ruling declaring it exempt, in part, from payment of the regulatory fee increase applicable to its radio stations and hereby requests that the Commission refund the amount of regulatory fees the licensee has paid that is over and above the 38% amount increase attributable to the increase in costs for enforcement, policy and rulemaking, international and user activities in FY 1997.

I. Introduction

1. On June 26, 1997, the FCC issued its revised schedule of annual regulatory fees for 1997. See Commission Report and Order, MD Docket No. 96-186 (Released June 26, 1997) ("FY 1997 Fee Order"). The regulatory fees contained therein represented a substantial increase in the fees due for these stations in previous years. Part of that increase results from an overall increase in costs for enforcement, policy and rule making, international and user information activities in FY 1997, which the Commission is obligated to recover. The amount of such

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increase attributable to the radio industry is 38%. The FY 1997 Fee Order listed regulatory fees for the licensee which were substantially greater than 38% over last year's fees. The amount of the fee increase above the 38% mark is due to the FCC's new methodology of calculating annual regulatory fees for AM and FM Stations. Licensee has already paid the full amount of the regulatory fees due for each of its two stations as set forth in the FY 1997 Fee Order, and seeks only a reduction of any increase over and above the 38%, as such increase is based on the FCC's fees determination methodology. Licensee hereby requests a refund of the amount it paid the Commission over and above the 38% or $847.80 for WMDD(AM) and $275.00 for WDOY(FM). In support of this request, the following is submitted.

II. Argument

2. Section 9(d) of the Communications Act of 1934, as amended, provides that "[t]he Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest." 47 U.S.C. 159(d); see 47 C.F.R. § 1.1166 (1995).

3. In its FY 1997 Fee Order, the FCC instituted a new fee structure for assessment of AM and FM broadcast fees for FY 1997. The Commission's objective in doing so was to more accurately "associate population density and service area contours with license data." FY 1997 Fee Order, at page 19. By basing fees on class of station and population served, the FCC hoped to provide "a fair and equitable means of distinguishing between stations located in metropolitan areas and those located in rural areas." Id. at 23. The expected result is that generally larger stations and those located in larger metropolitan areas will be more likely to be assessed higher

fees and small stations and those located in rural areas will be more likely to be assessed lower fees. Id. While Licensee does not challenge the Commission's contention that generally these objectives have been realized due to its implementation of the new methodology, it is noted that proportionately, with respect to the fee increase, small rural stations on the island of Puerto Rico, including the Stations at issue here, are bearing a significantly greater share of the increase than the large metropolitan stations.

4. The disproportionate fee increase appears to be the combined result of several factors unique to Puerto Rico, not just one specific circumstance. As is more fully described below, these factors include the Island's unusual geographical characteristics, its dense but predominately rural population, the implementation of certain technical standards, which although in compliance with Commission requirements, are at variance with similarly situated stations located in the 48 contiguous states, and the inherent localism of the stations.

5. First, a number of factors particular to an island location converge to result in disproportionate fees for small stations in Puerto Rico. Geographically, Puerto Rico is small and its terrain is quite rugged. Puerto Rico is approximately 90 miles long (east to west) and thirty miles wide (north to south), bisected east to west by a central mountain range which effectively blocks broadcast signals directed across its heights. Isolated high points also exist throughout the island which make it difficult to sustain a good quality broadcast signal even at shorter distances.

6. Recognizing the inherent difficulties these geographical considerations pose to coverage and the need to enhance the abilities of the Puerto Rico stations to better serve the needs of their audiences, the FCC has authorized, through waivers and/or specific rules and

regulations, the use of more powerful transmitters and/or larger antennas than would otherwise be permitted.[1] Additionally, the FCC has adopted special short spacing rules for Puerto Rico stations, which permit the construction of a greater number of stations in a smaller area than would be the case on the mainland. See 47 C.F.R § 73.215. Taken together, these specialized technical rules artificially inflate the annual regulatory fees due for these stations under the FCC's new fee methodology.

7. While admittedly the variances mentioned above are necessary to Puerto Rican radio operations, their impact with respect to the regulatory fee obligations of small rural stations in Puerto Rico, including the Stations at issue here, is profound. First, the short spacing rules create significant congestion in the radio market, particularly in the rural areas. Consequently, there is more contour overlap and thus more contour interference. The effects of this congestion are further magnified by the fact that 90% of the radio stations on the Island are located along the coastline, the implication being that some portion of these stations' signals are transmitting over the ocean. Finally, even though the terrain, contour overlap and interference generally preclude the Stations from transmitting a signal of any quality beyond their communities of license, the expanded facilities requirements (i.e., ERP and HAAT variances) produce a greater maximum

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1/ For example, Class A stations in Puerto Rico are authorized a maximum ERP of 6kW and a reference HAAT of 240 m. While Class A stations in the 48 contiguous states are authorized the same maximum ERP, the maximum authorized reference HAAT is only 100 m. The same comparison applies to Class B1 and Class B stations. While the maximum allowable ERP is the same, Puerto Rican stations have been authorized a greater reference HAAT. See 47 C.F.R. § 73.211.

theoretical class contour distance for the Stations [2] Thus, because the new fee methodology is tied to both the class of the station and the population being served, and because the Stations have a larger theoretical area of coverage and therefore a seemingly larger population base, albeit a technically unreachable population base, the Stations have seen a disproportionate increase in their fee obligations.

8. Moreover, although Puerto Rico is rather small, it has a strong radio presence. Roughly 120 licensed or authorized radio stations exist on the island, the majority of which are small, privately owned stations which serve rural communities. Puerto Rico is also densely populated. Approximately the size of the State of Connecticut, it is home to a total 1990 Census population of 3,522,037 persons. These people, however, are not highly mobile like the residents of Connecticut who commute daily to New York to work. Rather, all of the daily activities of the residents of Puerto Rico occur within their own or neighboring communities, which are considered as distinct as the cities of Washington, New York and Boston. This localization is further evidenced by the findings of the U.S. Census Bureau, which has divided the Island into four Metropolitan Statistical Areas ("MSAs"),[3] and by the Commission, who has utilized such

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[2] This is best illustrated by comparing the maximum limits for Puerto Rican FM stations to those of the same class in the 48 contiguous states. The maximum contour distances for FM stations in Puerto Rico is as follows: 42 for Class A stations, 46 for Class B1 stations, and 78 for Class B stations. In contrast, the maximum contour distances for the same class of stations on the mainland is: 28 for Class A stations, 39 for Class B1 stations, and 52 for Class B stations.

[3] An MSA comprises one or more counties containing either a place with at least 50,000 inhabitants or an urbanized area and a Metropolitan Area (MA) total population of at least 100,000. Contiguous counties are included if they have close social and economic links

MSAs when considering waivers of the one-to-a-market multiple ownership rule to help define applicable broadcast markets in Puerto Rico. See WLDI, Inc. (Assignor) and Pedro Roman Collazo (Assignee) for Assignment of License of Station WRAI (AM), San Juan, Puerto Rico, 1 CR 862, 10 FCC Rcd 12150 (September 28, 1995).

9. The existence of these alternative MSAs demonstrates that population, commuting, and business patterns are fractured. Thus, the mere fact that a station's signal from one market might spill into the population center of another's doesn't mean people there will be listeners, or more importantly, that advertisers will buy time on the station. This impact is even greater on the rural stations which have populated areas but are not considered stations in the populated area by listeners or advertisers.[4/]

10. Given the Commission's intent to treat Puerto Rico specially, as evidenced by these different technical rules and standards, and given its intent to more accurately associate the regulatory fee assessment with population density and the fact that a completely opposite result is reached when this methodology is applied to the Stations because of the artificial factors which inflate the Stations' population base, it would be unfair and inequitable not to refund to Licensee that portion of its regulatory fees that are more than 38% over last year's fees. Moreover, because of the generally more depressed nature of the Puerto Rico economy, increases over the

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with the area's population nucleus.

4/ Because stations are strongly tied to their community of license, most if not all of a station's advertising dollars come from local advertisers. These advertisers service only local consumers and therefore do not generally purchase advertising outside the community of license.

38% mark confer a disproportionately greater burden on Puerto Rico licensees. In this instance, the drastic and disproportionate increases have caused the Licensee to suffer severe financial strain and limit its ability to serve the public.

11. As indicated above, the Commission has the authority to reduce or defer the regulatory fee requirement in instances where reduction or deferral would promote the public interest. See 47 C.F.R. § 1.1166 (1997). For the reasons noted above, the Commission should exercise this discretion in the case of Licensee.

III. Conclusion

Licensee has demonstrated that as a result of the artificial factors influencing the Stations' area of coverage and population base, application of the current fee schedule and imposition of a regulatory fee increase over and above the amount mandated by Congress would result in a grossly unfair burden. In order for Licensee to continue its operations and meet the needs of its listeners, Licensee respectfully requests that the Commission exercise its authority in this case and exempt Licensee from the regulatory fee increase requirement, over and above the 38% mandated by Congress, and refund the amount Licensee has already paid for WMDD and WDOY that is over and above the 38%.

Respectfully submitted,

Richard J. Friedman
President

Dated: October 4 ,1997