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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re the Matter of)
)
Assessment & Collection of)
Regulatory Fees for Fiscal)
Year 1997)
)
)

MD Docket 96-186

To: Managing Director

PETITION FOR WAIVER OF 1997 REGULATORY FEES

Thomas A. Aceituno, Trustee for the Bankruptcy Estate of Stratcom, Ltd. ("Aceituno"), the licensee of radio broadcast stations KPCO(AM), Quincy, California and KBNF(FM), Chester, California (the "Stations"),¹ pursuant to Section 1.1166 of the Commission's rules, respectfully requests that the Commission waive payment of 1997 regulatory fees for the Stations.² Because this Petition is not accompanied by payment for the 1997 fees assessed for the Stations, Aceituno has filed simultaneously herewith a Petition to Defer Payment of the 1997 Regulatory Fees due to financial hardship as required by Section 1.1166(c) of the Commission's rules.

Section 1.1166 of the Commission's rules provides that requests for waiver of regulatory fees will be granted on a case-by-case basis, where good cause is shown and where waiver would promote the public interest. 47 C.F.R. § 1.1166. A sufficient showing of financial hardship

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¹ The call sign for KBNF was formerly KCMT.

² By separate letters dated June 18, 1998 and addressed to Ralph E. Wittick, the Office of the Managing Director, Billings & Collection Branch, demanded payment of the \$500 1997 regulatory fee due for KPCO (plus a 25 percent late fee) and the \$1,500 for the 1997 regulatory fee due for KBNF (plus a 25 percent late fee). Ralph E. Wittick was the licensee of the Stations prior to Stratcom, Ltd., the bankrupt entity which involuntarily assigned the licenses for the Stations to Aceituno.

demonstrates “good cause.” *In the Matter of Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, 10 FCC Rcd 12759, 12761 (1995). Evidence of bankruptcy or receivership is sufficient to establish financial hardship and the Commission “will waive the regulatory fees for licensees whose stations are bankrupt . . . or in receivership.” *Id.* at 12762.

The Commission has also stated that it will grant waivers of the regulatory fees filed by licensees whose stations are dark, because such stations are generally suffering from financial hardship. *Id.* The Commission does not require the licensee of a dark station requesting a fee waiver to make a further showing of financial hardship. *Id.*

Based upon the foregoing standard, waiver of payment of the 1997 regulatory fees for the Stations is warranted. The Stations discontinued operations on July 1, 1997, pursuant to Commission authority, owing to lack of operating revenues by Stratcom, Ltd., the prior licensee of the Stations, and the Stations were silent at the time the 1997 regulatory fees were due. Stratcom, Ltd. filed a voluntary petition for bankruptcy with the U.S. Bankruptcy Court for the Eastern District of California on October 20, 1997. On that date, the Office of the United States Trustee appointed Aceituno as the trustee of the bankruptcy estate of Stratcom, Ltd. A copy of Aceituno’s notice of appointment is attached hereto as Exhibit A. Aceituno became licensee of the Stations, with Commission consent, on April 7, 1998 upon the consummation of the involuntary assignment of the licenses of the Stations from Stratcom, Ltd. to Aceituno as trustee.

Therefore, waiver of payment of the 1997 regulatory fees for the Stations should be appropriate in this case because the Stations were silent when the fees became due and shortly thereafter the former licensee of the Stations was adjudged bankrupt. In addition, the bankruptcy estate which holds the licenses for the Stations currently lacks the financial resources to pay the

1997 regulatory fees; the estate assets are at a level sufficient only to cover the basic operating expenses of the Stations.

In addition, granting Aceituno's waiver request would promote the public interest. Aceituno has resumed operations for both stations while facing the Stations' one-year silent date on July 1, 1998. To do so, Aceituno obtained special temporary authority to operate KPCO at variance until a proof of performance study is completed and KBNF at reduced power until a new antenna could be installed. Also, since Aceituno has become the licensee of the Stations, construction of a new tower and antenna for KBNF, authorized by a construction permit issued on July 9, 1996,³ has been initiated, and will soon be completed. Thus, grant of the requested waiver would enable Aceituno to continue to utilize the limited financial resources of the bankruptcy estate in keeping the Stations on the air and in compliance with the Commission's rules. Requiring payment of the regulatory fees at this time would threaten station operations.

Furthermore, in order to best serve the public interest, Aceituno has negotiated the sale and assignment of the Stations' assets and licenses to a new licensee which has the necessary financial resources to operate the Stations long-term.⁴ Requiring payment of the 1997 regulatory fees, when the Stations' finances are limited and the sale of the Stations to a financially stable party is imminent, could "act as an impediment to the negotiations and the transfer of the station[s] to a new licensee." *In the Matter of Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, 10 FCC Rcd at 12762.

³ As extended by BPH-980504JD.

⁴ See Files Nos. BAL-980701EG and BALPH-980701EH.

In light of the foregoing, Aceituno respectfully requests that the Commission waive the 1997 regulatory fees for radio broadcast KPCO and KBNF.

Respectfully submitted,

THOMAS A. ACEITUNO, TRUSTEE FOR THE
BANKRUPTCY ESTATE OF STRATCOM, LTD.

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July 20, 1998

Its Attorneys

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re)
)
Stratcom, Ltd.)
)
Debtor(s) .)

Case No. 97-36057-B-7

FILED
October 20, 1997
CLERK, U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

APPOINTMENT OF INTERIM TRUSTEE AND NOTICE OF SELECTION

Thomas A. Aceituno is hereby appointed Interim Trustee of the above-named Debtor's(s') estate and Trustee if creditors fail to elect a Trustee as provided by the Bankruptcy Code. The Interim Trustee has filed a blanket bond pursuant to Federal Rule of Bankruptcy Procedure 2010(a).

If the Interim Trustee does not notify the Office of the United States Trustee and the Court in writing of rejection of the office within five days after receipt of notice of selection, the Interim Trustee shall be deemed to have accepted the office.

Dated: October 20, 1997

Office of the United States Trustee
Region 17

Linda E. Stanley
United States Trustee

Antonia G. Darling
Assistant United States Trustee

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CERTIFICATE OF SERVICE

I, Nellie Martinez-Redicks, a secretary in the law firm of Arter & Hadden LLP,
hereby certify that on this day, July 20, 1998, a copy of the foregoing "Petition for
Waiver of 1997 Regulatory Fees" was served on the following person by hand-delivery:

Regina Dorsey, Chief
Federal Communications Commission
Billings & Collections Branch
1919 M Street, N. W., Room 452
Washington, DC 20554

Nellie Martinez-Redicks