

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

OCT 16 2014

OFFICE OF  
MANAGING DIRECTOR

Richard J. Hayes, Jr., Esq.  
27 Water's Edge Drive  
Lincolnton, Maine 04849

Applicants/Licensees/Debtors: **Hochman  
Hawaii One, Inc., and Hochman Hawaii  
Two, Inc.**

Correct Records; Remove Fees

Disposition: **Dismissed and Denied** (47 U.S.C.  
§ 159(c)(2); 47 C.F.R. §§ 1.1164, 1.1166(c) &  
(e), 1.1910, 74.1263)

Stations: Auxiliary Booster Stations KITH-  
FM1 & KTOH-FM1

FRNs: 0004989364 and 0004984472

Basis of Debts: Fiscal Year (FY) 2013

Regulatory Fees<sup>1</sup>

Fee Control No.: RROG-13-00015673

Amount Due: **See Fee Filer**

Dear Counsel:

This responds to Licensees' joint *Request*<sup>2</sup> to correct the Commission's records to remove from collection the unpaid and delinquent Fiscal Year (FY) 2013 regulatory fees due for Auxiliary Booster Stations KITH-FM1 and KTOH-FM1. Because the fees remain unpaid, late payment penalties and accrued interest, penalties, and charges for collection accrued. As we discuss below, because Licensees are delinquent in paying the regulatory fees and charges, we dismiss and, in the alternative, deny the *Request*.

On July 18, 2014, Licensees responded to the Commission's two demand letters (*Demand I* and *Demand II*) for payment of delinquent regulatory fees.<sup>3</sup> Both *Demand I* and *II* included similar notices that, in summary, informed Licensees that they (1) owed debts to the United States, (2) had 15-days from the date of the *Demand Letters* to request inspection, seek

<sup>1</sup> See FY 2013 Regulatory Fees Due No Later Than September 20, 2013, 11:59 pm Eastern Time (ET), *Public Notice*, DA 13-1796. (Sep. 4, 2013). Licensees are delinquent \$1,175.58 (including the accrued statutory penalty and charges for collection) for non-payment of FY 2013 Regulatory Fees.

<sup>2</sup> Letter from Richard Hayes, Jr., Esq., 27 Water's Edge Drive, Lincolnton, Maine 04849, to FCC, Revenue and Receivables Operations Group, PO Box 979088, St. Louis, MO 63197 (Jul. 18, 2014) (*Request*).

<sup>3</sup> Demand Letter from FCC, Washington, DC 20554 to Hochman Hawaii One, Inc., 4339 Kalaheo Dr., Kalaheo, HI 96741 (Jun. 25, 2014) (*Demand I*), Demand Letter from FCC, Washington, DC 20554 to Hochman Hawaii Two, Inc., 4339 Kalaheo Dr., Kalaheo, HI 96741 (Jun. 25, 2014) (*Demand II*).

installment plans, or seek review of the bases of the debts, and (3) remained subject to sanctions, including withholding of action and collection, until the debts were paid or satisfactory arrangements were made.<sup>4</sup> After expiration of the time permitted to seek review, Licensees asserted, the debts described in *Demand I* and *II* pertained to “booster facilities [that] have not been used ... since June, 2009 [when the primary signal stations moved to a new transmitter site, thus] no fees are appropriate or allowable.”<sup>5</sup> Licensees asked the Commission to “correct [its] records to reflect that neither licensee has been legally permitted to utilize either of the listed booster stations.”<sup>6</sup>

As noted above, Licensees’ *Request* was dated and received more than 15-days from the date on *Demand I* and *II*, thus the time for “review of the basis for the Debt” expired. Even so, as a courtesy, we looked to our records to determine whether, in fact, Licensees had surrendered the authorizations. If so, we would take appropriate action. Contrary to Licensees’ assertions, the Commission records show that call signs KITH-FM1 and KTOH-FM1 are active, licensed FM booster facilities, and they do not expire until February 1, 2022. Thus, until the authorizations are surrendered, cancelled, or they expire, fees are due and payable each year. Accordingly, Licensees are responsible for timely payment of the FY 2014 regulatory fees.

For FY 2013, the deadline for paying regulatory fees was September 20, 2013.<sup>7</sup> Licensees did not meet that deadline, thus they are delinquent, and under 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1164(e) and 1.1910 (our red light rule),<sup>8</sup> we dismiss the *Request*. As delinquent debtors, Licensees are subject to sanctions, including those set forth at the Debt Collection Improvement Act of 1996 (DCIA).<sup>9</sup> This ends the matter; however, as a courtesy, we explain that because Licensees failed to comply with the Commission’s rules pertaining to booster authorizations, they are in violation of our rules, and on the applicable facts, we deny the *Request*, including that portion seeking correction of our records.

Licensees failed to include any evidence with their *Request* seeking record correction, and the Commission’s records do not show that Licensees notified the Commission that they intended to discontinue operations for a period or permanently or that Licensees forwarded the station authorizations to the Commission. Such evidence is necessary to show rule compliance and to establish that Licensees surrendered the authorizations prior to the expiration dates. Procedures to notify the Commission of a temporary or permanent discontinuance of operations and the procedure to surrender an authorization are set forth at Part 74 of the Commission’s

---

<sup>4</sup> *Id.* (“This Demands payment of a Debt owed the United States. It Notifies you of (a) important information about the nature of the Debt, (b) your rights, (c) consequences for failing to pay .... you have 15-days from the date of this Demand Letter [6/25/2014] to request an opportunity to ... (c) as permitted by FCC rules, seek agency review of the basis for the Debt. FCC’s rules specific conditions that may apply to one or more of these rights, including, e.g., under 47 CFR 1.1167, the full amount of a regulatory fee must be paid before filing a petition for reconsideration, under 47 CFR 1.1910, the FCC withholds action on applications from delinquent debtors ... you will be deemed to have waived any right not exercised [within 15 days] ... additional charges may accrue, including a statutory penalty ... administrative charges ... interest and penalties ... charges accrue until the Debt is paid in full ....”).

<sup>5</sup> *Request*.

<sup>6</sup> *Id.*

<sup>7</sup> See FY 2013 Regulatory Fees Due No Later Than September 20, 2013, 11:59 pm Eastern Time (ET), *Public Notice*, DA 13-1796. (Sep. 4, 2013).

<sup>8</sup> Under 47 C.F.R. § 1.1910(b)(2), the Commission will withhold action on any application filed or pending.

<sup>9</sup> Public Law 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

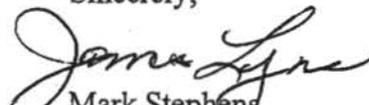
rules. Specifically, the Commission rule at 47 C.F.R. § 74.1263(c) requires the “licensee of an FM translator or booster [to] notify the Commission of its intent to discontinue operations for 30 or more consecutive days,” and 47 C.F.R. § 74.1263(d) requires the “licensee of an FM translator or booster [to] notify the Commission of its intent to permanently discontinue operations at least two days before operation is discontinued[, and i]mmediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, DC for cancellation.” We are unable to find evidence of such compliance; however, if Licensees have such evidence, they should provide it immediately to the Commission’s licensing bureau with a copy to this office. Until Licensees furnish such proof or properly surrender the authorizations, fees are due, and if unpaid, penalties and charges accrue, and sanctions will apply.

Refer to the Commission’s fee filer website to determine a payoff and make payment. We will continue to assess interest and penalties until the full amount is paid, and under the law,<sup>10</sup> we will apply debt collection procedures.<sup>11</sup> Until the Commission receives the full amount (and full payment of other delinquent debts), we are required to dismiss any application that Licensee has pending or that it will file. Additional statutory charges continue to accrue.

Moreover, under 31 U.S.C. § 3716, 31 C.F.R. § 285.5, and 47 C.F.R. § 1.1912, some or all of the debt may be collected by non-centralized or centralized administrative offset. Also, under 31 U.S.C. § 3711(e), this debt and Licensee’s payment history will be reported to credit reporting information bureaus. Further, this provides notification that under 31 U.S.C. § 3711(g), without further notice, and usually within 180 days or less of the original date of delinquency, we will transfer the delinquent debts to Treasury, which will initiate collection action through private collection activities and assess additional charges. In addition, we may refer the debts to the Department of Justice, which may result in litigation and additional costs. Because we have furnished notice here, Licensee may not receive another notification of this process. As mentioned earlier, Licensee will remain red lighted<sup>12</sup> until it pays the debt or makes other satisfactory arrangements.<sup>13</sup>

If Licensees have questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

  
Mark Stephens  
FCC  
Chief Financial Officer

<sup>10</sup> See 47 C.F.R. § 1.1901, *et seq.*

<sup>11</sup> See 31 C.F.R. § 3717.

<sup>12</sup> See 47 C.F.R. § 1.1910(b)(2) (“Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or request for authorization by any entity found to be delinquent in its debt to the Commission ....”); 47 C.F.R. § 1.1164(e) (“Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.”).

<sup>13</sup> See 47 C.F.R. § 1.1914 (“If a debtor is financially unable to pay a debt in one lump sum, the Commission, in its sole discretion, may accept payment in regular installments.”).