

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

SEP 25 2014

OFFICE OF
MANAGING DIRECTOR

Charles S. Lotsof, Esq.
1188 Bishop Street, Suite 2711
Honolulu, HI 96813-3311

Licensee/Applicant: **Stereo 97, Inc.**
Waiver and Refund of Payment: Financial Hardship
Disposition: **Denied** (47 C.F.R. § 1.1166(c))
Stations: KAVV, KAVV-FM1 & WHB636
Fee: Fiscal Year (FY) 2011 Regulatory Fees
Date Request Filed: Oct. 31, 2011
Date Regulatory Fees Paid: Sep. 11, 2011
Fee Control No.: RROG-11-00014017

Dear Mr. Lotsof:

This responds to Applicant's *Request*¹ for waiver and refund of the required Fiscal Year (FY) 2011 regulatory fees that is based on financial hardship. As we discuss below, because Applicant failed to demonstrate both good cause and that the public interest is served by waiving the fee, we deny the *Request*.

On October 11, 2011, Applicant submitted his "application for waiver of the [FY 2011] regulatory fees for KAVV and KAVV-FM1" on the grounds of financial hardship "pursuant to 47 C.F.R. § 1.1166."² Applicant asserts, "until [Jack Lotsof] he died on May 18, 2011, [he was the sole owner of] Stereo 97, Inc., [and on October 10, 2011, Applicant was] appointed ... the Administrator of Jack Lotsof's estate."³ Furthermore, "KAVV has never been profitable, because it serves such a small market."⁴ Applicant explains that payment to the vice president was compensation for "employment [at a] full-time position as ... general manager [and] no other employee, consultant or other individual received as much as \$25,000 in any form of compensation ... during the fiscal year."⁵ On October 24, 2011, Applicant submitted financial information including an accountant's review report, statement of assets, liabilities, and stockholder's equity, statement of revenues, expenses and deficit, statement of cash flows, and notes to financial statements. In addition to Applicant's materials, we located public information

¹ Letters from Charles S. Lotsof, Esq., 1188 Bishop Street, Suite 2711, Honolulu, HI, 96813-3311 to Attn: Regulatory Fee Waiver Requests, Office of Managing Director, 445 12th St., S.W., Rm 1-A625, FCC, Washington, DC 20554 (Oct. 11, and Oct. 24, 2013) (*Request*) with Financial documents, including Accountant's Review Report, Statement of Assets, Liabilities, and Stockholder's Equity, Statement of Revenues, Expenses and Deficit, Statement of Cash Flows, and Notes to Financial Statements (Oct. 24, 2011).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

pertaining to Applicant's station showing that the station promotes itself as "Southeast Arizona's Most Powerful Radio Station"⁶ providing radio service over-the-air and by internet streaming from its location in Benson, Arizona.

Under 47 C.F.R. § 1.1160, refunds are made in only specific instances, *i.e.*, (1) no regulatory fee is required, (2) in the case where the amount is an advance payment of regulatory fees, subject to 47 C.F.R. § 1.1152, the refund is based on unexpired full years, and the Commission adopted new rules that nullify a license or other authorization, or a new law or treaty renders a license or other authorization useless, or a licensee in the wireless radio service surrenders the license or other authorization to the Commission, or when the Commission declines to grant an application submitted with a regulatory fee payment, or (3) when a waiver is granted as set forth in 47 C.F.R. § 1.1166,⁷ which is the asserted basis for Applicant's *Request*.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced or deferred, but only upon a showing of *good cause* and a finding that the *public interest will be served* thereby.⁸ The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.⁹ In an appropriate situation, fee relief may be granted based on a "sufficient showing of financial hardship."¹⁰ In such matters, however, "[m]ere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."¹¹ Thus, in order to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, *e.g.*, a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.¹² Applicant failed to meet that standard.¹³

⁶ See www.cavefm.com/cave_coverage.html.

⁷ 47 C.F.R. § 1.1160(a).

⁸ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344, ¶ 29 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

⁹ *Id.*

¹⁰ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (*FY 1994 MO&O*).

¹¹ *Id.*

¹² 9 FCC Rcd at 5344 ¶ 29; In *The Matter of Phoenix Broadcasting, Inc. Stations KSWD and KPFD Seward, Alaska*, *Memorandum Opinion and Order*, 18 FCC Rcd. 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the

Applicant provided some financial information in support of its assertions of financial loss; however, financial loss alone does not present extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions. The primacy of the standard is that the applicant must present "extraordinary and compelling circumstances showing that a waiver ... would override the public interest" in collecting the fee.¹⁴ We analyze the facts of each case to determine whether the applicant has satisfied both prongs of the Commission's standard, financial hardship and extraordinary¹⁵ and compelling circumstances¹⁶ showing waiver is justified.¹⁷

Applicant bases its asserted financial hardship on a statement of revenues, expenses and deficit showing that as of the end of its year, expenses exceed the reported revenue from operations and interest. In that regard, Applicant failed to adequately clarify important elements of its submission. For example, the notes to Applicant's financial statements suggest unreported receivables in the context of the explanation that the "basis [of accounting in Applicant's situation] differs from generally accepted accounting principles primarily because [Applicant] has not recognized balances, and the related effects on earnings, of accounts receivable from advertising services rendered, and accounts payable to vendors."¹⁸ Indeed, Applicant reported revenue from interest and from operations, which by definition includes only revenue from day-to-day activities, and no other sources. Applicant failed to clarify these points. Furthermore, Applicant failed to clarify the apparent inconsistency between asserting in the *Request* that the station "has never been profitable, because it serves such a small market" and promoting on the internet that the station is "Southeast Arizona's Most Powerful Radio Station." This is important to Applicant's burden of showing the public interest is served by waiving the fee to be paid by a self-proclaimed powerful radio station. Overall, Applicant failed to establish an accurate picture of its financial status and the station operation, and Applicant failed to show the "the impact of the regulatory fee [on the Licensee's] ability to serve the public."¹⁹ Moreover, Applicant did not show how, in light of the current national financial climate, the public interest will be served by waiving the fee. We will not speculate about the substance of the information that might fill in the gaps. Accordingly, we deny Licensee's *Request*.²⁰

regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

¹³ See *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971); *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner . . . has the 'burden of clarifying its position' before the agency."). See also 47 C.F.R. § 1.65 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

¹⁴ *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12.

¹⁵ Black's Law Dictionary (9th ed. 2009)(extraordinary-"a highly unusual set of facts that are not commonly associated with a particular thing or event").

¹⁶ *Id.* (compelling-"something so great that irreparable harm or injustice would result if not met").

¹⁷ In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

¹⁸ *Request*, Notes to Financial Statements.

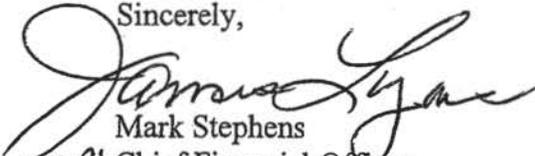
¹⁹ *FY 1994 MO&O*, 10 FCC Rcd at 12762, ¶ 13.

²⁰ 47 C.F.R. § 1.1166.

Licensee requested confidential treatment of the submitted financial data. Under 47 C.F.R. §§ 0.442(d)(1) and 0.459(d)(3), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records; however, in the meantime, we treat the records confidentially.

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

Sincerely,



Mark Stephens
FOR: Chief Financial Officer