

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554
OCT 17 2014

OFFICE OF
MANAGING DIRECTOR

Wayne D. Mack, Manager
Stratus Media Holdings, LLC
5000 Tremont Avenue, Suite 100C
Davenport, IA 52807

Licensee/Applicant: **Waterloo Television Group, LLC**
Waiver and Deferral of Payment: Financial Hardship
Disposition: **Denied** (47 U.S.C. § 159(d); 47 C.F.R. § 1.1166)
Station: KWWF (TV)
Fee: Fiscal Year (FY) 2013 Regulatory Fee
Date Request Filed: Sep. 20, 2013
Date Regulatory Fee Paid: Not paid
Fee Control No.: RROG-13-00015399
Amount Due: See Fee Filer

Dear Mr. Mack:

This responds to Licensee's *Request*¹ for a waiver and deferral of the Fiscal Year (FY) 2013 regulatory fee based on financial hardship. As we discuss below, because Licensee failed to demonstrate both good cause and that the public interest is served by waiving the fee, we deny the *Request*, and require full payment of the regulatory fee.

On September 20, 2013, Licensee submitted its *Request* to waive the FY 2013 regulatory fee and defer payment pending disposition of the *Request*. Licensee asserts it acquired the station as part of a foreclosure transaction in early March 2012, and during the prior 16 months, Licensee "suffered the defection of a key corporate officer and ... declining to nonexistent revenues[, such that Licensee was] forced ... to discontinue operations on August 8, 2013[, the date on which Licensee] filed ... Silent STA due to financial reasons."² Licensee referred to the

¹ Waterloo Television Group, LLC; KWWF (TV), Waterloo, Iowa, Facility ID 81595, Petition for Deferral and Waiver of FY 2013 Annual Regulatory Fees To Marlene H. Dortch, Secretary, Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request (Sep. 20, 2013) (*Request*) with Attachment A (FCC Station Search Results, Application Search Results), Attachment B (Waterloo Television Group, LLC, 2013 Projected Cash flow For the period January to December 2013 (*Cash flow 2013*), Waterloo Television Group, LLC, Balance Sheet As of August 2, 2013 (*Balance Sheet 8/2013*), Waterloo Television Group, LLC Profit & Loss January 1 through August 2, 2013 (*Profit & Loss 2013*), Waterloo Television Group, LLC Balance As of December 31, 2012 (*Balance Sheet 2012*), Waterloo Television Group, LLC Profit & Loss January through December 2012 (*Profit & Loss 2012*), and Attachment C (2013 Compensation of Licensee Employees and Officers/Members of Parent-Stratus Media Holdings, LLC (*Compensation*) and Stratus Media Holdings, LLC (*Percentage of Interest*)).

² *Id.* at 1-2.

attachment, which included a *Balance Sheet 8/2013, Cash flow 2013, Profit & Loss 2013, Balance Sheet 2012, Profit & Loss 2012, a Compensation payment report, and a Percentage of Interest chart.*³

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.⁴ 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.⁵ In an appropriate situation, fee relief may be granted based on a "sufficient showing of financial hardship."⁶ 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."⁷ 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.⁸ Licensee failed to meet that standard.⁹

Licensee provided financial documentation in support of its assertions of financial loss; however, the financial loss and the documentation 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-licensee must present "extraordinary and compelling circumstances showing

³ *Id.*

⁴ 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).

⁵ *Id.*

⁶ 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*).

⁷ *Id.*

⁸ 9 FCC Rcd at 5344 ¶ 29; In *The Matter of Phoenix Broadcasting, Inc. Stations KSWD and KPFN 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 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.").

⁹ 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.).

that a waiver ... would override the public interest” in collecting the fee.¹⁰ We analyze the facts of each case to determine whether the applicant-licensee has satisfied both prongs of the Commission’s standard, financial hardship and extraordinary¹¹ and compelling circumstances¹² showing waiver is justified.¹³

Licensee asserted financial hardship based on its documentation, i.e., “1) a Balance Sheet, as of August 2, 2013 [*Balance Sheet 8/2013*], 2) a Profit & Loss Statement for the period between January 1, 2013 and August 2, 2013 [*Profit & Loss 2013*], 3) a Balance Sheet, as of December 31, 2013 (*sic*) [*Balance Sheet 2012*], and 4) a Profit & Loss Statement for the period between January 1, 2012 and December 31, 2012 [*Profit & Loss 2012*].” Licensee did not discuss *Cash flow 2013*, the *Compensation* payment report, or the *Percentage of Interest* chart or relate these documents to its *Request*. As a result, Licensee’s documentation presents several unexplained anomalies.

The Commission requirements are well established. Applicants 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. Here, Licensee did not provide all required information. For example, Licensee furnished *Cash flow 2013*, which projected expenses for a period of only five months more than reported in *Profit & Loss 2013*. Despite an overlap in the period reported sufficient to suggest the information should be similar, the reports are drastically different. Even so, Licensee did not explain the several differences in entries between *Cash flow 2013* and *Profit & Loss 2013* that include a 96% difference between the totals on the two documents, which seem to result from the dramatic unexplained differences between the estimates and actual payments for *facilities* and *interest* expenses, and the absence of the *Personnel* expense item on *Profit & Loss 2013*. As its *Personnel* expense, Licensee reported the compensation to station employees for the period January through August 2013. On one hand, the total compensation matches within a few cents the projected amount on *Cash flow 2013*, but on the other hand, the entry and its amount are not included on *Profit & Loss 2013*. Licensee did not explain the source of those funds, and Licensee failed to explain Stratus Media Holdings, LLC’s participation or to provide any of its financial documentation. Licensee’s failure to furnish sufficient documentation and to explain significant differences casts doubt on the accuracy and completeness of the furnished information.

Licensee asserts “declining to nonexistent revenues” and that it “discontinue[d] operations on August 8, 2013,” yet it will pay “certain ongoing expenses including, but not limited to, administrative, debt and facility obligations.”¹⁴ In effect, Licensee paid select financial obligations reported on the *Profit & Loss 2013* (including undefined *Professional Fees*), and now Licensee asks the Commission and other regulatees to shoulder a portion of

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

¹¹ 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”).

¹² *Id.* (compelling-“something so great that irreparable harm or injustice would result if not met”).

¹³ 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).

¹⁴ *Request* at 1, 2.

Licensee's financial obligations and allow it to pay future undefined expenses to other unidentified creditors instead of the established regulatory fee. That summary approach fails to demonstrate how the public interest is served by waiving the fee.

Overall, Licensee failed to establish an accurate picture of its financial status and the station operation, and Licensee failed to show the "the impact of the regulatory fee [on the Licensee's] ability to serve the public."¹⁵ Moreover, Licensee 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*.¹⁶

Licensee must immediately pay the FY 2013 regulatory fee. Refer to the Commission's fee filer website to determine a payoff, and immediately make full payment with a Form 159.¹⁷ If the full amount is unpaid within 30 days from the date of this letter, Licensee will be a delinquent debtor as of the date of this letter,¹⁸ and we will dismiss any application that Licensee has pending or that it will file. Additional statutory charges will accrue from the date of this letter. Furthermore, this notifies Licensee that under 31 U.S.C. § 3711(g), without further notice, and usually within 180 days or less of delinquency, we will transfer the delinquent debt to Treasury, which will initiate collection action through private collection activities and assess additional charges. In addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs.

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. Because we have furnished notice here, Licensee may not receive another notification of this process. Finally, Licensee will be red lighted¹⁹ until it pays the debt or makes other satisfactory arrangements.²⁰

¹⁵ *FY 1994 MO&O*, 10 FCC Rcd at 12762, ¶ 13.

¹⁶ 47 C.F.R. § 1.1166.

¹⁷ The Form 159 with complete instructions is at <http://www.fcc.gov/fees/form159.html>.

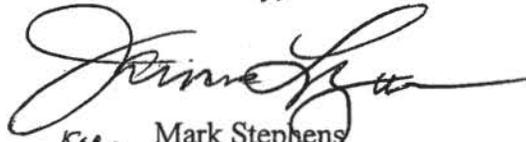
¹⁸ 47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1167(b) ("filing of a petition for reconsideration ... of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted"). See 9 FCC Rcd at 5346, ¶ 35 ("the petitioner will have 30 days to [pay the fee] in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.").

¹⁹ 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.").

²⁰ 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.").

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Stephens", with a long horizontal flourish extending to the right.

For: Mark Stephens
Chief Financial Officer