

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554  
JUN 18 2015

OFFICE OF  
MANAGING DIRECTOR

Robert D. Primosch, Esquire  
Wilkinson Barker Knauer, LLP  
2300 N Street, N.W., Suite 700  
Washington, DC 20037

Licensee/Applicant: 115 License Subsidiary, LLC  
Request: Waiver of Charges or Extension of Time  
Disposition: Denied (47 C.F.R. § 1.1940)  
Basis of Debt: Performance Bond Payment  
Date of Request: June 10, 2015

Dear Counsel:

This responds to Licensee's<sup>1</sup> request<sup>2</sup> (*Request*) to "(i) waive any accrual or collection of interest, penalties, and administrative costs on 115 License Sub's ... bond or, in the alternative, (ii) extend the payment deadline established under the Office of the Managing Director's above referenced Notice of Default and Demand ... until the Commission rules on [Licensee's] pending application for review of the International Bureau's March 30, 2015 *Order* regarding the [certain] applications [for review]."<sup>3</sup> As we discuss below, we deny the *Request* because Licensee fails to establish (i) "good cause shown of extraordinary and compelling circumstances" to extend the period to waive the collection of interest and administrative charges or (ii) "good cause shown of extraordinary and compelling circumstances ... to waive interest, penalties, and administrative costs charged [on our determination] that collection of these charges is against equity and good conscience or is not in the best interest of the United States," and (iii) grounds for the Commission to modify the terms of the agreed to bond payment deadline.

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<sup>1</sup> 115 License Subsidiary, LLC or 115 License Sub (Licensee).

<sup>2</sup> Letter from Robert D. Primosch, Wilkinson Barker Knauer, LLP, 2300 N St., N.W., Suite 700, Washington, DC 20037 to Marlene H. Dortch, Secretary, FCC, 445 Twelfth St., S.W., Washington, DC 20554 (Jun. 10, 2015) (*Request*).

<sup>3</sup> *Id.* at 1.

## Background

On December 17, 2008, the Commission's International Bureau (Bureau) granted, with conditions, Pegasus Development DBS Corporation's Application for Satellite Station Authorizations.<sup>4</sup> Pursuant to this authorization, Pegasus, later Licensee, as successor, was required to satisfy specific implementation milestones, and if it failed to do so, Licensee's authorization for a 17/24 GHz BBS space station at the 115.0° W.L. orbital location would be null and void with no further action on the Commission's part. Additionally, Pegasus and its successor, Licensee, posted the referenced \$3,000,000.00 bond (Bond) with the Commission. The Bond names the United States Treasury as beneficiary should Licensee incur any Event of Default specified in the Bond, to include, *e.g.*, failing to meet any time period-milestone. On May 2, 2012, Licensee surrendered the authorization and requested a determination that it met the first two milestone requirements.

On March 30, 2015, the Bureau released *115 LicenseSub Order*<sup>5</sup> denying Licensee's request for a determination that it met the first two system implementation milestones associated with its surrendered authorization to construct, launch, and operate a 17/24 GHz Broadcasting-Satellite Service (BSS) space station at the 115.0° W.L. orbital locations.<sup>6</sup> In pertinent part, *115 LicenseSub Order* determined Licensee failed its burden of proof of milestone completion, the first two milestone requirements were not met, thus the license is null and void, and the \$3,000,000.00 bond is payable to the United States Treasury.

On May 12, 2015, the Commission's Chief Financial Officer provided a Notice of Default and Demand (*Notice and Demand*)<sup>7</sup> to Travelers Casualty and Surety Company of America (Surety) and Licensee. The *Notice and Demand* advised Surety and Licensee that the Commission "complied with all conditions precedent, thus under the ordinary meaning of the terms of the Bond, Surety is obligated to pay three million dollars (\$3,000,000) within thirty (30) business days of this notice. Any amount of the Bond unpaid after that date is delinquent, and subject to interest, penalties, and administrative charges of collection as required by law."<sup>8</sup>

On June 10, 2015, Licensee submitted its *Request* to "(i) waive any accrual or collection of interest, penalties, and administrative costs on 115 License Sub's ... bond or, in the alternative, (ii) extend the payment deadline established under the Office of the Managing Director's above referenced Notice of Default and Demand ... until the Commission rules on

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<sup>4</sup> *115 LicenseSub Authorization*.

<sup>5</sup> *115 License Subsidiary, LLC, 17/24 GHz Broadcasting-Satellite Service Space Station at the 115.0° W.L. Orbital Location; Ruling on Milestones Completion*, Order, DA-15-391 (IB) (rel. Mar. 30, 2015) (*115 LicenseSub Order*).

<sup>6</sup> Grant Stamp and Attachment to Grant for IBFS File Nos. SAT-LOA-20060412-00044 and SAT-AMD-20080114-00023 (*granted* Dec. 17, 2008) (*115 LicenseSub Authorization*); letter from Tony Lin, Pillsbury Winthrop Shaw Pittman, LLP, 2300 N. St., N.W., Washington, DC 200370-1122 to Marlene H. Dortch, Office of the Secretary, FCC (May 2, 2012) (*115 License Subsidiary, LLC, File Nos. SAT-LOA-20060412-00044, SAT-MOD-20111216-00240, SAT-MOD-20120315-00050, and SAT-T/C-20110630-00124, Call Sign S2700, Surrender of License and Withdrawal of Applications*).

<sup>7</sup> Letter from Mark Stephens, CFO, FCC to Christopher B. Vahey, Travelers Casualty and Surety Company of America, 10 Sentry Parkway, Ste 300, Blue Bell, PA 19422 (May 12, 2015) (*Notice and Demand*).

<sup>8</sup> *E.g.*, 31 U.S.C. §§ 3701, 3711, 3716, 3717.

[Licensee's] pending application for review of the International Bureau's March 30, 2015 *Order* regarding the [certain] applications [for review]."<sup>9</sup>

Specifically, Licensee asserts, without either a "waiver or extension of the June 24 deadline," it "may be required to pay a minimum of \$210,000 in interest and penalties,"<sup>10</sup> however, granting the relief "would cause no cognizable harm to the U.S. Treasury, the Commission's process or the public interest."<sup>11</sup> Additionally, Licensee challenges the statutory requirement to collect changes of collection, interest and penalties, and adds "equity and fairness justify maintenance of the *status quo* while the Application for Review is pending ..."<sup>12</sup> Licensee describes matters it believes evidence accomplishment of milestones one and two, and those that were Bureau delays in ruling on Licensee's compliance. Further, Licensee asserts, but for the Bureau's delay in processing an application to transfer control, a successor entity would have completed milestones three and four. In the end, Licensee surrendered its authorization with a simultaneous request that the Bureau confirm compliance of milestones one and two and release the bond.<sup>13</sup> Licensee acknowledges the *115 LicenseSub Order* requires payment of the bond.<sup>14</sup>

Licensee asserts, a balancing of equities favors the requested waiver or extension. First, Licensee asserts the facts of the case favor granting the waiver, for example, the Bureau's lengthy processing time, the Licensee's good faith and willing submission of documentation, payment of bond processing fees, and possible accrued interest and penalties imposed when the payment is delinquent.<sup>15</sup> As such, Licensee asserts "it hardly seems equitable ... to begin accruing interest ... and threaten assessment of penalties ... before [Licensee] had a fair opportunity to fully prosecute its Application for Review."<sup>16</sup> Furthermore, Licensee asserts a waiver or extension "will cause no cognizable injury to any person or entity that may have an interest in the matter."<sup>17</sup> Moreover, Licensee opines a waiver or extension would not "put either [the Treasury or the Commission] at any material disadvantage" because no harm was apparent from the passage of time in issuing *115 LicenseSub Order*.<sup>18</sup> Finally, Licensee asserts a waiver or extension will be consistent with the underlying policy of the bond because Licensee remains "at risk of losing the bond if the Order is not reversed," and a waiver would not harm the Commission's licensing scheme.<sup>19</sup>

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<sup>9</sup> *Id.* at 1.

<sup>10</sup> *Request* at 1.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 4-5.

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.* at 6-7.

<sup>16</sup> *Id.* at 7.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 8.

### *Standards*

Licensee does not challenge the establishment of the debt, the date by which Surety must make payment (the date of delinquency<sup>20</sup>), or the consequences of nonpayment. Indeed, Licensee acknowledges the *Notice and Demand* established, by June 24, 2015, Surety must pay \$3,000,000.00, and if not paid by that date, under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940, the Commission shall charge interest, penalties, and administrative costs. Licensee's focus is on the Commission's authority to waive accrual of these charges. As such, under section 1.1940(g),

The Commission will waive the collection of interest and administrative charges ... on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. The Commission will not extend this 30-day period except for good cause shown of extraordinary and compelling circumstances, completely documented and supported in writing, submitted and received before the expiration of the first 30-day period. The Commission may, on good cause shown of extraordinary and compelling circumstances, completely documented and supported in writing, waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt, either under the criteria set forth in these standards for the compromise of debts, or if the agency determines that collection of these charges is against equity and good conscience or is not in the best interest of the United States.

### *Discussion*

Licensee's *Request* is in the alternative: waive accrual and collection interest, penalties and administrative costs or extend the payment due date (the date of delinquency). We will address the second point first.

Licensee asks us to make a major modification to an essential term in the Bond. Indeed, modifying the due date goes to a contractual obligation that affects the rights and obligations of three parties. Licensee mistakenly believes the Chief Financial Officer as the person in the Office of the Managing Director that "established" the payment deadline, and as such, he can modify the term under the authority at 47 C.F.R. § 1.1940(g). Licensee mistakenly believes this section of four rules permits the Commission to extend the due date.

In fact, the payment deadline is established by the written terms of the Bond, *i.e.*, condition 3 of Bond Number 105169931, "It is ... understood and unconditionally agreed that upon receipt of ... Notice of Default, [Surety] will ... tender ... payment ... within thirty (30) business days of ... Notice of Default." In its effort to seek modification, Licensee fails to (i) include the Surety, (ii) provide a legal basis for the change, (iii) establish good cause for this major modification, (iv) establish how the public interest is served, or (v) present a reasoned explanation of the consequences to the United States and the Surety. Moreover, section

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<sup>20</sup> 47 C.F.R. § 1.1901(i).

1.1940(g) provides the standards to submit and evaluate a waiver of collection of interest and administrative charges that accrue *after the date of delinquency*, not to *alter the due date*. Under these circumstances, we will not unilaterally make a major modification to this critical term. Thus, we deny that portion of Licensee's *Request* to "extend the payment deadline," and it remains June 24, 2015.

The Commission has a duty to collect debts,<sup>21</sup> and the debt becomes delinquent if not paid in full by the date specified in the *Notice and Demand*.<sup>22</sup> In this case, \$3,000,000.00 is due no later than June 24, 2015. After that date, any unpaid portion becomes delinquent, and both Licensee and the Surety become delinquent debtors subject to the Commission's sanctions, including the accrual of charges of collection, interest, and penalties,<sup>23</sup> and the Commission's redlight rule.<sup>24</sup>

Next, we turn to Licensee's *Request* asking us to waive accrual or collection of interest, penalties, and administrative costs. Licensee asserts several matters in support of the requested relief; however, the assertions fail to meet the Commission's standard "good cause shown of extraordinary and compelling circumstances, completely documented and supported" and that "collection of [interest, penalties, and administrative costs] is against equity and good conscience or is not in the best interest of the United States."

Initially, Licensee levels an unsupported broadside attack on whether interest, penalties, and administrative costs may accrue. Licensee fails to recognize, under 31 U.S.C. §§ 3701, 3711, and 3717, the Federal Claims Collection Standards,<sup>25</sup> and the Commission's rules,<sup>26</sup> the Bond is a debt owed the United States payable on a specific date, after which any unpaid amount is delinquent and we are required to assess the charges.

Next, Licensee asserts that a balancing of the equities favors a waiver and extension of the due date. As such, Licensee points to the time the Bureau took to reach its decision and the financial injury it may suffer from paying interest, penalties, and administrative costs. Licensee contrasts its financial burden against its perception that neither the U.S. Treasury nor the Commission will suffer harm by granting the waiver or extension. The problems with this approach are significant.

First, as explained above, the due date is an agreed to condition in the Bond that we will not modify. Next, in order to extend the 30-day period in which the Commission waives interest and administrative costs, the applicant must show good cause of extraordinary and compelling circumstances. Licensee hangs its request on the consequence it will face upon becoming a delinquent debtor and incurring additional charges. Under the terms of the Bond, the Surety, not Licensee, must pay \$3,000,000.00 by June 24, 2015. As such, Licensee fails initially to assert the

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<sup>21</sup> 31 C.F.R. § 901.1.

<sup>22</sup> 47 C.F.R. § 1.1901.

<sup>23</sup> 31 U.S.C. § 3717, 47 C.F.R. § 1.1940.

<sup>24</sup> 47 C.F.R. § 1.1910.

<sup>25</sup> 31 C.F.R. Parts 900 – 904.

<sup>26</sup> 47 C.F.R. §§ 1.1901, *et seq.*

reasons why the Surety (i) will default, (ii) is unable to pay the full amount when due, (iii) is unable to pay the interest, penalties, and administrative costs, or (iv) has not communicated its intent to the Commission.

Next, even assuming Licensee's assertions have relevance, they do not rise to the level of extraordinary and compelling circumstances. As Licensee acknowledges, 31 U.S.C. § 3717 mandates that agencies collect costs of collection, interest, and penalties on unpaid debts from the responsible delinquent debtors. These consequences to a delinquent debtor are not extraordinary or compelling, except perhaps in limited situations, such as where a delinquent debtor is financially unable to pay the additional charges. Licensee makes no such argument. Indeed, Licensee fails to establish that the Surety will not pay the full amount when due or that if Surety defaults, it is unable to pay the additional charges. Even so, Licensee's problem, the anticipated costs and charges accruing on a delinquent debt, appears to be the consequence of Licensee directing the Surety to default on paying its obligation. If that is the case, the problem is self-imposed and the solution is entirely within Licensee's control – allow the Surety to pay the Bond amount by the due date.

Next, Licensee asserts the waiver will not cause injury to any person or entity. Licensee fails to address two critical points. First, the \$3,000,000.00 payment is due June 24, 2015, and if unpaid, the United States suffers the loss of use of funds from that date until payment is received. Loss of use of funds is tangible and well recognized. Indeed, it is a reason that 31 U.S.C. § 3717 mandates accrual and collection of administrative costs, interest, and penalties. Licensee provides no support for the brief comment that the United States will not suffer harm from the delinquency, even as Licensee anticipates the Surety will default. Indeed, harm is measurable. With a cogent explanation to the contrary, it is apparent that Licensee's act of surrendering the authorization makes compliance with milestones three and four impossible, and a Bond payment of \$1,500,000.00 is undisputable. Licensee's comment, but for the Bureau's delay, it would have assigned the authorization to a third party, who in turn would have met the requirement is entirely speculative. Furthermore, Licensee fails to provide any grounds for a finding that the public interest is served by permitting Licensee and Surety to disregard the contractual obligations, default on the payment of a debt, and avoid compensating the United States for the loss of use of funds.

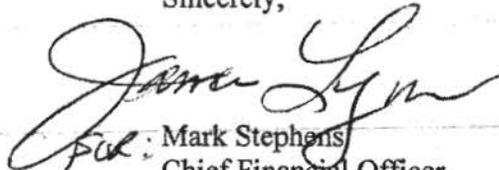
Next, Licensee asserts a waiver is consistent with the policy underlying the bond. Licensee asserts the purpose of the bond program is achieved, speculation in relevant applications is deterred, and Licensee remains under the risk of having to pay the principal bond amount sometime in the future. Missing from Licensee's *Request* is a supported analysis of the consequences to the public interest when (i) written contractual agreements are disregarded, (ii) a surety or principal are allowed to breach a contract without consequences, (iii) the terms of the bond program are cast aside on a principal's suggestion that the Surety will not pay the bond when due. We have nothing from Licensee to establish the public interest is served and that collecting interest from a delinquent debtor surety company is against equity and good conscience or it is not in the best interest of the United States.

Finally, our standard requires complete documentation and support. Licensee provided no documentation to establish extraordinary and compelling circumstances. Indeed, Licensee's submission leaves us to speculate whether Surety intends to default in its legal obligation to pay \$3,000,000.00 by June 24, 2015.

We find Licensee fails to meet the Commission's standard of establish good cause shown of extraordinary and compelling circumstances, completely documented and supported" and that "collection of [interest, penalties, and administrative costs] is against equity and good conscience or is not in the best interest of the United States." Accordingly, we deny the entire *Request*.

If the Commission does not receive \$3,000,000.00 on June 24, 2015, the debt is delinquent and both Licensee and Surety will be redlighted and subject to debt collection procedures.

Sincerely,



For: Mark Stephens  
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

MAR 19 2015

OFFICE OF  
MANAGING DIRECTOR

John Low, President  
1TV.Com, Inc.  
KBSZ  
4501 Broadway  
Miami, AZ 85539

Licensee/Applicant/Debtor: **1TV.Com, Inc.**  
Waiver and Refund of Fee Request: Financial  
Hardship  
Disposition: **Denied** (47 C.F.R. § 1.1166)  
Station: KBSZ  
FRN: 0017654526  
Fee(s): Fiscal Year (FY) 2014 Regulatory Fees  
Filed: Sep. 9, 2014  
Fee Control No.: RROG-14-00015713  
Date Regulatory Fee Paid: Sep. 18, 2014

Dear Mr. Low:

This responds to Licensee's *Request*<sup>1</sup> for waiver of the required Fiscal Year (FY) 2014 regulatory fee for Station KBSZ. Licensee paid the fee, but did not request a refund, as is required by 47 C.F.R. § 1.1160. As we discuss below, because Licensee fails to show extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs,<sup>2</sup> we deny the *Request*. Our disposition moots the issue arising from failing to request a refund.

<sup>1</sup> Letter from John Low, 1TV/KBSZ, P.O. Box 1416, Los Altos, CA 94023 to Marlene Dortch, Secretary, FCC, Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12<sup>th</sup> St., S.W., Washington, DC 20554 (Aug. 21, 2014)(*rec'd* Sep. 9, 2014) (*Request*) with (1) 2013 U.S. Income Tax Return for an S Corporation Form 1120S (with forms and schedules) (*2013 Form 1120S*), (2) 2012 U.S. Income Tax Return for an S Corporation Form 1120S (with forms and schedules) (*2012 Form 1120S*), (3) 2011 U.S. Income Tax Return for an S Corporation Form 1120S, (with forms and schedules) (*2011 Form 1120S*)(collectively, *Forms 1120S*).

<sup>2</sup> 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)(*1994 Report and Order*); 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.").

## Background

Licensee seeks a waiver of the required Fiscal Year (FY) 2014 regulatory fees it paid for Station KBSZ.<sup>3</sup> In support of the *Request*, Licensee asserts that "iTV.com Inc., is the owner of KBSZ. KBSZ has shown net losses for 2013, 2012 and 2011."<sup>4</sup> Licensee includes *Forms 1120S* that report Licensee's total assets, income, and deductions for each of the three years. In each tax year, the total tax deductions, when applied to the total income, result in a business income loss. Licensee fails to include other financial documentation.

## Standards

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.<sup>5</sup> 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.<sup>6</sup> A "sufficient showing of financial hardship"<sup>7</sup> requires more than "[m]ere allegations or documentation of financial loss, standing alone," rather "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."<sup>8</sup> For example, in situations where the regulatee seeks a 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.<sup>9</sup>

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<sup>3</sup> *Request*.

<sup>4</sup> *Request*.

<sup>5</sup> 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)(1994 *Report and Order*).

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

<sup>7</sup> 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*).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

## Discussion

Licensee fails to meet our standards by failing to include the required financial documentation and failing to demonstrate how the public is served by waiving the fee. Instead of the required documentation, Licensee relies on the income tax forms that show a business income loss resulting from deductions for depreciation, amortization, programming, and broadcasting. Deductions for depreciation and amortization are applied to tangible and intangible assets. The effect of these deductions is the same, amortization is a method of recovering (deducting) certain capital costs over a fixed period of time. It is similar to the straight line method of depreciation.<sup>10</sup> Such deductions are applied to reduce annual tax liability, but they do not represent payments from revenue. Thus, although deductions for depreciation and amortization on the *Forms 1120S* are intended to reduce tax liability, they do not establish whether the regulatee has sufficient funds to pay the fee and to maintain service to the public. Rather, deductions for depreciation represent sums available to pay the regulatory fee. In addition to those categories, Licensee reports deductions of amounts for "broadcasting," "outside services," and "programming." These labels are not defined and the categories are not explained. Missing from Licensee's submission are documents such as a balance sheet, profit and loss statement, cash flows statement projecting actual, not conjectural, expenditures for the future, and the list of officers and compensation amounts. Rather, than full financial information, Licensee rests its case on *Forms 1120S* that show a business loss, and report total assets exceeding short term liabilities. In this case, without complete verified documentation, Licensee fails to demonstrate that it lacks funds both to pay the fee and to maintain service. This is a ground to deny the *Request*.

In addition to the necessary financial documentation, Licensee is obligated to demonstrate that the public interest overrides the private interest of the Licensee, that is, does the case present extraordinary and compelling circumstances outweighing the public interest in recouping the cost of the Commission's regulatory services from a particular regulatee.<sup>11</sup> Here, Licensee fails to present any information addressing this element of our standard. This is an additional ground to deny the *Request*.

Overall, Licensee does not carry its burden<sup>12</sup> of demonstrating compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.

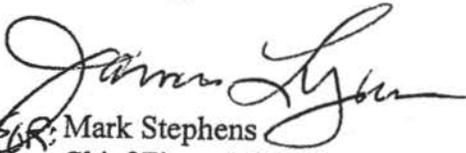
<sup>10</sup> IRS Pub. 535, Business Expenses, Chapter 8, Amortization.

<sup>11</sup> 47 C.F.R. § 1.1166; 1994 Report and Order, 9 FCC Rcd 5333, 5344, ¶ 29.

<sup>12</sup> *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

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

Sincerely,

  
|EGR: Mark Stephens  
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

APR 15 2015

OFFICE OF  
MANAGING DIRECTOR

Jack N. Goodman  
Law Offices of Jack N. Goodman  
1200 New Hampshire Avenue, NW  
Suite 600  
Washington, DC 20036

**Licensees/Applicant: Broadcast Trust, successor to  
Roberts Broadcasting Company of Evansville, IN, LLC,  
DIP**

**Waiver of Regulatory Fees: Financial Hardship**

**Disposition: Dismissed and Denied** (47 U.S.C. § 159(c)(2)  
and 47 C.F.R. §§ 0.401, 1.3, 1.7, 1.1160(a)(3), 1.1164,  
1.1166, and 1.1910(a)(2) & (3))

**Stations: WAZE-LP, WIKY-LP, and WJPS-LP**

**Fiscal Year (FY) 2013 Regulatory Fees**

**Fee Control No.: RROG-14-00015909**

Dear Counsel:

This responds to Licensee's *Request*<sup>1</sup> for a waiver of the delinquent Fiscal Year (FY) 2013 regulatory fee for stations WAZE-LP, WIKY-LP, and WJPS-LP on grounds that Roberts Broadcasting of Evansville, IN, LLC (Roberts), Licensee's predecessor, was in a bankruptcy proceeding. As we explain below, we dismiss and deny because Licensee failed to comply with Commission rules for filing the *Request*, Roberts is a delinquent debtor, and Licensee failed to establish both good cause and that waiver would promote the public interest.

<sup>1</sup> Letter from Jack N. Goodman, Law Offices of Jack N. Goodman, 1200 New Hampshire Ave., NW, Suite 600, Washington DC 20036 to Marlene H. Dortch, Secretary, FCC, Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12<sup>th</sup> St., S.W., Room TW-B204, Washington, D.C. 20554 (*Letter*) with Request for Waiver of Regulatory Fees (*Request*) with Appendix A, Letter to Marlene H. Dortch, Secretary, FCC, 445 12<sup>th</sup> St., SW, Washington, D.C. 20554 (Jul. 28, 2014) (*Request to Delete WJPS-LP and WIKY-LP*), Appendix B, Roberts Broadcasting Company of Evansville, IN, LLC, (US Bankr. Ct., ED MO, Case Nos. 11-50746), Voluntary Petition (Oct. 7, 2011).

## Background

On February 18, 2015, Licensee filed its *Request* with the Commission. Licensee asserts “[a]t all times during Fiscal Year 2013 ... Roberts .... was in bankruptcy [having] entered into bankruptcy on October 7, 2011.”<sup>2</sup> Licensee came into existence following a December 19, 2013, bankruptcy court order,<sup>3</sup> and later, the Commission approved the transfer of control from Roberts to Licensee, which the parties consummated on February 10, 2014.<sup>4</sup> When the FY 2013 regulatory fees were due, Roberts was in bankruptcy. Thus, Licensee asserts, “the Commission concluded that ‘Evidence of bankruptcy ... is sufficient to establish financial hardship.... Thus [the Commission] will waive the regulatory fee for licensees whose stations are bankrupt, undergoing Chapter 11 reorganizations or in receivership.’ ... Therefore, the regulatory fee obligation for [the three stations] should be waived.”<sup>5</sup> Licensee acknowledges, “the Commission ... expects requests [for] fee waivers to be filed prior to the date the fees are due ... however, Licensee had not been formed and [Roberts] neglected to seek a waiver.”<sup>6</sup> Licensees ask that Roberts’ “failure ... to timely seek a waiver should not be held against a trustee subsequently appointed by the bankruptcy court to facilitate payment to creditors.”<sup>7</sup> Further, Licensee asserts that station WAZE-LP was in a silent status on January 9, 2013, that it “resumed operations briefly in late 2013, and subsequently resumed silent operations due to lack of access to its tower.”<sup>8</sup> This status “provides a second and independent ground why no regulatory fees were due for Fiscal Year 2013.”<sup>9</sup> Licensee also asserts the “same is true for the other stations[, WIKY-LP and WJPS-LP, that] were silent on January 9, 2013[, and t]hey never resumed operations.”<sup>10</sup> Licensee asserts, on July 28, 2014, it surrendered the licenses on two stations, “[t]hus these stations were not operational at the time Fiscal Year 2013 regulatory fees were due, and that also establishes a second and independent ground for waiving the ... fee payment obligation.”<sup>11</sup> Finally, Licensee asserts, “had it timely filed a request [Licensee] would have been entitled to a waiver of the regulatory fees.”<sup>12</sup>

Licensee failed to include relevant and necessary bankruptcy court filings, *e.g.*, the relevant filings, forms, first day pleadings, and evidence the trustee or debtor-in-possession has complied with its required duties<sup>13</sup> by including court-filed financial reports.<sup>14</sup>

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<sup>2</sup> *Request* at 1.

<sup>3</sup> *Id.* at 1-2.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 1, text at fn 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 2-3.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See 11 U.S.C. § 521.

<sup>14</sup> 11 U.S.C. §§ 1106, 1107, 1166; Fed. R. Bnkr. P., Rule 1007.

## Standards

The Commission's rules at 47 C.F.R. §§ 0.401, 1.7, 1.1159 and 1.1166 establish the proper location for filing waiver and refund requests and the consequence of dismissal for failing to comply with those rules. The Commission has designated specific offices to receive and process certain matters, thus a request for relief is *filed* only upon receipt at the location designated by the Commission.<sup>15</sup> For example, under sections 1.1159 and 1.1166 of the Commission's rules, a petition to waive a regulatory fee "must be accompanied by the required fee and FCC Form."<sup>16</sup> If the request is accompanied by the fee, the request must be submitted to the Commission's lockbox bank.<sup>17</sup> Waiver requests that do not include the required fees or form will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.<sup>18</sup> "If no fee payment is submitted, the request should be filed with the Commission's Secretary."<sup>19</sup> Filing is accomplished by mailing or otherwise delivering a hard copy of the documents to Office of the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554. A petition for waiver, reduction and deferment must be filed no later than the date payment is due.<sup>20</sup>

Under 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1164(e), 1.1166, and 1.1910(a)(2) & (3), the Commission will dismiss applications filed by delinquent debtors.<sup>21</sup> The application will be dismissed, and it may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty.<sup>22</sup>

<sup>15</sup> 47 C.F.R. § 1.7 ("pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.")

<sup>16</sup> 47 C.F.R. § 1.1166(c).

<sup>17</sup> 47 C.F.R. § 1.1166(a)(1).

<sup>18</sup> 47 C.F.R. § 1.1166(b).

<sup>19</sup> 47 C.F.R. § 1.1166(a)(2).

<sup>20</sup> 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, ¶ 34 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995) (*FY 1994 Report and Order*).

<sup>21</sup> 47 U.S.C. § 159(c)(2) ("The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section."); 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."); 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.")

<sup>22</sup> 47 C.F.R. § 1.1164(e).

Furthermore, under 47 U.S.C. § 159 and 47 C.F.R. §§ 1.1166, the Commission imposes the statutory penalty<sup>23</sup> on any licensee that submits a request for a waiver based on financial hardship that does not include either the full fee or a timely petition to defer payment supported by documentation of the financial hardship.

A licensee's regulatory fee is due on the first day of the fiscal year and it is payable at a date established by the Commission's annual regulatory fee Report and Order.<sup>24</sup> The Commission recognizes 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 upon a showing of good cause<sup>25</sup> and a finding that the public interest will be served thereby.<sup>26</sup> The burden rests with the petitioner to demonstrate a waiver is warranted,<sup>27</sup> *i.e.*, that special circumstances warrant a deviation from the general rule, here to collect the regulatory fee, and that the deviation will serve the public interest.<sup>28</sup>

An applicant has the burden of showing extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.<sup>29</sup> Fee relief may be granted based on a "sufficient showing of financial hardship."<sup>30</sup> "Mere 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."<sup>31</sup> Thus, 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,

<sup>23</sup> 47 U.S.C. § 159; 47 C.F.R. § 1.1166; *Waivers, Reductions and Deferments of Regulatory Fees, Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) ("The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. \* \* \* The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.").

<sup>24</sup> *Assessment and Collection of Regulatory Fees For Fiscal Year 2013, Report and Order*, 28 FCC Rcd 12351, 12366, ¶ 45 (2013); *FY 1994 Report and Order*, 9 FCC Rcd 5333, ¶ 48; *see* *Assessment and Collection of Regulatory Fees For Fiscal Year 2013, Small Entity Compliance Guide*, 28 FCC Rcd 16046, (2013) ("Regulatory Fees must be paid for authorizations that were granted on or before October 1, 2012.").

<sup>25</sup> 47 C.F.R. § 1.3.

<sup>26</sup> 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. *See also* *FY 1994 Report and Order*, 9 FCC Rcd at 5344; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>27</sup> *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

<sup>28</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>29</sup> 9 FCC Rcd at 5344 ¶ 29; *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 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.").

<sup>30</sup> *FY 1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13.

<sup>31</sup> *Id.*

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.<sup>32</sup>

An applicant's verified evidence of bankruptcy is relevant;<sup>33</sup> however, "in some circumstances a significant question may exist as to whether bankruptcy represents 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."<sup>34</sup> Thus, an applicant must present "extraordinary and compelling circumstances showing that a waiver ... would override the public interest" in collecting the fee,<sup>35</sup> and we analyze the facts of each case to determine whether the applicant has satisfied both prongs of the Commission's standard, financial hardship and extraordinary<sup>36</sup> and compelling circumstances<sup>37</sup> showing waiver is justified.<sup>38</sup>

The bankruptcy proceeding and the applicant's place therein is established with verified court records, such as, in a reorganization under Chapter 11 of the Bankruptcy Code, copies of the relevant filings, forms, and evidence the trustee or debtor-in-possession has complied with its required duties<sup>39</sup> by including court-filed financial reports.<sup>40</sup> Relevant to this request is the purpose of a Chapter 11 proceeding, which is to restructure the debtor's obligations and allow its business to continue successfully after confirmation.<sup>41</sup> The bankruptcy process that begins with filing a petition and an automatic stay and continues until confirmation of the plan, provides breathing room for a business to recoup, evaluate, and deal with creditors. During the process, the debtor operates the business as a debtor-in-possession or under the direction of a trustee, and pays current obligations. The debtor also develops a plan dealing with creditors, and it projects

<sup>32</sup> *Id.*

<sup>33</sup> *See id.* at 12762, ¶ 14 ("[W]here a bankruptcy trustee, receiver, or debtor in possession is negotiating a possible transfer of a license, the regulatory fee could act as an impediment to the negotiations and the transfer of the station to a new licensee.").

<sup>34</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice of Proposed Rulemaking*, 18 FCC Rcd 6085, 6090, ¶ 11 (2003) ("Although fee waivers will generally be given in cases of financial hardship, we nevertheless note that even under our current policies, in some circumstances a significant question may exist as to whether bankruptcy represents 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. ... We therefore emphasize that under the statutory waiver provisions, case-by-case review of fee waiver requests is necessary to determine the public interest, even in bankruptcy cases.").

<sup>35</sup> 47 U.S.C. § 159(d) ("The 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 C.F.R. § 1.1166 ("fee ... 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."). *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12.

<sup>36</sup> 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").

<sup>37</sup> *Id.* (compelling-"something so great that irreparable harm or injustice would result if not met").

<sup>38</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

<sup>39</sup> *See* 11 U.S.C. § 521.

<sup>40</sup> 11 U.S.C. §§ 1106, 1107, 1166; Fed. R. Bnkr. P., Rule 1007.

<sup>41</sup> *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203 (1983); *In re Lee Min Ho Chen*, 482 B.R. 473, 478 (D. Puerto Rico, Bkrtcy, 2012), *In re Gyro-Trac (USA), Inc.*, 441 B.R. 470, 479 (D.S.C. Bkrtcy, 2010).

post-confirmation operations. Relevant to post-petition and post-confirmation operations are court-filed financial documents, including, *e.g.*, a statement of financial affairs, monthly operating reports, the plan,<sup>42</sup> and a disclosure statement with debtor's plan for the business going forward that has timely and accurate financial information with projections.<sup>43</sup> Consistent with our standards, an applicant seeking a waiver of fees post-petition must include relevant financial documentation, such as the plan reflecting debtor-applicant's reasonable financial projections, including the annual regulatory fees.<sup>44</sup>

### Discussion

Licensee's failure to comply with the Commission's procedures for filing a request to waive the payments is grounds for dismissal and denial.

First, Licensee's submission fails to conform to the Commission's rules for filing a request to waive the annual regulatory fees and a petition to defer payment of the fees until the Commission reaches a decision on the request for a waiver. Specifically, Licensee submitted the *Request* to the Commission's Secretary on February 18, 2015, well after the date the fee was due, but without including full payment of the fee and accrued charges. To be timely, a "request[] for waiver accompanied by a petition for deferral of payment must [have been] received by the deadline, September 20, 2013. Any request for waiver and deferral received after that date will be dismissed and licensee will be responsible for paying the full amount of the fee, a penalty equal to 25% of the amount of the fee not paid in a timely manner, charges of collection, and accrued payable interest and other penalties."<sup>45</sup> This iterates the long held determination that the Commission "will accept petitions for waiver, reduction and deferment so long as they are filed no later than by the date payment is due."<sup>46</sup> September 20, 2013, was the deadline<sup>47</sup> for paying the fee and filing the *Request*. Accordingly, we dismiss because the *Request* submitted on February 18, 2015, is untimely. We note, Licensee's broad statement that Roberts was negligent in failing to seek a timely request does not establish grounds to waive our procedural requirement dismissing an untimely-submitted request. Licensee fails to establish that special circumstances warrant a deviation from the general rule and that the deviation will serve the public interest.<sup>48</sup>

<sup>42</sup> 11 U.S.C. § 1129.

<sup>43</sup> See *e.g.*, 11 U.S.C. §§ 1125, 1129; see also *In re Ferguson*, 474 B.R. 466, 476 (D. S.C. Bkrtcy, 2012) ("to satisfy the requirements of adequate information under [11 U.S.C.] § 1125, a disclosure statement must contain the necessary financial information, data, and projections ....").

<sup>44</sup> See *In re Idearc, Inc.*, 423 B.R. 138, 167 (N.D. Tx. Bkrtcy, 2009) ("To establish the feasibility of a plan, the debtor must present proof through reasonable projections that there will be sufficient cash flow to fund the plan. Such projections cannot be speculative, conjectural or unrealistic.").

<sup>45</sup> *Waivers, Reductions and Deferrals of Regulatory Fees, Regulatory Fees Fact Sheet* (Sep. 5, 2013), 2013 WL 4773993 (F.C.C.) (2013).

<sup>46</sup> *FY 1994 Report and Order*, 9 FCC Rcd 5333, ¶ 34.

<sup>47</sup> FY 2013 Regulatory Fee Due No Later Than September 20, 2013, 11:59 PM Eastern Time (ET), *Public Notice*, DA 13-1796 (Sep. 4, 2013).

<sup>48</sup> *Northeast Cellular*, 897 F.2d at 1166; 47 C.F.R. § 1.3.

Next, under 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1164(e), 1.1166, and 1.1910(a)(2) & (3), we dismiss because Roberts is a delinquent debtor.<sup>49</sup>

We dismiss the *Request*, which ends the matter; however, as both a courtesy and matter of administrative economy, we look to whether Licensee's submission would otherwise meet our standard requiring a showing of extraordinary circumstances and that that the waiver is in the public interest.

First, Licensee mistakenly believes two circumstances mandate the waiver. Licensee asserts WAZE-LP was silent on January 9, 2013, and in a "non-operating status at the time regulatory fees were due," WIKY-LP and WJPS-LP "were also not operational at the time ... regulatory fees were due."<sup>50</sup> That is not the standard. Fees are due on the first day of the fiscal year, and they are payable at a date established by the Commission's annual regulatory fee Report and Order.<sup>51</sup> Next, Licensee is mistaken in its belief that had it made a timely filing, it was "entitled to a waiver of the regulatory fees."<sup>52</sup> That also is not the standard. Rather, the applicant is required to show "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."<sup>53</sup>

Our analysis of a timely and proper filing begins with Licensee's documentation of financial hardship.<sup>54</sup> The applicant must provide documentation to support the claim of financial hardship. Here, rather than providing that documentation, Licensee asserts the existence of select events. For example, Licensee informs us, on October 7, 2011, Roberts initiated a bankruptcy proceeding for reorganization under Chapter 11 of the Bankruptcy Code,<sup>55</sup> and following a series of events including Commission grant, Roberts transferred control of the station to Licensee.<sup>56</sup> Licensee asserts, because Roberts was in bankruptcy when the FY 2013 regulatory fee was due,

<sup>49</sup> 47 U.S.C. § 159(c)(2) ("The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section."); 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."); 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship."); *Waivers, Reductions and Deferrals of Regulatory Fees, Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) ("The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. \* \* \* The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.")

<sup>50</sup> *Request* at 3.

<sup>51</sup> *Assessment and Collection of Regulatory Fees For Fiscal Year 2013, Report and Order*, 28 FCC Rcd at 12366, ¶ 45; *FY 1994 Report and Order*, 9 FCC Rcd 5333, ¶ 48; see *Assessment and Collection of Regulatory Fees For Fiscal Year 2013, Small Entity Compliance Guide, supra*.

<sup>52</sup> See *Request* at 3.

<sup>53</sup> 18 FCC Rcd 6085, 6090, ¶ 11 (2003).

<sup>54</sup> 47 C.F.R. § 1.1166(d); *FY 2011 Regulatory Fee Report and Order, supra*.

<sup>55</sup> *Request* at 1.

<sup>56</sup> *Id.*

the regulatory fee should be waived.<sup>57</sup> Further, Licensee asserts a “second and independent ground” that Roberts was in a silent status and non-operational status.<sup>58</sup> As explained above, Licensee is mistaken in believing the silent status on the day the fee is due presents an independent ground for waiver. Overall, Licensee fails to include relevant documentation to include Chapter 11 proceeding filings and the court-required financial records. Instead, Licensee leaves us to speculate about the content of required financial documents, *e.g.*, First Day Pleadings, a statement of financial affairs, monthly operating reports, financial projections, and requested and allowed expenditures for operations after October 7, 2011. Notably, Licensee does not assert that Roberts lacked funds in 2013 or that Licensee lacks funds to pay the regulatory fee.<sup>59</sup> Without relevant documentation, Licensee’s *Request* is incomplete,<sup>60</sup> and it leaves Licensee unable to show how the bankruptcy proceeding represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs.

When the Commission announced that evidence of bankruptcy or receivership is sufficient to establish financial hardship,<sup>61</sup> it was referring to the situation where the party was proceeding in a straight bankruptcy liquidation case. A party filing under Chapter 11 is not a *bankrupt*.<sup>62</sup> Moreover, in 2003, the Commission explained, the applicant must show that the

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<sup>57</sup> *Id.* at 2. Licensee refers to 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*) to assert the Commission “will waive the regulatory fee for licensees whose stations are bankrupt, undergoing Chapter 11 reorganizations or in receivership.”

<sup>58</sup> *Id.*

<sup>59</sup> Licensee’s payment after submitting the *Request* confirms the assumed available of funds.

<sup>60</sup> 47 C.F.R. § 1.65 (“Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished ... is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of the application so as to furnish such additional or corrected information as may be appropriate.”); *Bartholdi Cable Co. Inc. v FCC*, 114 F.3d 274, 280 (DC Cir. 1997) (The Commission “need not sift pleadings and documents’ to identify arguments that are not ‘stated with clarity’ by a petitioner. It is the petitioner that has the burden of clarifying its petition before the agency.”).

<sup>61</sup> *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 14.

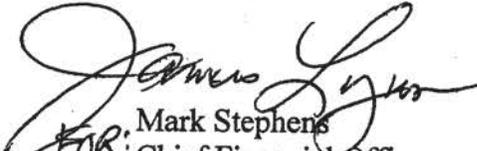
<sup>62</sup> *Matter of Phillips*, 966 F.2d 926, 930 (5th Cir. 1992), *rehearing denied* (1992),

Congress consolidated federal bankruptcy law in the Bankruptcy Act of 1898. *See* Act of July 1, 1898, c. 541, 30 Stat. 544. At that time, bankruptcy law only facilitated liquidation. Not until 1933 did Congress amend the Bankruptcy Act to permit reorganization of certain entities. *See* Pub.L. No. 72-420, 47 Stat. 1474 (1933). In 1938, Congress amended the Bankruptcy Act with the precursor to Chapter 11 to facilitate general corporate reorganization. *See* Act of June 22, 1938, Pub.L. No. 74-575, 52 Stat. 840 (1938). Until Congress substantially revised the Bankruptcy Act with the Bankruptcy Reform Act of 1978, the Bankruptcy Act apparently referred to entities undergoing Chapter 7 liquidation as “bankrupts,” and those undergoing Chapter 11 reorganization as “debtors.” *See* S. REP. No. 989, 95th Cong., 2d Sess. 23 (1978), *reprinted in* Historical and Revision Notes following 11 U.S.C.A. § 101(12) at 36 (1979), *and reprinted in* 1978 U.S.C.C.A.N. 5787, 5809. But the Bankruptcy Reform Act of 1978 removed all references to “bankrupt” in federal bankruptcy law, created the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, and adopted “debtor” to refer to all who seek protection under the Code, whether they do so through liquidation under Chapter 7 or reorganization under Chapter 11. *See* 11 U.S.C. § 101 (12); *see generally* H.R. REP. No. 595, 95th Cong., 2d Sess. 3-5 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 5965-66 (recounting Reform Act’s history and purpose).

bankruptcy proceeding represents 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.<sup>63</sup> Accordingly, we deny Licensee's *Request*.

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

Sincerely,

  
FOR: Mark Stephens  
Chief Financial Officer

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<sup>63</sup> 18 FCC Rcd at 6090, ¶ 11.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

APR 15 2015

OFFICE OF  
MANAGING DIRECTOR

Jack N. Goodman  
Law Offices of Jack N. Goodman  
1200 New Hampshire Ave., NW  
Suite 600  
Washington, DC 20036

**Licensees/Applicant: Broadcast Trust, successor to  
Roberts Broadcasting Company of Evansville, IN, LLC,  
DIP**

**Waiver and Cancellation of Regulatory Fees: Financial  
Hardship**

**Disposition: Dismissed and Denied** (47 U.S.C. § 159(c)(2)  
and 47 C.F.R. §§ 0.401, 1.3, 1.7, 1.1160(a)(3), 1.1164,  
1.1166, and 1.1910(a)(2) & (3))

**Station: WIKY-LP**

**Fiscal Year (FY) 2013 Regulatory Fees**

**Fee Control No.: RROG-14-00015661**

Dear Counsel:

This responds to Licensee's *Request*<sup>1</sup> for a waiver and cancellation of the delinquent Fiscal Year (FY) 2013 regulatory fee for station, WIKY-LP, on grounds that Roberts Broadcasting of Evansville, IN, LLC (Roberts), Licensee's predecessor, was in a bankruptcy proceeding. As we explain below, we dismiss and deny because Licensee failed to comply with Commission rules for filing the *Request*, Roberts is a delinquent debtor, and Licensee failed to establish both good cause and that waiver would promote the public interest.

*Background*

On July 18, 2014, Licensee submitted its *Request* to the Commission's lockbox account in St. Louis, MO, and it provided a copy of the *Request* by email to a member of the Commission's staff.<sup>2</sup> Relative to the *Request*, Licensee asserts Roberts "entered into bankruptcy on October 7, 2011,"<sup>3</sup> and Licensee came into existence following a December 19, 2013, bankruptcy court order. Thereafter, the Commission approved the transfer of control from Roberts to Licensee, which the parties consummated on February 10, 2014.<sup>4</sup> When the FY 2013

<sup>1</sup> Letter from Jack N. Goodman, Law Offices of Jack N. Goodman, 1200 New Hampshire Ave., NW, Suite 600, Washington DC 20036 to FCC, Revenue & Receivables Operations, P.O. Box 979088, St. Louis, MO 63197-9000 (*Request*) with Roberts Broadcasting Company of Evansville, IN, LLC, (US Bankr. Ct., ED MO, Case Nos. 11-50746), Voluntary Petition (Oct. 7, 2011). As we discuss in the text, because Licensee failed to comply with our rules, it never filed the *Request*, and the only copy before us is the *email* attachment described in the next footnote. Nonetheless, as a matter of efficiency, our references are to the *Request*.

<sup>2</sup> Email from Jack N. Goodman [jack@jackngoodman.com] to Stephen French, FCC (Jul. 18, 2014) (*email*).

<sup>3</sup> *Request* at 1.

<sup>4</sup> *Id.*

regulatory fees were due, Roberts was in bankruptcy, thus Licensee asserts, the “regulatory fee obligation for [station] WIKY-LP should be waived.”<sup>5</sup> Further, Licensee asserts that Roberts was in a silent status on January 8, 2013, and that it remains off the air as of July 18, 2014, thus the “non-operating status provides a second and independent ground why no regulatory fees were due for Fiscal Year 2013.”<sup>6</sup> Accordingly, “WIKY-LP was not liable for regulatory fees for Fiscal Year 2013. Please cancel the bill for those fees and for late payment penalties, and withdraw the Demand Letter.”<sup>7</sup>

Licensee failed to include relevant and necessary bankruptcy court filings, *e.g.*, the relevant filings, forms, first day pleadings, and evidence the trustee or debtor-in-possession has complied with its required duties<sup>8</sup> by including court-filed financial reports.<sup>9</sup>

### *Standards*

The Commission’s rules at 47 C.F.R. §§ 0.401, 1.7, 1.1159 and 1.1166 establish the proper location for filing waiver and refund requests and the consequence of dismissal for failing to comply with those rules. The Commission has designated specific offices to receive and process certain matters, thus a request for relief is *filed* only upon receipt at the location designated by the Commission.<sup>10</sup> For example, under sections 1.1159 and 1.1166 of the Commission’s rules, a petition to waive a regulatory fee “must be accompanied by the required fee and FCC Form.”<sup>11</sup> If the request is accompanied by the fee, the request must be submitted to the Commission’s lockbox bank.<sup>12</sup> Waiver requests that do not include the required fees or form will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.<sup>13</sup> “If no fee payment is submitted, the request should be filed with the Commission’s Secretary.”<sup>14</sup> Filing is accomplished by mailing or otherwise delivering a hard copy of the documents to Office of the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554.

<sup>5</sup> *Id.* at 2. Licensee refers to 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*) to assert the Commission “will waive the regulatory fee for licensees whose stations are bankrupt, undergoing Chapter 11 reorganizations or in receivership.”

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

<sup>7</sup> *Id.*

<sup>8</sup> See 11 U.S.C. § 521.

<sup>9</sup> 11 U.S.C. §§ 1106, 1107, 1166; Fed. R. Bnkr. P., Rule 1007.

<sup>10</sup> 47 C.F.R. § 1.7 (“pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.”).

<sup>11</sup> 47 C.F.R. § 1.1166(c).

<sup>12</sup> 47 C.F.R. § 1.1166(a)(1).

<sup>13</sup> 47 C.F.R. § 1.1166(b).

<sup>14</sup> 47 C.F.R. § 1.1166(a)(2).

Under 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1164(e), 1.1166, and 1.1910(a)(2) & (3), the Commission will dismiss applications filed by delinquent debtors.<sup>15</sup> The application will be dismissed, and it may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty.<sup>16</sup>

Furthermore, under 47 U.S.C. § 159 and 47 C.F.R. §§ 1.1166, the Commission imposes the statutory penalty<sup>17</sup> on any licensee that submits a request for a waiver based on financial hardship that does not include either the full fee or a timely petition to defer payment supported by documentation of the financial hardship.

The Commission recognizes 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 upon a showing of good cause<sup>18</sup> and a finding that the public interest will be served thereby.<sup>19</sup> The burden rests with the petitioner to demonstrate a waiver is warranted,<sup>20</sup> *i.e.*, that special circumstances warrant a deviation from the general rule, here to collect the regulatory fee, and that the deviation will serve the public interest.<sup>21</sup>

An applicant has the burden of showing extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.<sup>22</sup> Fee relief may be granted based on a "sufficient showing of financial hardship."<sup>23</sup> "Mere 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

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<sup>15</sup> 47 U.S.C. § 159(c)(2) ("The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section."); 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."); 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.")

<sup>16</sup> 47 C.F.R. § 1.1164(e).

<sup>17</sup> 47 U.S.C. § 159; 47 C.F.R. § 1.1166; Waivers, Reductions and Deferrals of Regulatory Fees, *Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) ("The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. \* \* \* The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.")

<sup>18</sup> 47 C.F.R. § 1.3.

<sup>19</sup> 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. *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 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>20</sup> *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

<sup>21</sup> *Northeast Cellular* 897 F.2d at 1166 (D.C. Cir. 1990).

<sup>22</sup> 9 FCC Rcd at 5344 ¶ 29; 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 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.")

<sup>23</sup> *FY 1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13.

the regulatory fee and to maintain its service to the public.”<sup>24</sup> Thus, 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.<sup>25</sup>

An applicant’s verified evidence of bankruptcy is relevant;<sup>26</sup> however, “in some circumstances a significant question may exist as to whether bankruptcy represents 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.”<sup>27</sup> Thus, an applicant must present “extraordinary and compelling circumstances showing that a waiver ... would override the public interest” in collecting the fee,<sup>28</sup> and we analyze the facts of each case to determine whether the applicant has satisfied both prongs of the Commission’s standard, financial hardship and extraordinary<sup>29</sup> and compelling circumstances<sup>30</sup> showing waiver is justified.<sup>31</sup>

The bankruptcy proceeding and the applicant’s place therein is established with verified court records, such as, in a reorganization under Chapter 11 of the Bankruptcy Code, copies of the relevant filings, forms, and evidence the trustee or debtor-in-possession has complied with its required duties<sup>32</sup> by including court-filed financial reports.<sup>33</sup> Relevant to this request is the purpose of a Chapter 11 proceeding, which is to restructure the debtor’s obligations and allow its

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *See id.* at 12762, ¶ 14 (“[W]here a bankruptcy trustee, receiver, or debtor in possession is negotiating a possible transfer of a license, the regulatory fee could act as an impediment to the negotiations and the transfer of the station to a new licensee.”).

<sup>27</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice of Proposed Rulemaking*, 18 FCC Rcd 6085, 6090, ¶ 11 (2003) (“Although fee waivers will generally be given in cases of financial hardship, we nevertheless note that even under our current policies, in some circumstances a significant question may exist as to whether bankruptcy represents 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. ... We therefore emphasize that under the statutory waiver provisions, case-by-case review of fee waiver requests is necessary to determine the public interest, even in bankruptcy cases.”).

<sup>28</sup> 47 U.S.C. § 159(d) (“The 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 C.F.R. § 1.1166 (“fee ... 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.”). *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12.

<sup>29</sup> 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”).

<sup>30</sup> *Id.* (compelling-“something so great that irreparable harm or injustice would result if not met”).

<sup>31</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

<sup>32</sup> *See* 11 U.S.C. § 521.

<sup>33</sup> 11 U.S.C. §§ 1106, 1107, 1166; Fed. R. Bnkr. P., Rule 1007.

business to continue successfully after confirmation.<sup>34</sup> The bankruptcy process that begins with filing a petition and an automatic stay and continues until confirmation of the plan, provides breathing room for a business to recoup, evaluate, and deal with creditors. During the process, the debtor operates the business as a debtor-in-possession or under the direction of a trustee, and pays current obligations. The debtor also develops a plan dealing with creditors, and it projects post-confirmation operations. Relevant to post-petition and post-confirmation operations are court-filed financial documents, including, *e.g.*, a statement of financial affairs, monthly operating reports, the plan,<sup>35</sup> and a disclosure statement with debtor's plan for the business going forward that has timely and accurate financial information with projections.<sup>36</sup> Consistent with our standards, an applicant seeking a waiver of fees post-petition must include relevant financial documentation, such as the plan reflecting debtor-applicant's reasonable financial projections, including the annual regulatory fees.<sup>37</sup>

### Discussion

We note that Licensee's submission fails to comply with Commission's procedures, which are grounds for dismissal.

First, Licensee's submission fails to conform to the Commission's rules for filing a request to waive the annual regulatory fees and a petition to defer payment of the fees until the Commission reaches a decision on the request for a waiver. Specifically, Licensee submitted the *Request* to the Commission's lockbox, after the date the fee was due, but without including full payment of the fee and accrued charges. Licensee's courtesy *email* copy did not remedy the problems resulting from the improper submission. Because Roberts failed to submit in 2013 a timely and proper petition to defer payment with a request for waiver and Licensee failed to pay the delinquent fee and charges, they created the impediment to consider the *Request* that they compounded by failing to meet our standards for filing set forth at 47 C.F.R. §§ 0.401, 1.7, 1.1159 and 1.1166. Accordingly, we dismiss Licensee's improperly filed *Request*.<sup>38</sup>

Second, to be timely a "request[] for waiver accompanied by a petition for deferral of payment must [have been] received by the deadline, September 20, 2013. Any request for waiver and deferral received after that date will be dismissed and licensee will be responsible for paying the full amount of the fee, a penalty equal to 25% of the amount of the fee not paid in a timely manner, charges of collection, and accrued payable interest and other penalties."<sup>39</sup> This is a reiteration of the long held determination that the Commission "will accept petitions for waiver,

<sup>34</sup> *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203 (1983); *In re Lee Min Ho Chen*, 482 B.R. 473, 478 (D. Puerto Rico, Bkrtcy, 2012), *In re Gyro-Trac (USA), Inc.*, 441 B.R. 470, 479 (D.S.C. Bkrtcy, 2010).

<sup>35</sup> 11 U.S.C. § 1129.

<sup>36</sup> See *e.g.*, 11 U.S.C. §§ 1125, 1129; see also *In re Ferguson*, 474 B.R. 466, 476 (D. S.C. Bkrtcy, 2012) ("to satisfy the requirements of adequate information under [11 U.S.C.] § 1125, a disclosure statement must contain the necessary financial information, data, and projections ....").

<sup>37</sup> See *In re Idearc, Inc.*, 423 B.R. 138, 167 (N.D. Tx. Bkrtcy, 2009) ("To establish the feasibility of a plan, the debtor must present proof through reasonable projections that there will be sufficient cash flow to fund the plan. Such projections cannot be speculative, conjectural or unrealistic.").

<sup>38</sup> 47 C.F.R. §§ 0.401, 1.7, 1.1166.

<sup>39</sup> Waivers, Reductions and Deferments of Regulatory Fees, *Regulatory Fees Fact Sheet* (Sep. 5, 2013), 2013 WL 4773993 (F.C.C.) (2013).

reduction and deferment so long as they are filed no later than by the date payment is due.”<sup>40</sup> September 20, 2013, was the deadline<sup>41</sup> for paying the fee and filing the *Request*. Accordingly, in addition to not being properly filed, under the circumstances, the *Request* was submitted late, thus we dismiss.

Next, under 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1164(e), 1.1166, and 1.1910(a)(2) & (3), we dismiss because Roberts is a delinquent debtor.<sup>42</sup> We note that Roberts is delinquent in paying fees on other stations not included within this *Request*. As a result, those other delinquencies require us to dismiss the *Request*.

On those grounds, we dismissed the *Request*, which ends the matter; however, as both a courtesy and matter of administrative economy, we look to whether Licensee’s submission would otherwise meet our standard to waive the fee by showing extraordinary circumstances and that that the waiver is in the public interest.

Our analysis begins with Licensee’s documentation of financial hardship.<sup>43</sup> Rather than providing documentation to support the claim of financial hardship, Licensee asserts that on October 7, 2011, Roberts initiated a bankruptcy proceeding for reorganization under Chapter 11 of the Bankruptcy Code,<sup>44</sup> and following a series of events including Commission grant, Roberts transferred control of the station to Licensee.<sup>45</sup> Licensee asserts, because Roberts was in bankruptcy when the FY 2013 regulatory fee was due, the regulatory fee should be waived.<sup>46</sup> Further, Licensee asserts a “second and independent ground” that Roberts was in a silent status and non-operational status.<sup>47</sup> Licensee fails to include relevant documentation to include Chapter 11 proceeding filings and the court-required financial records. Instead, Licensee leaves us to speculate about the content of required financial documents, e.g., First Day Pleadings, a statement of financial affairs, monthly operating reports, financial projections, and requested and

<sup>40</sup> 9 FCC Rcd 5333, ¶ 34.

<sup>41</sup> FY 2013 Regulatory Fee Due No Later Than September 20, 2013, 11:59 PM Eastern Time (ET), *Public Notice*, DA 13-1796 (Sep. 4, 2013).

<sup>42</sup> 47 U.S.C. § 159(c)(2) (“The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section.”); 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.”); 1.1166(c) (“Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.”); *Waivers, Reductions and Deferments of Regulatory Fees, Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) (“The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. \* \* \* The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.”).

<sup>43</sup> 47 C.F.R. § 1.1166(d); *FY 2011 Regulatory Fee Report and Order*, *supra*.

<sup>44</sup> *Request* at 1.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 2. Licensee refers to 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*) to assert the Commission “will waive the regulatory fee for licensees whose stations are bankrupt, undergoing Chapter 11 reorganizations or in receivership.”

<sup>47</sup> *Id.*

allowed expenditures for operations after October 7, 2011. Notably, Licensee does not assert that Roberts lacked funds in 2013 or that Licensee lacks funds to pay the regulatory fee.<sup>48</sup> These gaps in Licensee's *Request* are not resolved with the additional assertion that the station was silent on the day the fee was due. That mere assertion does not establish a waiver is appropriate. Hence, without relevant documentation, Licensee's *Request* is incomplete<sup>49</sup> leaving Licensee unable to show how the bankruptcy proceeding represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs.

When the Commission announced that evidence of bankruptcy or receivership is sufficient to establish financial hardship,<sup>50</sup> it was referring to the situation where the party was proceeding in a straight bankruptcy liquidation case. A party filing under Chapter 11 is not a *bankrupt*.<sup>51</sup> Moreover, in 2003, the Commission explained, the applicant must show that the bankruptcy proceeding represents 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.<sup>52</sup> Accordingly, we deny Licensee's *Request*.

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<sup>48</sup> Licensee's payment after submitting the *Request* confirms the assumed available of funds.

<sup>49</sup> 47 C.F.R. § 1.65 ("Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished ... is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of the application so as to furnish such additional or corrected information as may be appropriate."); *Bartholdi Cable Co. Inc. v FCC*, 114 F3d 274, 280 (DC Cir. 1997)(The Commission "'need not sift pleadings and documents' to identify arguments that are not 'stated with clarity' by a petitioner. It is the petitioner that has the burden of clarifying its petition before the agency.'").

<sup>50</sup> *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 14.

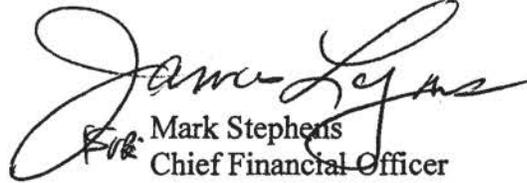
<sup>51</sup> *Matter of Phillips*, 966 F.2d 926, 930 (5th Cir. 1992), *rehearing denied* (1992),

Congress consolidated federal bankruptcy law in the Bankruptcy Act of 1898. *See* Act of July 1, 1898, c. 541, 30 Stat. 544. At that time, bankruptcy law only facilitated liquidation. Not until 1933 did Congress amend the Bankruptcy Act to permit reorganization of certain entities. *See* Pub.L. No. 72-420, 47 Stat. 1474 (1933). In 1938, Congress amended the Bankruptcy Act with the precursor to Chapter 11 to facilitate general corporate reorganization. *See* Act of June 22, 1938, Pub.L. No. 74-575, 52 Stat. 840 (1938). Until Congress substantially revised the Bankruptcy Act with the Bankruptcy Reform Act of 1978, the Bankruptcy Act apparently referred to entities undergoing Chapter 7 liquidation as "bankrupts," and those undergoing Chapter 11 reorganization as "debtors." *See* S. REP. No. 989, 95th Cong., 2d Sess. 23 (1978), *reprinted in* Historical and Revision Notes following 11 U.S.C.A. § 101(12) at 36 (1979), *and reprinted in* 1978 U.S.C.C.A.N. 5787, 5809. But the Bankruptcy Reform Act of 1978 removed all references to "bankrupt" in federal bankruptcy law, created the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, and adopted "debtor" to refer to all who seek protection under the Code, whether they do so through liquidation under Chapter 7 or reorganization under Chapter 11. *See* 11 U.S.C. § 101 (12); *see generally* H.R. REP. No. 595, 95th Cong., 2d Sess. 3-5 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 5965-66 (recounting Reform Act's history and purpose).

<sup>52</sup> 18 FCC Rcd at 6090, ¶ 11.

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

Sincerely,



For Mark Stephens  
Chief Financial Officer