FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
MAR 09 2015

OFFICE OF
MANAGING DIRECTOR

Slava Avdyeyev
Broadvox, LLC
75 Erieview Plaza, Suite 400
Cleveland, OH 44114

Licensee/Applicant: **Broadvox, LLC**
Waiver Request: Late Payment Penalty;
Disposition: **Dismiss** (47 U.S.C. § 159(c)(2) and **47** C.F.R. §§ 1.1164, 1.1166, and 1.1910(a)(2) & (3))
Station: N/A
Fee: Fiscal Year (FY) 2014 Regulatory Fee Late Fee
Date Request Filed: Nov. 20, 2014
Date Regulatory Fee Paid: Nov. 24, 2014
Date Late Penalty Fee Paid: Not paid; Debt Transferred
Fee Control No.: RROG-14-00015871

Dear Mr. Avdyeyev:

This responds to Licensee's *Request*[1] for a waiver of the statutory penalty amount imposed when Licensee failed to pay the Fiscal Year (FY) 2014 regulatory fees by the deadline. As discussed below, we dismiss the *Request* because Licensee remains a delinquent debtor, and the associated collection action has been transferred to the Secretary of the Treasury, Bureau of Fiscal Services, which has legal authority to collect the debt and which should be contacted to pay the debt.

[1] Letter from Slava Avdyeyev, Broadvox, LLC, 75 Erieview Plaza, Suite 400, Cleveland, OH 44114 to ARINQUIRIES (arinquiries@fcc.gov) (*dated* Nov. 20, 2014; *rec'd* Jan. 9, 2015)(*Request*); email from Holly Runyon [hrunyon@broadvox.com] to Stephen French (Jan . 9, 2015); email from Stephen French [FCC] to Holly Runyon (Jan. 9, 2015); email from Holly Runyon to Samantha Pierce [FCC] (Jan. 7, 2015); email from Samantha Pierce [FCC] to Holly Runyon (Dec. 18, 2014); email from Holly Runyon to Samantha Pierce [FCC] (Dec. 18, 2014); email from Samantha Pierce to Holly Runyon (Nov. 20, 2014). Licensee's submission by email does not comply with the Commission's rules (47 C.F.R. § 1.1166(a)(2)).

Background

September 23, 2014, was the published deadline for payment of the FY 2014 annual regulatory fees.[2] On November 20, 2014, Licensee submitted a *Request* to the Commission's ARINQUIRIES Help Desk for a waiver of an amount equal to the imposed 25% statutory penalty. Licensee asserts a key person who had responsibility for making timely payment of the annual regulatory fees left the organization. On November 24, 2014, the Commission received Licensee's partial payment. The Commission's records show that Licensee is delinquent in paying contribution amounts to the Universal Service Fund (USF).

Standards

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,[3] and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."[4] Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."[5]

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. §§ 1.1157(c)(1) and 1.1164, and additional charges of interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2014, the deadline for paying regulatory fees was September 23, 2014.[6]

Under 47 C.F.R. § 1.1940(f) a partial payment is applied first to the penalties and accrued charges, and then to the principal amount owed.[7] Any portion of the unpaid amount, *e.g.*, a regulatory fee, is delinquent, and under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940, interest, penalties, and charges of collection on the unpaid balance accrue from the original date of delinquency. The licensee remains a delinquent debtor subject to the Commission's red light rule,[8] and as required by 47 C.F.R. §§ 1.1164(e)[9] and 1.1910, any application or request for relief filed may be dismissed.

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[2] *See* FY 2014 Regulatory Fees Due No Later Than September 23, 2014, 11:59 pm Eastern Time (ET), *Public Notice,* DA 14-1261 (Aug. 29, 2014).
[3] 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.
[4] 47 U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164.
[5] 47 C.F.R. § 1.1164.
[6] *See* FY 2014 Regulatory Fees Due No Later Than September 23, 2014, 11:59 pm Eastern Time (ET), *Public Notice,* DA 14-1261 (Aug. 29, 2014).
[7] 47 C.F.R. §§ 1.1940(f)("When a debt is paid in partial ... payments, amounts received ... shall be applied first to outstanding penalties and administrative cost charges, second to accrued interest, and third to the outstanding principal."), 1.1157(c)(1), 1.1164(c).
[8] 47 C.F.R. § 1.1910.

Under 31 U.S.C. § 3711(g)(1), 31 C.F.R. § 285.12, and 47 C.F.R. § 1.1917, the Commission is required to transfer delinquent debt to the Secretary of the Treasury. On behalf of the Commission, the Secretary of the Treasury, Bureau of Fiscal Service will take appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action.[10] As such, when the debt is transferred, the Commission ceases collection action related to the debt.[11]

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.[12] For example, under sections 1.1159 and 1.1166 of the Commission's rules, a request for a waiver of a regulatory fee must be *filed* with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554 by mailing or otherwise delivering a hard copy of the documents to Office of the Secretary.

Discussion

Licensee failed to pay the FY 2014 annual regulatory fee before our published deadline. Accordingly, under 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164, the Commission assessed a 25% late payment penalty and charges of collection. On November 24, 2014, Licensee made a partial payment equal to the amount of the annual regulatory fee, but Licensee failed to include the accrued but unpaid late payment penalty and other charges of collection. Under 47 C.F.R. § 1.1940(f), the partial payment was "applied first to outstanding penalties and administrative cost charges, second to accrued interest, and third to the outstanding principal." The balance is a delinquent regulatory fee, and the Licensee is subject to delinquent debtor sanctions, *e.g.*, dismissal of filed applications, withholding of action, additional charges of collection, and, as in this case, the delinquent debt is transferred to the Treasury's Bureau of Fiscal Service. The consequence of delinquency is dismissal of the *Request*. While that ends the matter, as a courtesy, we note and will comment on Licensee's other problems.

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[9] 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 .... The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment."), 1.1910.
[10] 31 C.F.R. § 285.12(c).
[11] 47 C.F.R. § 1.1917(b).
[12] 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.").

Our rules require an applicant to file a request for waiver with "the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554."[13] The consequences of filing to follow that rule is that the submission is not filed[14] and "[a]pplications and other filings not submitted in accordance with the addresses or locations set forth [in our rules] will be returned to the applicant without processing."[15]

Our records show Licensee submitted the *Request* to ARINQUIRIES, which fails to conform to our designated filing requirements. Thus the *Request* was never filed, and now, it may be returned without processing.[16] Moreover, the debt and authority to collect the debt is now at Treasury.

Finally, as a courtesy, we looked to the merits of the *Request*. Licensee's assertions attributing its failure to pay the fee by the deadline describes circumstances that were within Licensee's control and a matter of its business decision or, at least, general inattention to the publicized fee payment information[17] and inadvertence to complete timely payment. Licensee failed to establish "extraordinary circumstances"[18] that, if proved, would be legal grounds or clear mitigating circumstances to waive collection of the penalty. Repeatedly, the Commission has held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."[19]

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[13] 47 C.F.R. §§ 1.1159(b), 1.1160.

[14] 47 C.F.R. § 1.7.

[15] 47 C.F.R. § 0.401 ("The Commission maintains several offices and receipt locations. Applications and other filings not submitted in accordance with the addresses or locations set forth [in the Commission's rules] will be returned to the applicant without processing.").

[16] *Id.*

[17] *See* FY 2014 Regulatory Fees Due No Later Than September 23, 2014, 11:59 pm Eastern Time (ET), *Public Notice,* DA 14-1261 (Aug. 29, 2014).

[18] *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

[19] *See Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), *citing Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); *see also NextGen Telephone (*OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

Because Licensee is a delinquent debtor,[20] whose debt has been transferred to the Treasury for collection action, under 47 C.F.R. §§ 1.1164(e)[21] and 1.1910(a)(2) & (3), we dismiss this *Request*.

Sincerely,

FOR: Mark Stephens
Chief Financial Officer

[20] Our records show that Licensee is delinquent in contributions to the USF. Whether that delinquency has been resolved does not alter our decision in this matter; however, any delinquency to the Commission or its reporting entities may trigger sanctions under the Commission's red light rule.

[21] 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. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment." 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."). Emphasis added.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

JUN 04 2015

OFFICE OF
MANAGING DIRECTOR

David Tillotson, Esquire
4606 Charleston Terrace, NW
Washington, DC 20007

Licensee/Applicant: **Casa En Denver, Inc.**
Waiver of Regulatory Fees: Financial Hardship
Disposition: **Dismissed and Denied** (47 C.F.R. § 1.1166)
Stations: KQCK and KQDK-CD
Fee: Fiscal Year (FY) 2014 Regulatory Fees
Date Request Filed: Sep. 23, 2014
Fee Control No.: RROG 14-00015755
Amount Due: ***See Fee Filer***

Dear Counsel:

This responds to Licensee's *Petition*[1] for waiver or, in the alternative, deferment of the required, but unpaid Fiscal Year (FY) 2014 regulatory fees due for Stations KQCK and KQDK-CD. As we discuss below, we dismiss and deny the *Petition* because Licensee failed to substantiate both prongs of the Commission's standard, extraordinary and compelling circumstances and that a waiver will promote the public interest. Accordingly, we demand immediate payment.

Background

On September 23, 2014, Licensee filed its *Petition* asking the Commission to waive the FY 2014 annual regulatory fees for the two stations or, in the alternative, to defer payment until a decision on the waiver.

Licensee asserts, "waiver and deferral are predicated upon the fact that [Licensee] has suffered continuing operating losses since acquiring the stations in October 2012."[2] Referring to the *Declaration* as the support for the *Petition*, Licensee states, "the Stations had a cash operating loss [exceeding $500,000 during] 2013 and a cash operating loss in excess of $100,000 during the first six months of 2014."[3] The "2013 [and 2014] losses were covered by [Licensee's] parent company and … principals of [Licensee's] parent company; [however, Licensee's] parent

[1] Casa En Denver, Inc., Petition for Waiver of FY 2014 Regulatory Fees for Station KQDK-CD, Facility ID 29544, (sic) Denver, Colorado and KQCK, Facility ID 18287, Cheyenne, Wyoming, To: The Secretary Attn: Managing Director, Petition for Waiver Or, In The Alternative, Deferral of Regulatory Fees (Sep. 22, 2014) (*Petition*) *with* Declaration of Juan Salvador Gonzalez (*Declaration*), Exhibit A, Casa en Denver Inc 2013, Profit & Loss (cash basis) (*P&L, 2013*), Exhibit B, Casa en Denver Inc, Jan-June 2014, Profit & Loss (cash basis) (*P&L, Jun 2014*), Exhibit C, Casa en Denver Inc, FY 2012-June 30 FY 2014, Balance Sheet (*Balance Sheet*) (collectively, *Request*).
[2] *Petition* at 1.
[3] *Id.* at 1-2.

is experiencing financial difficulties similar to [Licensee] and is no longer able to support [Licensee] financially."[4] Moreover, Licensee states, "none of the principals of [Licensee's] parent ... received any compensation of any sort from [Licensee, and its] financial condition ... deteriorated significantly since the end of 2012, with the company's total liabilities having increased by nearly $800,000 and its current liabilities having increased by more than $400,000."[5] Licensee explains that Licensee's parent and the "principals of [Licensee's] parent" funded Licensee's operations in 2013 and 2014, and that "none of the principals of [Licensee's] parent have received any compensations of any sort;" however, Licensee fails to furnish any similar information about the "principals of [Licensee's] parent."

Licensee's declarant states, the stations' "programming [affiliation with the Spanish Fox network was] not ... successful ... [t]he Stations are severely indebted and since [A]ugust 2013 the Company stopped servicing its debt. Currently the company is negotiating with its bank the restructuring of its notes and is seeking to procure additional financing—although these efforts have not been successful."[6] The declarant adds, "Casa Media Partners LLC, [Licensee's] parent company ... faces ... high debt leverage, poor operating results and inability to pay its debt[, hence] it is no longer able to support the Company financially."[7] Also, declarant states, "the [Licensee's] financial situation between the end of year 2012 and June 30, 2014 has worsened significantly. Its total liabilities reached $8,875,647—an increase of $796,955 compared with December 2012[, and] current liabilities ... reach[ed] $463,624 from $45,875 as of the end of ... 2012 ... exceed[ing] current assets ... many times over."[8]

The Commission's records show, on November 1, 2012, Licensee acquired the station licenses from Denver TV Licenses, LLC and Denver TV Group, LLC (*sellers*).[9] Under the terms of the Asset Purchase Agreement,[10] Licensee assumed a $7,084,798.53 loan owed by *sellers* to Valley Bank. In summary, the Commission's records show that VBDenver, LLC (a subsidiary of Valley Bank) acquired the licenses from Denver Broadcasting, Debtor-in-Possession, then VBDenver, LLC sold them to Denver TV Licenses, LLC that, in turn, sold the licenses to Licensee. Licensee is owned by Casa Media Partners, LLC.

On June 20, 2014, the Illinois Department of Financial & Professional Regulation-Division of Banking closed Valley Bank because of irregularities and the Federal Deposit Insurance Corporation was named Receiver.[11]

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[4] *Id.* at 2.
[5] *Id.*
[6] *Declaration* at 1.
[7] *Id.*
[8] *Id.*
[9] *See* FCC Form 314, Application For Consent To Assignment Of Broadcast Station Construction Permit Or License, BALCDT-20120328AGF (May 24, 2012)(*consummated* Nov. 1, 2012).
[10] *Id.*, Exhibit 5, Asset Purchase Agreement Dated March 15, 2012 Among Casa en Denver, Inc., Buyer And Denver TV Licenses, LLC And Denver TV Group, LLC, Sellers (Asset Purchase Agreement).
[11] Https://www.fdic.gov/bank/individual/failed/valleybankil.html.

Standards

Under section 1.1166 of the Commission's rules, a petition to waive a regulatory fee "must be accompanied by the required fee and FCC Form."[12] If the applicant includes the fee, the request must be submitted to the Commission's lockbox bank.[13] 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.[14] "If no fee payment is submitted, the request should be filed with the Commission's Secretary."[15] 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.

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.[16] When the application is dismissed, it may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty.[17]

Furthermore, under 47 U.S.C. § 159 and 47 C.F.R. §§ 1.1166, the Commission imposes the statutory penalty[18] 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*.

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[12] 47. C.F.R. § 1.1166(c).

[13] 47 C.F.R. § 1.1166(a)(1).

[14] 47 C.F.R. § 1.1166(b); Assessment and Collection of Regulatory Fees For Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011) ("A regulatee's mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed. A regulatee cannot delay payment on the theory that its deferral request triggered an automatic six-month extension of its obligation to pay.").

[15] 47 C.F.R. § 1.1166(a)(2).

[16] 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.").

[17] 47 C.F.R. § 1.1164(e).

[18] 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.").

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[19] and a finding that the public interest will be served thereby.[20] The applicant has the burden of demonstrating a waiver is warranted,[21] *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.[22]

Specifically, an applicant must show extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.[23] The required "sufficient showing of financial hardship"[24] is more that "[m]ere allegations or documentation of financial loss, standing alone." "[I]t [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."[25] 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.[26]

Accordingly, each licensee has the burden of demonstrating compelling and extraordinary circumstances that a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the Commission's regulatory action.[27] For the reasons discussed below, we find that Licensee fails to meet our standard.

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[19] 47 C.F.R. § 1.3.

[20] 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) (*1994 Report and Order*); *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*).

[21] *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

[22] *Northeast Cellular,* 897 F.2d at 1166.

[23] *1994 Report and Order,* 9 FCC Rcd at 5344 ¶ 29; 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.").

[24] *FY 1994 MO&O,* 10 FCC Rcd at 12761-62, ¶ 13.

[25] *Id.*

[26] *Id.*

[27] *Id., 1994 Report and Order*, 9 FCC Rcd at 5344.

Discussion

First, Licensee incorrectly presents its *Petition* in the form of an alternative request, *i.e.*, to waive the fee or, in the alternative, to defer payment. As such, Licensee fails to comply with 47 C.F.R. § 1.1166(c) that provides "[w]aiver 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." Specifically, Licensee must establish for both the deferral and the waiver "good cause" and that each result, deferral and waiver, "would promote the public interest."[28] Indeed, a "regulatee's mere allegation of financial hardship ... does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed."[29] A petition filed, "in the alternative," fails to comply with the standard, and on that ground, we dismiss.

Next, Licensee fails to establish for *both* the requested deferment and waiver the two prongs of the standard, "*good cause*" and that each action would "*promote the public interest.*" Indeed, Licensee fails to show (or even mention) how the public interest is served by deferring payment of the fees and waiving the fees due from Licensee's undercapitalized company. Without establishing the essential "*public interest*" element, we dismiss. This ends the matter; however, as a matter of administrative economy, we look to whether Licensee establishes good cause. It does not, and for the reasons discussed below, we deny.

Licensee's financial documentation fails to support a showing of good cause and it fails to provide the necessary proof to sustain Licensee's burden of establishing that the public interest will be served by waiving the fees, rather than requiring payment. For example, Licensee opens by asserting, "waiver and deferral are predicated upon the fact that [Licensee] has suffered continuing operating losses since acquiring the stations in October 2012."[30] Additionally, Licensee asserts the "stations are severely indebted and since [A]ugust 2013[,] the Company stopped servicing its debt. ... in year 2013 the stations['] cash deficit was over half a million dollars. ... Casa Media Partners LLC, the parent Company, faces a similar situation (high debt leverage, poor operating results and inability to pay its debt) and it is no longer able to support the Company financially."[31] Licensee adds, "the Company's financial situation between the end of year 2012 and June 30, 2014 has worsened .... Its total liabilities reached $8,875,647 –an increase of $796,955 compared with December 2012."[32] Licensee's financial information shows as of December 31, 2012, its total equity was $1,556,868.82 reflecting $2,000,000 in common stock and negative net income of $443,131.18.[33] Although Licensee's *Petition* fails to disclose the details of the March 15, 2012, purchase and sale agreement, our records show Licensee assumed a $7,084,998.53 loan from Valley Bank, which appears to be the basis for asserting

[28] 47 C.F.R. § 1.1166.
[29] Assessment and Collection of Regulatory Fees for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011)
[30] *Petition* at 1.
[31] *Declaration* at 1.
[32] *Declaration* at 2.
[33] Balance Sheet.

Licensee suffered losses since acquiring the licenses. As such, Licensee's submission and information at the Commission show it was undercapitalized when it acquired the licenses, and that circumstance did not change. Under those circumstances and without other evidence discussed below, Licensee fails to demonstrate from only the supplied balance sheet and profit and loss statement how the public interest is served by waiving the fees, rather than requiring payment.

Undercapitalization is a factor to consider in disregarding the corporate alter ego,[34] and in this instance, requiring us to look to Licensee's corporate parents, Casa Media Partners LLC, and those above it, to determine whether the financial situation of those entities meets our standard to present compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.

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.[35] In that context, a "sufficient showing of financial hardship"[36] is 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."[37] The applicant's evidence must support the requested relief, and as necessary, we look beyond financial records of the applicant to those of an affiliate, parent, or interest holder.

The legal doctrine that a corporation or limited liability company is a legal entity separate and apart from the persons composing it is subject to the exception that in the appropriate situation, the veil may be pierced, and the corporate business entity and the individual or individuals owning stock and assets will be treated as identical. Simply put, the separate corporate entity may be disregarded. In such matters, the general rule holds that inadequate capitalization favors disregard of the separate corporate entity. Obvious thin or inadequate capitalization, measured by the nature and magnitude of the corporate undertaking, is a measure in denying stockholders the defense of limited liability.[38] Indeed state courts have imposed personal liability on owners of thinly capitalized corporations or limited liability companies.[39] Just as undercapitalization provides legal ground to pierce the corporate veil to extend liability, it

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[34] *HOK Sport, Inc. v. FC Des Moines, L.C.*, 495 F.3d 927, 937 (8th Cir. 2007) (the corporate form can be disregarded if the corporation is undercapitalized); *Skidmore, Owings & Merrill v. Canada Life Assur. Co.*, 907 F.2d 1026, 1027 (10th Cir. 1990); *Ziegler v. Inabata of America, Inc.*, 316 F.Supp. 908, 917 (D. Colo. 2004).

[35] Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, *Report and Order*, 2 FCC Rcd 947, ¶¶ 70, 88 (1987); Accipiter Communications, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 18239, 18241, ¶ 8 (2001) (waiver predicated on financial need must show impact of regulatory fee will affect regulatee's ability to serve the public).

[36] *FY 1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13.

[37] *Id.*

[38] *See Anderson v. Abbott*, 321 U.S. 349, 362 (1944) ("obvious inadequacy of capital, measured by the nature and magnitude of the corporate undertaking, has frequently been an important factor in cases denying stockholders their defense of limited liability"); *Stone v. Eacho*, 127 F.2d 284 (4th Cir. 1942) (inadequate capitalization ground to disregard the separate existence of a subsidiary from a parent); *American Honda Motor Co., Inc Dealerships Relations Litigation*, 958 F.Supp. 1045, 1051 (D. Md. 1997) (corporate veil can be pierced because of inadequate capitalization of the subsidiary).

[39] *See e.g., Vuylsteke v. Broan*, 172 Or. App. 74 (2001).

permits us to scrutinize the financial status of the parent and affiliates to determine whether Licensee demonstrates financial hardship. Here, Licensee does not.

Furthermore, in addition to the consequences of undercapitalization, Licensee's reliance on the support of the parent and principals of the parent for financing and asserting hardship opens the door to require financial documentation from those interest holders. That information is relevant where, as here, Licensee presents itself operating on persistently thin capitalization insufficient to meet its basic operating goals. Licensee's submission shows it received financial resourcing at the discretion of decision makers both one and two entities above Licensee. A reasonable conclusion is that the parent and principals of the parent funded Licensee without a business plan that would anticipate and meet long-range goals to provide service.

Specifically, Licensee acknowledges "since ... October 2012" it was suffering operating losses. Indeed, Licensee's circumstances include assuming a sizeable debt with terms Licensee was incapable of meeting, and from the beginning requiring financial assistance from both its "parent company" and "principals of [the] parent"[40] merely to operate in the zone of insolvency. Licensee now summarily asserts that its parent company is unable to provide support, but without explaining details of the earlier funding arrangement or furnishing relevant financial information about the parent's or principals to the parent. Necessary, but missing from the *Petition* is a supported explanation why the principals of the parent company will not continue with their financial support, and if the immediate principal is a thinly capitalized intermediate business structure of entity above it, the details of that arrangement and any alteration of that funding arrangement. Licensee fails to explain these matters or the circumstances in which the parent and principals of the parent either provided or withheld funding. Licensee should have provided financial documentation about the parent, principals of the parent and itself, including, but not limited to, projected cash flows, estimates of future activities, business plans, and details of future financing. Because this information is missing, Licensee fails to demonstrate the existence of financial hardship, and we deny.

Moreover, Licensee asserts, it is "severely indebted,"[41] but it fails to provide any details of the debt, *e.g.*, the amount, terms, or the existence of any security agreement or collateral. Thus, Licensee does not properly describe the debt's effect on Licensee's operations.[42] Licensee fails to persuade us that compelling circumstances flow from future changes to the station's daily operations or its involvement in negotiations for financing.[43] Indeed, Licensee does not explain to what extent, if any, such efforts or agreements, now or in the future, affect the financial information provided. Simply, Licensee's information does not show compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs. We therefore deny the *Petition*.

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[40] *Petition* at 2.
[41] *Declaration* at 1.
[42] *Accipiter Communications, Inc., supra.*
[43] *Declaration* at 1.

Payment of the FY 2014 regulatory fee is now due. The regulatory fee must be filed together with a Form FCC 159[44] within 30 days from the date of this letter. If Licensee fails to pay the full amount due by that date, the statutory penalty of 25% of the unpaid fee,[45] and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter. Under the law,[46] the Commission will initiate collection proceedings and impose other administrative sanctions. 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

[44] You may find the Form 159 with complete instructions at: http://www.fcc.gov/fees/form159.html.
[45] 47 U.S.C. § 159(c)(1). *See 1994 Report and Order*, 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.").
[46] *See* 47 C.F.R. § 1.1901, *et seq.*

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

JUN 0 4 2015

OFFICE OF
MANAGING DIRECTOR

David Tillotson, Esquire
4606 Charleston Terrace, NW
Washington, DC 20007

Licensee/Applicant: **Casa Media Partners, LLC**
Waiver of Regulatory Fees: Financial Hardship
Disposition: **Dismissed and Denied** (47 C.F.R. § 1.1166)
Stations: KMQA-FM, KAEH-FM, KLES-FM, K282AE, KTNS-AM, KAAT-FM, KMNA-FM, KZXR-AM, KIQQ, KIQQ-FM, KMEN-FM and KAAT-FM1; and 9Auxiliary Broadcast Stations
Fee: Fiscal Year (FY) 2014 Regulatory Fees
Date Request Filed: Sep. 23, 2014
Fee Control No.: RROG 14-00015754
Amount Due: ***See Fee Filer***

Dear Counsel:

This responds to Licensee's *Petition*[1] for waiver or, in the alternative, deferment of the required, but unpaid Fiscal Year (FY) 2014 regulatory fees due for Stations KMQA-FM, KAEH-FM, KLES-FM, K282AE, KTNS-AM, KAAT-FM, KMNA-FM, KZXR-AM, KIQQ, KIQQ-FM, KMEN-FM and KAAT-FM1and 9Auxiliary Broadcast Stations. As we discuss below, we dismiss and deny the *Petition* because Licensee failed to substantiate both prongs of the Commission's standard; extraordinary and compelling circumstances and that a waiver will promote the public interest. Accordingly, we demand immediate payment.

Background

On September 23, 2014, Licensee filed its *Petition* asking the Commission to waive the FY 2014 annual regulatory fees for 12 stations or, in the alternative, to defer payment until a decision on the waiver.

[1] Casa Media Partners, LLC, Petition for Waiver of FY 2014 Regulatory Fees To: The Secretary Attn: Managing Director, Petition for Waiver Or, In The Alternative, Deferral of Regulatory Fees (Sep. 22, 2014) (filed Sep. 23, 2014)(*Petition*) *with* Exhibit A, Radio Stations Licensed to Casa Media Partners, LLC; Declaration of Juan Salvador Gonzalez (*Declaration*), Exhibit A, Casa Media Partner LLC (sic), 2013, Profit & Loss (cash basis) (*P&L, 2013*), Exhibit B, Casa Media Partners LLC, Jan-June 2014, Profit & Loss (cash basis) (*P&L, Jun 2014*), Exhibit C, Casa Media Partners LLC, FY 2012-June 30 FY 2014, Balance Sheet (*Balance Sheet*) (collectively, *Request*).

Licensee asserts, "waiver and deferral are predicated upon the fact that [Licensee] has suffered continuing operating losses since acquiring the stations in March of 2012."[2] Referring to the Declaration as support for the Petition, Licensee states "the Stations had a cash operating loss in excess of $750,000 in 2013, that in addition to this loss the company provided over $450,000 to its wholly owned subsidiary, Casa En Denver, Inc., in order to cover that company's operating losses."[3] Moreover, according to Licensee, it "took on an additional $1,195,533 in debt to cover its own losses and those of its subsidiary."[4] Even so, Licensee's principals and officers "received compensation directly or indirectly" totaling $286,000; however, even adjusting the results to eliminate the amount, Licensee "still is under financial distress with a negative cash flow during 2013 of $470,373."[5] Licensee asserts, in 2014 "cash flow was nearly in balance;" however finances continued to deteriorate to the point that Licensee stopped servicing its debt and [it] failed to make some critical payments related to its obligations as employer."[6] Furthermore, Licensee explains that its "total liabilities have increased by $1,943,867 and that [Licensee's] total liabilities exceed … its assets by more than $1 million."[7]

Standards

Under section 1.1166[8] of the Commission's rules, a petition to waive a regulatory fee "must be accompanied by the required fee and FCC Form."[9] If the applicant includes the fee, the request must be submitted to the Commission's lockbox bank.[10] 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.[11] "If no fee payment is submitted, the request should be filed with the Commission's Secretary."[12] 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.

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[2] *Petition* at 1.
[3] *Id.* at 1-2; *Declaration* at 1.
[4] *Petition* at 2; *Declaration* at 1.
[5] *Id.*
[6] *Petition* at 2.
[7] *Id.*; *Declaration* at 2.
[8] 47 C.F.R. § 1.1166 ("The fees established by sections 1.1152 through 1.1156 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. * * * (c) Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. 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.").
[9] 47. C.F.R. § 1.1166(c).
[10] 47 C.F.R. § 1.1166(a)(1).
[11] 47 C.F.R. § 1.1166(b); Assessment and Collection of Regulatory Fees For Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011) ("A regulatee's mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed. A regulatee cannot delay payment on the theory that its deferral request triggered an automatic six-month extension of its obligation to pay.").
[12] 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.[13] When the application is dismissed, it may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty.[14]

Furthermore, under 47 U.S.C. § 159 and 47 C.F.R. §§ 1.1166, the Commission imposes the statutory penalty[15] 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[16] and a finding that the public interest will be served thereby.[17] The applicant has the burden of demonstrating a waiver is warranted,[18] *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.[19]

Specifically, an applicant must show extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.[20] The required "sufficient showing of financial hardship"[21] is more than "[m]ere allegations or documentation of financial loss, standing alone." "[I]t [is] incumbent upon each regulatee to fully document its

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[13] 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.").

[14] 47 C.F.R. § 1.1164(e).

[15] 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.").

[16] 47 C.F.R. § 1.3.

[17] 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) (*1994 Report and Order*); *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*).

[18] *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

[19] *Northeast Cellular,* 897 F.2d at 1166.

[20] *1994 Report and Order,* 9 FCC Rcd at 5344 ¶ 29; 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.").

[21] *FY 1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13.

financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."[22] 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.[23]

Accordingly, each licensee has the burden of demonstrating compelling and extraordinary circumstances that a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the Commission's regulatory action.[24] For the reasons discussed below, we find that Licensee fails to meet our standard.

Discussion

First, Licensee incorrectly presents its *Petition* in the form of an alternative request, *i.e.*, to waive the fee or, in the alternative, to defer payment. In that regard, Licensee adds, "further [it] requests deferral of the obligation to pay these fees until such time as [the] Commission acts on the waiver request."[25] Here, Licensee asserts that its "requests for waiver and deferral are predicated upon the fact that [Licensee] suffered continuing operating losses since acquiring the stations in March of 2012 ...."[26] This submission, however, does not meet the standard set forth in 47 C.F.R. § 1.1166 that requires the applicant to show "good cause" for both the waiver request and the petition to defer payment and that the requested relief in each instance "would promote the public interest,"[27] and where the "[w]aiver request [does not] not include the required fees or forms [it] will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship." A "regulatee's mere allegation of financial hardship ... does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed."[28] A petition filed, "in the alternative," fails to comply with the standard, and on that ground, we dismiss.

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[22] *Id.*
[23] *Id.*
[24] *Id.*, *1994 Report and Order*, 9 FCC Rcd at 5344.
[25] *Petition* at 1.
[26] *Petition* at 1.
[27] 47 C.F.R. § 1.1166.
[28] Assessment and Collection of Regulatory Fees for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011)

Next, Licensee fails to establish for *both* the requested deferment and waiver the two prongs of the standard, "*good cause*" and that each action would "*promote the public interest.*"[29] Indeed, Licensee fails to show (or even mention) how the public interest is served by deferring payment of the fees and waiving the fees due from Licensee's undercapitalized company. Without establishing the essential "*public interest*" element, we dismiss. This ends the matter; however, as a matter of administrative economy, we look to whether Licensee establishes good cause. It does not, and for the reasons discussed below, we deny.

Licensee's financial documentation fails to support a showing of good cause and it fails to provide the necessary proof to sustain Licensee's burden of establishing that the public interest will be served by waiving the fees, rather than requiring payment. For example, Licensee opens by asserting, "waiver and deferral are predicated upon the fact that [Licensee] has suffered continuing operating losses since acquiring the stations in March of 2012."[30] Although Licensee fails to disclose the amounts paid for the licenses, the Asset Sale and Purchase Agreement[31] shows the August 15, 2011, purchase price was $3,500,000, but without including a detailed listing of the assets. Nonetheless, we anticipate the purchased assets included station licenses, fixed and other assets, including good will. That said, it appears from Licensee's financial documentation that the value dropped soon after the sale. Indeed, as of December 31, 2012, Licensee valued the FCC licensees at $1,370,860.70 and other related fixed assets at $2,019,540.91.[32] At the same time, Licensee reported approximately $5.8 million in "other notes payable."[33] We note this information is offered without detail or explanation, such as the identity of the creditor(s), the terms, or whether the notes were secured. Even so, Licensee states that it stopped servicing its debt in November 2013.[34] Nonetheless, during this period, Licensee provided approximately $470,000 financial support to a subsidiary entity,[35] and it paid $286,000 commission to its principals and officers for brokering the sale of the stations to Licensee.[36] Licensee's does not provide its historical information; however, our records show Licensee was formed on July 22, 2011, and it appears it was capitalized at $875,000.[37] Without further financial documentation and adequate explanation of Licensee's financial history, the details of its balance sheet, and the financial arrangements between Licensee and its principals and parent(s), it appears Licensee was undercapitalized when it acquired the licenses, and that circumstance did not change. Thus, without other evidence discussed below, Licensee fails to demonstrate from only the supplied balance sheet and profit and loss statement how the public interest is served by waiving the fees, rather than requiring payment.

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[29] 47 C.F.R. § 1.1166.
[30] *Petition* at 1.
[31] *See* FCC File No. BALH 20110817ACW, Asset Sale and Purchase Agreement by and among MB Prosser Licensee LLC, *et al.*, and Casa Media Partners, LLC for the Sale and Purchase of the Assets of Radio Stations KMNA (FM), Mabton, Washington, *etc.*, (Aug. 15, 2011).
[32] *Balance Sheet.*
[33] *Id.*
[34] *Declaration* at 1.
[35] *Id.*
[36] *Petition* at 2.
[37] See FCC Form 323, Ownership Report for Commercial Broadcast Stations, File No. BOA-20131125BMC, File No., BOA-20131125BHQ, Attachment 2, Operating Agreement. We infer from the membership page that Mr. White acquired his 20% share on payment of $175,000, thus 100% capitalization would be $875,000.

Undercapitalization is a factor to consider in disregarding the corporate alter ego,[38] and in this instance, requiring us to look to Licensee's members and parent affiliates[39] to determine whether the financial situation of those entities meets our standard to present compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.

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.[40] In that context, a "sufficient showing of financial hardship"[41] is 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."[42] The applicant's evidence must support the requested relief, and as necessary, we look beyond financial records of the applicant to those of an affiliate, parent, or interest holder.

The legal doctrine that a corporation or limited liability company is a legal entity separate and apart from the persons composing it is subject to the exception that in the appropriate situation, the veil may be pierced, and the corporate business entity and the individual or individuals owning stock and assets will be treated as identical. Simply put, the separate corporate entity may be disregarded. In such matters, the general rule holds that inadequate capitalization favors disregard of the separate corporate entity. Obvious thin or inadequate capitalization, measured by the nature and magnitude of the corporate undertaking, is a measure in denying stockholders the defense of limited liability.[43] Indeed state courts have imposed personal liability on owners of thinly capitalized corporations or limited liability companies.[44] Just as undercapitalization provides legal ground to pierce the corporate veil to extend liability, it permits us to scrutinize the financial status of the parent and affiliates to determine whether Licensee demonstrates financial hardship. Here, Licensee does not.

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[38] *HOK Sport, Inc. v. FC Des Moines, L.C.*, 495 F.3d 927, 937 (8th Cir. 2007) (the corporate form can be disregarded if the corporation is undercapitalized); *Skidmore, Owings & Merrill v. Canada Life Assur. Co.*, 907 F.2d 1026, 1027 (10th Cir. 1990); *Ziegler v. Inabata of America, Inc.*, 316 F.Supp. 908, 917 (D. Colo. 2004).

[39] On the FCC 323, Ownership Report for Commercial Broadcast Stations, File No. BOA-20131125BMC, Licensee reported it is owned by Barca Media Partners, LLC (45%), Guillermo Canedo White (20%), and Jose Alfredo Reygadas (35%). Barca Media Partners, LLC is owned by Barbara Laurence (11%) and Jose Alfredo Reygadas (89%).

[40] Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, *Report and Order*, 2 FCC Rcd 947, ¶¶ 70, 88 (1987); Accipiter Communications, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 18239, 18241, ¶ 8 (2001) (waiver predicated on financial need must show impact of regulatory fee will affect regulatee's ability to serve the public).

[41] *FY 1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13.

[42] *Id.*

[43] *See Anderson v. Abbott*, 321 U.S. 349, 362 (1944) ("obvious inadequacy of capital, measured by the nature and magnitude of the corporate undertaking, has frequently been an important factor in cases denying stockholders their defense of limited liability"); *Stone v. Eacho*, 127 F.2d 284 (4th Cir. 1942) (inadequate capitalization ground to disregard the separate existence of a subsidiary from a parent); *American Honda Motor Co., Inc Dealerships Relations Litigation*, 958 F.Supp. 1045, 1051 (D. Md. 1997) (corporate veil can be pierced because of inadequate capitalization of the subsidiary).

[44] *See e.g., Vuylsteke v. Broan*, 172 Or. App. 74 (2001).

Furthermore, in addition to the consequences of undercapitalization, Licensee's reliance on the support of the parent and principals of the parent for financing and asserting hardship opens the door to require financial documentation from those interest holders. That information is relevant where, as here, Licensee presents itself operating on persistently thin capitalization insufficient to meet its basic operating goals. Licensee's submission shows it received financial resourcing at the discretion of decision makers both one and two entities above Licensee. A reasonable conclusion is that the parent and principals of the parent funded Licensee without a business plan that would anticipate and meet long-range goals to provide service.

Specifically, Licensee acknowledges "since ... March of 2012" it was suffering operating losses. Indeed, Licensee's circumstances include assuming an unspecified sizeable debt with terms Licensee may have been incapable of meeting, so that it required financial assistance even as it was, at the same time, funneling money to a subsidiary. Overall, Licensee appears to have been operating in the zone of insolvency, even as it was paying money to a subsidiary and its principals and officers. Licensee now summarily asserts it is unable to meet its obligations. Necessary, but missing from the *Petition* is a supported explanation why Licensees members will not continue with their financial support, and the details of any arrangement that permitted Licensee to operate "since ... March of 2012" despite operating losses and thin financial reserves. Licensee fails to explain these matters or the circumstances in which the members or parents provided or withheld funding. Licensee should have provided financial documentation about the parent, members or principals including, but not limited to, projected cash flows, estimates of future activities, business plans, and details of future financing. Because this information is missing, Licensee fails to demonstrate the existence of financial hardship, and we deny.

Moreover, Licensee asserts, it is "severely indebted,"[45] but it fails to provide any details of the debt, *e.g.*, the amount, terms, or the existence of any security agreement or collateral. Thus, Licensee does not properly describe the debt's effect on Licensee's operations.[46] Licensee fails to persuade us that compelling circumstances flow from future changes to the station's daily operations or its involvement in negotiations for financing.[47] Indeed, Licensee does not explain to what extent, if any, such efforts or agreements, now or in the future, affect the financial information provided. Simply, Licensee's information does not show compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs. We therefore deny the *Petition.*

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[45] *Declaration* at 1.
[46] *Accipiter Communications, Inc., supra.*
[47] *Declaration* at 1.

Payment of the FY 2014 regulatory fees is now due. The regulatory fees must be filed together with a Form FCC 159[48] within 30 days from the date of this letter. If Licensee fails to pay the full amount due by that date, the statutory penalty of 25% of the unpaid fees,[49] and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter. Under the law,[50] the Commission will initiate collection proceedings and impose other administrative sanctions. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

Mark Stephens
FOR: Chief Financial Officer

[48] You may find the Form 159 with complete instructions at: http://www.fcc.gov/fees/form159.html.
[49] 47 U.S.C. § 159(c)(1). *See 1994 Report and Order*, 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.").
[50] *See* 47 C.F.R. § 1.1901, *et seq.*

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554
JAN 12 2015

OFFICE OF
MANAGING DIRECTOR

Daniel A. Kirkpatrick, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209

Applicant/Licensee: **Communicom Broadcasting LLC and Communicom Corp of America, LLC**
Waiver and Petition for Deferral: Financial Hardship
Disposition: **Denied** (47 C.F.R. §§ 1.1166)
Station(s): WDRJ(AM), WLNO(AM), WLF942, KXXT(AM), WPJC868, KXEG(AM), WMF982
FRN: 0016666885, 0001605864, 0001605864, 0014148233, 001418241
Fee: Fiscal Year (FY) 2013 Regulatory Fee
Filed: Sep. 6, 2013
Fee Control No.: RROG-13-00015365
Amount Due: See Fee Filer

Dear Counsel:

This letter responds to Licensees' *Request*[1] for a waiver and deferral of the unpaid Fiscal Year (FY) 2013 regulatory fees on the grounds of financial hardship.[2] As we discuss below, we deny because Licensees fail to meet their burden of establishing both financial hardship and extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.[3]

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[1] Letter from Daniel A. Kirkpatrick, Esq., Fletcher, Heald & Hildreth, 1300 North 17th St., 11th Floor, Arlington, VA 22209 to Marlene Dortch, Secretary, FCC, Attn: Office of Managing Director, Regulatory Fee Waiver /Reduction Request, 445 12th St., SW, Room TW-B204, Washington, DC 20554 (filed Sep. 6, 2013) (*Request*) with Exhibit A, Communicom Corp. of America, LLC, *et al*, U.S. Bankruptcy Court, District of Colorado, (Case No. 13-12694-MER, *et al.*), *Notice of Joint Administration* (Mar. 6, 2013) (page 1), Communicom Corp. of America, LLC, *et al,* U.S. Bankruptcy Court, District of Colorado, (Case No. 13-12694-MER, *et al.*), *Order Granting Motions for Joint Administration* (Pages 1-3) (*Order For Joint Administration*). In this letter, the term, *Licensee* or *Licensees* includes the entities named in the *Request*, *i.e.*, Communicom Co. of Michigan, L.P., Communicom Co. of Louisiana, L.P., Communicom Co. of Arizona, L.P., and Communicom Co. of Phoenix, L.P.

[2] 47 C.F.R. § 1.1166(c) (Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment to financial hardship, supported by documentation of the financial hardship.).

[3] 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. granted in part,*

Background

Licensees request the Commission waive each Licensee's obligation to pay regulatory fees due September 20, 2013, on the ground they are "currently undergoing Chapter 11 reorganizations."[4] Specifically, the fees include three $10-fees and four fees of $7,800, $6,500, $5,400, and $4,225, respectively. Licensees assert the *Request* complies with the Commission's standard, specifically that the "waiver request and petition for deferral is submitted pursuant to the Commission's determination in Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5345-46 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995), that it 'will waive the regulatory fees for licensee whose stations are bankrupt, undergoing Chapter 11 reorganizations or in receivership.' [Licensees] are currently undergoing Chapter 11 reorganizations as demonstrated by the Order of the United States Bankruptcy Court ... attached hereto as Exhibit A."[5] Exhibit A is a page from the *Notice of Joint Administration* and a copy of a portion of the *Order for Joint Administration.*[6]

The Standard

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 upon a showing of good cause and a finding that the public interest will be served thereby.[7] The Commission has narrowly interpreted its waiver authority to require a showing of extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.[8] Fee relief may be granted based on a "sufficient showing of financial hardship."[9]

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10 FCC Rcd 12759 (1995); 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.").

[4] *Request* at 2.

[5] *Id.*

[6] *Request*, Exhibit A.

[7] 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. *See also* 9 FCC Rcd at 5344.

[8] 9 FCC Rcd at 5344 ¶ 29; Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd At 26446, ¶¶ 5-6 ("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] 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*) .

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."[10] Indeed, the regulatee-applicant has a duty to clarify its position with the Commission[11] and to maintain the accuracy and completeness of its application.[12] 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.[13]

We consider a licensee's verified bankruptcy to be a relevant fact;[14] 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."[15] Indeed, the primacy of the standard[16] remains, the applicant must present "extraordinary and compelling circumstances showing that a waiver ... would override the public interest" in collecting the fee.[17] Thus, we analyze the facts of each case to determine whether the applicant has satisfied both prongs of the Commission's

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[10] *Id.*

[11] *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.").

[12] 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.).

[13] *Id.*

[14] *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.").

[15] 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.").

[16] 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.").

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

standard, financial hardship and extraordinary[18] and compelling circumstances[19] showing waiver is justified.[20]

A bankruptcy proceeding 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[21] by including court filed financial reports.[22]

Discussion

The debtor-in-possession is a fiduciary of the estate, exercising powers for the benefit of the creditors,[23] including keeping all creditors informed of the status of the business undergoing reorganization through the use of pervasive reporting.[24] Required court filings maintain the expected degree of disclosure and transparency in both the bankruptcy proceeding[25] and in a waiver request before the Commission. Moreover, these required court filings show how the debtor-in-possession continues to operate in the normal course of business,[26] including paying from current revenues postpetition expenses, such as the Commission's annual regulatory fees.

In contrast to what is required by the court, and that Licensees presumably filed in response, here, Licensees provide only some information that the court granted joint administration.[27] That submission is incomplete and it lacks context. For example, Licensees fail to include basic relevant court records, *e.g.*, the petition, evidence of authorization to file, and initial forms and schedules and, relevant to the issue of financial hardship and inability to pay the annual regulatory fees, financial information pertaining to the debtor-in-possession and each specific Licensee. In that regard, to provide further examples, and not to exclude other relevant financial information, Licensees should furnish copies of (a) statutorily required lists, schedules, and statements,[28] (b) reports required by bankruptcy court rules,[29] (c) current cash flow statements and operating reports for each Licensee, (d) reports of current, post-bankruptcy filing liabilities, (e) reports of post-petition credit (with or without judicial review) (secured and unsecured), (f) reports or statements showing the disposition of current liabilities, (g) relevant court orders, (h) draft and final plans for reorganization, and (i) present and future offers to purchase any or all of Licensees assets. This information is the essence of the bankruptcy

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[18] 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").
[19] *Id.* (compelling-"something so great that irreparable harm or injustice would result if not met").
[20] Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).
[21] *See* 11 U.S.C. § 521.
[22] 11 U.S.C. §§ 1106, 1107, 1166; Fed. R. Bnkr. P., Rule 1007.
[23] *Modern Office Supply, Inc.*, 28 B.R. 943, 944 (W.D. Ok., Bankr. 1983).
[24] *Id.*
[25] *Visicon Shareholders Trust*, 478 B.R. 292, 311 (S.D. Oh, Bankr. 2012).
[26] *Matt v. HSBC Bank, USA*, 968 F.Supp. 2d 351, 359 (D.Ma. 2013).
[27] *Request*, Exhibit A.
[28] *Id.*
[29] *See* Fed.R.Bankr.P., Rule 2015.

proceeding that Licensees should present to show whether the debtor-in-possession is experiencing financial hardship, and to resolve questions whether bankruptcy presents extraordinary and compelling circumstances justifying a waiver. The information is readily available. Indeed, it is required to be filed with the petition or in response to the court's orders. In contrast to that required evidence of bankruptcy, Licensees' submission excludes any financial documentation, instead offering only a mere unverified assertion. As such, Licensees fail to establish a basis on which to determine under the law[30] whether Licensees established good cause and that the deferral and waiver would promote the public interest. Specific to the debtor-in-possession, Licensees fail to show either to defer payment or to waive the fee, "the impact of the regulatory fee [on the Licensees'] ability to serve the public,"[31] and to show how the public interest will be served by waiving the fees.

We will not speculate about the substance of the information that might fill in the gaps that result from Licensees failing in their duty to clarify their position with the Commission[32] and to maintain the accuracy and completeness of their application.[33]

Accordingly, because Licensees fail to establish that the "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,"[34] we deny the *Request*.

Payment of the FY 2013 regulatory fee is now due. The regulatory fee must be filed together with a Form FCC 159[35] within 30 days from the date of this letter. If Licensee fails to pay the full amount due by that date, the statutory penalty of 25% of the unpaid fee,[36] and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter. The debt will become delinquent, and under the law,[37] the Commission will initiate collection proceedings and impose other

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[30] 47 U.S.C. § 159(d) ("good cause shown, where such action would promote the public interest."); 47 C.F.R. § 1.1166 ("good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.").

[31] *FY 1994 MO&O*, 10 FCC Rcd at 12762, ¶ 13.

[32] *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.").

[33] 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.).

[34] 18 FCC Rcd at 6090, ¶ 11.

[35] You may find the Form 159 with complete instructions at: http://www.fcc.gov/fees/form159.html.

[36] 47 U.S.C. § 159(c)(1). *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.").

[37] *See* 47 C.F.R. § 1.1901, *et seq.*

administrative sanctions.[38] If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

Mark Stephens
Chief Financial Officer

[38] *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.").