

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 16 2015

OFFICE OF  
MANAGING DIRECTOR

Aaron P. Shainis, Esq.  
Shainis & Peltzman, Chartered  
1850 M Street, NW, Suite 240  
Washington, DC 20036

Applicant/Licensee: **KM Television of Iowa, LLC**  
Waiver and Deferral Request: Financial Hardship  
Disposition: **Dismissed and Denied** (47 U.S.C. §  
159(c)(2); 47 C.F.R. § 1.1166(c))  
Station: KWKB (TV)  
Fee: Fiscal Year (FY) 2014 Regulatory Fee  
Date Filed: Sep. 22, 2014  
Date Regulatory Fee Paid: Not Paid  
Fee Control No.: RROG-14-00015725  
Amount Due: **See Fee Filer**

Dear Counsel:

This responds to Licensee's *Request* and *Petition*<sup>1</sup> for waiver and deferment of the unpaid Fiscal Year (FY) 2014 regulatory fees that were due September 23, 2014.<sup>2</sup> As we discuss below, we dismiss and deny the *Petition* and the *Request* because Licensee failed to establish a documented showing of insufficient funds to pay the regulatory fees and extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.

<sup>1</sup> Letter from Aaron Shainis, Shainis & Peltzman, Chartered, Suite 240, 1850 M Street, N.W., Washington, D.C. 20036 to Marlene H. Dortch, Secretary, Federal Communications Commission, Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12<sup>th</sup> St., S.W., Washington, DC 20554 (Sep. 22, 2014) (*Request*) with (a) Schedule 1, FCC Fee Filer, Detail Report for Auto-Add Fees; Letter from Aaron Shainis, Shainis & Peltzman, Chartered, Suite 240, 1850 M Street, N.W., Washington, D.C. 20036 to Marlene H. Dortch, Secretary, Federal Communications Commission, Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12<sup>th</sup> St., S.W., Washington, DC 20554 (Sep. 22, 2014) (*Petition*) with (a) Attachment A, Department of Treasury, Internal Revenue Service, Schedule C (Form 1040), Profit or Loss From Business, Tax Year 2011 (*Schedule C, 2011*), (b) Attachment B, Department of Treasury, Internal Revenue Service, Schedule C (Form 1040), Profit or Loss From Business, Tax Year 2012 (*Schedule C, 2012*), and (c) Attachment C, KWKB-TV, Profit & Loss, January through December 2013 (*P&L 2013*).

<sup>2</sup> 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).

## Background

On September 22, 2014, Licensee filed its *Petition* and *Request* seeking a deferral of payment of the FY 2014 regulatory fee due for its regulated activity, call sign KWKB, on the grounds that Licensee “is experiencing financial challenges. The poor financial condition of [Licensee] reflects the poor economic condition of the Station’s market. [Licensee] is in no financial position to pay the regulatory fee. Waiver of the fee would be in the public interest since grant of the waiver would facilitate the continued operation of the Station.”<sup>3</sup> Licensee also asserts, “during 2013, the Station was in receivership. This occurred because the Station was in financial distress.”<sup>4</sup> In support of its *Petition*, Licensee refers to portions of two incomplete federal income tax returns that reported taxable profits (*Schedules C, 2011 and 2012*), and a profit and loss statement indicating a loss for the calendar year 2013 (*P&L 2013*).<sup>5</sup> The partial tax returns reflect that Licensee is a limited liability company with a single member that reports income taxes as a sole proprietor. Licensee fails to include the complete tax returns for 2011 and 2012, the tax return for 2013, its other financial documentation, or to disclose financial information about its limited liability company member, business affiliates of the member, or its parent business.

## 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 upon a showing of good cause and a finding that the public interest will be served thereby.<sup>6</sup> 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.<sup>7</sup>

Hence, in an appropriate situation, we may grant fee relief, including a petition to defer payment, based on a “sufficient showing of financial hardship.”<sup>8</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

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

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

<sup>5</sup> *Petition* at 1-2.

<sup>6</sup> 47 U.S.C. §159(d)(“[t]he 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.”). *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*).

<sup>7</sup> *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 26446,26466, ¶¶ 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>8</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*).

the regulatory fee and to maintain its service to the public.”<sup>9</sup> Thus, 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>10</sup> Also, the regulatee-applicant has a duty to clarify its position with the Commission<sup>11</sup> and to maintain the accuracy and completeness of its application.<sup>12</sup>

This applies equally to a petition to defer payment. A mere allegation of financial hardship does not automatically entitle a licensee 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.”<sup>13</sup>

We consider a licensee’s verified receivership to be a relevant fact,<sup>14</sup> however, “in some circumstances a significant question may exist as to whether [that situation] 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>15</sup> Indeed, the primacy of the standard<sup>16</sup> remains, the applicant must present

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

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

<sup>11</sup> *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>12</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.”).

<sup>13</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2011, Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011); 47 C.F.R. § 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 to financial hardship, supported by documentation of the financial hardship.”).

<sup>14</sup> *See FY 1994 MO&O*, 10 FCC Rcd 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>15</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>16</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

“extraordinary and compelling circumstances showing that a waiver ... would override the public interest” in collecting the fee.<sup>17</sup> Thus, 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>18</sup> and compelling circumstances<sup>19</sup> showing waiver is justified.<sup>20</sup>

Receivership is established with verified court records, relevant filings and forms showing the Licensee’s financial situation, and relevant state or federal statutes and law establishing the reason for receivership the relationship of that status to the asserted inability to pay the required annual regulatory fee.

#### Discussion

Licensee’s *Petition* and *Request*, with the attached documents, fail to meet our well-established standard of a “sufficient showing of financial hardship”<sup>21</sup> presenting extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.<sup>22</sup>

Licensee points to *Schedules C for 2011 and 2012* and the *P&L 2013* as support for its assertion that “[i]t is clear from the foregoing [documents] that Licensee is in no financial position to pay the requisite regulatory fee.” We disagree. First, the standard is not whether a regulatee is “in [a] financial position to pay” the regulatory fee, but rather whether the regulatee’s financial documentation shows financial hardship that establishes extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission’s regulatory costs. Next, Licensee’s documentation, although incomplete, shows there are funds available to pay the fee. For example, Licensee reported deductions for depreciation; however, rather than payments from revenue, those amounts represent tax deductions and funds available to pay the annual regulatory fee. Specifically, Licensee reported deductions for depreciation of \$74,247, \$72,700, and \$37,727, in 2011, 2012, and 2013, respectively. These amounts alter Licensee’s conclusion that the financial documentation shows inability to pay the regulatory fee. Thus, the financial information and Licensee’s brief assertions fail to make a “sufficient showing of financial hardship.” Thus, we dismiss the *Petition* and *Request*.

Because Licensee’s information discloses the existence of funds sufficient to pay the fee, we need not discuss in detail the consequences of Licensee’s failure to include the complete tax returns for 2011, 2012, and 2013, *e.g.*, the Forms 1040 and other schedules. Without the complete tax returns, the information fails to present an accurate picture of Licensee’s tax

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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.”).

<sup>17</sup> *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12.

<sup>18</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>19</sup> *Id.* (compelling-“something so great that irreparable harm or injustice would result if not met”).

<sup>20</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>21</sup> *FY 1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13.

<sup>22</sup> *1994 Report and Order*, 9 FCC Rcd at 5344 ¶ 29; *Phoenix Broadcasting, Inc. Stations KSWD and KPFD Seward, Alaska, Memorandum Opinion and Order*, 18 FCC Rcd At 26466, ¶¶ 5-6, *supra*.

liability that would support the asserted inability to pay. That ends the matter; however, we will explain Licensee's other problems that form grounds for denying the relief.

First, Licensee fails to provide the financial documentation we have always mandated. Specifically, we require a range of 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. This complete financial documentation is the basis for our case-by-case determination whether the applicant meets its burden to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.<sup>23</sup> Moreover, each applicant has a duty to clarify its position with the Commission<sup>24</sup> and to maintain the accuracy and completeness of its application.<sup>25</sup> Licensee submitted only the two Schedule C tax forms<sup>26</sup> and a single profit and loss statement, far less than the information needed to evaluate the station's ability to pay the regulatory fee and maintain service to the public.

Next, Licensee fails to include evidence to establish any part of the assertion that "during 2013, the Station was in receivership. This occurred because the Station was in financial distress."<sup>27</sup> For example, Licensee fails to provide evidence of the receivership proceeding, the jurisdiction,<sup>28</sup> the legal authority and purpose for appointing a receiver, the identity of the appointed receiver, or the property involved. Where an applicant fails to provide supporting evidence, we will not speculate on missing facts.<sup>29</sup>

Further, when Licensee asserts it is "experiencing financial challenges" and its "financial condition" reflects the "poor economic condition of [Licensee's] market,"<sup>30</sup> Licensee fails either to explain the meaning of the vague phrases, "financial challenge" and "poor financial condition," or to provide supporting evidence. For example, Licensee fails to include evidence the relevant broadcast market is economically distressed in comparison either to other comparable geographical and demographic areas or to other identified and relevant time periods. Moreover, Licensee fails to resolve the contradiction resulting from the assertion of an undefined negative business performance in the *Petition-Request* and the touted positive business stance in Licensee's webpage pages. For example, on its webpages, Licensee reports it is a "high-

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

<sup>24</sup> *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>25</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.).

<sup>26</sup> Under Internal Revenue Service guidance, a single-member LLC is disregarded as an entity separate from its owner and reports its income and deductions on the owner's federal income tax return.

<sup>27</sup> *Request* at 2.

<sup>28</sup> Licensee's station is located in Iowa, and it is registered in Illinois.

<sup>29</sup> *Bartholdi Cable Co. Inc. v FCC*, *supra*; 47 C.F.R. § 1.65 ("Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ...").

<sup>30</sup> *Request* at 2.

definition broadcast TV station serving greater Eastern Iowa” since 1999 with a “solid lineup of programming” on “[t]he CW” network “with a powerful lineup ... engaging the toughest audience [of] 18-34 year olds.”<sup>31</sup> Licensee reports it can be viewed on the internet, over the air, on Mediacom, ImOn, Cedar Fall Utilities, and both DishNET and DirecTV.<sup>32</sup> Licensee reaches out to advertisers with a claimed “a success rate of 93% for local advertisers in 2011” and “efficiencies among female viewers 18-34 and adults 18-49.”<sup>33</sup>

Finally, Licensee fails to present relevant financial documentation addressing the element of the standard whether it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public.<sup>34</sup> Licensee’s complete financial documentation is relevant, which in this case extends to the Licensee’s sole member. Licensee is a limited liability company with one member organized under the laws of the state of Illinois. Licensee’s sole member is also the 100%-controlling party in approximately 37 additional broadcasting entities.<sup>35</sup> In addition, other information indicates Licensee is the subsidiary of KM Communications, Inc., which is controlled by the same person who is the sole member of the Licensee’s limited liability company. That relationship warrants disclosure of the financial records of the member and the parent organization.

Each of these failings is a ground to deny the request. In summary, Licensee fails to demonstrate “good cause” and that the “waiver [of the required fee] would promote the public interest.”<sup>36</sup> Accordingly, we deny licensee’s *Request* for a waiver of the required regulatory fee.

Payment of the FY 2014 regulatory fee is now due. The regulatory fee must be filed together with a Form FCC 159<sup>37</sup> 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,<sup>38</sup> 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,<sup>39</sup> the Commission will initiate collection proceedings and impose other administrative sanctions.<sup>40</sup>

<sup>31</sup> See <http://www.kwkb.tv/About.html>.

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

<sup>33</sup> See <http://www.kwkb.tv/Advertising.html>.

<sup>34</sup> *Id.*

<sup>35</sup> FCC 323, Ownership Report For Commercial Broadcast Stations, File No.: BOA-20121106AKP (Nov. 6, 2013).

<sup>36</sup> 47 C.F.R. § 1.1166.

<sup>37</sup> You may find the Form 159 with complete instructions at: <http://www.fcc.gov/fees/form159.html>.

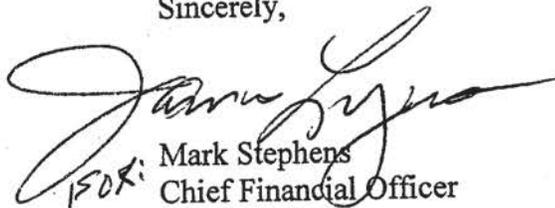
<sup>38</sup> 47 U.S.C. § 159(c)(1). See *1994 Report and Order*, 9 FCC Rcd at 5346, ¶ 35 (“the petitioner will have 30 days to [pay the fee] in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.”).

<sup>39</sup> See 47 C.F.R. § 1.1901, *et seq.*

<sup>40</sup> See 47 C.F.R. § 1.1910(b)(2) (“Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or request for authorization by any entity found to be delinquent in its debt to the Commission ...”); 47 C.F.R. § 1.1164(e) (“Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.”).

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

Sincerely,



SOI: Mark Stephens  
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

MAR 16 2015

OFFICE OF  
MANAGING DIRECTOR

Aaron P. Shainis, Esq.  
Shainis & Peltzman, Chartered  
1850 M Street, NW, Suite 240  
Washington, DC 20036

Applicant/Licensee: **KM Radio of Independence, LLC**

Waiver Request: Financial Hardship

Disposition: **Denied** (47 U.S.C. § 159(c)(2); 47 C.F.R. § 1.1166(c))

Stations: KQMG-AM, KQMG-FM, and KA2139

Fee(s): Fiscal Year (FY) 2014 Regulatory Fees

Date Filed: Sep. 22, 2014

Date Regulatory Fee Paid: Sep. 22, 2014

Fee Control No.: RROG-14-00015740

Amount Due: **Paid**

Dear Counsel:

This responds to Licensee's *Request*<sup>1</sup> for a waiver, but not a refund,<sup>2</sup> of the Fiscal Year (FY) 2014 regulatory fees for three stations that Licensee paid on September 22, 2014.<sup>3</sup> As we discuss below, we deny Licensee's *Request* that fails to make a documented showing of insufficient funds to pay the regulatory fees and extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.

<sup>1</sup> Letter from Aaron Shainis, Shainis & Peltzman, Chartered, Suite 240, 1850 M Street, N.W., Washington, D.C. 20036 to Marlene H. Dortch, Secretary, Federal Communications Commission, Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12<sup>th</sup> St., S.W., Washington, DC 20554 (Sep. 22, 2014)(*Request*) with (a) FCC Financial Operations Administration, Client History, (b) Attachment A, Department of Treasury, Internal Revenue Service, Schedule C (Form 1040), Profit or Loss From Business, Tax Year 2011 (*Schedule C, 2011*), (c) Attachment B, Department of Treasury, Internal Revenue Service, Schedule C (Form 1040), Profit or Loss From Business, Tax Year 2012 (*Schedule C, 2012*), (d) KQMG AM/FM Radio Station, Profit & Loss, January through December 2013 (*P&L 2013*), (e) FCC Form Notification of Suspension of Operations/Request for Silent STA, File No.: BLSTA-20140902ADF (Sep. 2, 2014) (*STA*), and (f) FCC Application Search Details, BLSTA-20140902ADF, Granted, Sep. 11, 2014.

<sup>2</sup> 47 C.F.R. § 1.1160.

<sup>3</sup> 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).

## Background

On September 22, 2014, Licensee filed its *Request* seeking a waiver of the FY 2014 regulatory fee due for its regulated activities, call signs KQMG (AM), KQMG (FM), and KA2139 on the grounds that Licensee “suffered a net loss. The poor financial condition of [Licensee’s] market. It should also be noted that in 2013 the licensee was in receivership. It should also be noted that [Licensee] is dark. ... The Commission’s policy is not to impose the requirement of payment of regulatory fees for stations that are dark.”<sup>4</sup> In support of its *Request*, Licensee refers to incomplete portions of two federal income tax returns that reported a net loss (*Schedules C, 2011 and 2012*), and a profit and loss statement indicating a loss for the calendar year 2013 (*P&L 2013*).<sup>5</sup> The partial tax returns reflect that Licensee is a limited liability company with a single member that reports income taxes as a sole proprietor. Licensee fails to include the complete tax returns for 2011 and 2012, the tax return for 2013, its other financial documentation, or to disclose financial information about its limited liability company member, business affiliates of the member, or its parent business. Licensee includes a copy of the STA showing that on September 2, 2014, it notified the Commission that call sign KQMG ceased broadcast operation due to equipment problems.

## 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 upon a showing of good cause and a finding that the public interest will be served thereby.<sup>6</sup> 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.<sup>7</sup>

Hence, in an appropriate situation, we may grant fee relief, including a petition to defer payment, based on a “sufficient showing of financial hardship.”<sup>8</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>4</sup> *Request* at 1-2.

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

<sup>6</sup> 47 U.S.C. § 159(d) (“[t]he 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.”). 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*).

<sup>7</sup> *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.”).

<sup>8</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*).

the regulatory fee and to maintain its service to the public.”<sup>9</sup> Thus, 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>10</sup> Also, the regulatee-applicant has a duty to clarify its position with the Commission<sup>11</sup> and to maintain the accuracy and completeness of its application.<sup>12</sup>

We consider a licensee’s verified receivership to be a relevant fact;<sup>13</sup> however, “in some circumstances a significant question may exist as to whether [that situation] 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>14</sup> Indeed, the primacy of the standard<sup>15</sup> remains, the applicant must present “extraordinary and compelling circumstances showing that a waiver ... would override the public interest” in collecting the fee.<sup>16</sup> Thus, 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>17</sup> and compelling circumstances<sup>18</sup> showing waiver is justified.<sup>19</sup>

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

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

<sup>11</sup> *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>12</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.”).

<sup>13</sup> *See FY 1994 MO&O*, 10 FCC Rcd 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>14</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>15</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.”).

<sup>16</sup> *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12.

<sup>17</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>18</sup> *Id.* (compelling-“something so great that irreparable harm or injustice would result if not met”).

<sup>19</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

Receivership is established with verified court records, relevant filings and forms showing the Licensee's financial situation, and relevant state or federal statutes and law establishing the reason for receivership the relationship of that status to the asserted inability to pay the required annual regulatory fee.

Pertinent to stations that file "[p]etitions to go dark," as is set forth at 47 C.F.R. § 73.1740(a)(4), the Commission opined that such petitions "are generally based on financial hardship. Under these circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship."<sup>20</sup>

### *Discussion*

Licensee's *Request*, with the attached documents, fails to meet our well-established standard of a "sufficient showing of financial hardship"<sup>21</sup> presenting extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.<sup>22</sup>

Licensee points to *Schedules C for 2011 and 2012 and the P&L 2013* as support for its assertion that "[t]he financial documentation reflects that [Licensee] suffered a net loss. The poor financial condition of [Licensee] reflects the poor economic condition of the Station's market. ... KQMG(AM) is dark. ... The Commission's policy is not to impose the requirement of payment or regulatory fees for stations that are dark."<sup>23</sup> These assertions do not establish a waiver is appropriate.

First, Licensee's documents and assertions do not meet our standard that a regulatee show financial hardship that establishes extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs. On one hand, the information that Licensee did include is incomplete. For example, it does not include the complete federal tax return for 2011 and 2012, or any portion of the tax return for 2013. Without the complete tax returns, the information fails to present an accurate picture of Licensee's tax liability. But even a complete tax return does not establish inability to pay. Indeed, on the other hand, Licensee's documentation does not include the range of information that we have always required, *e.g.*, a licensee's balance sheet in addition to the 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. Licensee has

<sup>20</sup> *FY 1994 MO&O*, 10 FCC Rcd at 12762 ¶ 15.

<sup>21</sup> *FY 1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13.

<sup>22</sup> *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 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.")

<sup>23</sup> *Request* at 1-2.

the burden to make its case and to present complete supporting financial documentation. Complete financial documentation is the basis for our case-by-case determination whether the applicant meets its burden to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.<sup>24</sup> Moreover, each applicant has a duty to clarify its position with the Commission<sup>25</sup> and to maintain the accuracy and completeness of its application.<sup>26</sup> Licensee submitted only portions of two income tax forms and a single profit and loss statement, which is far less than the complete information needed to evaluate a station's ability to pay the regulatory fee and maintain service to the public. Because Licensee is the sole member of a limited liability company, it appears that it files a tax return as a sole proprietor. A filing to determine tax liability does not establish financial hardship or financial ability to pay an annual regulatory fee, and a loss in a prior year does not foretell a loss in a future year, even for tax purposes. In this case, with incomplete tax forms for 2011 and 2012, and no tax information for 2013, Licensee left us to speculate on the true and complete picture of Licensee's financial situation.

Next, Licensee fails to include evidence to establish the assertion that "in 2013 the licensee was in receivership."<sup>27</sup> For example, Licensee fails to provide evidence of the receivership proceeding, the jurisdiction,<sup>28</sup> the legal authority and purpose for appointing a receiver, the identity of the appointed receiver, or the property involved. Where an applicant fails to provide supporting evidence, we will not speculate on missing facts.<sup>29</sup>

Further, when Licensee asserts its "poor financial condition ... reflects the poor economic condition of [Licensee's] market,"<sup>30</sup> Licensee fails either to explain the meaning of the vague phrases, "poor financial condition" and "poor economic condition," or to provide supporting evidence.

Moreover, Licensee fails to present relevant financial documentation addressing the elements of the standard whether it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public.<sup>31</sup> Licensee is a limited liability company organized under the laws of the state of Illinois, and with one member. Licensee's sole member is also the 100%-controlling party in approximately 37 additional broadcasting entities.<sup>32</sup> In addition, other information indicates Licensee is the subsidiary of KM Communications, Inc., which is controlled by the same person who is the sole member of the Licensee's limited liability company. That relationship warrants disclosure of the financial records of the member and the parent organization, so as to present Licensee's complete financial documentation to determine

<sup>24</sup> *FY 1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13.

<sup>25</sup> *Bartholdi Cable Co. Inc. v FCC*, *supra*.

<sup>26</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.).

<sup>27</sup> *Request* at 2.

<sup>28</sup> Licensee's station is located in Iowa, but the form of business is registered in Illinois.

<sup>29</sup> *Bartholdi Cable Co. Inc. v FCC*, *supra*; 47 C.F.R. § 1.65 ("Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ...").

<sup>30</sup> *Request* at 2.

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

<sup>32</sup> FCC 323, Ownership Report For Commercial Broadcast Stations, File No.: BOA-20121106AKP (Nov. 6, 2013).

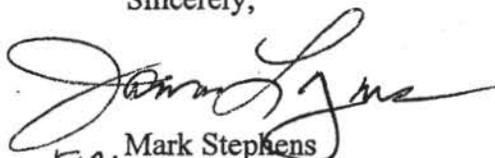
whether payment of the fee presents undue financial hardship, and from that whether Licensee has shown good cause and that the public interest will be served by granting the waiver.

Finally, Licensee asserts that one of its three call sign activities, KQMG (AM) filed for dark status. That request was submitted on September 2, 2014, for technical reasons. It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.<sup>33</sup> Inherent in the Commission's statement that "it is unnecessary to require a licensee to make a *further showing of financial hardship* (emphasis added),"<sup>34</sup> is the understanding that such a petition to go dark was (a) filed because of financial hardship and (b) supported by full documentation of its financial position that met the Commission's relevant standards. Plainly, in order for it to be unnecessary to require a *further showing*, the Licensee must have made a valid *prior* showing of the requisite financial information. Moreover, because each waiver is considered on a case-by-case basis, the financial information must be relevant to the current request for a waiver of the fee and it must be sufficient to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.<sup>35</sup> Filing for a silent STA for technical reasons 20 days before the fee is due does not establish grounds for waiver of the fee.

Each of these failings is a ground to deny the request. In summary, Licensee fails to demonstrate "good cause" and that the "waiver [of the required fee] would promote the public interest."<sup>36</sup> Accordingly, we deny licensee's *Request* for a waiver of the required regulatory fee. Licensee's failure to request a refund is moot.

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

Sincerely,

  
FAR: Mark Stephens  
Chief Financial Officer

<sup>33</sup> The FCC Form to request silent status includes in the section, "Reason for going silent" five categories, *i.e.*, Technical, Financing, Staffing, Program Source, and Other.

<sup>34</sup> *FY 1994 MO&O*, 10 FCC Rcd at 12762 ¶ 15.

<sup>35</sup> *1994 Report and Order*, 9 FCC Rcd at 5344 ¶ 29.

<sup>36</sup> 47 C.F.R. § 1.1166.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 16 2015

OFFICE OF  
MANAGING DIRECTOR

Aaron P. Shainis, Esq.  
Shainis & Peltzman, Chartered  
Suite 240  
1850 M Street, NW, Suite 240  
Washington, DC 20036

Licensee/Applicant: **KM Television of Flagstaff, LLC**  
Petition for Reconsideration and Extension of Time  
Disposition: **Dismissed and Denied** (47 C.F.R. §§  
1.106, 1.1164, 1.1910)  
Station: KCGF (TV)  
Fee: Fiscal Year (FY) 2011 Regulatory Fees  
Date Filed: Mar. 5, 2012  
Date Regulatory Fee Paid: Not Paid  
Fee Control No.: RROG-12-00014202  
Regulatory Fee (FY 2011): Contact Treasury

Dear Mr. Shainis:

This responds to Licensee's *Petition for Reconsideration*<sup>1</sup> and request for extension of time to supplement its filing and respond to our *Denial*<sup>2</sup> of Licensee's request for waiver of the Fiscal Year (FY) 2011 regulatory fee (*Request*<sup>3</sup>). Because Licensee is delinquent in paying the FY 2011 regulatory fee, and for the additional reasons set forth below, we dismiss and deny Licensee's *Petition for Reconsideration* and its request for extension of time.

*Background*

On February 2, 2012, we denied Licensee's *Request* and demanded payment of the fee within 30 days. That time passed and, as our records show, Licensee failed to pay the fee. In

<sup>1</sup> Letter from Aaron P. Shainis, Shainis & Peltzman, Chartered, 1850 M Street, NW, Washington, DC 20036 to Office of Secretary, FCC, 445 12<sup>th</sup> Street, S.W., Washington, DC 20554, Attn: Mark Stephens, CFO (Mar. 5, 2012)(*Petition for Reconsideration*).

<sup>2</sup> Letter from Mark Stephens, CFO, FCC to Aaron P. Shainis, Esq., Shainis & Peltzman, Chartered, 1850 M Street, NW, Ste 240, Washington, DC 20036 (Feb. 2, 2012) (*Denial*).

<sup>3</sup> Letter from Aaron P. Shainis, Esq., Shainis & Peltzman, Chartered, 1850 M St., N.W., Washington, D.C. 0036 to FCC, Office of the Secretary, 455 12<sup>th</sup> St., N.W., Washington, D.C. (Sep. 14, 2011) (*Request*).

addition, Licensee, without excuse, failed to pay the FY 2012 regulatory fee. As a result, we transferred both delinquent non-tax debts to the Secretary of the Treasury.

### Discussion

Licensee is delinquent in paying the FY 2011 and FY 2012 regulatory fees, a 25% penalty for late payment<sup>4</sup> on each unpaid regulatory fee, and the required interest, penalties, and charges of collection.<sup>5</sup> Because we transferred the debts, Licensee should contact the Treasury for a payoff amount. Moreover, because Licensee is delinquent, under 47 C.F.R. § 1.1910, we withheld action on this *Petition for Reconsideration* and we will withhold action on and dismiss any other pending or filed application until Licensee pays the fee and accrued charges or makes satisfactory arrangements for payment.<sup>6</sup> Licensee may not receive an additional notification of the procedures and consequences set forth at section 1.1910.

We next discuss our rules set forth at 47 C.F.R. §§ 1.1164 and 1.106 that require us to dismiss and deny Licensee's *Petition for Reconsideration*.

First, our records show that Licensee failed to pay the FY 2011 Regulatory Fee within 30 days after our *Denial*, which cautioned, "[i]f Licensee fails to pay the full amount due [within 30 days from the date of the *Denial*], the debt is delinquent and the statutory penalty of 25% of the unpaid fee, and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of th[e] letter."<sup>7</sup> Furthermore, we warned Licensee that the filing of a petition for reconsideration does not toll the 30-day period.<sup>8</sup> Because Licensee is delinquent in paying the fee, we are obliged to follow our rules at 47 C.F.R. § 1.1164(c)<sup>9</sup> and (e)<sup>10</sup> and dismiss and deny the *Petition for Reconsideration*. That concludes the matter; however, even had Licensee paid the fee and accrued charges, under 47 C.F.R. § 1.106, we would dismiss and deny.

Section 1.106(p) permits us to dismiss or deny a petition for reconsideration that fails to meet Commission standards. Licensee states in part, "[i]n view of [restated matters from the Request], and in light of the significant financial distress [as stated in the *Request*] that KM is undergoing, the Commission should reconsider its decision and allow [Licensee] ninety (90)

<sup>4</sup> 47 U.S.C. § 159 (c)(1).

<sup>5</sup> 31 U.S.C. § 3717.

<sup>6</sup> 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 ....").

<sup>7</sup> *Denial* at 3.

<sup>8</sup> *Id.* n. 14 (quoting Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5346 ¶ 35 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995)).

<sup>9</sup> 47 C.F.R. § 1.1164(c) ("If a regulatory fee is not paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.").

<sup>10</sup> 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.").

days to provide the pertinent information. [footnote deleted]"<sup>11</sup> This is not a valid ground for reconsideration. Licensee is required to "state with particularity the respects in which petitioner believes the action taken by ... the designated authority should be changed."<sup>12</sup> In addition Licensee failed to identify any material error, omission or reason warranting reconsideration.<sup>13</sup> Either ground is sufficient to dismiss or deny, so we need not address other possible reasons.<sup>14</sup>

Licensee is delinquent in paying a non-tax debt, thus under 31 U.S.C. § 3717(e) and 47 C.F.R. § 1.1940, we assessed (a) collection charges, (b) interest at the Treasury rate when the debt is more than 30 days delinquent, and (c) a penalty of 6% after 90 days. These charges started to accrue and will continue until Licensee pays the debt in full or executes an approved written installment payment plan.

Furthermore, under 31 U.S.C. § 3711(g), we transferred the delinquent debt to Treasury, which will initiate collection action through private collection activities and assess additional charges. In addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs.

Finally, under 31 U.S.C. § 3716, 31 C.F.R. § 285.5, and 47 C.F.R. § 1.1912, some or all of the debt may be collected by non-centralized or centralized administrative offset. Also, under 31 U.S.C. § 3711(e), this debt and Licensee's payment history will be reported to credit reporting information bureaus. Because we have furnished notice here, Licensee may not receive another notification of this process.

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<sup>11</sup> *Petition for Reconsideration*. Licensee offered to "advise the Commission if it cannot meet this [90-day] deadline." According to our records, Licensee failed either to provide the information or, as offered, to notify the Commission. As such, Licensee failed to comply with 47 C.F.R. § 1.65, which provides, "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."

<sup>12</sup> 47 C.F.R. § 1.106(d)(1).

<sup>13</sup> 47 C.F.R. § 1.106(d)(2).

<sup>14</sup> 47 C.F.R. § 1.106(p) ("Petitions for reconsideration ... that plainly do not warrant consideration ... may be dismissed or denied by the relevant bureau(s) or office(s). Examples include, but are not limited to, petitions that:

(1) Fail to identify any material error, omission, or reason warranting reconsideration;

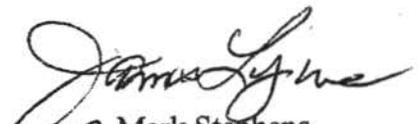
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(4) Fail to state with particularity the respects in which petitioner believes the action taken should be changed as required by paragraph (d) of this section;

\*\*\*").

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

Sincerely,

  
MR: Mark Stephens  
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

OFFICE OF  
MANAGING DIRECTOR

February 11, 2015

Robert J. Keller, Esq.  
Law Offices of Robert J. Keller, P.C.  
Post Office Box 33428, Farragut Station  
Washington, DC 20033-0428

Licensee: **Maritime Communications/Land Mobile, LLC, Debtor-in-Possession**  
Waiver and Deferral Application Processing Fees:  
Financial Hardship (Bankruptcy)  
Disposition: **Denied and Dismissed** (47 U.S.C. 158(d)(2);  
47 C.F.R. §§ 1.7, 1.1119(a), (c), & (f), 1.1166(e))  
Stations: Multiple  
Fee(s): Application Fees  
Fee Control No.: RROG-12-00014340

Dear Counsel:

This responds to Licensees' *Request*<sup>1</sup> for a waiver and deferral from payment of application processing fees on financial hardship grounds as set forth in our rules at 47 C.F.R. § 1.1119(a), (c) and (f) related to 53 applications for modification of authorizations. As we discuss below, we deny and, in the alternative, dismiss the *Request* because Licensee failed to demonstrate financial hardship. Moreover, the underlying authorizations expired, the Commission has dismissed the applications without action, and there are other procedural errors.

*Background*

On May 29, 2012, Licensee submitted to the Office of the Managing Director the *Request* asking the Commission to waive the application processing fees because it is a debtor in reorganization. Licensee's three attachments to its *Request* includes one related to Licensee's bankruptcy proceeding. That attachment included 38 photocopied pages of reduced-in-size or compressed-font (four 8.5" X 11" pages copied on each page) court schedules of a Chapter 11 disclosure statement, *i.e.*, financial schedules, lists of tangible property, lists of secured creditors,

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<sup>1</sup> Maritime Communications/ Land Mobile, LLC, Debtor-in-Possession, To Delete Specified Facilities from the Authorizations for AMTS Stations, WHG701, *et seq.*, File Nos. 0005225324, *et seq.*, *Motion For Deferral And Waiver Of Application Processing Fees* (May 29, 2012) (*Request*) with Attachment 1, Maritime Communications/Land Mobile, LLC, Debtors, Case No.: 11-13463-DWH, *Notice of Hearing on Disclosure Statement* (U.S. Bankcy Ct., N.D. Miss)(May 8, 2012) and 38 pages of photocopied compressed (four pages on each sheet) court filings, Attachment 2, Letter from Mark Stephens, Chief Financial Officer, FCC to Robert J. Keller, Esq., Robert J. Keller, P.C., P.O. Box 33428, Farragut Station, Washington, D.C. 20033-0428 (Apr. 16, 2012) (*2011 Application Fee Waiver*), Attachment 3, Letter from Mark Stephens, Chief Financial Officer, FCC to Robert J. Keller, Esq., Robert J. Keller, P.C., P.O. Box 33428, Farragut Station, Washington, D.C. 20033-0428 (Apr. 16, 2012) (*FY 2011 Regulatory Fee Waiver*).

a summary of schedules, a schedule of real property, a schedule of personal property, and a plan of reorganization.

Licensee asserted it is the “debtor in a reorganization pursuant to Chapter 11,” as shown in “[a] copy of the Plan of Reorganization ... the disclosure statement ... and the notice of hearing.”<sup>2</sup> Licensee’s appended Summary of Schedules of real property, personal property, secured and unsecured claims reported \$48,542,751.63 in assets and \$31,240,965.12 in liabilities. Licensee referred to 47 C.F.R. § 1.1119(a) that application “fees ... may be waived or deferred in specific instances where good cause is shown and where waiver or deferral of the fee would promote the public interest.”<sup>3</sup> Finally, Licensee asserted that showing “applicant is in bankruptcy establishes good cause for a waiver ... and such waivers serve the public interest by preserving assets that will accrue to creditors.”<sup>4</sup>

In contrast to Licensee’s assertions and attachments, Licensee failed to disclose other relevant matters, *e.g.*, that on April 19, 2011, the Commission commenced a hearing (*Order to Show Cause*) to determine whether Licensee is qualified to be and to remain a Commission licensee, and as a consequence thereof, whether any or all of its licenses should be revoked, and whether any or all of its licenses should be revoked, and whether any or all of the applications to which Licensee is a party should be denied.<sup>5</sup> Licensee did not disclose either that the underlying applications have been dismissed or that the licenses cancelled.<sup>6</sup>

### Standards

The Commission’s rules at 47 C.F.R. §§ 1.49 and 1.65 establish standards to which applicants must adhere in submitting pleadings and ensuring that information furnished in an application is accurate and complete. Illegible or improperly submitted information that results in a defective application or the failure to maintain accurate and current material information may lead to dismissal.<sup>7</sup>

The Commission recognizes that in certain instances, payment of an application 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.<sup>8</sup> The Commission narrowly interprets its waiver authority to require a showing of extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission’s

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

<sup>3</sup> Request at 2.

<sup>4</sup> *Id.*, citing *MobileMedia Corp., et al., Memorandum Opinion and Order*, 14 FCC Rcd 8017, 8027 (1999).

<sup>5</sup> *Maritime Communications/Land Mobile, LLC, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, 26 FCC Rcd 6520 (2011) (*Order to Show Cause*).

<sup>6</sup> *See Maritime Communications/Land Mobile, LLC, Debtor-In-Possession Application To Assign Licenses to Choctaw Holdings, LLC Maritime Communications/Land Mobile, LLC, Memorandum Opinion and Order*, 29 FCC Rcd 10871 (2014) (*Maritime Order*).

<sup>7</sup> *See Order to Show Cause*, 26 FCC Rcd at 6545-46, ¶ 59; *Winnebago Cooperative Telephone Association, Memorandum Opinion and Order*, 5 FCC Rcd 1247, 1248 (1990); *Queen City Cellular Communications, Order on Review*, 5 FCC Rcd 509, 510 (1990).

<sup>8</sup> 47 U.S.C. § 158(d)(2); 47 C.F.R. §§ 1.1119, 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).

costs.<sup>9</sup> Fee relief may be granted based on a “sufficient showing of financial hardship.”<sup>10</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.”<sup>11</sup>

Verified evidence of bankruptcy is relevant;<sup>12</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>13</sup> A bankruptcy proceeding in reorganization under Chapter 11 of the Bankruptcy Code may be established with verified court records, such as copies of the relevant court filings and forms, and evidence the trustee or debtor-in-possession has complied with its required duties,<sup>14</sup> including submitting copies of court-filed financial reports.<sup>15</sup>

We will look to that documentation to determine whether the applicant presents “extraordinary and compelling circumstances showing that a waiver . . . would override the public interest” in collecting the fee,<sup>16</sup> and we will 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>17</sup> and compelling circumstances<sup>18</sup> showing waiver is justified.<sup>19</sup>

<sup>9</sup> 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.”).

<sup>10</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>11</sup> *Id.*

<sup>12</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>13</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>14</sup> See 11 U.S.C. § 521.

<sup>15</sup> 11 U.S.C. §§ 1106, 1107, 1166; Fed. R. Bnkr. P., Rule 1007.

<sup>16</sup> 47 U.S.C. § 158(d)(2) (“The Commission may waive or defer payment of a charge in any specific instance for good cause shown, where such action would promote the public interest.”); 47 C.F.R. §§ 1.1119(a), (c) & (f), 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>17</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>18</sup> *Id.* (compelling-“something so great that irreparable harm or injustice would result if not met”).

<sup>19</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

*Discussion*

Licensee shows in its bankruptcy court financial information that assets exceed liabilities,<sup>20</sup> from which we conclude that Licensee is financially able to pay the required fees. Thus, Licensee failed to meet its burden of establishing that its bankruptcy represents extraordinary and compelling circumstances justifying a waiver of the application fees when balanced against the public interest in reimbursing the Commission for its costs. Accordingly, on this ground, we deny the *Request*. This ends the matter; however, Licensee's submission presented other matters that provide alternative grounds for disposition.

We note that Licensee failed to comply with our procedural rules at 47 C.F.R. § 1.49. Specifically, the attached visually compressed photocopied information is difficult to read and partially illegible. As such, Licensee failed to conform its filing to our standards, rather it provided documents in a format that hinders review. Furthermore, Licensee failed to comply with 47 C.F.R. § 1.65, which requires that an applicant maintain current and accurate information. Specifically, Licensee failed to disclose in this proceeding other pending matters, including the show cause hearing. In that regard, Licensee has a history of withholding information from the Commission.<sup>21</sup> Moreover, the Commission's records reflect that the underlying applications have been dismissed and denied because the licenses terminated.<sup>22</sup> Each of these points is an alternative ground for dismissal.

Finally, our records show that Licensee submitted the *Request* to the Office of the Managing Director, rather than to file it with the Commission's Office of the Secretary marked to the attention of the Managing Director.<sup>23</sup> A submission that does not conform to the designated filing requirements will be returned without processing.<sup>24</sup>

Our disposition means Licensee owes the full amount of the application filing fees is now due. If the full amount is paid within 30 days, interest will be waived. After that date, however, we will impose the statutory penalty<sup>25</sup> and we will assess charges of collection,<sup>26</sup> which continue to accrue until Licensee pays the debt in full. A petition for reconsideration or an application for review of a fee determination will not relieve Licensee from the requirement to submit full and

<sup>20</sup> *Request*, Attachment 1.

<sup>21</sup> *Order to Show Cause*, 26 FCC Rcd at 6541-43, ¶¶ 51-54.

<sup>22</sup> See e.g., Wireless Telecommunications Bureau Site-By-Site Action, Report Number: 10119, *Public Notice* (Dec. 10, 2014); FCC 601, FCC Application for Radio Service Authorization: Wireless Telecommunications Bureau Public Safety and Homeland Security Bureau, File No.: 0005531406, Withdrawal of Application (12/2/2014); letter from FCC, Wireless Telecommunications Bureau, 1270 Fairfield Rd., Gettysburg, PA 17325-7245 to Attn: Sandra M. DePriest, Maritime Communications/Land Mobile, LLC, Debtor-In-Possession, 206 North 8<sup>th</sup> St., Columbus, MS 39701, *Notice of Dismissal*, File No.: 0005225324 (12/9/2014).

<sup>23</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."), 1.1166(a)(2) ("request should be filed with the Commission's Secretary").

<sup>24</sup> 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.").

<sup>25</sup> 47 U.S.C. § 158; 47 C.F.R. § 1.1118.

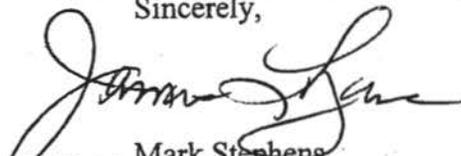
<sup>26</sup> 31 C.F.R. § 3717.

proper payment of the underlying fee and charges.<sup>27</sup> Moreover, this provides notice that under the law,<sup>28</sup> we will apply debt collection procedures.<sup>29</sup> Licensee should refer to the Commission's fee filer website to determine a payoff, and immediately make full payment with a Form 159.<sup>30</sup>

In addition to notifying Licensee it is delinquent in paying a debt owed the United States, this notifies Licensee that under 31 U.S.C. § 3711(g), without further notice, and usually within 180 days or less of delinquency, we will transfer the delinquent debt to Treasury, which will initiate collection action through private collection activities and assess additional charges. In addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs. Moreover, under 31 U.S.C. § 3716, 31 C.F.R. § 285.5, and 47 C.F.R. § 1.1912, some or all of the debt may be collected by non-centralized or centralized administrative offset. Also, under 31 U.S.C. § 3711(e), this debt and Licensee's payment history will be reported to credit reporting information bureaus. Because we have furnished notice here, Licensee may not receive another notification of this process. Finally, Licensee will be red lighted<sup>31</sup> until it pays all delinquent debts or it makes other satisfactory arrangements.<sup>32</sup>

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

Sincerely,



ESQ: Mark Stephens  
Chief Financial Officer

<sup>27</sup> 47 C.F.R. § 1.1120.

<sup>28</sup> See 47 C.F.R. § 1.1901, *et seq.*

<sup>29</sup> See 31 C.F.R. § 3717.

<sup>30</sup> Form 159 with complete instructions is at <http://www.fcc.gov/fees/form159.html>.

<sup>31</sup> See 47 C.F.R. § 1.1910(b)(2) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or request for authorization by any entity found to be delinquent in its debt to the Commission ..."); 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.").

<sup>32</sup> See 47 C.F.R. § 1.1914 ("If a debtor is financially unable to pay a debt in one lump sum, the Commission, in its sole discretion, may accept payment in regular installments.").

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

FEB 28 2015

OFFICE OF  
MANAGING DIRECTOR

Robert J. Keller, Esq.  
Law Offices of Robert J. Keller, P.C.  
Post Office Box 33428, Farragut Station  
Washington, D.C. 20033-0428

Licensee: **Maritime Communications/Land Mobile,  
LLC, Debtor-in-Possession**

Waiver and Deferral Application Processing Fee:  
Financial Hardship (Bankruptcy)

Disposition: **Dismissed and Denied** (47 U.S.C. §  
158(d)(2); 47 C.F.R. §§ 1.7, 1.1119(a), (c), & (f),  
1.1166(e))

Station: KAE889

Fee(s): Application Fee

Fee Control No.: RROG-12-00014341

Dear Counsel:

This responds to Licensees' *Request*<sup>1</sup> for a waiver and deferral from payment of an application processing fee on financial hardship grounds as set forth in our rules at 47 C.F.R. § 1.1119(a), (c) and (f) related to an application for modification of an authorization. As we discuss below, we deny and, in the alternative, dismiss the *Request* because Licensee failed to demonstrate financial hardship, and because it failed to comply with procedural rules.

*Background*

On May 29, 2012, Licensee submitted to the Office of the Managing Director the *Request* asking the Commission to waive the application processing fee because it is a debtor in reorganization. Licensee's three attachments to its *Request* includes one related to Licensee's bankruptcy proceeding. That attachment included 38 photocopied pages of reduced-in-size or compressed-font (four 8.5" X 11" pages copied on each page) court schedules of a Chapter 11 disclosure statement, *i.e.*, financial schedules, lists of tangible property, lists of secured creditors,

<sup>1</sup> Maritime Communications/ Land Mobile, LLC, Debtor-in-Possession, To Delete Specified Facilities from the Authorizations for AMTS Station, KAE889, File No. 0004314903, *Motion For Deferral And Waiver Of Application Processing Fees* (May 29, 2012) (*Request*) with Attachment 1, Maritime Communications/Land Mobile, LLC, Debtors, Case No.: 11-13463-DWH, *Notice of Hearing on Disclosure Statement* (U.S. Bankcy Ct., N.D. Miss)(May 8, 2012) and 38 pages of photocopied compressed (four pages on each sheet) court filings, Attachment 2, Letter from Mark Stephens, Chief Financial Officer, FCC to Robert J. Keller, Esq., Robert J. Keller, P.C., P.O. Box 33428, Farragut Station, Washington, D.C. 20033-0428 (Apr. 16, 2012) (*2011 Application Fee Waiver*), Attachment 3, Letter from Mark Stephens, Chief Financial Officer, FCC to Robert J. Keller, Esq., Robert J. Keller, P.C., P.O. Box 33428, Farragut Station, Washington, D.C. 20033-0428 (Apr. 16, 2012) (*FY 2011 Regulatory Fee Waiver*).

a summary of schedules, a schedule of real property, a schedule of personal property, and a plan of reorganization.

Licensee asserted it is the “debtor in a reorganization pursuant to Chapter 11,” as shown in “[a] copy of the Plan of Reorganization ... the disclosure statement ... and the notice of hearing.”<sup>2</sup> Licensee’s appended Summary of Schedules of real property, personal property, secured and unsecured claims reported \$48,542,751.63 in assets and \$31,240,965.12 in liabilities. Licensee referred to 47 C.F.R. § 1.1119(a) that application “fees ... may be waived or deferred in specific instances where good cause is shown and where waiver or deferral of the fee would promote the public interest.”<sup>3</sup> Finally, Licensee asserted that showing “applicant is in bankruptcy establishes good cause for a waiver ... and such waivers serve the public interest by preserving assets that will accrue to creditors.”<sup>4</sup>

In contrast to Licensee’s assertions and attachments, Licensee failed to disclose other relevant matters, *e.g.*, that on April 19, 2011, the Commission commenced a hearing (*Order to Show Cause*) to determine whether Licensee is qualified to be and to remain a Commission licensee, and as a consequence thereof, whether any or all of its licenses should be revoked, and whether any or all of its licenses should be revoked, and whether any or all of the applications to which Licensee is a party should be denied.<sup>5</sup>

### Standards

The Commission’s rules at 47 C.F.R. §§ 1.49 and 1.65 establish standards to which applicants must adhere in submitting pleadings and ensuring that information furnished in an application is accurate and complete. Illegible or improperly submitted information that results in a defective application or the failure to maintain accurate and current material information may lead to dismissal.<sup>6</sup>

The Commission recognizes that in certain instances, payment of an application 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.<sup>7</sup> The Commission narrowly interprets its waiver authority to require a showing of extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission’s costs.<sup>8</sup> Fee relief may be granted based on a “sufficient showing of financial hardship.”<sup>9</sup> “Mere

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

<sup>3</sup> Request at 2.

<sup>4</sup> *Id.*, citing *MobileMedia Corp., et al., Memorandum Opinion and Order*, 14 FCC Rcd 8017, 8027 (1999).

<sup>5</sup> *Maritime Communications/Land Mobile, LLC, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, 26 FCC Rcd 6520 (2011) (*Order to Show Cause*).

<sup>6</sup> See *Order to Show Cause*, 26 FCC Rcd at 6545-46, ¶ 59; *Winnebago Cooperative Telephone Association, Memorandum Opinion and Order*, 5 FCC Rcd 1247, 1248 (1990); *Queen City Cellular Communications, Order on Review*, 5 FCC Rcd 509, 510 (1990).

<sup>7</sup> 47 U.S.C. § 158(d)(2); 47 C.F.R. §§ 1.1119, 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).

<sup>8</sup> 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

allegations or documentation of financial loss, standing alone," do not suffice, and "it [is] incumbent upon each regulatee to fully document its financial position."<sup>10</sup>

Verified evidence of bankruptcy is relevant;<sup>11</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>12</sup> A bankruptcy proceeding in reorganization under Chapter 11 of the Bankruptcy Code may be established with verified court records, such as copies of the relevant court filings and forms, and evidence the trustee or debtor-in-possession has complied with its required duties,<sup>13</sup> including submitting copies of court-filed financial reports.<sup>14</sup>

We will look to that documentation to determine whether the applicant presents "extraordinary and compelling circumstances showing that a waiver ... would override the public interest" in collecting the fee,<sup>15</sup> and we will 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>16</sup> and compelling circumstances<sup>17</sup> showing waiver is justified.<sup>18</sup>

#### *Discussion*

We note that Licensee failed to comply with our procedural rule at 47 C.F.R. § 1.49. Specifically, Licensee's visually compressed photocopied information is difficult to read and

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>9</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>10</sup> *Id.*

<sup>11</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>12</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>13</sup> See 11 U.S.C. § 521.

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

<sup>15</sup> 47 U.S.C. § 158(d)(2) ("The Commission may waive or defer payment of a charge in any specific instance for good cause shown, where such action would promote the public interest."); 47 C.F.R. §§ 1.1119(a), (c) & (f), 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>16</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>17</sup> *Id.* (compelling-"something so great that irreparable harm or injustice would result if not met").

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

partially illegible. As such, Licensee failed to conform its filing to our standards, rather it provided documents in a format that hinders review. Furthermore, Licensee failed to comply with 47 C.F.R. § 1.65, which requires that an applicant maintain current and accurate information. Specifically, Licensee failed to disclose in this proceeding other pending matters, including the show cause hearing. In that regard, Licensee has a history of withholding information from the Commission.<sup>19</sup> Each point is a ground for dismissal.

Finally, our records show that Licensee submitted the *Request* to the Office of the Managing Director, rather than to file it with the Commission's Office of the Secretary marked to the attention of the Managing Director.<sup>20</sup> A submission that does not conform to the designated filing requirements will be returned without processing.<sup>21</sup> This ends the matter; however, as a matter of administrative economy, we look to the merits of Licensee's submission, and find other matters provide an alternative ground for disposition.

Licensee shows in its bankruptcy court financial information that assets exceed liabilities,<sup>22</sup> from which we conclude that Licensee is financially able to pay the required fee. Thus, Licensee failed to meet its burden of establishing that its bankruptcy represents extraordinary and compelling circumstances justifying a waiver of the application fees when balanced against the public interest in reimbursing the Commission for its costs. Accordingly, on this ground, we deny the *Request*.

Our disposition means Licensee owes the application filing fee, and it is now due. If the full amount is paid within 30 days, interest will be waived. After that date, however, we will impose the statutory penalty<sup>23</sup> and we will assess charges of collection,<sup>24</sup> which continue to accrue until Licensee pays the debt in full. A petition for reconsideration or an application for review of a fee determination will not relieve Licensee from the requirement to submit full and proper payment of the underlying fee and charges.<sup>25</sup> Moreover, this provides notice that under the law,<sup>26</sup> we will apply debt collection procedures.<sup>27</sup> Licensee should refer to the Commission's fee filer website to determine a payoff, and immediately make full payment with a Form 159.<sup>28</sup>

In addition to notifying Licensee it is delinquent in paying a debt owed the United States, this notifies Licensee that under 31 U.S.C. § 3711(g), without further notice, and usually within 180 days or less of delinquency, we will transfer the delinquent debt to Treasury, which will initiate collection action through private collection activities and assess additional charges. In

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<sup>21</sup> 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.").

<sup>22</sup> *Request*, Attachment 1.

<sup>23</sup> 47 U.S.C. § 158; 47 C.F.R. § 1.1118.

<sup>24</sup> 31 C.F.R. § 3717.

<sup>25</sup> 47 C.F.R. § 1.1120.

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

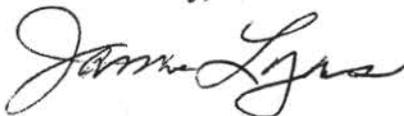
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addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs. Moreover, under 31 U.S.C. § 3716, 31 C.F.R. § 285.5, and 47 C.F.R. § 1.1912, some or all of the debt may be collected by non-centralized or centralized administrative offset. Also, under 31 U.S.C. § 3711(e), this debt and Licensee's payment history will be reported to credit reporting information bureaus. Because we have furnished notice here, Licensee may not receive another notification of this process. Finally, Licensee will be red lighted<sup>29</sup> until it pays all delinquent debts or it makes other satisfactory arrangements.<sup>30</sup>

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

Sincerely,



*ENC:* Mark Stephens  
Chief Financial Officer

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<sup>29</sup> See 47 C.F.R. § 1.1910(b)(2) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or request for authorization by any entity found to be delinquent in its debt to the Commission ..."); 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.").

<sup>30</sup> See 47 C.F.R. § 1.1914 ("If a debtor is financially unable to pay a debt in one lump sum, the Commission, in its sole discretion, may accept payment in regular installments.").