

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

APR 1 2015

OFFICE OF
MANAGING DIRECTOR

Monica N. Johnson
Director of Operations
Roberts Broadcasting
1408 N. Kingshighway Blvd., Suite 300
St. Louis, MO 63113

Licensees/Applicant: **Roberts Broadcasting Company of
Evansville, IN, LLC, DIP**
Waiver and Deferment of Regulatory Fees: Financial
Hardship
Disposition: **Dismissed and Denied** (47 C.F.R. §§ 0.401,
1.3, 1.7, 1.1160(a)(3), and 1.1166)
Stations: WAZE-LP, WIKY-LP, WJPS-LP,
Fiscal Year (FY) 2012 Regulatory Fees
Fee Control No.: RROG-12-00014698

Dear Ms. Johnson:

This responds to Licensee's *Request*¹ for a deferment and waiver of the Fiscal Year (FY) 2012 regulatory fees on the ground that Licensee is in financial distress because of a proceeding filed under Chapter 11 of the Bankruptcy Code. As we explain below, we dismiss and, in the alternative, deny because Licensee failed to comply with Commission rules for filing the *Request*, resubmit after paying the delinquent debt, and establish both good cause and that waiver would promote the public interest.

Background

On September 13, 2012, the final day for filing the FY 2012 regulatory fees,² Licensee submitted its *Request* to the Office of the Managing Director, Regulatory Fee Deferment/Waiver Request. Licensee asserts, on October 7, 2011, it "filed a voluntary petition for bankruptcy in the United States Bankruptcy Court, Eastern District of Missouri, seeking to reorganize under Chapter 11 of the U.S. Bankruptcy Code,"³ and it is "operating as debtor-in-possession under the Bankruptcy Court's oversight In light of the bankruptcy proceeding, [Licensee] requests a

¹ Roberts Broadcasting Company of Evansville, IN LLC, Debtor-in-Possession, Request for Deferment and Waiver of Regulatory Fees, Attn: Office of the Managing Director, Regulatory Fees Deferment/Waiver Request, (Sep. 13, 2012)(*Request*) with enclosures (a) Sworn Affidavit of Monica N. Johnson (*Affidavit*), (b) Roberts Broadcasting Company, *et al.*, (US Bankr. Ct., ED MO, Case Nos. 11-50744-399, *et al.*), Chapter 11, Order Granting Motion for Joint Administration (Oct. 19, 2011) (*Order for Joint Administration*).

² Reminder That FY 2012 Regulatory Fees Are Due No Later Than September 13, 2012, Eastern Time (ET), *Public Notice* (DA 12-1423) (Aug. 31, 2012).

³ *Request* at 1-2.

deferment of the submission, and a waiver of the payment of FY 2012 regulatory fees,⁴ and “a waiver is in the public interest and fully consistent with [Commission] precedent. Section 1.1166 allows a waiver of regulatory fees ‘where good cause is shown and where waiver ... or deferral ... would promote the public interest.’ ... The Commission has previously held that a corporate reorganization is, in and of itself, a sufficient demonstration of financial hardship.”⁵ Finally, Licensee asserts deferral and waiver are in the public interest “so that [Licensee’s] financial resources can be conserved and otherwise used to continue operating the stations.”⁶ Licensee included the *Affidavit* confirming the accuracy of the content of the Request and the *Order for Joint Administration*. On July 24, 2013, Licensee paid the fees and accrued charges; however, Licensee did not update its *Request*.

Standards

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 cause⁷ and a finding that the public interest will be served thereby.⁸ The burden rests with the petitioner to demonstrate a waiver is warranted,⁹ *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.¹⁰

The petitioner has the burden of showing extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.¹¹ Fee relief may be granted based on a “sufficient showing of financial hardship.”¹² “Mere allegations or documentation of financial loss, standing alone,” do not suffice, and “it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public.”¹³ 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,

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Id.*

⁷ 47 C.F.R. § 1.3.

⁸ 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁹ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹⁰ *Northeast Cellular* 897 F.2d at 1166 (D.C. Cir. 1990).

¹¹ 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.”).

¹² 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*).

¹³ *Id.*

other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.¹⁴

An applicant's verified evidence of bankruptcy is relevant;¹⁵ 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."¹⁶ Thus, an applicant must present "extraordinary and compelling circumstances showing that a waiver ... would override the public interest" in collecting the fee,¹⁷ and we analyze the facts of each case to determine whether the applicant has satisfied both prongs of the Commission's standard, financial hardship and extraordinary¹⁸ and compelling circumstances¹⁹ showing waiver is justified.²⁰

The bankruptcy proceeding and the applicant's place therein is established with verified court records, such as, in a reorganization under Chapter 11 of the Bankruptcy Code, copies of the relevant filings, forms, and evidence the trustee or debtor-in-possession has complied with its required duties²¹ by including court-filed financial reports.²² Relevant to this request is the purpose of a Chapter 11 proceeding, which is to restructure the debtor's obligations and allow its business to continue successfully after confirmation.²³ The bankruptcy process that begins with filing a petition and an automatic stay and continues until confirmation of the plan, provides breathing room for a business to recoup, evaluate, and deal with creditors. During the process, the debtor operates the business as a debtor-in-possession or under the direction of a trustee, and pays current obligations. The debtor also develops a plan dealing with creditors, and it projects

¹⁴ *Id.*

¹⁵ 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.").

¹⁶ 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.").

¹⁷ 47 U.S.C. § 159(d) ("The Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest."); 47 C.F.R. § 1.1166 ("fee ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12.

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

post-confirmation operations. Relevant to post-petition and post-confirmation operations are court-filed financial documents, including, *e.g.*, a statement of financial affairs, monthly operating reports, the plan,²⁴ and a disclosure statement with debtor's plan for the business going forward that has timely and accurate financial information with projections.²⁵ Consistent with our standards, an applicant seeking a waiver of fees post-petition must include relevant financial documentation, such as the plan reflecting debtor-applicant's reasonable financial projections, including the annual regulatory fees.²⁶

A waiver and, if the required fee is not included, a separate petition to defer payment due to financial hardship, supported by documentation of the financial hardship, must be filed with the Commission's Office of the Secretary marked to the attention of the Managing Director.²⁷ In cases where the request is submitted with the fee, it must be made to the Commission's lockbox bank.²⁸ The Commission will return without processing a submission that does not conform to the designated filing requirements.²⁹ In addition to the specific requirements as to filing location, the Commission requires petitioners to provide documentation to support a petition to defer payment, *i.e.*, "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."³⁰ Furthermore, if the Commission determines that the party submitting an application is delinquent in paying a standard regulatory fee or an installment payment, the application will be dismissed; it may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty.³¹

Discussion

Initially, we note that Licensee's submission fails to comply with Commission's procedures, and that the omissions are grounds for dismissal.

First, Licensee fails to conform to the Commission's rules for filing a request to waive the annual regulatory fees and a petition to defer payment of the fees until the Commission reaches a decision on the request for a waiver. Specifically, our records show Licensee submitted

²⁴ 11 U.S.C. § 1129.

²⁵ *See e.g.*, 11 U.S.C. §§ 1125, 1129; *see also In re Ferguson*, 474 B.R. 466, 476 (D. S.C. Bkrtcy, 2012) ("to satisfy the requirements of adequate information under [11 U.S.C.] § 1125, a disclosure statement must contain the necessary financial information, data, and projections").

²⁶ *See In re Idearc, Inc.*, 423 B.R. 138, 167 (N.D. Tx. Bkrtcy, 2009) ("To establish the feasibility of a plan, the debtor must present proof through reasonable projections that there will be sufficient cash flow to fund the plan. Such projections cannot be speculative, conjectural or unrealistic.").

²⁷ 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.").

²⁸ 47 C.F.R. § 1.1166(a)(1).

²⁹ 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.").

³⁰ Assessment and Collection of Regulatory Fees for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011) (*FY 2011 Regulatory Fee Report and Order*).

³¹ 47 C.F.R. § 1.1164(e).

its *Request* directly to the Managing Director, rather than filing with the Commission's Secretary. Thus, Licensee never filed its *Request*.³²

Next, in its combination waiver request-petition to defer payment Licensee fails to include documentation of financial hardship, rather Licensee merely asserts the proceeding started and that the *Order of Joint Administration* had been approved. In particular, Licensee fails to include relevant documentation establishing the Chapter 11 proceeding and court-required financial records. Thus, Licensee leaves to speculation its place in the Chapter 11 reorganization proceeding, what financial resources exist for current operations, the content of its court submissions, and what, if any, payments from current resources are made or court approved. The copy of the October 19, 2011, *Order of Joint Administration* is insufficient information.

Next, on July 24, 2013, the Commission credited payment of the fees to Licensee's account, but Licensee failed to correct information in the *Request*.³³ That payment moots both the request to defer payment and the waiver and because Licensee failed to request a refund of the payment made.³⁴ This ends the matter; however, as a matter of administrative economy, we look to the merits of Licensee's submission to determine whether circumstances warrant relief, if we construe the *Request* as refiled.

Because the petition to defer payment is moot, we look to whether Licensee's submission meets our standard to waive the fee by providing sufficient documentation of financial hardship.³⁵ Licensee's mere assertion that it filed a voluntary petition for bankruptcy and that it is the debtor-in-possession does not establish either existence of the bankruptcy proceeding or, most important, that Licensee's bankruptcy proceeding represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs.

Licensee fails to clarify its position with the Commission³⁶ and to maintain the accuracy and completeness of its application.³⁷ Although we discuss some of the omissions next, we will

³² 47 C.F.R. §§ 0.401, 1.7, 1.1166.

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 47 C.F.R. § 1.1160.

³⁵ 47 C.F.R. § 1.1166(d); *FY 2011 Regulatory Fee Report and Order*, *supra*.

³⁶ *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.").

³⁷ 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.).

not speculate what information may fill in the gaps. Without the documentation of financial hardship, we dismiss.³⁸

Licensee noticeably did not assert it lacks funds to pay the regulatory fees.³⁹ Moreover, Licensee fails to include a complete accounting of all assets, asset valuation, expenses, and, as is necessary to present relevant facts, complete details of future sales, the proposed disposition of sale proceeds, the balance remaining after closing, and any proposed plan. We require the documents that the debtor provides to the court, including, for example, a fair market appraisal of all of assets, including licenses and associated property and equipment, copies of court required financial accountings, the disposition of any assets sold, transferred, or disposed of after the date of judgment, the proposed disposition of assets after the sale, and any offer by the purchaser to pay fees and the delinquent debts. Licensee fails to explain why such information is not part of its *Request*.

Instead of presenting the described financial documentation to support both prongs of the standard, good cause shown and that the waiver and deferral would promote the public interest, Licensee relies only on the unsubstantiated claim that it filed a voluntary petition under Chapter 11 of the Bankruptcy Code. Licensee's reliance on that assertion is misplaced.

When the Commission announced that evidence of bankruptcy or receivership is sufficient to establish financial hardship,⁴⁰ it was referring to the situation where the party was proceeding in a straight bankruptcy liquidation case. The party filing under Chapter 11 is not a bankrupt,⁴¹ and that status is not included in the Commission's initial discussion. Moreover, in 2003, the Commission explained, the applicant must show 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

³⁸ 47 C.F.R. § 1.1166(c).

³⁹ Licensee's payment after submitting the *Request* confirms the assumed available of funds.

⁴⁰ *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 14.

⁴¹ *Matter of Phillips*, 966 F.2d 926, 930 (5th Cir. 1992), *rehearing denied* (1992)

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

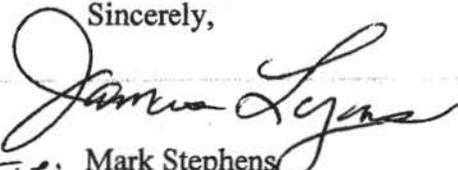
provisions.⁴² Looking to the submission, Licensee fails to present adequate information to make that showing.

Licensee's scant information fails to provide critical documentation of the proceeding or establish facts necessary to establish Licensee meets our standard. Indeed, Licensee's bare assertion of "financial distress" does not "fully document [Licensee's] financial position [to] show that [they] lack[ed] sufficient funds to pay the regulatory fees and to maintain its service to the public."⁴³

Finally, we note that Licensee made no showing how, in light of the current national financial climate, the public interest will be served by waiving the fees. Accordingly, we deny Licensee's *Request*.

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

Sincerely,



FOR: Mark Stephens
Chief Financial Officer

⁴² 18 FCC Rcd at 6090, ¶ 11.

⁴³ FY 1994 MO&O, 10 FCC Rcd at 12762, ¶ 13.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

APR 13 2015

OFFICE OF
MANAGING DIRECTOR

Dennis J. Kelly, Esq.
Post Office Box 41177
Washington, DC 20018

Licensees/Applicants: **Royce International
Broadcasting, Corp and Playa del Sol**
Waiver and Refund Request: Late Payment Penalty
Disposition: **Denied** (47 U.S.C. §§ 159(c)(1), 405;
47 C.F.R. §§ 1.106, 1.1151, 1.1157(c)(1), 1.1160,
1.1164)
Fee: Fiscal Year (FY) 2011 Regulatory Fee Late
Payment Penalties
Stations: KRC-FM, K238AK, KREV, KIEV,
KBET, KFRH and Auxiliary Broadcast Stations
WPXD407, WPWW383, WQFW634 and WL1700
Date Regulatory Fees paid: Sep. 20, 2011
Date Late Penalty Fees paid: Mar. 4, 2014
Date Request Filed: Nov. 6, 2014
Fee Control No.: RROG-13-00015800

Dear Counsel:

This responds to Licensees' *Request*¹ for waiver and refund of the late paid balance following their partial payments of the Fiscal Year (FY) 2011 regulatory fees. As we discuss below, we deny Licensees' *Request* because they fail to establish extraordinary and compelling grounds for a waiver of the balance remaining after a late filed partial payment.

Background

On November 6, 2014, Licensees filed their *Request* for "a refund of ... \$6,358.75 paid ... as late fees for fiscal year 2011 regulatory fees"² Licensees assert the Commission published a public notice "of the regulatory fee requirements for fiscal year 2011 "on August 17, 2011 ... less than 30 days before the due date established in said public notice, September 14, 2011."³ Licensees assert they "sent ... payment to the FCC on September 15, 2014 (sic) by Federal Express ... less than 30 days subsequent to the release of DA 11-1418, and well before

¹ Letter from Dennis Kelly, Esq., PO Box 41177, Washington, DC 20018 to Honorable Marlene Dortch, Office of Secretary, FCC, Washington, DC 20554, Attn: Office of Managing Director, Revenue and Receivables Group (Nov. 6, 2014) (*Request*).

² *Id.* at 1.

³ *Id.*

the end of the fiscal year on September 30, 2011.”⁴ Licensees assert, “[b]ecause the FCC failed to give adequate public notice ... equitable considerations require that the requested refund be granted.”⁵ Additionally, Licensees assert “a number of constitutional and statutory issues ... go to the heart of 47 U.S.C. § 159 and the ... regulatory fee program.”⁶ Specifically, Licensees raise the following four “issues:” First, the “Fee Order violates Article I, Section 7 of the federal Constitution [because the] fiscal year 2011 ... rates [are] different ... and higher than those ... in 47 U.S.C. § 159 [and] they did not originate in the popularly elected House of Representatives, but instead originated in the ... FCC.”⁷ Second, the “2014 (sic) Regulatory Fee Order violates Article I, Section 8, Clause 1 of the federal Constitution [because] the FCC’s annual regulatory fees constitute taxes, duties, imposts and/or excises. Only Congress ... has the power to ‘lay’ said taxes ... therefore, the 2011 Regulatory Fee Order is unconstitutional Further, the annual regulatory fees ... are not uniform from state to state.”⁸ Third, “the 2011 Regulatory Fee Order violates Article I, Section 9, Clause 4 of the federal Constitution [because b]oth 47 U.S.C. § 159 and the 2011 Regulatory Fee Order ... constitute an unconstitutional direct tax on broadcasting totally unrelated to ‘the census or enumeration herein.’”⁹ Fourth, Licensees assert, “the 2011 Regulatory Fee Order seeks to collect far more revenue than is contemplated by 47 U.S.C. § 159(a)(1) [and t]he methodology used [in] the 2011 Regulatory Fee Order is arbitrary and capricious [etc] and therefore violates the Administrative Procedure Act, 5 U.S.C. § 706(2)(A-E).”¹⁰

Standards

Under 47 U.S.C. § 159 and the Commission’s implementing rules, we are required to “assess and collect regulatory fees”¹¹ to recover the costs of the Commission’s regulatory activities,¹² and when the required payment is received late or it is incomplete, and “not excused by bank error, [to assess] a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner.”¹³ A timely fee payment is one received at the Commission’s lockbox bank by the due date.¹⁴

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. Our rulemaking warned,

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 3.

¹¹ Assessment and Collection of Regulatory Fees for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812 (2011) (*2011 Regulatory Fee Order*).

¹² 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

¹³ 47 U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164.

¹⁴ 47 C.F.R. § 1.1164.

To be considered timely, regulatory fee payments must be received and stamped at the lockbox bank by the last day of the regulatory fee filing window. Section 9(c) of the Act requires us to impose a late payment penalty of 25 percent of the unpaid amount to be assessed on the first day following the deadline date for filing of these fees.^[FN deleted] Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's Rules^[FN deleted] and in the Debt Collection Improvement Act of 1996 ("DCIA").^[FN deleted] We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's Rules.^[FN deleted] These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.¹⁵

For FY 2011, the deadline for paying regulatory fees was September 16, 2011.¹⁶

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.¹⁷ 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,¹⁸ and as required by 47 C.F.R. §§ 1.1164(e)¹⁹ and 1.1910, any application or request for relief filed may be dismissed.

Under 47 U.S.C. § 405, a petition to reconsider an order, decision, report or action must be filed within 30 days from the date upon which public notice is given of the order, decision, report or action. No such application excuses a person from complying with the order, decision, report or action, and it does not stay or postpone the enforcement thereof, without special order of the Commission.

¹⁵ 2011 Regulatory Fee Order, 26 FCC Rcd at 10826, ¶ 36.

¹⁶ See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

¹⁷ 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).

¹⁸ 47 C.F.R. § 1.1910.

¹⁹ 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.

Under 47 C.F.R. § 1.1160(a), regulatory fees are refunded, upon request, only in certain circumstances. Specific to this case, under § 1.1160(a)(3), a refund of the fees depends on a grant of a waiver under § 1.1166, which requires the applicant to show both good cause and that the waiver would promote the public interest.²⁰

Discussion

Under the Commission's rulemaking and the established deadline, Licensees had until September 16, 2011, to pay the FY 2011 regulatory fees. When Licensees' payments were not received and stamped in a timely manner, as explained in *2011 Regulatory Fee Order*, 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.²¹ The Commission's records show that on September 20, 2011, we received partial payments from Licensees that did not include the accrued but unpaid late payment penalty and other charges of collection. Thus, under 47 C.F.R. § 1.1940(f), each Licensee's partial payment was "applied first to outstanding penalties and administrative cost charges, second to accrued interest, and third to the outstanding principal."²² On March 4, 2014, Licensees paid the balance on the delinquent regulatory fees and the additional amounts owed.

Now, Licensees seek a refund of the amount equal to the accrued penalties and charges asserting "equitable considerations require that the requested refund be granted" and that the "2011 Regulatory Fee Order violates provisions of Article I, Section 7, Section 8, Clause 1, and Section 9, Clause 4 of the United States Constitution and 5 U.S.C. § 706(2)(A) – (E), which, we note, is a jurisdictional provision."²³

For the reasons we discuss next, we deny Licensees' *Request*.

First, Licensees misstate certain facts that form the so-called "equitable considerations" for a refund. Contrary to Licensees' assertions that they did not receive adequate notification of the "regulatory fee requirements," on August 10, 2011, the Federal Register published the FY 2011 regulatory fee order²⁴ setting forth in detail the regulatory fee requirements. In addition, the Commission published notice extending the deadline for paying the fees from September 15, 2011, to September 16, 2011.²⁵ Licensees had more than adequate notification of the regulatory fee requirements, and as such it is apparent Licensees misstate the matters they assert to be predicate facts for "equitable considerations" to warrant a refund. We reject these matters. Licensees also assert in the context of the inadequate notification, that they "sent ... payment to the FCC on September 15, 2014 (sic) by Federal Express."²⁶ Putting aside Licensees' obvious

²⁰ 47 C.F.R. § 1.1166.

²¹ See 31 U.S.C. § 3717; 47 C.F.R. § 1.1940.

²² 47 C.F.R. § 1.1940(f).

²³ Licensees fail to establish how the 2011 regulatory fee order violates the statute that is the jurisdictional authority extended to the court. Accordingly, we will treat the matter as an unexplained typographical error not requiring a response.

²⁴ Federal Register, 76 FR 49333-01 (Aug. 10, 2011).

²⁵ FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

²⁶ *Request* at 1.

typographical error in the date, if Licensees employed a next day delivery service, the item dispatched on September 15, 2011, should have been delivered by the deadline. That said, Licensees fail to include evidence of the delivery, and we will not speculate on missing information.²⁷ Even so, a delay by the delivery service is not grounds for relief. Accordingly, we deny any refund based on Licensees' "equitable considerations."

Next, Licensees fail to establish a proper base under our rules for a refund. In order to obtain a refund of fees, Licensees must establish a proper ground, *e.g.*, the existence of an exception to the imposition of the penalties under 47 C.F.R. § 1.1164, an error related to the regulatory fee payment following the procedures set forth at 47 C.F.R. § 1.1167, or proper grounds for a refund as set forth at 47 C.F.R. § 1.1160. Licensees fail to establish any grounds.

First, Licensees do not assert the existence of a bank error. Rather, they imply that the expedited delivery service may have failed to deliver the envelope with the payments before the deadline. Under our rules, that circumstance is not a ground on which to except Licensees from paying the penalties. We note next, Licensees do not present either a proper challenge to the determination that the fees were late or "suitable proof that the fee[s] had been paid or waived."²⁸ Finally, Licensees fail to establish a basis for a refund,²⁹ which, in this case, requires Licensees to demonstrate grounds for a waiver of the regulatory fee balances remaining after the partial payments.³⁰

Rather than establishing good cause and that the public interest is served by waiving the fee, Licensees rest their claim on the previously discussed "equitable considerations" supported in part by the above-described misstated facts and a single exhibit.³¹ That exhibit is a photocopy of a paper purporting to be the sender's copy of a mailing label to transmit an undescribed item by Federal Express, a private delivery company, from San Francisco, CA to St. Louis, MO. That exhibit has little value. Licensees fail to authenticate the document or establish its relevance. For example, Licensees fail to provide any evidence to show the FedEx US Airbill exhibit was, in fact, attached to an envelope that included a properly prepared negotiable instrument, and that Federal Express properly accepted the envelope at a particular time on the date referred to on the mailing label for delivery in accordance with the carrier's terms and conditions on a certain date and time. Even extending the most favorable possible inferences to Licensees' superficial information, the exhibit raises only the specter that Federal Express failed to deliver the envelope under the terms of its service agreement with Licensees. A delayed or misplaced delivery by a delivery service is not grounds for (a) an exemption from the statutory penalty, (b) a waiver of our rule, or (c) establishing an error. Any potential claim for failing to comply the terms and conditions of an expedited delivery agreement is a matter between Licensees and the delivery service, not the Commission.

²⁷ *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner . . . has the 'burden of clarifying its position' before the agency."); *see also* 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

²⁸ 47 C.F.R. § 1.1167.

²⁹ 47 C.F.R. § 1.1160(a).

³⁰ 47 C.F.R. § 1.1166.

³¹ *Request* at 1.

Overall, Licensees' assertions explaining its failure to pay the fee by the deadline describe circumstances that either were within Licensee's control and a matter of its business decision or the result of general inattention to the publicized fee payment information³² and inadvertence to complete timely payment. Those circumstances do not establish "extraordinary circumstances"³³ 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."³⁴ Licensees fail to establish either good cause or that the public interest is served by waiver.

Next, Licensees assert that the FY 2011 regulatory fee order violates several Articles of the United States Constitution. In their effort, however, Licensees fail to identify a logical form of relief. Licensees ask only for a refund of an amount equal to the payment of accrued penalties and charges. As such, by paying the regulatory fees without challenge, they accept the process set forth in our rulemaking and the FY 2011 regulatory fee order. Licensees cannot logically pay the fees, but seek to carve out the validity of the statutory penalty provisions in 47 U.S.C. § 159(c)(1) and 31 U.S.C. § 3717 by broadly challenging the entire regulatory fee process. As such, Licensees' assertions are without any merit and we may dispose of them with brief but pointed comment that such untimely collateral attacks on both the FY 2011 regulatory fee order and the initial rulemaking implementing Section 9 of the Communications Act are not permitted.³⁵ Thus, we reject Licensees' broad scope challenge to the validity of the Commission's 2011 fee order and deny the requested relief.

Moreover, Licensees fail to provide legal authority to support their assertions and they fail to distinguish their current claim from the earlier and timelier challenges by others rejected by the Commission. For example, in 1996, the Commission addressed and rejected the claim that a regulatory fee was an unauthorized and unconstitutional tax.³⁶ Later, in 1998, the Commission considered and rejected the argument that the regulatory fees are inconsistent with the enabling statute or they are otherwise unlawful because they are not completely cost-based.³⁷ Next, in 2004, the Commission held that Section 9 of the Communications Act does not conflict with the

³² See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

³³ McLeodUSA Telecommunications Services, Inc., *Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (*McLeodUSA*) (denying the request for waiver of 25 percent penalty).

³⁴ 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).

³⁵ 47 U.S.C. § 405(a); 47 C.F.R. § 1.106; *JEM Broad Co. v. FCC*, 22 F.3d 320 (D.C. Cir. 1994) (barring untimely attack on procedural genesis of regulations in the context of an enforcement action); *NLRB Union v. FLRA*, 834 F.2d 191, 195-97 (D.C. Cir. 1987) (summarizing circuit law regarding challenges). See also *Royce International Broadcasting Company*, 26 FCC Rcd 9249, *Memorandum Opinion and Order* (MB 2011) (dismissing petition for reconsideration of a Commission decision affirming a prior Bureau decision where petitioner reiterates arguments already considered and rejected).

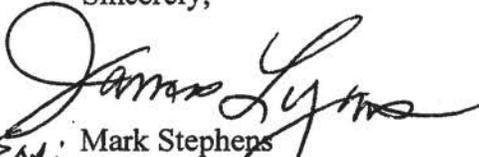
³⁶ *Assessment and Collection of Regulatory Fees for Fiscal Year 1996, Report and Order*, 11 FCC Rcd 18774 (1996).

³⁷ *Assessment and Collection of Regulatory Fees For Fiscal Year 1998, Report and Order*, 12 Comm. Reg (P&F) 392 (1998).

Origination Clause of the Constitution, and the regulatory fees are not a bill for raising revenue.³⁸ Licensees' assertions are meritless, and they waste valuable Commission resources.

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

Sincerely,


FOA: Mark Stephens
Chief Financial Officer

³⁸ *McLeod USA*; see also *Communique Telecommunications, Inc. Memorandum Opinion and Order*, 14 FCC Rcd 13635 (1999).

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

April 16, 2015

Jonathan E. Allen, Esq.
Rini, PC O'Neil
1200 New Hampshire Ave., NW, Ste. 600
Washington, DC 20036

Licensee/Applicant: **SATV10, LLC**
Waiver Request; Financial Hardship
Disposition: **Dismissed and Denied** (47 C.F.R. §
1.1166)
Station: KYVV-TV and auxiliary stations
Fee: Fiscal Year (FY) 2011 Regulatory Fees
Date Request Filed: Sep. 14, 2011
Fee Control No.: RROG 11-00013871
Regulatory Fees (FY 2011): \$20,950.00
Amount Due: See Fee Filer

Dear Counsel:

This responds to Licensee's *Request*¹ for waiver and deferment² of the required Fiscal Year (FY) 2011 regulatory fees, which Licensee has not yet paid. For the reasons stated below, we dismiss the petition to defer payment, deny the *Request*, and demand immediate payment.

¹ Letter from Jonathan E. Allen, Esq., Rini Coran, PC, 1140 19th Street, N.W., Suite 600, Washington, DC 20036 to FCC, Office of Managing Director, 445 12th St. S.W., Rm 1-A625, Washington, DC 20554 (Attn: Regulatory Fee Waiver/Reduction Request) (Sep. 14, 2011) (*Letter Request*) with SATV10, LLC, FRN: 0014562839, Licensee of Station KYVV-TV-Del Rio, TX (Facility ID: 55762), Request For Waiver and/or Deferment of FY 2011 Regulatory Fees (*Request*), Attachment A (Fee Filer Detail Report for Auto-Add Fees (*Fee Filer*); Declaration of Barbara Laurence (*Declaration*), Exhibit A-Financial Documentation (Accountants' Compilation Statement (*Compilation Statement*), SATV 10, LLC, Debtor in Possession Balance Sheet as of April 30, 2011 (*Balance Sheet*), Statement of Operations (*Statement of Operations*), and Schedule of Operating Expenses (*Schedule of Operating Expenses*). Licensee's *Request* submitted to the Office of the Managing Director fails to comply with the Commission's rule set forth at 47 C.F.R. § 1.1166(a)(2) that requires an applicant to file such matters with the Secretary. 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. 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.").

² Licensee's request "to the extent necessary, [to] defer[] payment of the[]fees" does not comply with 47 C.F.R. § 1.1166(c), which provides, "[w]aiver requests that do not include the required fee ... will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship (emphasis added)." Instead of submitted a separate petition to defer payment, Licensee added in a brief penultimate paragraph to its *Request* a single sentence that the "public interest would be served by granting the deferral."

Background

On September 14, 2011, the day the fee was due,³ Licensee filed its *Request* that we waive station KYVV-TV's annual regulatory fee (and grant deferral of payment) on the ground that Licensee suffers severe financial hardship as evidenced by attached financial documentation.⁴ Licensee asserts, on January 30, 2009, it filed a voluntary petition for reorganization under Chapter 11 in the United States Bankruptcy Court, Southern District of New York. Thereafter, on March 6, 2009, Licensee applied to assign the license to SATV10, LCC, Debtor-in-Possession, and on November 15, 2010, it applied to have the license assigned from SATV10, LCC, Debtor-in-Possession to Licensee. The Commission approved each assignment.⁵

Licensee asserts, waiver of the "FY 2011 regulatory fees would serve the public interest by permitting Licensee to allocate the amount it would [pay in] FCC fees toward operation of the station's digital facilities. The financial hardship that Licensee currently experiences prevents payment of regulatory fees."⁶ Further, Licensee asserts, "[t]he station has faced acute financial challenges in post-bankruptcy operations. Severe financial constraints have limited station revenues,"⁷ and it "continues to actively negotiate to obtain financing for construction and facilities changes [to] help improve service to the public [and] improve cash flow and overall financial position."⁸ Licensee points to its debtor-in-possession "balance sheet ... as of April 30, 2011 ... indicat[ing] that over the reporting period ... liabilities ... are exceeded by its total assets ... but that the vast majority of such assets ... are tied up in the station's property and equipment."⁹ Moreover, Licensee asserts "[t]he station is heavily encumbered by debt, as demonstrated by the amounts of the notes payable ... associated with Debtor in Possession Financing."¹⁰ Licensee continues, the station "generate[d] limited advertising revenue relative to the costs of operating the station, and for a portion of the reporting period, the station was in bankruptcy."¹¹ Licensee's *Declaration* asserts, "licensee emerged from bankruptcy a few months [before September 14, 2011, the date of the *Declaration*] and accordingly has had insufficient opportunities to implement day-to-day operations and programming sufficient to generate significant revenues."¹²

Licensee attaches a *Balance Sheet, Statement of Operations, and Schedule of Operating Expenses* reporting information as of April 30, 2011, and December 31, 2010, pertaining to SATV 10, LLC, Debtor-in-Possession. Licensee also included the accountants' *Compilation Statement* that declares, the "balance sheet" and "related statement of operation" of SATV 10,

³ See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time (ET), Public Notice, DA 11-1450, 26 FCC Rcd 11379 (2011).

⁴ See *Request, Declaration, Compilation Statement, Balance Sheet, Statement of Operations, and Schedule of Operating Expenses.*

⁵ *Request* at 2.

⁶ *Request* at 2.

⁷ *Id.* at 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Declaration* at 1.

LLC, Debtor-in-Possession were “not audited or reviewed ... accordingly [the accountants] do not express an opinion or provide any assurance about whether the financial statements are in accordance with accounting principles generally accepted in the United States of America.”¹³ Furthermore, the accountants aver, “Management has elected to omit a statement of members’ capital, a statement of cash flows and substantially all of the disclosures required by accounting principles generally accepted in the United States of America. If the omitted statements and disclosures were included in the financial statements, they might influence the user’s conclusions about the Company’s financial position and results of operations.”¹⁴ Emphasis added.

Finally, Licensee “also requests deferral of the regulatory fees ... to the extent such deferral is necessary. The purpose of requesting ... deferral is to avoid ... penalties for failure to timely pay the regulatory fees. Given the likelihood of success of this petition, combined with the financial hardship that imposition of the regulatory fees would impose, the public interest would be served by granting the deferral.”¹⁵

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.¹⁶ In particular, 47 C.F.R. § 1.1166 provides, “[t]he fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.” 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.¹⁷ Fee relief may be granted based on a “sufficient showing of financial hardship.”¹⁸ “Mere allegations or documentation of financial loss, standing alone,” do not suffice, and “it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public.”¹⁹ 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

¹³ *Compilation Statement*.

¹⁴ *Id.*

¹⁵ *Request at 4.*

¹⁶ 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*).

¹⁷ 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.”).

¹⁸ 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*).

¹⁹ *Id.*

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.²⁰

Furthermore, as 47 C.F.R. § 1.1166(c) provides, “[w]aiver requests that do not include the required fee ... will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.”

An applicant’s verified evidence of bankruptcy is relevant;²¹ 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.”²² Thus, an applicant must present “extraordinary and compelling circumstances showing that a waiver ... would override the public interest” in collecting the fee,²³ and we analyze the facts of each case to determine whether the applicant has satisfied both prongs of the Commission’s standard, financial hardship and extraordinary²⁴ and compelling circumstances²⁵ showing waiver is justified.²⁶

The bankruptcy proceeding and the applicant’s place therein is established with verified court records, such as, in a reorganization under Chapter 11 of the Bankruptcy Code, copies of the relevant filings, forms, and evidence the trustee or debtor-in-possession has complied with its required duties²⁷ by including court filed financial reports.²⁸ Relevant to this request is the purpose of a Chapter 11 proceeding, which is to restructure the debtor’s obligations and allow its business to continue successfully after confirmation.²⁹ The bankruptcy process that begins with

²⁰ *Id.*

²¹ *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.”).

²² 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.”).

²³ 47 U.S.C. § 159(d) (“The Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest.”); 47 C.F.R. § 1.1166 (“fee ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.”). *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12.

²⁴ 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”).

²⁵ *Id.* (compelling-“something so great that irreparable harm or injustice would result if not met”).

²⁶ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

²⁷ *See* 11 U.S.C. § 521.

²⁸ 11 U.S.C. §§ 1106, 1107, 1166; Fed. R. Bnkr. P., Rule 1007.

²⁹ *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203 (1983); *In re Lee Min Ho Chen*, 482 B.R. 473, 478 (D. Puerto Rico, Bkrtcy, 2012), *In re Gyro-Trac (USA), Inc.*, 441 B.R. 470, 479 (D.S.C. Bkrtcy, 2010).

filing a petition and an automatic stay and continues until confirmation of the plan, provides breathing room for a business to recoup, evaluate, and deal with creditors. During the process, the debtor operates the business as a debtor-in-possession or under the direction of a trustee, and pays current obligations. The debtor also develops a plan dealing with creditors, and it projects post-confirmation operations. Relevant to post-petition and post-confirmation operations are court-filed financial documents, including, *e.g.*, a statement of financial affairs, monthly operating reports, the plan,³⁰ and a disclosure statement with debtor's plan for the business going forward that has timely and accurate financial information with projections.³¹ Consistent with our standards, an applicant seeking a waiver post-petition and post-confirmation must include relevant financial documentation, such as the plan reflecting debtor-applicant's reasonable financial projections, including the annual regulatory fees.³²

Discussion

Licensee exited bankruptcy, and now it is operating under the terms of a confirmed plan. Although Licensee failed to include with the *Request* relevant court records (*e.g.*, a statement of financial affairs, monthly operating reports, the plan,³³ and a disclosure statement with debtor's plan for the business going forward that has timely and accurate financial information with projections³⁴), from an exhibit to the assignment application from SATV10, LLC Debtor-in-Possession to Licensee,³⁵ we note their existence. Licensee should have, but failed to include copies of that financial information, which is relevant to our determinations in both the required (but unfiled) separate Petition to Defer Payment and the *Request*. Below, we discuss problems with Licensee's submission, the relevance of the missing information, and consequences for failing to submit the documentation.

First, because Licensee did not pay the required annual regulatory fee, under 47 C.F.R. § 1.1166, it must file a separate "petition to defer payment due to financial hardship, supported by documentation of the financial hardship" showing "good cause" and that "deferral of the fee would promote the public interest."³⁶ Here, Licensee did not file a separate petition to defer payment, rather it made a superficial offering, "to the extent ... deferral is necessary," supported only with the assertion that "the likelihood of success of this petition, combined with the financial hardship ... the ... fees would impose, the public interest would be served." This is not a separate petition to defer payment supported by appropriate documentation, thus Licensee

³⁰ 11 U.S.C. § 1129.

³¹ See *e.g.*, 11 U.S.C. §§ 1125, 1129; see also *In re Ferguson*, 474 B.R. 466, 476 (D. S.C. Bkrtcy, 2012) ("to satisfy the requirements of adequate information under [11 U.S.C.] § 1125, a disclosure statement must contain the necessary financial information, data, and projections").

³² See *In re Idearc, Inc.*, 423 B.R. 138, 167 (N.D. Tx. Bkrtcy, 2009) ("To establish the feasibility of a plan, the debtor must present proof through reasonable projections that there will be sufficient cash flow to fund the plan. Such projections cannot be speculative, conjectural or unrealistic.").

³³ 11 U.S.C. § 1129.

³⁴ See *e.g.*, 11 U.S.C. §§ 1125, 1129; see also *In re Ferguson*, 474 B.R. 466, 476 (D. S.C. Bkrtcy, 2012) ("to satisfy the requirements of adequate information under [11 U.S.C.] § 1125, a disclosure statement must contain the necessary financial information, data, and projections").

³⁵ FCC 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License, File No.: BALCDT-20101115FKN (Nov. 15, 2010).

³⁶ 47 C.F.R. § 1.1166.

Jonathan E. Allen, Esq.

misses the mark, so we may dismiss; however, even construing this as a petition to defer, Licensee fails to show both good cause and that deferral would promote the public interest.

Licensee wraps its justification for deferral with a mere statement of perception that it will succeed with the petition, and an assertion of financial hardship. We discount Licensee's perception of success, because that is not part of the standard, and after looking to Licensee's thin financial information, we find it fails to meet requirements. In particular, the financial information is insufficient because (a) it is from the debtor-in-possession, not Licensee,³⁷ (b) it is materially incomplete as noted in the accountants' admonishment (*e.g.*, management "omitted statements and disclosures [that] might influence the user's conclusions about the Company's financial position and results of operations,"³⁸ (c) it is materially incomplete in failing to include relevant financial documentation, and (d) it provides evidence that assets available to the debtor-in-possession and now, Licensee, exceed total liabilities. The first of these two deficiencies are self-explanatory, *i.e.*, Licensee did not relate the debtor-in-possession's financial information to Licensee's financial status, and the debtor-in-possession's accountant warns that the information is materially incomplete. In addition to the accountants' warning, Licensee's submission is incomplete because Licensee failed to include the statement of financial affairs, monthly operating reports, plan,³⁹ and disclosure statement with the debtor's plan for the business going forward. This information is necessary to explain how Licensee is unable to meet the anticipated expenditure for annual regulatory fees that were or should have been itemized in the plan and disclosure statement. Furthermore, such documentation is necessary to explicate post-petition and post-confirmation financing, current expenses, and changes between projected and actual financing. Without this information, Licensee is unable to demonstrate how payment of the regulatory fee presents a financial hardship. Finally, Licensee's financial information shows it has the necessary assets to fund the fee. For these reasons, we dismiss the petition to defer, and from that, we may dismiss or deny the *Request*.

Next, in the alternative, Licensee's submission fails to establish a "compelling case of financial hardship"⁴⁰ that would "override the public interest in reimbursing the Commission for its regulatory costs"⁴¹ and where the "impact of the regulatory fee will affect [Licensee's] ability to serve the public."⁴²

As noted in our review of the petition to defer payment, the accountants' warn that the "balance sheet" and "related statement of operation" were "not audited or reviewed ... accordingly [accountants] do not express an opinion or provide any assurance about whether the financial statements are in accordance with accounting principles,"⁴³ and that omissions of "a statement of members' capital, a statement of cash flows and substantially all of the disclosures required by accounting principles ... might influence ... conclusions about the ... financial

³⁷ Licensee failed to connect the debtor-in-possession's financials with Licensee's business operation (up to September of 2011) and its financial information, including post-bankruptcy financing and the required disclosure information.

³⁸ *Compilation Statement*.

³⁹ 11 U.S.C. § 1129.

⁴⁰ *1994 Report and Order*, 9 FCC Rcd 5333, 5344, ¶ 29, 5346, ¶ 35.

⁴¹ *Id.*

⁴² *FY 1994 MO&O*, 10 FCC Rcd 12759, 12761, ¶ 12 (1995).

⁴³ *Compilation Statement*.

position and results of operations.”⁴⁴ This casts doubt on both the relevance and weight of Licensee’s documentation, and it leaves in place an obstacle to a finding that on this information, the public interest is served in waiving and deferring payment.

Moreover, Licensee presents its *Request* after emerging from bankruptcy with an approved plan. As such, without satisfactory clarification to the contrary, we presume that in the bankruptcy proceeding the debtor-in-possession submitted a business plan that included expected expenses, such as the regulatory fee due each year, projected revenues and financing, and a business plan.⁴⁵ When the debtor-in-possession emerged from bankruptcy and Licensee assumed operations it should have resolved the matters Licensee now characterizes in vague terms as “financial hardship ... prevent[ing] payment,”⁴⁶ “acute financial challenges in post-bankruptcy operations [and] financial constraints ... limit[ing] station revenues,”⁴⁷ and efforts “to actively ... obtain financing for construction and facilities changes.”⁴⁸ Moreover, Licensee failed to relate its post-bankruptcy business plan to the circumstances under which “[t]he station is heavily encumbered by debt”⁴⁹ or that the station “generate[d] limited advertising revenue relative to the costs of operating the station, and for a portion of the reporting period, the station was in bankruptcy.”⁵⁰

Thus, we deny the *Request* because Licensee failed to carry its burden⁵¹ of demonstrating “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.”⁵²

Licensee also requests confidential treatment of the material submitted with its *Request*. Under 47 C.F.R. §0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records; however, in the meantime, we treat the records confidentially. If we receive a request for access to the information submitted in

⁴⁴ *Id.*

⁴⁵ See 11 U.S.C. §§ 1125, 1129; *In re Ferguson*, 474 B.R. 466, 476 (D. S.C. Bkrtcy, 2012) (“to satisfy the requirements of adequate information under [11 U.S.C.] § 1125, a disclosure statement must contain the necessary financial information, data, and projections ...”); *In re Idearc, Inc.*, 423 B.R. 138, 167 (N.D. Tx. Bkrtcy, 2009) (“To establish the feasibility of a plan, the debtor must present proof through reasonable projections that there will be sufficient cash flow to fund the plan. Such projections cannot be speculative, conjectural or unrealistic.”).

⁴⁶ *Request* at 2.

⁴⁷ *Id.* at 3.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

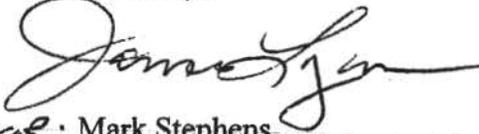
⁵² Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice of Proposed Rulemaking*, 18 FCC Rcd 6085, 6090, ¶ 11 (2003) (“Although fee waivers will generally be given in cases of financial hardship, we nevertheless note that even under our current policies, in some circumstances a significant 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.”); *1994 Report and Order*, 9 FCC Rcd at 5344; *FY 1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13; see *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) (“petitioner . . . has the ‘burden of clarifying its position’ before the agency.”); see also 47 C.F.R. § 1.65 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

Jonathan E. Allen, Esq.

conjunction with Licensee's *Request*, at that time, we will notify Licensee and provide it the opportunity to respond.

Payment of Licensee's FY 2011 regulatory fee is now due, and that amount must be received, together with a Form 159,⁵³ within 30 days of the date of this letter. If Licensee's full payment of that amount is not received by that date, any unpaid portion of the debt will be delinquent, and such amount, we will assess the statutory penalty of 25% of the unpaid fee,⁵⁴ and assess interest and applicable additional penalties and charges required by 31 U.S.C. § 3717(e) that will accrue from the date of this letter. Furthermore, under the law,⁵⁵ the Commission will initiate collection proceedings. 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

⁵³ See Fee Filer.

⁵⁴ 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.").

⁵⁵ See 47 C.F.R. § 1.1901, *et seq.*

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

April 16, 2015

Jonathan E. Allen, Esq.
Rini, O'Neil, PC
1200 New Hampshire Ave., NW, Ste. 600
Washington, DC 20036

Licensee/Applicant: **SATV10, LLC**
Waiver Request; Financial Hardship
Disposition: **Dismissed and Denied** (47 C.F.R. §
1.1166)
Station: KYVV-TV and auxiliary stations
Fee: Fiscal Year (FY) 2012 Regulatory Fees
Date Request Filed: Sep. 13, 2012
Fee Control No.: RROG 12-00014809
Regulatory Fees (FY 2012): \$21,925.00
Amount Due: See Fee Filer

Dear Counsel:

This responds to Licensee's *Request*¹ for waiver and deferment² of the required Fiscal Year (FY) 2012 regulatory fees, which Licensee has not yet paid. For the reasons stated below, we dismiss the petition to defer payment, deny the *Request*, and demand immediate payment.

¹ Letter from Jonathan E. Allen, Esq., Rini Coran, PC, 1140 19th Street, N.W., Suite 600, Washington, DC 20036 to FCC, Office of Managing Director, 445 12th St. S.W., Rm 1-A625, Washington, DC 20554 (Attn: Regulatory Fee Waiver/Reduction Request) (Sep. 13, 2012) (*Letter Request*) with SATV10, LLC, FRN: 0014562839, Licensee of Station KYVV-TV-Del Rio, TX (Facility ID: 55762), Request For Waiver and/or Deferment of FY 2012 Regulatory Fees (*Request*), Attachment A (Fee Filer Confirmation Report, Attachment B, Declaration of Scott Zemnack, General Counsel of Beam Tilt, LLC, managing member of SATV10, LLC (*Declaration*), Exhibit A to Declaration of Scott Zemnack: Financial Documentation, Employees (*Chart*), 2011 Partnership Return IRS Form 8879-PE for Calendar Year 2011 with Form 1065 (*2011 Tax Form*), and SATV Start-Up Expenditures (*Expense Spreadsheet*). Licensee's *Request* submitted to the Office of the Managing Director fails to comply with the Commission's rule set forth at 47 C.F.R. § 1.1166(a)(2) that requires an applicant to file such matters with the Secretary. 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. 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.")

² Licensee's request "to the extent necessary, [to] defer[] payment of the[]fees" does not comply with 47 C.F.R. § 1.1166(c), which provides, "[w]aiver requests that do not include the required fee ... will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship (emphasis added)." Instead of submitted a separate petition to defer payment, Licensee added in a brief penultimate paragraph to its *Request* a single sentence that the "public interest would be served by granting the deferral."

Moreover, Licensee explains the “officers have received no compensation in 2012[, and the] company’s gross monthly expense for salaries and wages was \$1,250 for the first eight months of 2012.”¹² Licensee, however, fails to include a balance sheet, profit and loss statement (audited, if available), or a cash flow projection for the next twelve months, or any of the financial documentation that was filed with the bankruptcy proceeding.

Finally, Licensee “also requests deferral of the regulatory fees ... to the extent such deferral is necessary. The purpose of requesting ... deferral is to avoid ... penalties for failure to timely pay the regulatory fees. Given the likelihood of success of this petition, combined with the financial hardship that imposition of the regulatory fees would impose, the public interest would be served by granting the deferral.”¹³

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.¹⁴ In particular, 47 C.F.R. § 1.1166 provides, “[t]he fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.” 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.¹⁵ Fee relief may be granted based on a “sufficient showing of financial hardship.”¹⁶ “Mere allegations or documentation of financial loss, standing alone,” do not suffice, and “it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public.”¹⁷ 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-

¹² Declaration 2.

¹³ Request at 4.

¹⁴ 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).

¹⁵ 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.”).

¹⁶ 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).

¹⁷ *Id.*

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.¹⁸

Furthermore, as 47 C.F.R. § 1.1166(c) provides, “[w]aiver requests that do not include the required fee ... will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.”

An applicant’s verified evidence of bankruptcy is relevant;¹⁹ 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.”²⁰ Thus, an applicant must present “extraordinary and compelling circumstances showing that a waiver ... would override the public interest” in collecting the fee,²¹ and we analyze the facts of each case to determine whether the applicant has satisfied both prongs of the Commission’s standard, financial hardship and extraordinary²² and compelling circumstances²³ showing waiver is justified.²⁴

The bankruptcy proceeding and the applicant’s place therein is established with verified court records, such as, in a reorganization under Chapter 11 of the Bankruptcy Code, copies of the relevant filings, forms, and evidence the trustee or debtor-in-possession has complied with its required duties²⁵ by including court filed financial reports.²⁶ Relevant to this request is the purpose of a Chapter 11 proceeding, which is to restructure the debtor’s obligations and allow its business to continue successfully after confirmation.²⁷ The bankruptcy process that begins with filing a petition and an automatic stay and continues until confirmation of the plan, provides breathing room for a business to recoup, evaluate, and deal with creditors. During the process,

¹⁸ *Id.*

¹⁹ *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.”).

²⁰ 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.”).

²¹ 47 U.S.C. § 159(d) (“The Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest.”); 47 C.F.R. § 1.1166 (“fee ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.”). *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12.

²² 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”).

²³ *Id.* (compelling-“something so great that irreparable harm or injustice would result if not met”).

²⁴ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

²⁵ *See* 11 U.S.C. § 521.

²⁶ 11 U.S.C. §§ 1106, 1107, 1166; Fed. R. Bkr. P., Rule 1007.

²⁷ *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203 (1983); *In re Lee Min Ho Chen*, 482 B.R. 473, 478 (D. Puerto Rico, Bkrcty, 2012), *In re Gyro-Trac (USA), Inc.*, 441 B.R. 470, 479 (D.S.C. Bkrcty, 2010).

the debtor operates the business as a debtor-in-possession or under the direction of a trustee, and pays current obligations. The debtor also develops a plan dealing with creditors, and it projects post-confirmation operations. Relevant to post-petition and post-confirmation operations are court-filed financial documents, including, *e.g.*, a statement of financial affairs, monthly operating reports, the plan,²⁸ and a disclosure statement with debtor's plan for the business going forward that has timely and accurate financial information with projections.²⁹ Consistent with our standards, an applicant seeking a waiver post-petition and post-confirmation must include relevant financial documentation, such as the plan reflecting debtor-applicant's reasonable financial projections, including the annual regulatory fees.³⁰

Discussion

Licensee exited bankruptcy under the terms of a confirmed plan, and it appears from its submission that it is conducting business.³¹ Although Licensee failed to include with the *Request* relevant court records (*e.g.*, a statement of financial affairs, monthly operating reports, the plan,³² and a disclosure statement with debtor's plan for the business going forward that has timely and accurate financial information with projections³³), from an exhibit to the assignment application from SATV10, LLC Debtor-in Possession to Licensee,³⁴ we note their existence. Licensee should have, but failed to include copies of that financial information, which is relevant to our determinations in both the required (but unfiled) separate Petition to Defer Payment and the *Request*. Below, we discuss problems with Licensee's submission, the relevance of the missing information, and consequences for failing to submit the documentation.

First, because Licensee did not pay the required annual regulatory fee, under 47 C.F.R. § 1.1166, it must file a separate "petition to defer payment due to financial hardship, supported by documentation of the financial hardship" showing "good cause" and that "deferral of the fee would promote the public interest."³⁵ Here, Licensee did not file a separate petition to defer payment, rather it made a superficial offering, "to the extent ... deferral is necessary," supported only with the assertion that "the likelihood of success of this petition, combined with the financial hardship ... the ... fees would impose, the public interest would be served."³⁶ This is not a separate petition to defer payment supported by appropriate documentation, thus Licensee

²⁸ 11 U.S.C. § 1129.

²⁹ See *e.g.*, 11 U.S.C. §§ 1125, 1129; see also *In re Ferguson*, 474 B.R. 466, 476 (D. S.C. Bkrtcy, 2012) ("to satisfy the requirements of adequate information under [11 U.S.C.] § 1125, a disclosure statement must contain the necessary financial information, data, and projections").

³⁰ See *In re Idearc, Inc.*, 423 B.R. 138, 167 (N.D. Tx. Bkrtcy, 2009) ("To establish the feasibility of a plan, the debtor must present proof through reasonable projections that there will be sufficient cash flow to fund the plan. Such projections cannot be speculative, conjectural or unrealistic.").

³¹ See Expense Spreadsheet.

³² 11 U.S.C. § 1129.

³³ See *e.g.*, 11 U.S.C. §§ 1125, 1129; see also *In re Ferguson*, 474 B.R. 466, 476 (D. S.C. Bkrtcy, 2012) ("to satisfy the requirements of adequate information under [11 U.S.C.] § 1125, a disclosure statement must contain the necessary financial information, data, and projections").

³⁴ FCC 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License, File No.: BALCDT-20101115FKN (Nov. 15, 2010).

³⁵ 47 C.F.R. § 1.1166.

³⁶ *Request* at 4.

misses the mark, so we may dismiss; however, even construing this as a petition to defer, Licensee fails to show both good cause and that deferral would promote the public interest.

Licensee wraps its justification for deferral with a mere statement of perception that it will succeed with the petition, and an assertion of financial hardship. We discount Licensee's perception of success, because that is not part of the standard, and after looking to Licensee's thin financial information,³⁷ we find it fails to meet requirements. In particular, the financial information is insufficient because (a) it is a partnership income tax return for an investment business activity providing a broadcast television service, and not an accurate picture of Licensee's business activities,³⁸ (b) it omits detailed financial information presented to the bankruptcy court that led to the confirmed plan, *e.g.*, a statement of financial affairs, confirmation plan,³⁹ and disclosure statement with the debtor's plan for the business going forward, and (c) it omits reporting the partners' financial resources available to sustain the business operation.

This information is necessary to explain how Licensee is unable now to meet the anticipated expenditure for annual regulatory fees that were or should have been itemized in the plan and disclosure statement. Licensee builds its *Request* on frail unsupported claims of financial hardship. Indeed, Licensee asserts, "acute financial challenges in ... post-bankruptcy operations ... while simultaneously seeking new sources of funds."⁴⁰ Moreover, Licensee asserts that its "balance sheet demonstrates the company's severe financial difficulties."⁴¹ That is insufficient. First, Licensee fails to explain the nature of the so-called acute financial challenges in post-bankruptcy operations, and the extent to which the plan and disclosure statement with projected expenses failed to address these matters. Next, Licensee fails to include its balance sheet or other relevant documentation, rather Licensee provides a partnership tax return reporting a loss distributed to the several partners.

The missing documentation is necessary to explicate post-petition and post-confirmation financing, current expenses, and changes between projected and actual financing. Without this information, Licensee is unable to demonstrate how payment of the regulatory fee presents a financial hardship. Finally, Licensee's financial information shows the entity's total assets exceed the total of the long-term "mortgages, notes, bonds" reported on the partnership Form 1065. Without satisfactory explanation to the contrary, we conclude the post-bankruptcy financing referred to on the Form 1065 is intended to satisfy operational expenses and the payment of fees. For these reasons, we dismiss the petition to defer, and from that, we may dismiss or deny the *Request*.

³⁷ As we note earlier, the financial information consists of the *Declaration*, the *Chart* reporting monthly payment to three employees monthly payments (chart) and the 2011 Tax Return that shows the partnership had a business loss realized from depreciation and certain itemized deductions.

³⁸ Licensee failed to connect the debtor-in-possession's financials with Licensee's business operation (up to September of 2011) and its financial information, including post-bankruptcy financing and the required disclosure information.

³⁹ 11 U.S.C. § 1129.

⁴⁰ *Request* at 3.

⁴¹ *Id.*

Next, in the alternative, Licensee's submission fails to establish a "compelling case of financial hardship"⁴² that would "override the public interest in reimbursing the Commission for its regulatory costs"⁴³ and where the "impact of the regulatory fee will affect [Licensee's] ability to serve the public."⁴⁴

As noted in our review of the petition to defer payment, Licensee fails to provide relevant financial information and to explain the assertions of hardship in matters that were or should have been identified, discussed, and resolved before the plan was confirmed.

Licensee asserts it is in a post-bankruptcy operation; however, Licensee fails to provide relevant details. Licensee fails to present any measure of a satisfactory clarification of how Licensee's operation deviates from financial projections in the disclosure statement and business plan and the terms the confirmed plan. We anticipate that the business plan submitted to the bankruptcy court included expected expenses, such as the regulatory fee due each year, projected revenues and financing, and a business plan.⁴⁵ When Licensee emerged from bankruptcy and began operations it should have resolved matters Licensee now characterizes in vague terms as "financial hardship mak[ing] payment ... unduly burdensome,"⁴⁶ "acute financial challenges in post-bankruptcy operations,"⁴⁷ and efforts "seeking new sources of funds."⁴⁸ Moreover, Licensee failed to relate its post-bankruptcy business plan to the circumstances under which "[t]he station is heavily encumbered by debt."⁴⁹

Thus, we deny the *Request* because Licensee failed to carry its burden⁵⁰ of demonstrating "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."⁵¹

⁴² 1994 Report and Order, 9 FCC Rcd 5333, 5344, ¶ 29, 5346, ¶ 35.

⁴³ *Id.*

⁴⁴ FY 1994 MO&O, 10 FCC Rcd 12759, 12761, ¶ 12 (1995).

⁴⁵ See 11 U.S.C. §§ 1125, 1129; *In re Ferguson*, 474 B.R. 466, 476 (D. S.C. Bkrtcy, 2012) ("to satisfy the requirements of adequate information under [11 U.S.C.] § 1125, a disclosure statement must contain the necessary financial information, data, and projections ..."); *In re Idearc, Inc.*, 423 B.R. 138, 167 (N.D. Tx. Bkrtcy, 2009) ("To establish the feasibility of a plan, the debtor must present proof through reasonable projections that there will be sufficient cash flow to fund the plan. Such projections cannot be speculative, conjectural or unrealistic.").

⁴⁶ *Request* at 2.

⁴⁷ *Id.* at 3.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

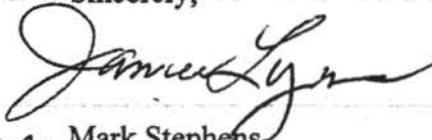
⁵¹ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice of Proposed Rulemaking*, 18 FCC Rcd 6085, 6090, ¶ 11 (2003) ("Although fee waivers will generally be given in cases of financial hardship, we nevertheless note that even under our current policies, in some circumstances a significant 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."); 1994 Report and Order, 9 FCC Rcd at 5344; FY 1994 MO&O, 10 FCC Rcd at 12761-62, ¶ 13; see *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner ... has the 'burden of clarifying its position' before the agency."); see also 47 C.F.R. § 1.65 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

Jonathan E. Allen, Esq.

Licensee also requests confidential treatment of the material submitted with its *Request*. Under 47 C.F.R. §0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records; however, in the meantime, we treat the records confidentially. If we receive a request for access to the information submitted in conjunction with Licensee's *Request*, at that time, we will notify Licensee and provide it the opportunity to respond.

Payment of Licensee's FY 2012 regulatory fee is now due, and that amount must be received, together with a Form 159,⁵² within 30 days of the date of this letter. If Licensee's full payment of that amount is not received by that date, any unpaid portion of the debt will be delinquent, and such amount, we will assess the statutory penalty of 25% of the unpaid fee,⁵³ and assess interest and applicable additional penalties and charges required by 31 U.S.C. § 3717(e) that will accrue from the date of this letter. Furthermore, under the law,⁵⁴ the Commission will initiate collection proceedings. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



MSR: Mark Stephens
Chief Financial Officer

⁵² See Fee Filer.

⁵³ 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.").

⁵⁴ See 47 C.F.R. § 1.1901, *et seq.*