FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
FEB 24 2016

OFFICE OF
MANAGING DIRECTOR

Lawrence Rogow, Vice President
World Television
4164 Meridian Street, Suite 102
Bellingham, WA 98226

Licensee/Applicant: **World Television of Washington, LLC**
Waiver and Refund of Regulatory Fees
Disposition: **Dismissed and Denied** (47 U.S.C. § 159(d); 47 C.F.R. §§ 0.401, 1.3, 1.7, 1.1160, and 1.1166)
Station: KBCB, Channels 19 & 24, Facility ID 53586
Fee: Fiscal Year (FY) 2015 Regulatory Fees
Date Request Submitted: Oct. 13, 2015
Date Regulatory Fees Paid: Sep. 17, 2015
Fee Control No.: RROG-15-00016091

Dear Mr. Rogow:

This responds to Licensee's *Request*[1] for a partial refund of its 2015 regulatory fees paid for station KBCB, Bellingham, Washington, because the "Grade B contour service area can only be received by 969,386 persons within the Seattle-Tacoma DMA … just 20% of the Seattle – Tacoma DMA populace," hence Licensee should pay a reduced fee comparable to a smaller DMA market. Because Licensee's submission fails to comply with the Commission's filing procedures, we dismiss, and, in the alternative, because Licensee fails to demonstrate that the fee paid is excessive or to demonstrate that the Commission should waive or reduce the total fee, we deny the *Request*.

Background

On October 13, 2015, Licensee submitted to the Commission's Office of the Managing Director its *Request* asserting, in relevant part, that it "is licensed to Bellingham, Washington, which is part of the Seattle-Tacoma Designated Market Area (DMA) and was assessed a

[1] Letter from Lawrence Rogow, Vice President, World Television of Washington, LLC, 4164 Meridian Street, Suite 102, Bellingham, WA 98226 to Federal Communications Commission, Office of the Managing Director, FCC, 455 12th St., S.W., Rm 1-A625, Washington, DC 20554, Attn: Regulatory Fee Waiver/Reduction Request (Oct.13, 2015) (*Request*) with Attachment A (Fee Filer)(9/17/2015), Attachment B (WA Bellingham KBCB Coverage Map CA, 2010 Census), Attachment C (Seattle-Tacoma, WA Demographic and Economic Summary), Attachment D (Champaign-Springfield-Decatur, IL, Demographic and Economic Summary). Licensee's submission to the Office of the Managing Director, Room 1-A625, does not comply with the Commission's rule requiring filing with the Commission's Secretary (47 C.F.R. § 1.1166(a)(2)).

regulatory fee of $43,200 … [h]owever, [Licensee's city] is in the far northern end of the Seattle-Tacoma DMA and due to this location, [Licensee's] signal cannot be received over-the-air in either Seattle or Tacoma. In fact, as illustrated in [Licensee's] Grade B contour map … KBCB's Grade B service area can only be reached by 969,386 persons within the Seattle-Tacoma DMA. … the [Licensee's] over-the-air signal reaches just 20% of the Seattle-Tacoma DMA populace. …. [Licensee] believes that circumstances dictate that [its] regulatory fees be adjusted in accordance with the 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 (1995) [(*1994 MO&O*)], paras. 21-22, as there are … 381,231 television households within the Grade B service area[, hence Licensee] is serving a much smaller than Savannah, GA, DMA … Stations in markets 51-100 pay a regulatory fee of $16,275, which is $26,925 less than [the amount Licensee] paid."[2]

Standards

The Commission's rules include well established procedures for assessing and collecting annual regulatory fees, the consequences for failing to make timely complete payment, the procedures for submitting petitions to defer payment and to petition for waivers, reductions, and refunds, and procedures for filing.[3] Licensees are expected to know these rules and procedures,[4] and the consequences for non-compliance.

The *1994 MO&O*, relied on by Licensee, discusses then-relevant circumstances upon which a licensee may apply for a reduction of its regulatory fee. Specifically, in the *1994 MO&O*, the Commission opined that a licensee of a UHF station, lacking network affiliation, operating in a large market, not providing a signal to a substantial portion of DMA, and not carried by cable systems serving the DMA principal metropolitan areas, may apply to the Managing Director for a reduction of the fee. Thereafter, the Managing Director, under delegated authority, will determine if the station with these characteristics demonstrates it should be charged a fee "based on the number of television households served, and it will be charged the same fee as stations serving markets with the same number of television households" using information derived from "the Arbitron [now A.C. Nielsen] market data in the [Nielsen Station Index Directory and Nielsen Station Index US Television Household Estimates or any successor publications]."[5] These characteristics have changed.

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[2] *Request* at 1-2.

[3] 47 C.F.R. § 1.1166; *see* 47 C.F.R. Part 1, Subpart G.

[4] 47 C.F.R. § 0.406; *see* Life on the Way Communications, Inc., *Forfeiture Order* 30 FCC Rcd 2603, 2607 (2015).

[5] 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, 12763, ¶¶ 21-22 (1995) (*1994 MO&O*); Assessment and Collection of Regulatory Fees for Fiscal Year 1996, *Report and Order*, 11 FCC Rcd 18774, 18786, ¶ 32 (1996) ("We …rely on Nielsen's DMA market rankings … Nielsen data is generally accepted throughout the industry and will be updated and published annually … We will consider the equities concerning the fees of licensees that change markets on a case-by-case basis, upon request, and, where a licensee demonstrates that it does not serve its assigned market, we will consider reducing the assigned fees to a more equitable level, based upon the area actually served by the licensee.").

Relevant to annual regulatory fees, section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, codified at 47 U.S.C. § 534, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(C). Section 76.55(e)(2) of the Commission's rules specifies that a commercial broadcast television station's market is its Designated Market Area (DMA) as determined by Nielsen Media Research and published in its Nielsen Station Index Directory and Nielsen Station Index US Television Household Estimates or any successor publications.[6]

The Commission's rule at 47 C.F.R. § 1.1160(a) provides that a refund of regulatory fees will be made upon request, only in the following instances:

> (1) When no regulatory fee is required or an excessive fee has been paid. In the case of an overpayment, the refund amount will be based on the applicants', permittees', or licensees' entire submission. * * *
> (2) * * *
> (3) When a waiver is granted in accordance with §1.1166.
> * * *
> (d) No refunds will be processed without a written request from the applicant, permittee, licensee or agent.

Under 47 C.F.R. § 1.1166,

> The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. ... (a) ... All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission. ... (2) If no fee payment is submitted, the request should be filed with the Commission's Secretary.

The crux of a request to refund a regulatory fee at § 1.1160 is demonstrating either that an excessive fee has been paid or that the fee should be waived or reduced. As to the latter basis, in certain instances, payment of a regulatory fee may be waived, reduced, or deferred upon a showing of *good cause*[7] and a finding that the *public interest will be served thereby*.[8] The

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[6] 47 C.F.R. § 76.55(e)(2); Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *Report and Order*, 15 FCC Rcd 14478, 14492, ¶ 34 (2000) ("Fees for television stations are based on market size as determined by Nielsen. This is the only consistent source the Commission has for determining which market a station serves.").
[7] 47 C.F.R. § 1.3.
[8] 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5354 ¶ 65 (1994) (*1994 Report and Order*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); Phoenix Broadcasting, Inc. Stations KSWD and KPFN

applicant has the burden of demonstrating relief is warranted,[9] *i.e.*, that special circumstances warrant a deviation from the general rule to collect the regulatory fee, and that the deviation will serve the public interest.[10]

To initiate and complete the filing of such a request, an applicant must follow the Commission's procedures at 47 C.F.R. §§ 0.401, 1.7, and 1.1166 that establish the proper location for filing waiver, reduction, and refund requests and the consequence of dismissal for failing to comply with those rules.[11] The Commission has designated specific offices to receive and process certain matters, thus a request for relief is filed only upon receipt at the location designated by the Commission.[12] As such, under 47 C.F.R. § 1.1166,[13] a petition to waive or reduce a regulatory fee must be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554 by mailing or otherwise delivering a hard copy of the documents to Office of the Secretary.

Discussion

As we discuss below, we dismiss the *Request* because Licensee failed to comply with filing procedures, and, in the alternative, we deny the *Request* because Licensee failed to demonstrate it paid an excessive fee or that its situation warrants a waiver of the fee and a refund.

First, we dismiss the *Request* because Licensee's submission does not comply with Commission's filing procedures. For example, 47 C.F.R. §§ 0.401, 1.7, and 1.1166 establish the proper location for filing waiver and refund requests and the consequence of dismissal for failing to comply with those rules. The Commission has designated specific offices to receive and process certain matters, thus a request for relief is *filed* only upon receipt at the location designated by the Commission.[14] Under 47 C.F.R. §§ 1.1160 and 1.1166,[15] Licensee's request to reduce and refund the fee paid or to waive a portion of the regulatory fee must be *filed* with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554 by mailing or otherwise delivering a hard copy of the documents to Office of the Secretary. Licensee did not deliver its *Request* to the Commission's Office of the Secretary, rather Licensee addressed and mailed it to the Office of the Managing Director at Room 1-A625,

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Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26466, ¶ 5 (2003) (*Phoenix Broadcasting, Inc.*).

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

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

[11] 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 below will be returned to the applicant without processing. When an application or other filing does not involve the payment of a fee, the appropriate filing address or location is established elsewhere in the rules for the various types of submissions made to the Commission."), 1.7 ("pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission").

[12] *Id.*

[13] 47 C.F.R. § 1.1166(a)(2) ("If no fee payment is submitted, the request [for waiver and deferral] should be filed with the Commission's Secretary.").

[14] 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.").

[15] 47 C.F.R. § 1.1166(a)(2).

hence the *Request* was never filed, and it may be dismissed and returned unprocessed.[16] Even so, as a matter of administrative economy, we look to merits of Licensee's *Request*, and, as we discuss next, in the alternative, deny.

Licensee fails to establish it paid an excessive fee.[17] Licensee's fee for a commercial television station is based upon the size of the Nielsen DMA,[18] the fact and procedure for which Licensee neither disputes nor challenges as being erroneous. Rather, the essence of Licensee's *Request* is that a waiver of the determined fee amount is appropriate because the station's over-the-air broadcast signal, as shown from its Grade B contour, reaches a reduced portion of the population of the designated DMA. These circumstances, in Licensee's view, warrant reduction of the regulatory fee based on the Commission's discussion in paragraphs 21 and 22 of *1994 MO&O*. As we discuss next, Licensee's reliance on the *1994 MO&O* is misplaced because Licensee fails to demonstrate that the circumstances described as the grounds for relief in *1994 MO&O* are valid now, that the characteristics enumerated in the *1994 MO&O* apply to Licensee, and that Licensee's payment is excessive.

First, market conditions in the *1994 MO&O* forming the basis for a reduction of the fee are enumerated necessary characteristics. In particular, applicants considered for relief "were generally UHF stations ... lack[ing] network affiliations ... located outside of the principle city's metropolitan area and do not provide a Grade B signal to a substantial portion of the market's metropolitan areas. Often these stations are not carried by cable systems serving the principal metropolitan areas."[19] To show whether a station "serve[s] the principal metropolitan areas within their assigned markets and serve[s]" a particular number of "television households ... [the applicant should present information] derived from the Arbitron market data in the Television and Cable Fact Book."[20]

Over time, however, circumstances existing in 1995 changed. For example, major changes in 1996, 2000, and 2009, set out below, modify the characteristics. Hence, an applicant for relief now must consider and address those relevant changes or invite denial of the relief. Licensee's *Request* fails to align its situation to the characteristics.

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[16] 47 C.F.R. § 0.401.

[17] Consistent with 47 C.F.R. § 1.1160(a)(1), we considered Licensee's entire submission.

[18] 47 U.S.C. § 534(h)(1)(C); 47 C.F.R. § 76.55(e)(2); Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *Report and Order*, 15 FCC Rcd 14478, 14492, ¶ 34 (2000); *see* FY 2001 Mass Media Regulatory Fees, *Public Notice* (Aug. 7, 2001); FY 2002 Media Services Regulatory Fees, *Public Notice* (Aug. 7, 2002), What You Owe-Media Services Licensees For FY 2013, *Regulatory Fees Fact Sheet* (Sep. 5, 2013), What You Owe-Media Services Licensees For FY 2014, *Regulatory Fees Fact Sheet* (Sep. 5, 2014) ("Fees for commercial television stations are based upon the size of the Nielsen Designated Market Area ...."), What You Owe-Media Services Licensees For FY 2015, *Regulatory Fees Fact Sheet* (Sep. 11, 2015) ("Fees for commercial television stations are based upon the size of the Nielsen Designated Market Area ....").

[19] *1994 MO&O*, 10 FCC Rcd at 12763, ¶ 21.

[20] *Id.* at 12763, ¶ 22.

First, the Commission does not rely on Arbitron market data. In 1996, Arbitron market data was replaced by A.C. Nielsen ratings to determine which market a station serves,[21] and thereafter "[f]ees for television stations are based on market size as determined by Nielsen."[22] As to fee determinations, in 1996, the Commission said it would consider cases in which an applicant demonstrated it does not serve its assigned market, however, in 2000, the Commission noted that it "is unaware of the existence of any reliable published source that can identify which television stations are serving small markets at the fringe of larger DMA's."[23] Thus, Licensee must shoulder the heavy burden of establishing that its circumstances fall within these defined limits and that the Nielsen ratings are wrong. The Nielsen rating standard is codified at 47 C.F.R. § 76.55(e)(2), which provides, "[e]ffective January 1, 2000, a commercial broadcast television station's market, unless amended pursuant to § 76.59, shall be defined as its Designated Market Area (DMA) as determined by Nielsen Media Research and published in its Nielsen Station Index Directory and Nielsen Station Index US Television Household Estimates or any successor publications." Annual regulatory fees assessed on commercial television stations licensees are based upon the size of the Nielsen DMA.

Next, the Grade B contour information referenced in the *1994 MO&O*, and relied on by Licensee as authority for a refund, is not relevant to show a station's digital station strength. Grade B contour defines an *analog* television station's service area, *see* 47 C.F.R. § 73.683(a), and with the completion of the full power digital television transition on June 12, 2009, there are *no longer any full power analog stations*. Indeed, Licensee's station is digital. As such, and as set forth in Section 73.622(e), a station's digital (DTV) service area is defined as the area within its noise-limited contour where its signal strength is predicted to exceed the noise-limited service level. *See* 47 C.F.R. § 73.622(e). Accordingly, the Commission has treated a digital station's noise limited service contour as the functional equivalent of an analog station's Grade B contour.[24] Even so, in its *Request*, Licensee fails to include that information or to discuss how it demonstrates the fee determination results in an excessive fee payment.

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[21] Assessment and Collection of Regulatory Fees for Fiscal Year 1996, *Report and Order*, 11 FCC Rcd 18774, 18786, ¶ 32 (1996) ("We ...rely on Nielsen's DMA market rankings ... Nielsen data is generally accepted throughout the industry and will be updated and published annually ... We will consider the equities concerning the fees of licensees that change markets on a case-by-case basis, upon request, and, where a licensee demonstrates that it does not serve its assigned market, we will consider reducing the assigned fees to a more equitable level, based upon the area actually served by the licensee."); Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *Report and Order*, 15 FCC Rcd 14478, 14492, ¶ 34 (2000) (Commission rejected commenter's "argu[ment] that small television stations located near large designated market areas (DMA) are assessed disproportionately high fees because the A.C. Nielsen ratings include them in the DMA but they do not serve households in the DMA. Fees for television stations are based on market size as determined by Nielsen. This is the only consistent source the Commission has for determining which market a station serves.").

[22] Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *Report and Order*, 15 FCC Rcd at 14492, ¶ 34, *supra.*

[23] *Id.* at 14493.

[24] Report to Congress: The Satellite Home Viewer Extension and Reauthorization Act of 2004, Study of Digital Television Field Strength Standards and Testing Procedures, 20 FCC Rcd 19504, 19507, ¶ 3 (2005) (The Grade B signal intensity standard, as set forth in Section 73.683(a) of the Commission's rules, is used to identify a geographic contour that defines an analog television station's service area. For digital television stations, the counterpart to the Grade B signal intensity standards for analog television stations are the values set forth in Section 73.622(e) of the Commission's Rules describing the DTV noise-limited service contour.); Petition for Modification of Dayton, OH

Next, Licensee fails to match its circumstances with either those described in the *1994 MO&O* or in the criteria of the changed market and strength standards. The reason for this omission is apparent; unlike the characteristics described in *1994 MO&O*,[25] Licensee's station is digital, it is affiliated with networks, *i.e.*, the Sonlife Broadcasting Network,[26] ShopHQ,[27] and Estrella TV,[28] it is carried by cable and satellite providers[29] Comcast, Dish Network, and Verizon FiOS, that deliver the station's signal to both Seattle and Tacoma,[30] Washington, its fee is based on the market size determined by the Nielsen ratings, and the Grade B contour information displaying analog strength is not relevant. These differences are material to the *Request*. Because Licensee's signal is carried by cable and satellite providers to the DMA cities[31] Licensee's assertion that the station's "over-the-air signal" reaches "just 20% of the Seattle-Tacoma DMA populace" as illustrated by the Grade B contour data is not material and it is misleading because it fails to provide a complete picture of how the signal reaches viewers. Consequently, not only do the station characteristics not match characteristics in *1994 MO&O*, but also Licensee's Attachment C rebuts Licensee's asserted "over-the-air" constraint by showing that in 2010, Comcast, one of three carriers of Licensee's station, has more than 1 million subscribers just in Seattle and Bellingham. Furthermore, Attachment C shows, in 2010, the combined cable/ADS[32] penetration in the DMA is 93%. Hence, rather than showing reduced coverage, Licensee demonstrates its signal reaches nearly the entire DMA. Furthermore, we note, Licensee's additional material omissions in failing to show its digital over-the-air signal transmission strength, and to relate the data to the Nielsen ratings. Finally, Licensee fails to show that the fee determined from Nielsen ratings is incorrect. The whole of Licensee's *Request* fails to demonstrate the fee paid is excessive.

Finally, even if we construe Licensee's *Request* as seeking a waiver under 47 C.F.R. §1.1166, Licensee fails to establish for a waiver both *good cause*[33] and a finding that the *public interest will be served thereby*.[34] Accordingly, we deny the *Request*.

Designated Market Area With Regard to Television Station WHIO-TV, Dayton, OH, *Memorandum Opinion and Order*, 28 FCC Rcd 16011, 16013, fn 15 (MB 2013).

[25] *1994 MO&O*, 10 FCC Rcd at 12763, ¶ 21.

[26] http://www.stationindex.com/tv/callsign/KBCB.

[27] *See* http://medlibrary.org/medwiki/KBCB.

[28] *See* https://en.wikipedia.org/wiki/List_of_Estrella_TV_affiliates.

[29] *See* fn 30, below.

[30] See http://www.stationindex.com/tv/markets/Seattle-Tacoma; http://www.stationindex.com/tv/markets/Seattle-Tacoma; http://www.makoa.org/jlubin/seattle-channels.htm (Xfinity Channell Line up, Seattle, WA); http://tvlistings.aol.com/listings/wa/seattle/comcast-king-county-south/WA63873%7CX; http://static.king5.com/programming-guide/; http://www.dish-systems.com/dish-local-channels/dish-network-hd-locals-seattle-washington/.

[31] *Id.*

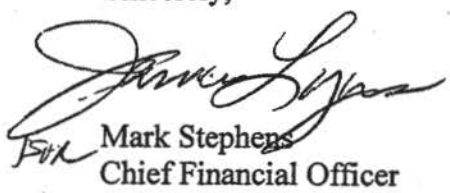
[32] ADS means alternate deliver systems, *e.g.*, satellite, satellite master antenna systems, or multipoint distribution systems.

[33] 47 C.F.R. § 1.3.

[34] 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. *See also 1994 Report and Order*, 9 FCC Rcd at 5354, ¶ 65; *WAIT Radio v. FCC*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166; *Phoenix Broadcasting, Inc., supra*, 18 FCC Rcd at 26466.

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

Sincerely,



For Mark Stephens
Chief Financial Officer