

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

June 29, 1998

OFFICE OF  
MANAGING DIRECTOR

RECEIVED

OCT - 8 1998

Mr. D. Robert Eddy  
President  
Seven Ranges Radio Co., Inc.  
P.O. Box 374  
Greens Run Road  
St. Marys, WV 26170

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Request for Reduction of Regulatory Fees  
Fee Control # 9709238835301002  
Fee Paid: \$850

Dear Mr. Eddy:

This is in response to your request for reduction of the Fiscal Year (FY) 1997 regulatory fees for AM Radio Station WVVW, St. Marys, West Virginia, licensed to Seven Ranges Radio Co., Inc. (Seven Ranges). You argue that WVVW serves a sparsely populated county, that the area is in a recession, and that Seven Ranges cannot afford the regulatory fee. In support of your request you have submitted an Income Statement for Seven Ranges for the period from January 1 through December 31, 1997, and its Income Tax Returns for 1994, 1995 and 1996.

In establishing its regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. Thus, the Commission decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), reconsideration granted, 10 FCC Rcd 12759 (1995).

In determining whether a licensee has sufficient revenues to pay its regulatory fees, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits. Thus, although deductions for amortization and depreciation, which do not affect cash flow, and payments to principals, reduce gross income for tax purposes, those deductions also represent money which is considered to be available to pay the regulatory fee.

The financial statement and tax returns establish that WVVW has been operating at a deficit, that no payments have been made to Seven Ranges' officers, and that any deductions for depreciation or amortization are insufficient to offset its financial losses. Under these circumstances, Seven Ranges has established a compelling case of financial hardship. Therefore, your request is granted, and the FY 1997 regulatory fee for Radio Station WVVW is waived.

Mr. D. Robert Eddy

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The waiver, however, is limited to the FY 1997 regulatory fees. If WVW continues to experience financial hardship, you may file requests for waiver of the regulatory fees in FY 1998 and succeeding years, supported by appropriate documentation.

Accordingly, a check made payable to the maker of the original check, and drawn in the amount of \$850, will be sent to you at the earliest practicable time. If you have any questions concerning the refund, please call the Chief, Fee Section, at (202) 418-1995.

Sincerely,

  
Thomas M. Holleran  
Acting Associate Managing  
Director - Financial Operations

cc: The Honorable Alan B. Mollohan  
U.S. House of Representatives  
2242 Rayburn House Office Building  
Washington, D.C. 20515

Jenny

August 25, 1997

The Honorable Alan B. Mollohan  
U.S. House of Representatives  
2242 Rayburn House Office Building  
Washington, D.C. 20515

Dear Sir:

We recently received a notice from the FCC that our "regulatory fee" will be increased 100% from \$400 to \$800 on our small AM station. This sounds like a small amount of money, but it represents a substantial portion of our income on this station for a month.

Saint Marys has a population of 2,400, the county, 8,400. Yet we are paying the same fee as stations licensed to Marion, Ohio or South Bend, Indiana. For that matter, a 50,000 watt AM station such as WTOP, Washington has a fee of only \$2,000.

Apparently the fee is based on the number of people in our 0.5 millivolt signal contour (a circle with a 35 mile radius). For most purposes, such as cross-ownership, the FCC uses the 5.0 millivolt signal contour to determine coverage. This is a circle 12 miles out from our tower. As a practical matter, the proliferation of computers, light dimmers and other electronic equipment generating noise in the AM broadcast band limits our audience to this much smaller area; the FCC refuses to take any action against this type of interference.

And we really do not get very much for this fee. Every application we would file for changes to our operation requires another, separate, fee. Interference protection from other stations? Earlier this month at the W.V. Broadcasting Association annual convention an FCC representative conceded that they no longer have the staff to chase down pirate radio operations.

This fee is, of course, nothing more than another tax. Like most business taxes, it favors big business over small business. Unfortunately, the only Chinese business owner we know owes us money, and we don't have any contacts in Taipei or Beijing.

We note that this past week a trade magazine reported that a pair of small stations in Niles, Ohio sold for \$3.4 million to Jacor Broadcasting. Their fees for this year will be exactly \$600 more than ours. Perhaps Congress should simply impose a tax on station trades, and abolish the "regulatory fee".

WVWV Radio

P.O. Box 374  
Greens Run Road  
St. Marys, WV 26170  
Business Office, Studio  
Telephone (304) 684-3400

1000 Watts Daytime

Otherwise, we fear the Commission will keep raising this fee until all the small, independently-owned radio stations are closed down, or sold to group owners.

We used to hear a lot about "re-inventing" government. Apparently the only inventions that stuck were those that maximized the flow of money to Washington.

Sincerely yours

*D. Robert Eddy*

D. Robert Eddy  
President,  
Seven Ranges Radio Co.

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
9709238835301002	SEVEN RANGES RADIO CO INC PO BOX 374 GREENS RUN ROAD	FCC2012161	09/19/97

SAINT MARYS WV 26170

Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type	
\$850.00	\$850.00	2	MUB7	1	KPG317	SEVEN RANGES RADIO CO INC	26170		\$25.00	1	PMT	
\$850.00	\$850.00	3	MUB7	1	WHY553	SEVEN RANGES RADIO CO INC	26170		\$25.00	1	PMT	
\$850.00	\$850.00	1	MGG7	1	WVWV	SEVEN RANGES RADIO CO INC	26170		\$800.00	1	PMT	
<b>Total</b>									<b>3</b>	<b>\$850.00</b>		

# WVWV AM 630

The Valley's Voice of Worship

Supplemental  
for

9709238835301002

*Jenny*

February 25, 1998

Tom Putnam  
1919 M St. NW  
Room 450  
Washington, D.C. 20554

RE: FCC Mass Media Regulatory Fees  
Rep. Allen Mollohan

Dear Mr. Putnam:

Please be advised of the following:

First, I appreciate your telephone call very much. You seemed very sincere and concerned about our problem. Thanks. However, you seem to be in an ever decreasing minority in government these days.

Seven Ranges Radio Co. Inc. is the licensee of WVWV (AM) and WRRR-FM, St. Marys, W. V., plus five translators and one booster in neighboring towns. The 1997 fees for all of the license totaled over \$3,300, or over 1.3% of our 1997 sales for the two stations.

WVWV programs a gospel format and sales average about \$2,500 per month. WVWV's fee alone (including STL and TSL) were \$850 in 1997 or 2.8% of annual sales (or more than 25% of that month's revenue). I am enclosing tax returns for the last few years plus an income statement for 1997, since the current tax return is not yet completed.

Based on recent "FCC Inflation Rates" I would expect 1998 fees to total over 2.5% of sales, and 1999 fees to hit 4%.

St. Marys has a population of about 2,200; the county, 8,000. The economy here is very depressed, we never recovered from the 1990-1991 recession. Area businesses are complaining that 1997 was one of the worst years ever. They have also figured out that the government's rosy forecasts of economic growth are just so many lies, calculated to insure re-election of incumbent politicians.

It appears, then, that Uncle Sam has one of two things in mind:

- A. Raise the cost of doing business so high that small market stations will be forced to sell out to the large chains with deep pockets. These chains, in turn, can contribute time and money to the political elite, or
- B. Force us off the air so that the spectrum can be auctioned.

WVWV Radio

P.O. Box 374  
Greens Run Road  
St. Marys, WV 26170  
Business Office, Studio  
Telephone (304) 684-3400

1000 Watts Daytime

The whole system seems to operate with the idea of maximizing the cash flow to Washington--no matter who gets hurt in the process. We would suggest that the government look to the far east for more money and leave us alone.

At one time the FCC was concerned about the public interest, convenience and necessity. We've taken this concept seriously, we staff our FM station with live announcers around the clock, seven days a week. Most other stations in our area have gone to satellite or automated programing over night.

On January 9, we had a tornado warning at about 12:10 A. M; a rare event for the middle of winter. Our announcer immediately re-broadcast the weather service warning, and spent the next few minutes answering the telephone. Even at that hour we received ten calls in a matter of minutes.

Many listeners caught only part of the warning, others wanted more details, others, just someone to talk to. Luckily the storm caused only minor property damage, uprooting a few trees, and damaging one motorist's car (our 6 to midnight announcer on his way home--he pulled into a restaurant, and spent the night in his car). But I defy any unmanned operation to handle this situation even with the new and improved EAS system.

This type of operation increases our costs of doing business. But, as your field inspector Jim Walker commented in 1993: " we take our business seriously". Perhaps the Commission would prefer that we automate, lay off people and become a second class operation.

My 14 years as part owner and operator of a small business has been an education and real eye opener for me. Uncle Sam is one of the most corrupt leaches the world has ever known. Doesn't anyone in Washington understand basic biology: once a parasite gets to big, the host simply dies?

The regulatory fees are not the entire problem. Every time we file an application with the FCC a fee is required. In November, 1996, we spent \$1,800 for an EAS system that adds nothing to our emergency coverage. Every year we spend \$200 to \$300 for NRSC measurements.

As you can see for the financial data supplied we cannot afford your voracious appetite for money. I would propose sending you \$500 a year to play with, beyond that we have a real problem.

Please call me at your earliest convenience, (304) 684-3400.



D. Robert Eddy  
President and General Manager

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

August 19, 1998

OFFICE OF  
MANAGING DIRECTOR

RECEIVED

OCT - 8 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Patricia M. Chuh, Esquire  
Pepper & Corazzini, L.L.P.  
1776 K Street, N.W.  
Suite 200  
Washington, D.C. 20006

Re: Petition for Reduction of Regulatory Fee  
AM Radio Station WCNZ  
Fee Control # 9709228835207003  
Fee Paid: \$ 1,025

Dear Ms. Chuh:

This is in response to your petition for reduction of the Fiscal Year (FY) 1997 regulatory fee for Sheboygan Broadcasting Corporation, licensee of AM Radio station WCNZ, Sheboygan, Wisconsin. Please excuse our failure to respond to your petition in a more timely manner.

You maintain that WCNZ is required to provide a 2 mV/m signal to its community of license, and that by relying on the 0.5 mV/m contour, the Commission ignored its own requirements and artificially inflated the population within WCNZ's service area.

Congress established the total amount of fees that we are to collect for all services for FY 1997 and our fee schedule is formulated to spread the burden of the total fee requirement equitably among the various categories of fee payers, including broadcast licensees. The FY 1997 regulatory fees for all AM stations were derived by calculating the populations within the 0.5 mV/m contour of each individual station, which is their daytime protection contour. Consequently, as a matter of equity, recalculation of a station's service area using a different contour for measuring population would require the recalculation of service areas, populations, and fees, at a minimum, for all radio broadcast stations, in order to insure the Commission's ability to collect the required amount in fees.

We recognize that some broadcasters believe that the city grade contour which each licensee is required to place over its community of license may be a better reflection of the "core" population served by that station, and we contemplate using the city grade contour to calculate FY 1998 radio regulatory fees. However, the 0.5 mV/m contour is appropriate in formulating the methodology for calculating the FY 1997 regulatory fees because that contour does represent the area in which listeners are within the station's protected signal contours. Thus, the Commission will not reduce, on an ad hoc basis, an individual

Patricia M. Chuh

2.

station's regulatory fee solely because its population served would be lower had we relied on a different service contour.

Thus, your request for a reduction in WCNZ's regulatory fee is denied. If you have any questions concerning the regulatory fees, please call the Chief, Fee Section, at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Reger". The signature is written in a cursive style with a large initial "M" and a stylized "R".

Mark Reger  
Chief Financial Officer

97104228835207003

ORIGINAL

PEPPER & CORAZZINI  
L. L. P.

ATTORNEYS AT LAW  
1776 K STREET, NORTHWEST, SUITE 200  
WASHINGTON, D. C. 20006  
(202) 296-0600

GREGG P. SKALL  
E. THEODORE MALLYCK  
OF COUNSEL  
FREDERICK W. FORD  
1909-1986

TELECOPIER (202) 296-5572  
INTERNET PEPCOR@COMMLAW.COM  
WEB SITE HTTP://WWW.COMMLAW.COM

VINCENT A. PEPPER  
ROBERT F. CORAZZINI  
PETER GUTMANN  
JOHN F. GARZIGLIA  
NEAL J. FRIEDMAN  
ELLEN S. MANDELL  
HOWARD J. BARR  
MICHAEL J. LEHMKUHL ■  
SUZANNE C. SPINK ■  
MICHAEL M. SHACTER  
KEVIN L. SIEBERT ■  
PATRICIA M. CHUH  
■ NOT ADMITTED IN D.C.

September 17, 1997

RECEIVED

SEP 17 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: Petition for Reduction in Regulatory Fee for  
WCNZ (AM), Sheboygan, Wisconsin

Dear Mr. Caton:

Transmitted herewith in triplicate on behalf of Sheboygan Broadcasting Corporation, is its petition for reduction of the 1997 regulatory fee for WCNZ (AM), Sheboygan, Wisconsin. Also attached is a copy of Sheboygan Broadcasting Corporation's payment of the 1997 annual regulatory fee, filed with the Commission on September 16, 1997.

Should any questions arise concerning this matter, please contact this office directly.

Sincerely,  
  
Patricia M. Chuh

Enclosure

SEP 17 1997

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COM  
 OFFICE OF THE SECRETARY

In the Matter of )  
 )  
 Petition for Reduction of )  
 1997 Regulatory Fee Payment for )  
 WCNZ(AM), Sheboygan, Wisconsin )

To: Managing Director

**PETITION FOR REDUCTION OF REGULATORY FEE**

Sheboygan Broadcasting Corporation, by its attorneys, hereby respectfully requests that the Commission reduce the 1997 regulatory fee for WCNZ(AM), Sheboygan, Wisconsin ("WCNZ"), pursuant to the Public Notice released August 1, 1997. See FY 1997 Mass Media Regulatory Fees, Public Notice (August 1, 1997) ("Public Notice"). The Commission will consider such requests in extraordinary and compelling circumstances upon a showing that the reduction in fee overrides the public interest in reimbursing the Commission for its regulatory costs. Public Notice, at 4. In support whereof, the following is submitted:

A reduction of the 1997 regulatory fee for WCNZ is proper because the Commission's methodology of calculating an AM station's population - upon which the 1997 regulatory fees are formulated - is wholly inconsistent with the Commission's own groundwave signal strength rule. 47 C.F.R. § 73.182(d). Section 73.182 of the Commission's Rules, which prescribes engineering standards of allocations for AM broadcast stations, states that "[t]he groundwave signal strength required to render primary service is 2 mV/m for communities with populations of 2,500 or

more . . . ." Accordingly, the population in cities with a population of more than 2,500 persons must receive a 2 mV/m signal in order to be counted in determining an AM station's primary service.

Ignoring this rule, however, the Commission counted all of the population within an AM broadcast station's 0.5 mV/m contour. WCNZ, for example, was credited with service to a population of 390,240 persons by the Commission. See Public Notice, List of AM & FM Radio, at 65. The Commission included the populations of cities with populations of 2,500 persons or more, even if these cities did not receive a 2 mV/m signal as mandated by the Commission's own rule. See 47 C.F.R. § 73.182(d). As a result, the population calculated for WCNZ, a basis of its 1997 regulatory fee, is much greater than the actual population served by WCNZ.

The Commission's use of the 0.5 mV/m contour to determine an AM station's population for 1997 regulatory fee purposes is, therefore, blatantly inconsistent with its own rules and against the public interest. It is plainly unjust to assess a fee intended to reflect an AM station's service population when the Commission's own rules do not recognize such service. Further, a 1997 regulatory fee based on the Commission's methodology will unduly burden WCNZ by forcing it to pay a fee based on an artificially inflated service population. This added financial burden on WCNZ will undoubtedly affect the station's service to its true service area and thus will be against the public

interest. Under these circumstances, a reduction of the 1997 regulatory fee to reflect the actual population served by WCNZ(AM), Sheboygan, Wisconsin is proper.

Respectfully submitted,

**SHEBOYGAN BROADCASTING CORPORATION**

By:



---

John F. Garziglia  
Patricia M. Chuh  
Its Attorneys

Pepper & Corazzini L.L.P.  
1776 K Street, N.W.  
Suite 200  
Washington, D.C. 20006  
(202) 296-0600

September 17, 1997

VINCENT A. PEPPER  
ROBERT F. CORAZZINI  
PETER GUTMANN  
JOHN F. GARZIGLIA  
NEAL J. FRIEDMAN  
ELLEN S. MANDELL  
HOWARD J. BARR  
MICHAEL J. LEHMKUNL ■  
SUZANNE C. SPINK ■  
MICHAEL H. SHACTER  
KEVIN L. SIEBERT ■  
PATRICIA M. CHUH  
■ NOT ADMITTED IN D.C.

PEPPER & CORAZZINI

L. L. P.

ATTORNEYS AT LAW

1776 K STREET, NORTHWEST, SUITE 200

WASHINGTON, D. C. 20006

(202) 296-0600

FILE COPY

FREDERICK W. FORD

1909-1986

TELECOPIER (202) 296-5572

INTERNET PEPCOR@COMMLAW.COM

WEB SITE HTTP://WWW.COMMLAW.COM

September 16, 1997

Federal Communications Commission  
525 William Penn Way  
Pittsburgh, Pennsylvania 15259-0001

Re: 1997 Regulatory Fee Payment for  
WCNZ (AM), Sheboygan, Wisconsin;  
Auxiliary Station WLO-831

FCC MELLON SEP 16 1997

Dear Sir/Madame:

Transmitted herewith on behalf of Sheboygan Broadcasting Corporation, the licensee of the above-referenced stations, is its 1997 annual regulatory fee.

Enclosed is a check in the amount of \$1,025.00 to cover the requisite filing fee. Should any questions arise concerning this matter, please contact this office directly.

Sincerely,



Patricia M. Chuh

Enclosure

bcc: Mr. Julian E. Jetzer

pnc/  
f:\wp\2592\xregfee.97

READ INSTRUCTIONS CAREFULLY,  
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION  
**REMITTANCE ADVICE**

APPROVED BY OMB 3060-052

(1) LOCKBOX # 358835

PAGE NO 1 OF 1

SPECIAL USE

FCC USE ONLY

**SECTION A - PAYER INFORMATION**

(2) PAYEE NAME (if paying by credit card, enter name exactly as it appears on your card) <b>Sheboygan Broadcasting Corporation WCNZ-AM</b>		(3) TOTAL AMOUNT PAID (dollars and cents) <b>\$ 1025.00</b>
(4) STREET ADDRESS LINE NO. 1 <b>cc: John F. Garziglia, Esq.</b>		(5) STREET ADDRESS LINE NO. 2 <b>Pepper &amp; Corazzini, L.L.P.</b>
(6) STREET ADDRESS LINE NO. 2 <b>1102 Fond du Lac Avenue</b>		
(8) CITY <b>Sheboygan Falls</b>	(7) STATE <b>WI</b>	(9) ZIP CODE <b>53085</b>
(9) DAYTIME TELEPHONE NUMBER (include area code) <b>920-467-0200 202/296-0600</b>		(10) COUNTRY CODE (if not in U.S.A.)

**IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B  
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)**

**SECTION B - APPLICANT INFORMATION**

(11) APPLICANT NAME (if paying by credit card, enter name exactly as it appears on your card)		
(12) STREET ADDRESS LINE NO. 1		
(13) STREET ADDRESS LINE NO. 2		
(14) CITY	(15) STATE	(16) ZIP CODE
(17) DAYTIME TELEPHONE NUMBER (include area code)		(18) COUNTRY CODE (if not in U.S.A.)

**COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEETS (FORM 159-C)**

**SECTION C - PAYMENT INFORMATION**

(18A) FCC CALL SIGN/OTHER ID <b>WCNZ-AM</b>	(18B) PAYMENT TYPE CODE (PTC) <b>M G F 7</b>	(18C) QUANTITY <b>1</b>	(18D) FEE DUE FOR (PTC) IN BLOCK 18A <b>1,000.00</b>	FCC USE ONLY
(22A) FCC CODE 1 <b>950 kHz</b>	(22B) FCC CODE 2 <b>WI Sheboygan</b>			
(19B) FCC CALL SIGN/OTHER ID <b>WLO-831</b>	(19C) PAYMENT TYPE CODE (PTC) <b>M U B 7</b>	(19D) QUANTITY <b>1</b>	(19E) FEE DUE FOR (PTC) IN BLOCK 19B <b>25.00</b>	FCC USE ONLY
(23A) FCC CODE 1	(23B) FCC CODE 2			
(19C) FCC CALL SIGN/OTHER ID	(19D) PAYMENT TYPE CODE (PTC)	(19E) QUANTITY	(19F) FEE DUE FOR (PTC) IN BLOCK 19C	FCC USE ONLY
(23C) FCC CODE 1	(23D) FCC CODE 2			
(19D) FCC CALL SIGN/OTHER ID	(19E) PAYMENT TYPE CODE (PTC)	(19F) QUANTITY	(19G) FEE DUE FOR (PTC) IN BLOCK 19D	FCC USE ONLY
(23D) FCC CODE 1	(23E) FCC CODE 2			

**SECTION D - TAXPAYER INFORMATION (REQUIRED)**

(25) PAYER TIN <b>0391325252</b>	(26) COMPLETE THIS BLOCK ONLY IF APPLICANT NAME IN 8-11 IS DIFFERENT FROM PAYER NAME IN A-2 APPLICANT TIN <b>0</b>
-------------------------------------	--

**SECTION E - CERTIFICATION**

(27) CERTIFICATION STATEMENT  
 I, Julian E. Jetzer, Certify under penalty of perjury that the foregoing and supporting information  
 (PRINT NAME)  
 are true and correct to the best of my knowledge, information and belief. SIGNATURE *Julian E. Jetzer*

**SECTION F - CREDIT CARD PAYMENT INFORMATION**

(28) MASTERCARD	MASTERCARD/VISA ACCOUNT NUMBER	EXPIRATION DATE
<input type="checkbox"/>		MONTH YEAR
VISA	I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization(s) herein described.	AUTHORIZED SIGNATURE DATE
<input type="checkbox"/>		

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

JUL 16 1998

RECEIVED

OCT - 8 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Mr. Frank A. Schultz  
3202 Urban Avenue  
Dallas, TX 75227

Re: Request for Waiver of Regulatory Fee

Dear Mr. Schultz:

This is in response to your request for waiver of the Fiscal Year (FY) 1997 regulatory fees for FM Translator Station K278AE. You maintain that you are the licensee of the translator station, that you have no interest in any commercial broadcast station, that you derive no income from advertising, and that operation of the translator is dependent on voluntary donations from members of the community for funds.

In implementing the regulatory fee program, the Commission stated that it would waive its regulatory fees for any translator station that:

(1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support.

Implementation of Section 9 of the Communications Act, FCC 95-257, ¶ 16, released June 22, 1995.

It appears that your translator is not licensed to, and does not have common ownership with, any commercial broadcast stations, that you do not sell advertising, and that income for support of the station is derived from voluntary donations from the community families served by your system. Under these circumstances, your request for a waiver of the regulatory fees is granted, and the waiver shall remain in effect until there is

Mr. Frank A. Schultz

Page 2

a change in the ownership or operation of the translator station. You should retain this letter, and a copy should be included in any correspondence with the Commission concerning the regulatory fees for K278AE.

If you have any questions concerning the waiver, please call the Chief, Fee Section, at (202) 418-1995.

Sincerely,



Thomas M. Holleran  
Acting Associate Managing  
Director - Financial Operations

000000BCB-98-017

3202 Urban Avenue  
Dallas, Texas 75227  
November 11, 1997

Jerry

Amc-e  
Rec'd  
12/16/97

Chief of Auxiliary Services Branch  
Federal Communications Commission  
Room 408 - Stop Code 1800B4  
1919 M. Street, N.W.  
Washington, DC 20554

Dear Sir,

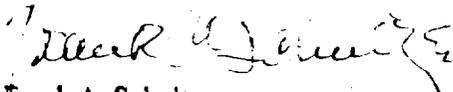
RE: FM translator station K278AE

I am writing you in regards to the fiscal year 1997 Mass Media Regulatory fees. I own and operate FM translator license #K278AE.

As per your Public Notice #75519 dated August 1st, 1997, I request a waiver of the regulatory fee as I meet all criteria for a waiver as follows: (1) The translator in question is licensed to me, an individual who has no interest in a commercial broadcast station, (2) I do not derive income from advertising that is rebroadcast via the translator, and (3) I am solely dependent on contributions from listeners for support.

Should you have any questions with respect to the foregoing, please contact me at the address above. Thank you.

Sincerely



Frank A. Schultz

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

June 17, 1998

OFFICE OF  
MANAGING DIRECTOR

Philip L. Malet, Esquire  
Brent H. Weingardt, Esquire  
Steptoe & Johnson  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036

RECEIVED  
OCT - 8 1998  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Messrs. Malet and Weingardt:

This will respond to your request, dated February 10, 1998, on behalf of Space Systems License, Inc. (Space System), a wholly owned subsidiary of Motorola, Inc. (Motorola) for a fee determination, waiver and partial refund of the fees submitted by Motorola in 1990 and 1994 with applications filed by Motorola Satellite Communications, Inc. to construct, launch and operate the IRIDIUM System, a low-Earth orbit (LEO) satellite system. The licenses for the IRIDIUM system were assigned to Space System on January 7, 1998.

You state that, when Motorola filed its IRIDIUM System applications, it submitted a payment of \$2,030.00 for each of its proposed 77 in-orbit and 10 spare LEO satellites for a total fee payment of \$176,610.00. Because the Section 8 Schedule of Application Fees did not at the time explicitly differentiate between geostationary and non-geostationary fees, Motorola submitted a request for a fee determination, waiver and partial refund with its application package. Inadvertently, there was no disposition of Motorola's request. Thereafter, Motorola, when it made a required system amendment concerning the IRIDIUM System, submitted a second fee amounting to \$241,080.00, the fee then applicable, pursuant to the Commission's rules following an amendment to Section 8 of the Communications Act, for an application to launch and operate a LEO system. Thus, in total, Motorola has submitted fees in the amount of \$417,690.00 in connection with its applications to construct, launch and operate the IRIDIUM System.

You request a refund of the difference between the fees submitted by Motorola and the fees applicable to applications for authority to construct, launch and operate a LEO system at the time Motorola filed its required system amendment or, in the alternative, you request a partial waiver and refund of the total fees submitted. You state that Congress intended that LEO applicants pay only the fees reflected in its 1992 amendment to the Section 8 Schedule of application fees and any increases to the statutory fee adopted by the Commission pursuant to Section 8(b) of the Communications Act. 47 U.S.C. § 158(b).

We recognize that subsequent to the filing of the initial application for authority to construct, launch and operate the IRIDIUM System, Congress amended Section 8 of the Act to include in its Schedule of Application Fees a fee category for LEO systems. 47 U.S.C. 158(g)(22). Also,

we are aware that the legislative history accompanying the amendment indicates that the new fee requirement should have retroactive effect for those applicants that had paid higher fees prior to the effective date of the amendment and that refunds should be made to any applicant that had submitted a larger fee payment than required. See House Committee on Energy and Commerce on the Federal Communications Commission Authorization Act of 1991, H.R. Rep. No. 207, 102nd Cong., 1st Sess., 28-29 (1991). Further, we conclude that the IRIDIUM System, as a LEO satellite system, is subject to the fee category Congress enacted in the amendment.

Thus, your request is granted. Motorola is entitled to a refund of its payments for the IRIDIUM satellites, described above, in the amount of any fee payments submitted in excess of the fees required by the Commission's rules for LEO systems when Motorola filed its required system amendment. As you note, a fee of \$6,000.00 was then required with an application to construct a LEO system and an additional fee of \$241,080.00 was required with an application to launch and operate a constellation of LEO satellites. See Amendment of the Schedule of Application Fees Set Forth In Section 1.1102 through 1.1105 of the Commission's Rules, 9 FCC Rcd 7005 (1994). Thus, combined fees in the amount of \$247,080.00 were due with the required system amendment. Because Motorola has filed total fees of \$417,690.00, it is entitled to a refund of \$170,610.00.

A check, made payable to the maker of the original check and drawn in the amount of \$170,610.00, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section, at (202) 418-1995.

Sincerely,



Thomas M. Holleran  
Acting Associate Managing  
Director - Financial Operations

9411178115144001  
STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

1330 CONNECTICUT AVENUE, N.W.  
WASHINGTON, D.C. 20036-1795

(202) 429-3000

FACSIMILE: (202) 429-3902

TELEX: 89-2503

**ORIGINAL**

STEPTOE & JOHNSON INTERNATIONAL  
AFFILIATE IN MOSCOW, RUSSIA

TELEPHONE: (011-7-501) 258-5250  
FACSIMILE: (011-7-501) 258-5251

Hdl y

PHOENIX, ARIZONA  
TWO RENAISSANCE SQUARE

TELEPHONE: (602) 257-5200  
FACSIMILE: (602) 257-5299

February 10, 1998

**RECEIVED**

**FEB 10 1998**

Federal Communications Commission  
Office of Secretary

Mr. Andrew S. Fishel  
Managing Director  
Federal Communications Commission  
1919 M Street, Northwest  
Room 852 Code 1100  
Washington, D.C. 20554

Re: Renewed Request of Space System License, Inc. for a Fee Determination,  
Waiver and/or Partial Refund of Fees for the IRIDIUM<sup>®</sup> System  
Application

Dear Mr. Fishel:

On behalf of Space System License, Inc., a wholly owned subsidiary of Motorola, Inc. ("Motorola") the licensee of the IRIDIUM<sup>®</sup> System, we are writing to renew its request for a fee determination, waiver and/or partial refund of the Section 8 application fees paid by Motorola in 1990 and 1994 for its application to construct, launch and operate a low-Earth orbit (LEO) satellite system.<sup>1</sup> To date, Motorola has paid application fees totaling \$417,690 for these processing services,<sup>2</sup> while it believes that the most it should have paid is \$247,080. Motorola therefore seeks a refund of \$170,610. In the alternative, Motorola renews its request for the Commission to exercise its waiver authority and grant Motorola a partial refund, consistent with waivers granted to other LEO applicants, which would result in a refund to Motorola of \$172,550.

On December 3, 1990, Motorola submitted an application to construct, launch and operate 77 low-Earth orbit satellites plus 10 spare satellites. Because the Section 8 Schedule of Charges did not explicitly differentiate between geostationary and non-geostationary satellite processing fees at that time, Motorola, out of an abundance of caution, submitted a payment of \$2,030 for each of its 87 proposed satellites to reflect the application fee for construction of these satellites, a total of \$176,610. At the same time, Motorola submitted a request for a

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<sup>1</sup> Motorola Satellite Communications, Inc. another wholly-owned Motorola subsidiary, was the original applicant and resulting licensee for this LEO system. The International Bureau granted the assignment of license to Space System License, Inc. on January 7, 1998.

<sup>2</sup>See Annex to this letter which lists when these fees were paid.

Mr. Andrew S. Fishel  
February 10, 1998  
Page 2

Commission determination of the appropriate fee (the "Motorola Request"). The Commission has yet to act on this request. (See Exhibit 1 for a copy of the Motorola Request) At that time, Motorola argued that the Section 8 Schedule of Charges required the Commission to charge for construction of non-geostationary satellite systems on a per system basis, not on a per satellite basis. Under this scenario, Motorola believed the Commission was entitled to collect one construction fee of \$2,030 and one launch and operation fee of \$72,530, entitling Motorola to a refund of \$104,580. In the alternative, Motorola requested that the Commission exercise its waiver authority under Section 1.1115 of the Rules to avoid a patently unreasonable fee charge far in excess of the costs of processing its application. Motorola suggested that the Commission treat its application as the equivalent of two in-orbit geostationary satellites and one ground spare, resulting in a fee of \$146,590. Under this scenario, Motorola would have been entitled to a refund of \$30,020 for its 1990 payment. This partial waiver would have been in keeping with several partial refunds made to other satellite applicants at that time to ensure that the statutory fee would not "result in a levy that bears scant relation to the underlying cost of processing the applications." See Motorola Request at 8.

Motorola subsequently paid its space station launch and operation processing fee in 1994 as part of a required system amendment. (See Exhibit 2) By that time, Congress had adopted and the Commission had implemented an explicit low-Earth orbit satellite processing fee calling for a per system charge of \$6,000 for construction authority and \$210,000 for launch and operating authority. Motorola submitted a fee of \$241,080 in November 1994 to cover the statutory charge, as revised by the Commission.<sup>3</sup> At that time, Motorola reminded the Commission that its fee refund request was still pending, but again submitted this fee amount in full out of an abundance of caution. (See Exhibit 3).

To date, Motorola has paid \$417,690 in processing fees for the construction, launch and operation of the IRIDIUM satellite system. Congress intended, however, that LEO applicants pay only the costs of processing such applications as reflected in the 1992 amendments to the Section 8 Schedule of Charges. Therefore, as discussed in detail below, Motorola should be subject only to the \$6,000 satellite construction fee and the satellite launch and operation fee of \$241,080 in effect in 1994. Accordingly, Motorola now seeks a refund of \$170,610 that reflects an overpayment of fees.

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<sup>3</sup>The low-Earth orbit satellite processing fees adopted by Congress in 1992 was subsequently increased by the Commission to reflect a 14.8% increase in the consumer price index. See Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1105 of the Commission's Rules, Order, 9 FCC Rcd 7005 (1994).

**I. CONGRESS ESTABLISHED AN EXPLICIT LEO SATELLITE PROCESSING FEE IN 1992 AND INTENDED IT TO HAVE RETROACTIVE EFFECT**

Motorola's 1990 fee payment for its application to construct a LEO satellite network should be based on a per system charge, not on a per satellite charge as established for geostationary satellites. The 1992 amendments to the Communications Act of 1934, as amended, reflect a similar congressional view.

Congress originally adopted a schedule of processing charges for satellite applications in 1986.<sup>4</sup> The law itself did not distinguish between geostationary and non-geostationary satellite fees. However, the Commission's initial interpretation of the law seemed to limit its application to geostationary space stations.<sup>5</sup> As Motorola noted in its 1990 refund request, at the time of the adoption of the 1986 Schedule of Charges and a subsequent 1989 amendment to the schedule, the Commission had never received a commercial non-geostationary satellite application. Thus, it would be inconceivable that Congress had contemplated a fee for a radio service that had yet to be approved by the Commission and for which it had no processing experience.

Congress clarified any ambiguity in 1992. It adopted further amendments to the Section 8 Schedule of Charges that established fees for low-Earth orbit satellites.<sup>6</sup> The relevant provisions read as follows:

22. Low-Earth Orbit Satellite Systems

- a. Application for Authority to Construct (per system of technologically identical satellites)..... 6,000
- b. Application for Authority to Launch and Operate (per system of technologically identical satellites)..... 210,000

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<sup>4</sup>Consolidated Omnibus Reconciliation Act of 1985, P.L. 97-297, Sec. 5002(e) and (f), 100 Stat. 82, 118-121 (1986); codified at 47 U.S.C. § 158.

<sup>5</sup>See Establishment of a Fee Collection Program, Report and Order, 2 FCC Rcd 947, 975 (1987) ("Satellite services use radio transmission between authorized geostationary satellite space stations for common carrier and private communications.")

<sup>6</sup>Telecommunications Authorization Act of 1992, Pub. L. No. 102-538; codified at 47 U.S.C. § 158(g)(22).

The legislative history of this amendment clearly indicates that Congress intended this provision to have retroactive effect for low-Earth orbit applicants who had inadvertently paid geostationary satellite processing fees prior to the amendment to Section 8 of the Communications Act.

The Committee is aware that applicants for LED (sic) systems may have paid space station filing fees based on the Schedule of Charges contained in Section 8. In light of the passage of this amendment to the Schedule, it is clear that the Committee does not intend that those fees apply to LED (sic) applications. Accordingly, any applicant that has already paid its fee should be liable only for the amount stipulated in this amendment. Any excess fee amount paid as the result of the misapplication of the space station fee should be refunded to the applicant.<sup>7</sup>

Then-House Telecommunications Subcommittee Chairman Markey explained that Congress had received assistance from the Commission in establishing a LEO fee that corresponded more closely with the costs associated with processing these applications.

In response to the Commission's recommendation the satellite fee schedule included in the legislation has been adjusted to differentiate between various types of satellites --that is-- low earth orbit satellites... As a result, satellite fees correspond more closely with regulatory costs associated with particular satellite users... This change [to a flat fee per LEO system] was recommended after further review by the Commission for the licensing of these multisatellite system[s] which are a new technology with which the Commission has limited licensing experience. These changes provide for a fair, effective and equitable distribution and administration of user fees.<sup>8</sup>

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<sup>7</sup>House Committee on Energy and Commerce Report on the Federal Communications Commission Authorization Act of 1991, H.R. Rep. No. 207, 102nd Cong., 1st Sess., 28-29 (1991) (emphasis added).

<sup>8</sup>137 Cong. Rec. H6755-56 (1991) (statement of Cong. Markey).

The Commission itself has indicated that the propriety of applying Section 8 fees for low-Earth orbit satellite applicants prior to 1992 was unclear at best.<sup>9</sup> This uncertainty, coupled with the clear congressional guidance to refund any overpayments made by LEO applicants, justifies a refund to Motorola for its almost double payment of the statutory application fees.

## **II. IN THE ALTERNATIVE, THE COMMISSION SHOULD EXERCISE ITS WAIVER AUTHORITY TO AVOID A PAYMENT FAR IN EXCESS OF THE COSTS OF PROCESSING LEO APPLICATIONS**

As the Commission is aware, Congress authorized it to grant waivers of fees, in whole or part, in specific instances where good cause is shown and such a waiver would serve the public interest.<sup>10</sup> The Commission has repeatedly found that good cause exists to partially waive a fee when a fee assessment "would result in a levy that bears scant relation to the underlying cost of processing the applications."<sup>11</sup>

The Commission's processing of low-Earth orbit satellite applications is an instance where the effort to process these applications does not increase with the number of satellites in the constellation. As the Commission recently explained in eliminating the need to file a distinct application for each LEO satellite in a system proposal, it does not review each of the applications for technically identical satellites in a LEO constellation. "Technology has changed significantly since this rule [requiring an application for each satellite] was adopted and the satellite industry of the 1990's sometimes uses hundreds of space stations in a particular satellite system. This proposal will eliminate paperwork and alleviate any unnecessary burden placed on applicants who are proposing more than one space station."<sup>12</sup>

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<sup>9</sup>Emergency Petition of EYETEL International, Order, DA 94-1261 (Int'l Bureau, November 15, 1994) (confirming a decision to allow first round Little LEO applicants to file applications with only a construction fee since, among other issues creating uncertainty, there were no fees established for LEO systems prior to 1992.)

<sup>10</sup>47 C.F.R. § 1.1115(a).

<sup>11</sup>See FCC Decisions cited in Motorola Request at 8, note 13.

<sup>12</sup>Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures, Notice of Proposed Rulemaking, 10 FCC Rcd 10624, 10626 (1995); See also, Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures, Report and Order, 5 Comm. Reg. 567 (1997).

As the 1990 Motorola Request noted, if the Commission were to impose the then-existing processing fees on a "per-satellite" basis for LEO applicants, Motorola's application alone would have been subject to a fee of over \$5 million dollars, approximately 5% of the Commission's budget at that time. Such a fee would bear no reasonable relationship to the cost of processing a LEO application, as the Commission recognized in several fee waiver grants made for other satellite filings in that time frame. Congress inserted the waiver provision into the fee statute to allow the Commission to deal with situations such as the instant case where strict adherence to the Schedule of Charges would result in an unintended result.

In processing LEO satellite applications submitted in the same time frame as Motorola's, the Commission recognized that the more appropriate charge for satellite systems filed prior to the 1992 Communications Act amendments would be two times the construction permit charge in place at the time of their filing.<sup>13</sup> The Commission found then that "a waiver of all but two of the individual fees that would have been due...more accurately reflect[s] the average cost of the Commission's processes involved in disposing of the matter subject to the fee requirement."<sup>14</sup> Consistent with these waiver actions for other LEO applicants, the Commission could alternatively exercise its waiver authority and issue Motorola a refund of \$172,550.<sup>15</sup>

Grant of a partial waiver of the Schedule of Charges would also result in Motorola paying a construction, launch and operating processing fee consistent with that paid by other Big LEO applicants. The Commission's records indicate that Motorola has paid more than three times more than any other LEO applicant filing in this time frame.

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<sup>13</sup>Letter to Albert Halprin, Counsel for Orbital Communications Corporation, from Marilyn McDermott, FCC Associate Managing Director for Operations, August 13, 1990; Letter to Raul R. Rodriguez, Counsel for STARSYS, Inc., from Marilyn McDermott, FCC Associate Managing Director for Operations, February 6, 1991.

<sup>14</sup>Letter to Raul R. Rodriguez at 2.

<sup>15</sup>This figure is based upon the \$176,610 Motorola paid for its construction application in 1990 minus two times the \$2,030 processing fee for applications to construct satellites. [ $\$176,610 - \$4,060 = \$172,550$ ] Motorola's 1990 Request suggested that three times the construction processing fee of \$2,030 would be a fair approximation of the Commission's LEO processing costs. See Motorola Request at 3. A multiple of two construction fees is, however, consistent with the Commission's treatment of other LEO applicants who sought partial waivers prior to the 1992 amendments to the Communications Act.

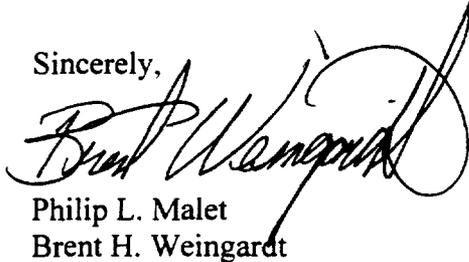
Mr. Andrew S. Fishel  
February 10, 1998  
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### III. CONCLUSION

Congressional guidance as to the retroactive impact of the 1992 Communications Act amendments establishes the correct charge for Motorola's application to construct, launch and operate the IRIDIUM<sup>®</sup> System. Therefore, Motorola requests a refund of \$170,610 for its overpayment of the statutory fee. In the alternative, the Commission should exercise its waiver authority and grant Motorola a partial waiver of its fee and a refund of \$172,550. A partial refund or waiver is in keeping with the obvious conclusion that a "per satellite" charge for LEO applications has scant relation to the administrative effort involved in processing these applications, the Commission's recent indication that it does not separately consider applications for technically identical satellites in a constellation, and the gross disparity between Motorola's fee payments and those of other similarly-situated LEO applicants.

Please do not hesitate to contact the undersigned if you have any questions.

Sincerely,



Philip L. Malet  
Brent H. Weingardt

Counsel for Motorola Satellite  
Communications, Inc.

Enclosures

cc: Claudette Pride  
Jim Mullens

## ANNEX

### Section 8 Application Fee Payments Made by Space System License, Inc. to Request Constructions, Launch and Operational Authority for the IRIDIUM® System.

December 3, 1990:	\$176,610	(reflects payment of 87 times the \$2,030 processing fee for application to construct a satellite) <sup>1</sup>
November 15, 1994:	\$241,080	(reflects payment of the fee for an application to launch and operate a LEO satellite system as established by Congress in 1992 and amended by the Commission to reflect increases in the Consumer Price Index) <sup>2</sup>

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<sup>1</sup> Motorola made a total payment on this date of \$177,110. The difference of \$500 reflects a fee for an application for a waiver of the construction permit requirement, for which Motorola is not requesting a refund at this time.

<sup>2</sup> Motorola made a total payment on this date of \$244,525. The difference of \$3,445 reflects a fee for an application for a minor amendment to Motorola's then-pending application, for which Motorola is not requesting a refund at this time.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Application of: )  
)

MOTOROLA SATELLITE )  
COMMUNICATIONS, INC. )

File No.

For Authority to Construct, Launch )  
and Operate a Low Earth Orbit )  
Satellite System )  
in the 1610-1626.5 MHz Band )  
)

To: The Managing Director

REQUEST FOR A FEE DETERMINATION, WAIVER  
AND/OR PARTIAL REFUND OF FEES

Pursuant to 47 U.S.C. § 158(d)(2) and 47 C.F.R.  
§ 1.1115, Motorola Satellite Communications, Inc. ("Motorola"),  
by its attorneys, hereby submits this request for a fee  
determination, waiver and/or partial refund of the Commission's  
fees for filing and processing its low earth orbit satellite  
application.

Simultaneously with the filing of this request,  
Motorola has submitted a comprehensive system application seeking  
the Commission's authorization to construct, launch and operate  
its IRIDIUM satellite system. The IRIDIUM system is composed of  
a constellation of 77 identical low earth orbit ("LEO")  
satellites circling the globe in seven polar orbits. The system  
will be capable of providing radiodetermination, two-way voice  
and data communications between any two portable, mobile

subscriber units anywhere in the world, and of interconnecting these subscriber units to the public switched telephone network.

Accompanying its satellite system application, Motorola submitted an FCC Form 155 and filing fees in the amount of \$177,110. This amount represents 87 times the \$2,030 fee specified in 47 U.S.C. § 158(g) for the authorization to construct space stations, plus a \$500 fee specified for a request for a waiver of prior construction authorization.

For the reasons discussed below, Motorola believes that the Commission is required by statute to assess the filing fees specified for an authorization to construct, launch and operate the IRIDIUM system on a per system basis and not on a per satellite basis. The total fee for this application, therefore, should be \$72,530: one \$2,030 fee for authorization to construct and one \$70,000 fee for authorization to launch and operate the IRIDIUM system, plus the \$500 fee for a waiver of prior construction authorization. Accordingly, Motorola respectfully requests that the Commission issue a determination to this effect and refund to Motorola the amount of \$104,580.

In the alternative, should the Commission determine that the filing fees for authorization to construct, launch and operate the IRIDIUM system are payable on a per satellite basis, Motorola requests that the Commission exercise its authority to grant a waiver pursuant to Section 1.1115 of the Rules on the ground that the resulting fee of \$5,567,110 is patently unreasonable and grossly in excess of the cost of processing

Motorola's application.<sup>1/</sup> Because the cost of processing an application for a system of 77 identical low earth orbit satellites and 10 ground spares is no greater than the cost of processing an application for a system of identical geostationary satellites, which typically include two in-orbit satellites and one ground spare, Motorola's fee should not exceed \$146,590.<sup>2/</sup> Under this alternative, Motorola respectfully requests that the Commission waive the fee rules and refund the amount of \$30,520.

I. THE COMMUNICATIONS ACT AUTHORIZES THE COMMISSION TO COLLECT ONLY ONE APPLICATION FEE FOR AUTHORITY TO CONSTRUCT, LAUNCH AND OPERATE A SATELLITE SYSTEM REGARDLESS OF THE NUMBER OF SATELLITES INVOLVED

Pursuant to 47 U.S.C. § 158, the Commission is required to assess and collect charges set by Congress for its various regulatory services. First enacted in 1985, the fee schedule was revised by the Omnibus Budget Reconciliation Act of 1989,<sup>3/</sup> and the revised schedule implemented by a decision of the

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<sup>1/</sup> This figure was calculated as follows: 87 times the \$2,030 fee for authorization to construct space stations, plus 77 times the \$70,000 fee for authorization to launch and operate space stations, plus the \$500 fee for a waiver of prior construction authority.

<sup>2/</sup> This figure was calculated as follows: Three times the \$2,030 fee for authorization to construct space stations, plus two times the \$70,000 fee for authorization to launch and operate space stations, plus the \$500 fee for a waiver of prior construction authority.

<sup>3/</sup> P.L. 101-239, Title III, § 3001(a), (b), 103 Stat. 2124, 2131 ("The 1989 Budget Act").

Commission.<sup>4/</sup> According to the current Schedule of Charges for Common Carrier Services, effective May 21, 1990, fees for satellites are stated as follows:

16. Space Stations

- a. Application for Authority to Construct . . . . .[\$] 2,030.00
- b. Application for Authority to Launch & Operate
  - (i) Initial Application . . . . .[\$] 70,000.00
  - (ii) Replacement Satellite . . . . .[\$] 70,000.00
- c. Assignment or Transfer (per satellite) . . . . .[\$] 5,000.00
- d. Modification . . . . .[\$] 5,000.00
- e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request) . . . . .[\$] 500.00
- f. Amendment of Application . . . . .[\$] 1,000.00
- g. Extension of Construction Permit/Launch Authorization (per request) . . . . .[\$] 500.00

Application of basic principles of statutory construction and comparison of this schedule with the prior schedule demonstrate that the fees set forth for applications to construct, launch and operate space stations are meant to be applied on a per system rather than a per satellite basis.

First, it is significant that Congress headed this section in the schedule of charges "Space Stations" in the plural while listing "Application for Authority to Construct" and "Application for Authority to Launch and Operate" in the singular. The obvious implication of this juxtaposition of singular and plural is that Congress meant a single fee to be collected regardless of the number of identical satellites

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<sup>4/</sup> Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989, FCC 90-163, released April 20, 1990 (Fees II) reconsideration pending.

included in a single system application. "Ordinarily the legislature by use of a plural term intends a reference to more than one matter or thing, and by the use of the singular number a reference to one matter or thing is usually imported."<sup>5/</sup>

Although the distinction between singular and plural can sometimes be overlooked in the interpretation of a single term in a statute prescribing a general rule, it must be observed where, as here, the statute includes a long list of terms some of which have deliberately been made singular and some plural.

This interpretation is reinforced by the fee provision for Assignment or Transfer, which explicitly provides that the fee for such applications applies "per satellite." If Congress meant all the charges concerning space stations to be applied on a per satellite basis, it could easily have said so. In the absence of such a general expression of intent, the presence of the "per satellite" proviso in item "c" necessarily excludes the possibility that other items in the section also apply on that basis.<sup>6/</sup>

Additional support is offered by comparison with the schedule of charges prescribed by Congress in 1985.<sup>7/</sup> In the section of that schedule entitled "Satellite Services," the

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<sup>5/</sup> 2A Sutherland Statutory Construction § 47.34, at 249, quoting McKinney's Statutes of New York, Ann § 252 (1971).

<sup>6/</sup> See Marshall v. Western Union Telegraph Co., 621 F.2d 1246 (3rd Cir. 1980) (under usual canons of statutory construction, where Congress has carefully employed a term in one subsection and excluded it in another subsection of the same section, it should not be implied where excluded).

<sup>7/</sup> P.L. 99-272, Title V, Section 5002(f), 100 Stat. 118 ("The 1985 Budget Act").

analogous items read "Application for Authority to Construct a Space Station" and "Application for Authority to Launch & Operate a Space Station." (Emphasis added.) There was no doubt, given that wording, that the fees for these applications applied on a per satellite basis.<sup>8/</sup> There was no reason for Congress to replace this clear language with the current language unless it meant the current language to mean something different -- i.e., that the fees no longer applied on a per satellite basis.<sup>9/</sup>

In conclusion, the plain meaning of the fee statute, as revised by Congress in 1989, compels the Commission to assess the fees for authorization to construct, launch and operate a satellite system on a per system basis. The appropriate fee for the processing of Motorola's application is therefore \$72,530, entitling Motorola to a refund of \$104,580.

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<sup>8/</sup> The fact that some items in sections of the Schedule of Charges concerning satellite earth stations are followed by the phrase "per system" does not negate the conclusion that the application fees for space stations are to be assessed on a per system basis. This phrase appears not in connection with applications for authorization to construct or operate but with applications for modification or transfer of licenses or the like and was inserted into the statute to eliminate the prior practice of applying fees for such services on a per station basis, resulting in a total fee disproportional to the amount of work necessary to process these simple applications. See Letter from Managing Director to Glenn S. Rabin, dated August 13, 1990 (1989 Budget Act specifically addressed the problem of applications to assign or transfer multiple licenses and established a two-tiered fee to avoid the need for future waivers). In contrast, the change from per satellite initial authorization charges in the old fee schedule to per system charges in the new schedule was accomplished by means of the changes in language, making the addition of the phrase "per system" unnecessary.

<sup>9/</sup> See Muscogee (Creek) Nation v. Hodel, 851 F.2d 1439, 1444 (D.C. Cir. 1988), cert. denied, 488 U.S. 1010 (1989) (where words of a later statute differ from those of a previous one on the same subject, Congress must have intended the two statutes to have different meanings).

II. ASSESSING FILING FEES ON A PER SATELLITE BASIS FOR LEO SYSTEMS WOULD RESULT IN A PAYMENT GROSSLY DISPROPORTIONATE TO THE COMMISSION'S COST OF PROCESSING MOTOROLA'S APPLICATION AND PROVIDE APPROPRIATE CIRCUMSTANCES FOR A PARTIAL FEE WAIVER

A. The Commission is Authorized to Grant Fee Waivers in Appropriate Circumstances

In enacting the 1985 Budget Act, Congress expressed its explicit intent that the Commission collect the specified fees in order to defray its cost of processing the underlying applications.<sup>10/</sup> Because the fees imposed were necessarily approximations of the average cost of processing each class of application or filing, the fee statute explicitly authorized the Commission to "waive or defer payment of a charge in any specific instance for good cause shown, where such action would promote the public interest."<sup>11/</sup> Accordingly, Section 1.1115 of the Commission's Rules provides that "[t]he fees established by this subpart may be waived or deferred in specific instances where good cause is shown and where waiver or deferral of the fee would promote the public interest."<sup>12/</sup>

Based on this expression of Congressional intent, the Commission has ruled on numerous occasions that good cause for a waiver of fees is shown when, due to the factual circumstances

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<sup>10/</sup> See H. Conf. Rep. No. 453, 99th Cong., 1st Sess. 423 (1985) ("The Conferees believe that fees based on the cost of regulation principle are an appropriate mechanism by which a portion of the FCC's regulatory expenses may be recaptured.")

<sup>11/</sup> 47 U.S.C. § 158(d)(2).

<sup>12/</sup> 47 C.F.R. § 1.1115(a).

involved, assessment of the full statutory fee "would result in a levy that bears scant relation to the underlying cost of processing the applications."<sup>13/</sup> In these cases, the Commission has granted a partial waiver of fees so that the overall levy more accurately reflected the average cost of the FCC processing involved in disposing of the matter subject to the fee requirement.<sup>14/</sup>

When Congress revised the fee schedules in 1989, it reiterated its intent that fees assessed reflect the actual cost of regulation.<sup>15/</sup> The Commission, too, "worked with Congress to ensure that, to the best extent possible, fees reflect only the direct cost of processing the typical application or filing."<sup>16/</sup> The waiver provision in the statute was not modified in any way, nor did the Commission amend its regulations prescribing the situations in which a waiver would be justified.<sup>17/</sup>

The Commission thus retains its authority to waive any and all fees, in whole or in part, whenever good cause is shown and a waiver would promote the public interest. As the following

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<sup>13/</sup> See Letters to Joseph Godles and Sharon Pavlos ("the Equatorial Letter"), dated December 21, 1987, and Peter Tanenwald ("the IDB Letter"), dated March 28, 1988.

<sup>14/</sup> Id.

<sup>15/</sup> See H. Conf. Rep. No. 386, 101st Cong., 1st Sess. 433 (1989) ("These fees are intended to recover a portion of the FCC's operating budget. The Conferees believe that the individuals and companies who utilize the FCC's processes should be assessed some of the costs of operating the agency.").

<sup>16/</sup> Fees II, at ¶ 36.

<sup>17/</sup> The Commission only modified the procedures for applying for a fee waiver. See Fees II at ¶¶ 31-33.

sections will demonstrate, the circumstances surrounding Motorola's application justify the grant of a partial fee waiver in this case.

B. A Fee of Over Five Million Dollars Bears No Relationship Whatsoever to the Commission's Cost of Processing Motorola's Application

If the Commission were to assess Motorola a filing fee for its IRIDIUM system application on a per satellite basis, the total cost of this filing would be \$5,567,110.<sup>18/</sup>

Motorola respectfully submits that it is absolutely inconceivable that such a figure bears any reasonable relationship to the Commission's cost of processing this application. This single filing fee would represent about five percent of the Commission's entire budgetary allocation for 1990. Looked at another way, assuming an average professional salary of \$50,000 per year, a fee of over \$5.5 million would pay the annual salaries of more than 110 Commission staffers. Clearly, it will not take the Commission anything near the equivalent of 110 person-years to process Motorola's IRIDIUM system application.

A more reasonable approximation of the Commission's cost of processing Motorola's application readily suggests itself. There is no fundamental difference between the effort required to process an application for a satellite system employing geostationary satellites and one employing low earth orbit satellites. In both cases, all the satellites in the system virtually are identical and the kinds of technical,

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<sup>18/</sup> See note 1, supra.

operational and other issues are the same. A typical geostationary system employs two in-orbit satellites and one ground spare. Under the current fee schedule such a system application would result in a fee of \$146,590.<sup>19/</sup> This same fee might be a reasonable approximation of the Commission's cost of processing the IRIDIUM system application.

C. A Partial Fee Waiver Is Appropriate in This Case

In a recent case concerning the application of Orbital Communications Corp. ("ORBCOMM") to construct a system of 22 low earth orbit satellites, the applicant argued that it should not have to pay a fee of \$39,600 for the processing of its application (\$1,800 per satellite under the old fee schedule). ORBCOMM reasoned that the Commission's review of the application would require the same expenditure of resources whether it proposed to construct one or 22 satellites, because the staff's task would, in either case, be to determine whether ORBCOMM was qualified to construct the satellites and whether the satellites themselves were properly designed. Applying the standards enunciated in the Equatorial and IDB Letters, the Commission agreed that a fee of \$39,600 would far exceed the actual cost of processing ORBCOMM's application and that a fee of \$3,600 (two times \$1,800) was a more reasonable approximation of that cost.

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<sup>19/</sup> See note 2, supra.

The Commission therefore waived the Rules and refunded \$36,000 to ORBCOMM.<sup>20/</sup>

In ruling in the ORBCOMM case, however, the Commission suggested that application of the principles of the Equatorial and IDB Letters would no longer be appropriate under the 1989 revision of the fee schedule. In the Commission's opinion, the fact that Congress provided in that schedule for reduced fees for applications proposing multiple facilities in some instances, but not in the case of space stations, demonstrated that Congress had determined that fee waivers for multiple space stations should generally not be available after the effective date of the new fee schedule.<sup>21/</sup>

Motorola respectfully suggests that this interpretation is unwarranted. When Congress was considering the 1989 Budget Act, the FCC had received numerous requests for fee waivers in cases involving multiple earth stations or the transfer of multiple radio licenses. In such cases where experience had shown waivers of multiple fees to be appropriate, Congress made a provision for a blanket or reduced fee. See, e.g., 47 C.F.R. § 1.1105(13)(a), (14)(a), (15)(a). At the time the 1989 Budget Act was under consideration, however, commercial low earth orbit satellite systems had not developed to the point where applications proposing the construction and operation of large numbers of satellites had ever been filed with the Commission.

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<sup>20/</sup> Letter from the Managing Director to Albert Halprin, dated August 13, 1990.

<sup>21/</sup> Id. at 2.

Under these circumstances, the fact that Congress did not provide for reduced fees for multiple space stations cannot reasonably be interpreted as an implicit rejection of such relief to LEO applicants.<sup>22/</sup> On the contrary, Congress's action in providing for blanket licenses and fee reductions in so many other situations strongly suggests that if Congress had been aware of low earth orbit satellite systems it would have provided for a blanket or reduced system application fee.

Congress inserted the waiver provision into the fee statute so that the Commission could deal equitably with situations in which the imposed fees proved not to be reasonably related to the cost of the relevant regulatory actions. When it revised the Act it made some improvements in the fee schedules to capture more accurately these costs, but, recognizing that the schedule could not anticipate every possible inequitable factual situation that might arise, it left the Commission's waiver authority intact.

Motorola's LEO system application presents just such an unanticipated situation. It is clear that the fee schedule simply was not written with an application to construct, launch and operate a constellation of 77 satellites in mind. While the Commission will expend the same amount of resources processing Motorola's application as it would processing an application for

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<sup>22/</sup> See Carter v. Director, Office of Workers' Compensation Programs, 751 F.2d 1398 (D.C. Cir. 1985) (maxim of inclusio unius est exclusio alterius has force only when there is no apparent reason for inclusion of one disposition and omission of a parallel disposition except desire to achieve disparate results; it does not apply if a plausible alternate explanation exists).

a system composed of only two orbital geostationary satellites, the total fee would be 38 times higher. This application thus presents singularly appropriate circumstances for the grant of a partial fee waiver and a refund in the amount of at least \$30,520.

III. CONCLUSION

For the reasons stated herein, Motorola requests a fee determination, waiver and/or refund of filing fees submitted with the above-referenced application.

Respectfully submitted,



---

Philip L. Malet  
Alfred M. Mamlet  
Shara L. Aranoff  
Steptoe & Johnson  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 429-6239

Counsel for  
Motorola Satellite  
Communications, Inc.

December 3, 1990



# STEPTOE & JOHNSON

ATTORNEYS AT LAW

ORIGINAL

PHOENIX, ARIZONA  
TWO RENAISSANCE SQUARE

TELEPHONE: (602) 257-5200  
FACSIMILE: (602) 257-5299

1330 CONNECTICUT AVENUE, N.W.  
WASHINGTON, D.C. 20036-1788

(202) 428-3000  
FACSIMILE: (202) 428-3902  
TELEX: 89-2503

STEPTOE & JOHNSON INTERNATIONAL  
AFFILIATE IN MOSCOW, RUSSIA

TELEPHONE: (011-7-501) 929-9700  
FACSIMILE: (011-7-501) 929-9701

November 15, 1994

DELIVERY VIA COURIER

NOV 20 1994

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
Satellite and Radiocommunication Division  
International Bureau  
P.O. Box 358115  
Pittsburgh, PA 15251-5115

**RE: Application of Motorola Satellite Communications, Inc.  
for Authority to Construct, Launch and Operate a Low  
Earth Orbit Satellite System in the 1616-1626.5 MHz  
Band (File Nos. 9-DSS-P-91 (87): CSS-91-010)**

Dear Mr. Caton:

Enclosed for filing on behalf of Motorola Satellite Communications, Inc. ("Motorola") are an original and nine (9) copies of a Minor Amendment to the above-referenced application. This Minor Amendment is being submitted in accordance with paragraph 230 of the Commission's Report and Order in CC Docket No. 92-166, which requires that "Big LEO" applicants file conforming amendments and all necessary fees no later than November 16, 1994.

Also enclosed is a completed FCC Form 159 and a check made payable to the Federal Communications Commission in the amount of \$244,525.00 to cover both the filing fee for this Amendment (\$3,445.00) and the filing fee for that part of Motorola's application which requests authority to launch and operate the IRIDIUM® System (\$241,080.00). (It should be noted that Motorola filed a fee refund request with its original application on December 3, 1990, which is still pending.)

Finally, enclosed is an extra copy of this filing for our records. Please date-stamp this copy and return it to the courier delivering this package.

Telnet fees\_wl

PERFORM: Query Next Previous Add Update Remove Table Screen ...  
Shows the previous row in the Current List. \*\* 1: appl table\*\*

FEES II 05/21/9  
APPLICANT QUERY SCREEN

Fee Control Number: [9012048160237001]  
 Applicant Name: [MOTOROLA SATELLITE COMMUNICATIONS INC ]  
 Correspondence Address (Line 1): [2501 S PRICE RD ]  
 Correspondence Address (Line 2): [ ]  
 City: [CHANDLER ] State/Country: [AZ ] ZIP code: [852480000]  
 Call Sign: [ ] (Data Changed Flag: [N]) Debar Flag: [ ]

(1) Fee Type Code:	BBY	Fee Multiple:	1	Fee Due:	\$2030.00
(2) Fee Type Code:		Fee Multiple:	0	Fee Due:	\$0.00
(3) Fee Type Code:		Fee Multiple:	0	Fee Due:	\$0.00
(4) Fee Type Code:		Fee Multiple:	0	Fee Due:	\$0.00
(5) Fee Type Code:		Fee Multiple:	0	Fee Due:	\$0.00

Overage Amount: \$174580.00 Total Amount Remitted: \$176610.00  
 Check Flag: Current Amount: \$176610.00  
 Waiver: Refund: Payment: Status:

This is the fee payment record.

Holly

97122 4816 5898001

**DAVID TILLOTSON**  
Attorney at Law

Received Jan

3421 M Street, N.W., #1739  
Washington, D.C. 20007

Telephone: (202) 625-6241  
Facsimile: (202) 965-2018

January 9, 1998

WAIVER

Rec'd  
ms/Jan 14/98

Mr. Andrew Fishel, Managing Director  
Federal Communications Commission  
1919 M Street, N.W., Room 852  
Washington, DC 20554

RECEIVED

OCT - 8 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Request for Filing Fee Refund

Dear Mr. Fishel:

I am writing on behalf of Starview Media, Inc. to request a refund of the \$70.00 filing fee that I paid on its behalf, and charged to my MasterCard (5286-3008-4045-8788) in connection with a request to change the call sign of Station WHTR(FM) to WILZ that I filed at FCC/Mellon on or about December 22, 1997 (copy enclosed).

The reason for this refund request is that I withdrew the call sign change request by letter dated December 30, 1997 (copy enclosed). This withdrawal occurred before the Commission invested any resources in processing the request. In fact, during the period between the time the request was filed and the time it was withdrawn, the only member of the FCC's staff who processes call sign requests, Alma Hughes, was on leave.

As the filing fee for call sign changes is to defray the cost of processing the change, and as in this case the request was withdrawn before any processing of the call sign change request occurred, a refund of the \$70.00 fee is appropriate.

Sincerely,



David Tillotson

c: Donald Heckman

**DAVID TILLOTSON**  
Attorney at Law

4606 Charleston Terr. N.W.  
Washington, D.C. 20007-1911

Telephone: (202) 625-6241  
Facsimile: (202) 965-2018  
E-Mail: DT11@MSN.com

December 30, 1997

Magalie Roman Salas, Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Dear Ms. Salas:

I am writing on behalf of Starview Media, Inc., licensee of Station WHTR(FM), Hudson Falls, New York, to withdraw the request that the call sign of Station WHTR be changed to WILZ that I filed with FCC/Mellon on or about December 19, 1997.

If you have any questions concerning this matter, please call me.

Sincerely,

David Tillotson

Courtesy Copy: Aimee Hughes

c: Donald Heckman (via fax)

**DAVID TILLOTSON**  
**Attorney at Law**

**3421 M Street, N.W., #1739**  
**Washington, D.C. 20007**

**Telephone: (202) 625-6241**  
**Facsimile: (202) 965-2018**

December 18, 1997

FCC - c/o Mellon Bank,  
3 Mellon Bank Center, 525 William Penn Way  
27th Floor, Room 153-2713  
Pittsburgh, PA 15259-0001

Dear Sirs/Mesdames:

I am writing on behalf of Starview Media, Inc., licensee of Station WHTR(FM), Glens Falls, New York, to request that the call sign of that station be changed to WILZ effective on the earliest possible date.

Submitted herewith is a Remittance Advice (FCC Form 159) reflecting that the filing fee for this request is \$70.00 and authorizing the Commission to charge this fee to my Mastercard.

Also submitted herewith is an Anti-Drug Abuse Act Certification signed by the president of Starview Media, Inc.

If you have any questions concerning this request, please call me.

Sincerely,

David Tillotson

c: Donald Heckman (via fax)

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
9712248165898001	TILLOTSON, DAVID 4606 CHARLESTON TERRACE NW	FCC2026403	12/23/97

WASHINGTON DC 20007

Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$70.00	\$70.00	1	MBR	1	WHTR	STARVIEW MEDIA INC	12804		\$70.00	2	PMT
<b>Total</b>									<u>\$70.00</u>		

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

August 6, 1998

OFFICE OF  
MANAGING DIRECTOR

Naomi S. Travers, Esquire  
Arter & Hadden  
1801 K St., N.W.  
Suite 400K  
Washington, D.C. 20006

RECEIVED

OCT - 8 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Petition to Defer Regulatory Fee  
Stratcom, Ltd.

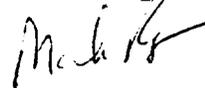
Dear Ms. Travers:

This is in response to the petition to defer payment of the Fiscal Year (FY) 1997 regulatory fees, that you filed on behalf of Thomas A. Aceituno, Trustee for the Bankruptcy Estate of Stratcom, Ltd., licensee of Radio Stations KPCO(AM), Quincy, California, and KBNF(FM), Chester, California. You maintain that the stations are being operated by Thomas A. Aceituno, as trustee appointed by the United States Bankruptcy Court, Eastern District of California, Sacramento Division. In support you have submitted a copy of the Order of the Bankruptcy Court appointing the trustee.

In Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759, 12762 ¶ 14 (1995), the Commission determined that it would waive the regulatory fees for licensees whose stations are bankrupt, undergoing Chapter 11 reorganizations, or are in receivership.

Accordingly, your request is granted and the FY 1997 regulatory fees for Radio Stations KPCO and KBNF are waived. If you have any questions concerning the waiver, please call the Chief, Fee Section, at (202) 418-1995.

Sincerely,



Mark Reger  
Chief Financial Officer

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

JUL 20 1993

In re the Matter of )  
 )  
Assessment & Collection of ) MD Docket 96-186  
Regulatory Fees for Fiscal )  
Year 1997 )  
 )  
 )

To: Managing Director

**PETITION TO DEFER PAYMENT OF 1997 REGULATORY FEES**

Thomas A. Aceituno, Trustee for the Bankruptcy Estate of Stratcom, Ltd. ("Aceituno"), the licensee of radio broadcast stations KPCO(AM), Quincy, California and KBNF(FM), Chester, California (the "Stations"), pursuant to Section 1.1166(c) of the Commission's rules, respectfully requests that the Commission defer payment of the 1997 regulatory fees for the Stations pending Commission action on the Petition for Waiver of 1997 Regulatory Fees for the Stations filed simultaneously herewith.

Section 1.1166 of the Commission's rules provides that "waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship." 47 C.F.R. § 1.1166(c). Evidence of bankruptcy or receivership is sufficient to establish financial hardship. *In the Matter of Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, 10 FCC Rcd 12759, 12762 (1995).

The instant petition and the Petition for Waiver of 1997 Regulatory Fees for the Stations, which it supports, are based on financial hardship. Aceituno was appointed bankruptcy trustee for the Stations on October 20, 1997 by the Office of the United States Trustee. A copy of the notice of appointment is attached hereto as Exhibit A. Aceituno is utilizing all available funds to keep the Stations on the air. Payment of the regulatory fees at this time would threaten station operations and, thus, would not be in the public interest.

Based on the evidence that the Stations' assets and licenses are currently being held by Aceituno in bankruptcy, Aceituno respectfully requests that the Commission defer payment of the regulatory fees for the Stations until the Commission acts on the Petition for Waiver of 1997 Regulatory Fees for the Stations filed simultaneously herewith.

Respectfully submitted,

THOMAS A. ACEITUNO, TRUSTEE FOR THE  
BANKRUPTCY ESTATE OF STRATCOM, LTD.

By: Naomi S. Travers

Naomi S. Travers  
Robin L. Miller  
ARTER & HADDEN  
1801 K Street, N.W.  
Suite 400K  
Washington, D.C. 20006  
(202) 775-7100

July 20, 1998

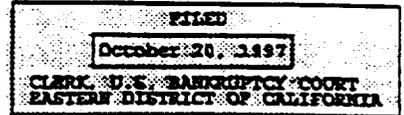
Its Attorneys

EXHIBIT A

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

In re )  
 )  
Stratcom, Ltd. )  
 )  
Debtor(s). )  
\_\_\_\_\_ )

Case No. 97-36057-B-7



APPOINTMENT OF INTERIM TRUSTEE AND NOTICE OF SELECTION

Thomas A. Aceituno is hereby appointed Interim Trustee of the above-named Debtor's(s') estate and Trustee if creditors fail to elect a Trustee as provided by the Bankruptcy Code. The Interim Trustee has filed a blanket bond pursuant to Federal Rule of Bankruptcy Procedure 2010(a).

If the Interim Trustee does not notify the Office of the United States Trustee and the Court in writing of rejection of the office within five days after receipt of notice of selection, the Interim Trustee shall be deemed to have accepted the office.

Dated: October 20, 1997

Office of the United States Trustee  
Region 17

Linda E. Stanley  
United States Trustee

Antonia G. Darling  
Assistant United States Trustee

**CERTIFICATE OF SERVICE**

I, Nellie Martinez-Redicks, a secretary in the law firm of Arter & Hadden LLP, hereby certify that on this day, July 20, 1998, a copy of the foregoing "Petition to Defer Payment of 1997 Regulatory Fees" was served on the following person by hand-delivery:

Regina Dorsey, Chief  
Federal Communications Commission  
Billings & Collections Branch  
1919 M Street, N. W., Room 452  
Washington, DC 20554

---

Nellie Martinez-Redicks

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

JUL 16 1998

OFFICE OF  
MANAGING DIRECTOR

RECEIVED

OCT - 8 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Mark Van Bergh, Esquire  
Arter & Hadden LLP  
1801 K Street, N.W.  
Washington, D.C. 20006-1301

Re: Fee Control # 9504198195422007

Dear Mr. Van Bergh:

This will respond to your request for refund, or in the alternative waiver, of an application fee submitted on behalf of T.C. Broadcasting, Inc. (T.C.) in connection with its application for a new FM station at Benton Harbor, Michigan.

You maintain that, due to the freeze on processing mutually exclusive broadcast applications, T.C.'s application has never received any processing. Further, you state that T.C. and the competing applicants have entered into a settlement agreement, filed with the Commission on January 30, 1998, in which it has agreed to dismiss its application in consideration of a monetary payment. You contend that T.C. is entitled to a refund of its application fee since its application has not been processed and, in view of the requested dismissal of its application, will receive no processing. Consequently, you contend that the Commission has incurred no processing costs involving T.C.'s application. Moreover, you argue that a refund is due because the Commission has modified its methodology for selection of broadcast station licensees.

The Commission's rules do not provide for refund of an application fee upon the filing or the grant of a motion to withdraw an application pursuant to a settlement agreement. See Report No. 44221A, released April 16, 1998, dismissing T.C.'s application, as requested, pursuant to its settlement agreement. Further, while the Commission clearly incurred processing costs connected with T.C.'s application and settlement agreement, you should note that the Commission has stated that its "processing costs were but one factor that resulted in the legislated fees." See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Act of 1985, 2 FCC Rcd 947, 949 (1987). Moreover, the Commission has explicitly stated that a refund will not be granted once an application has cleared the fee review process, except in certain circumstances enumerated in Section 1.1113 of the Commission's Rules. 47 C.F.R. 1.1113. Section 1.1113(a)(4) of the Rules provides for refund of an application fee when either a change in the rules or in the law nullify an application already accepted for filing. In the case of T.C.,

Mr. Van Bergh, Esquire

2.

however, because its application was dismissed on its own volition as part of a settlement agreement rather than as a consequence of a change in the rules or the law rendering it a nullity, no refund is due.

Thus, your request is denied.

Sincerely,

  
Thomas M. Holleran  
Acting Associate Managing  
Director - Financial Operations

95041981954 22007

**ARTER & HADDEN**<sup>LLP</sup>  
ATTORNEYS AT LAW  
*founded 1843*

Cleveland  
Columbus  
Dallas

1801 K Street, N.W. / Suite 400K  
Washington, D.C. 20006-1301  
202/775-7100 *telephone*  
202/857-0172 *facsimile*

RECEIVED  
APR 6 10 33 PM '98  
FEDERAL COMMUNICATIONS COMMISSION  
ORIGINAL  
Irvine  
Los Angeles  
San Francisco

Mark Van Bergh  
Direct Dial: (202) 775-7983  
E-mail: VanBergh@arterhadden.com

RECEIVED

April 1, 1998

APR - 1 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554  
Attention: Managing Director

Re: Request for Refund of Application Filing Fee  
TC Broadcasting, Inc.  
File No. 950417MP

Dear Mr. Fishel:

On behalf of T.C. Broadcasting, Inc. ("TC"), and pursuant to Sections 1.1113 and 1.1117 of the Commission's Rules, the Commission is hereby requested to refund the application filing fee that TC submitted to the Commission on April 17, 1995, in connection with TC's application for a construction permit for a new FM station at Benton Harbor, Michigan. Because the Commission never processed TC's application, and TC has now requested the Commission to dismiss its application pursuant to a settlement agreement, TC is entitled to a refund of its application fee in the amount of \$2,335. In support of this request the following is shown.

Attached to this request are a copies of page 1 of TC's FCC Form 301 application showing the relevant fee information, and the transmittal letter and the check in the amount of \$2,335 that accompanied the application. TC's application was one of seven applications filed for the Benton Harbor construction permit. Because of the freeze on the processing of all mutually exclusive broadcast applications the Commission has not processed TC's application.<sup>1</sup>

On January 30, 1998, all of the Benton Harbor applicants filed a "Joint Request for Approval of Auction and Settlement Agreement" in which they requested the Commission to grant the application of WSJM, Inc. and dismiss all of the other applications pursuant to a settlement agreement. On March 9, 1998, the Commission gave public notice that it had accepted

<sup>1</sup> See Public Notice: FCC Freezes Comparative Hearings, 9 FCC Rcd 1055 (1994), modified, 9 FCC Rcd 6689 (1994), further modified, 10 FCC Rcd 12182 (1995).

# ARTER & HADDEN<sub>LLP</sub>

Federal Communications Commission  
April 1, 1998  
Page 2

WSJM, Inc.'s application for filing and established April 9, 1998, as the last date for filing petitions to deny. The Commission also stated in the public notice that "no hearing fee is required because . . . (2) the applications are mutually exclusive but a settlement has been filed. All mutually exclusive FM commercial applications which would require hearing fees are currently frozen . . . ." See Report No. NA-220, released March 9, 1998.

TC requests a refund of the application fee that accompanied its Benton Harbor application because the Commission has never processed the application and now, pursuant to a universal settlement, TC's application will be dismissed and the application of the single remaining applicant, WSJM, Inc., will be granted. Although the Commission's rules governing refunds or exemptions from the fee charges do not specifically address this particular situation it is analogous to other circumstances for which the Commission will refund or return an application fee. To the extent necessary, a waiver of the fee requirement is requested. See Section 1.1113(a)(5).

The purpose of the application fee "is to permit the Commission to assess and collect charges for certain of the regulatory services it provides to the public. The charges are based primarily on the Commission's cost of providing these regulatory services." Establishment of a Fee Collection Program, 2 FCC Rcd 947, 948-949 (1987), modified, 2 FCC Rcd 1882 (1987), further modified, 3 FCC Rcd 5987 (1988). When the Commission is not required to undertake the process which underlies a fee, a refund of the previously paid fee is appropriate.

Under Section 1.1113(b)(4), an applicant is entitled to a refund of a hearing fee previously paid if a settlement agreement is filed which "provides for the dismissal of all but one of the applicants, and the single remaining applicant is immediately grantable . . . However, if the [remaining] applicant cannot be granted without resolution of issues specified in the designation order, it must pay the hearing fee." Thus, in the hearing context, applicants pay the hearing fee in advance of designation for hearing, but if they enter into a settlement agreement that avoids the need for a hearing the dismissing applicants are entitled to a fee refund because the Commission does not incur the costs associated with the hearing fee payment. The Commission deems the imposition of a hearing fee in cases which require no hearing process fundamentally unfair. See Establishment of a Fee Collection Program, 3 FCC Rcd 5987, 5990 (1988). If, however, the remaining applicant must partake in a hearing proceeding to resolve outstanding issues, then it is required to pay the hearing fee. Ibid.

The circumstances for the Benton Harbor applicants are substantially the same. The settlement agreement among the Benton Harbor applicants is similar in all respects to the conditions described in Section 1.1113(b)(4) except that the settlement occurred before designation for hearing and before the Commission processed the applications. TC and the other Benton Harbor applicants, except WSJM, Inc., are requesting the dismissal of their applications. Only WSJM, Inc., as the remaining applicant will have its application processed and granted.

# ARTER & HADDEN<sub>LLP</sub>

Federal Communications Commission  
April 1, 1998  
Page 3

Because the applications of the dismissing applicants have undergone no application processing, those applicants should receive a refund of their application fee. Just as in the context of a refundable hearing fee, the Commission has incurred no costs normally associated with the fee. However, the Commission is processing WSJM, Inc.'s application which is, therefore, subject to the application fee.

Additionally, the freeze on the processing of mutually exclusive applications resulted from a new Commission policy adopted after the implementation of the fee collection program. Although the Commission froze the filing of all applications for new broadcast stations in 1994, it ultimately modified the freeze to the extent of receiving applications, but if mutually exclusive applications were filed the Commission would not process them. See footnote 1, supra. Thus, the Commission's policies concerning the filing freeze and subsequent processing freeze meant that TC had to file its application and pay the application fee during the announced filing window for the Benton Harbor FM channel in order to protect and pursue its interest in obtaining the Benton Harbor construction permit. But those same policies and the subsequent settlement (entered into pursuant to a recent Commission policy temporarily waiving its settlement rules), have rendered the application a nullity. In analogous situations, where a new rule is adopted that renders an accepted application a nullity the applicant is entitled to a refund of its application fee. See Section 1.1113(a)(4).

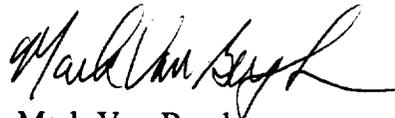
Although the Commission's rules do not specifically contemplate a refund of the application fee for applicants that are in TC's position, the conditions that gave rise to these circumstances arose after the Commission adopted the fee rules and procedures and were not contemplated or addressed at that time. Because the rules do not specifically contemplate the current circumstances, a waiver of the filing fee requirement may be necessary for the Commission to issue the fee refund. The Commission considers waivers on a case-by-case basis. See Establishment of a Fee Collection Program, 2 FCC Rcd at 961. Here there is no public interest in having an applicant reimburse the Commission for the services normally associated with the application fee because the Commission was not required to and did not provide those services. See Ibid. Because the public interest normally associated with the fee collection program is not applicable, i.e., the Commission has not incurred the costs normally associated with processing an application, a waiver of the fee requirement and refund of the \$2,335 application fee that TC previously paid is appropriate.

**ARTER & HADDEN<sub>LLP</sub>**

Federal Communications Commission  
April 1, 1998  
Page 4

Should you require any additional information or if any question arises concerning this request, please contact undersigned counsel.

Sincerely,



Mark Van Bergh

Enclosures

ECC/MELLON APR 17 1995

R&E

RETURN COPY

ROBERTS & ECKARD, P.C.

ATTORNEYS AT LAW

1150 CONNECTICUT AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20036

TELEPHONE  
(202) 296-0533

TELEFAX  
(202) 296-0464

JAMES S. BLITZ  
JOY R. BUTLER  
PAMELA C. COOPER  
LINDA J. ECKARD  
KENNETH M. KAUFMAN  
MARY L. PLANTAMURA  
LAWRENCE ROBERTS  
PETER D. SHIELDS  
MARK VAN BERGH\*

\*OF COUNSEL

April 17, 1995

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
Mass Media Bureau  
P.O. Box 358195  
Pittsburgh, PA 15251-5195

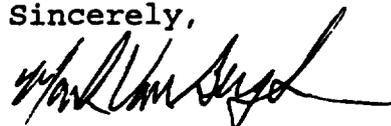
Dear Mr. Caton:

Enclosed for filing are an original and two copies of an application for a construction permit for a new FM station on Channel 235A at Benton Harbor, Michigan. The application is being filed in response to "Window Notice for the Filing of FM Broadcast Applications," Report No. CF-30, released March 13, 1995, establishing April 17, 1995, as the deadline for filing an application.

Also enclosed is a check for \$2,335 made payable to the FCC to cover the required filing fee.

If there are any questions concerning this application, please contact the undersigned counsel to T.C. Broadcasting, Inc.

Sincerely,



Mark Van Bergh

Enclosures

Approved by OMB  
3060-0027  
Expires 6/30/95

FCC 301

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20544

FOR  
FCC  
USE  
ONLY

APPLICATION FOR CONSTRUCTION PERMIT  
FOR COMMERCIAL BROADCAST STATION

FOR COMMISSION USE ONLY  
FILE NO.

Section 1 - GENERAL INFORMATION

1. APPLICANT NAME  
T.C. Broadcasting, Inc.

MAILING ADDRESS (Line 1) (Maximum 35 characters)  
5847 Venture Way

MAILING ADDRESS (Line 2) (If required) (Maximum 35 characters)

CITY Mount Pleasant	STATE OR COUNTRY (if foreign address) Michigan	ZIP CODE 48858
TELEPHONE NUMBER (Include area code) 517-772-4173	CALL LETTERS	OTHER FCC IDENTIFIER (IF APPLICABLE)

FOR MAILING THIS APPLICATION, SEE INSTRUCTIONS FOR SECTION 1 - GENERAL INFORMATION B.

2. A. Is a fee submitted with this application?  Yes  No

B. If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1112) and go to Question 3.  
 Governmental Entity  Noncommercial educational licensee

C. If Yes, provide the following information:

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in the "Mass Media Services Fee Filing Guide." Column (B) lists the Fee Multiple applicable for this application. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number listed in Column (B).

(A) FEE TYPE CODE	(B) FEE MULTIPLE (if required)	(C) FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY
(1) M   T   R	0   0   0   1	\$ 2,335.00	

To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

(A)	(B)	(C)	FOR FCC USE ONLY
(2)	0   0   0   1	\$	

ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (2), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.

TOTAL AMOUNT REMITTED WITH THIS APPLICATION	FOR FCC USE ONLY
\$ 2,335.00	

3. This application is for: (check one box)  AM  FM  TV

(b) Channel No. or Frequency  
235A

(b) Principal Community	City	State
	Benton Harbor	MI

# Payment Transactions Detail Report

Date: 5/7/98

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
9504198195422007	MACKIN, J D 210 N KINNEY	FCC18808	04/17/95

MOUNT PLEASANT MI 48858

Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$2,335.00	\$2,335.00	1	MTR	1		T C BROADCASTING INC	48858		\$2,335.00	1	PMT
<b>Total</b>									<b>\$2,335.00</b>		

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

JUL 16 1998

OFFICE OF  
MANAGING DIRECTOR

RECEIVED

OCT - 8 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. M. Camille Price  
Secretary  
Television Reception District #2  
of Okanogan County  
P. O. Box 441  
Twisp, WA 98856

Re: Exemption From Regulatory Fees

Dear Ms. Price:

This is in response to your request for an exemption for the Television Reception District from the Fiscal Year (FY) 1997 regulatory fees. You assert that the Television Reception District is a nonprofit Junior Taxing District of Okanogan County, Washington, providing radio and television signals to a remote area.

The Commission has previously determined that the Television Reception District is exempt from the fees. That exemption shall remain in effect until there is a change in the ownership or operation of your stations. Absent such changes, the Television Reception District is not required to request renewals of its exemption. The Television Reception District, however, should retain this letter in its files and refer to it in any correspondence concerning the regulatory fees.

If you have any questions concerning the exemption, please contact the Chief, Fee Section, at (202) 418-1995.

Sincerely,



Thomas M. Holleran  
Acting Associate Managing  
Director - Financial Operations

RECEIVED

AUG 29 1997

FCC MAIL ROOM

000000 BCB-98-018

~~TELEVISION DISTRICT #2~~  
OF OKANOGAN COUNTY  
PO Box 441  
Twisp, WA 98856

August 25, 1997

FEDERAL COMMUNICATIONS COMMISSION  
1919 M. Street N.W.  
Washington, D.C. 20554

Dear FCC Commission:

Television Reception District #2 of Okanogan County wishes to claim ~~exemption~~ from the new FY 1997 Mass Media Regulatory Fees as a Government nonprofit entity. We are claiming this exemption for the following FCC Station numbers: K12BA, K05EK, K09BI, K11BM, K10BD, K08AY, K04FT, K02FZ. You have granted us this exemption from fees in the past and may still have on file our letters claiming this status.

We are a nonprofit Junior Taxing District of Okanogan County, Washington. The Washington State Title 36 RCW setting the rules and regulations for districts such as ours was sent to you in August of 1995 with this same claim for exemption along with a copy of a letter we send each year with our tax statements explaining the nature of our district and our purpose. These documents should be on file in our FCC folder with you. As the letter states, we are located in a very remote and mountainous area on the east side of the Cascade mountains. Without the services of the District there would be no easily affordable radio or television reception. We provide signals from the city of Spokane which include public radio and television.

As the copy of the State RCW explains, all our business is conducted through the County Treasurer's and County Auditor's offices. We are audited by the Washington State Auditor's Office. We are nonprofit.

Thank you for your time and consideration.

Sincerely,

*M. Camille Pierce*  
M. CAMILLE PIERCE  
Secretary

SEP 8 11 52 AM '97

VIDEO SERVICES  
DIVISION