

FEDERAL COMMUNICATIONS COMMISSION ~~BOOKET~~ FILE COPY ORIGINAL
Washington, D. C. 20554
DEC 30 1998

OFFICE OF
MANAGING DIRECTOR

86-285

Mr. Joseph Buerry
President
Concord Area Broadcasting
5552 Pamplona Court
Concord, CA 94521

Re: Reconsideration of the Denial of a
Request for Waiver of the FY 1997
Regulatory Fee

Request for Waiver of the FY 1998
Regulatory Fee

Dear Mr. Buerry:

This is in response to your requests for a waiver of the Fiscal Year (FY) 1998 regulatory fee for AM Radio Station KRHT, Concord, California, licensed to Concord Area Broadcasting, and for reconsideration of a letter dated August 10, 1998 denying a request for waiver of the FY 1997 regulatory fees. You argue that KRHT had been dark, that the station returned to the air in February 1997, but that you lack funds to pay the 1997 and 1998 regulatory fees. You further argue that the Commission has overstated the size of KRHT's city of license.

The Commission's policy is to accept and consider timely requests for waivers of the Commission's regulatory fees. In the August 10, 1998, letter, we denied KRHT's request for waiver of the FY 97 regulatory fees, because of its disregard of the Commission's filing requirements and its failure to show why it could not have filed the waiver request in a more timely manner. The request for reconsideration will be denied also because it fails to show why KRHT could not have requested that waiver in a more timely manner.

The Commission will consider timely requests for waivers of the regulatory fees. You state that the Commission has overstated the population of KRHT's city of license. The regulatory fee was derived by calculating KRHT's city grade contour, and placing it over a census map, to determine the population within that contour. The city grade contour is not contiguous with geographical city limits of Concord. Thus, absent engineering data establishing that the estimate of population within the service area is in error, we will not reduce the regulatory fee because of the population served.

In establishing its regulatory fee program, however, 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). The Commission further held that regulatees can establish financial need by submitting:

[I]nformation such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.

10 FCC Rcd at 12761-2762.

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.

In the absence of appropriate documentation, you have failed to establish a compelling case of financial hardship. Therefore, your request for waiver of the FY 1998 regulatory fees is dismissed. The FY 1998 regulatory fee for Radio Station KRHT is now due. That fee of \$2,000 should be filed, together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. However, in view of your allegations of financial hardship and concerning the population within your service area, you may request a further deferment of the time in which to pay the FY 1998 regulatory fee and you may refile the waiver request together with appropriate supporting documentation within 30 days from the date of this letter.

In addition, payment of the FY 1997 regulatory fee of \$1,800 and the 25% late payment penalty of \$450, for Radio Station KRHT are now due. The aggregate \$2,250 fee should be filed together with a Form FCC 159 (copy enclosed), within 30 days from the date of this letter. You are cautioned, that the failure to submit payment of the FY 97 regulatory fee and penalty as required will result in the initiating of a proceeding to recover those fees pursuant to the provisions of the Debt Collection Act.

Mr. Joseph Buerry

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

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Reger", with a long horizontal flourish extending to the right.

Mark Reger
Chief Financial Officer

Enclosure

000000 BCB-98-075

Andrew S. Fishel
Managing Director
Federal Communications Commission
Room 450
1919 M Street N.W.
Washington DC 20054

RECEIVED
SEP 2 9 56 AM '98
ASSOC. MNG. DIR.
FINANCIAL OPERATIONS
(AHD-FO)

August 28, 1998

Dear Mr. Fishel:

I am writing you to ask you to waive our 1998 regulatory fee. KRHT is operating under a temporary STA. The station was off the air from February 1993 to February 1997. Since that time, we have no income. We hope to be able to reconstruct and generate income.

It would be a tremendous hardship to attempt to raise funds in order to pay the 1998 fee.

Finally, the information you sent regarding the fee lists our city of license, Concord, California with over 600,000 when in reality it has 112,000 which would significantly reduce our fee.

Please advise.

Sincerely,



President

Concord Area Broadcasting
5552 Pamplona Court
Concord, CA 94521