

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

FEB 1 1999

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OFFICE OF
MANAGING DIRECTOR

86-285

Ms. Sandi Usrey Bergman
President/General Manager
Bergman Broadcasting Co., Inc.
P.O. Box 886
Portales, NM 88130

Re: FY 1995 Regulatory Fee
Radio Station KSMX

Dear Ms. Bergman:

This is in response to your recent inquiries concerning the Fiscal Year 1995 regulatory fee for FM Radio Station KSMX, Clovis, New Mexico, licensed to RICKochet Communications, Inc.

Radio Station KSMX went off-the-air in August 1994. On July 21, 1995, the license for KSMX was assigned to RICKochet Communications, Inc. On September 1, 1995, KSMX resumed broadcasting with reduced power. The Commission's policy is to waive regulatory fees for stations which are dark. A waiver is granted for the period during which a station is dark, the waiver expires when the station returns to the air, and the station is expected to pay the full fee for the fiscal year unless it can establish a new basis for waiver of the fee. RICKochet's request for a waiver of the FY 1995 regulatory fee was denied because KSMX had returned to the air and RICKochet had certified that it had sufficient funds to build and operate the station for three months without additional revenues.

While the Commission is required by law to recover regulatory fees from its licensees, to the extent practicable, the Commission's policy is to implement the fees in a manner which will not unduly affect the offering of communications services to the public.

KSMX was off-the-air for almost the full year preceding the date for payment of the fee. RICKochet, as the assignee, expeditiously resumed broadcasting under a special temporary authority with reduced power. Moreover, had KSMX remained off-the-air an additional 3 weeks, the policy for waiving the fee would have still applied. On further consideration, we believe that under these circumstances it would be inequitable to require KSMX to pay a fee when it could have avoided the fee by remaining dark for a short additional period.

Ms. Bergman

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Accordingly, your request for further consideration of the FY 1995 regulatory fee for KSMX is granted and the fee is waived. You are cautioned, however, that this waiver is limited to the FY 1995 regulatory fee.

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

Sincerely,



Mark Reger
Chief Financial Officer

cc: Wayne Coy, Jr., Esquire
Cohn & Marks
1333 New Hampshire Ave., N.W.
Washington, D.C. 20036

BERGMAN BROADCASTING CO. INC.

CLOVIS HWY • PO BOX 886 • PORTALES, NM 88130

November 2, 1998

505-359-1759

FAX: 505-359-0724

Mr. Rick Chessen
Senior Legal Advisor to
FCC Commissioner Tristani
1919 M Street NW
Washington, D.C. 20554

000000BCB-99-004

Dear Mr. Chessen:

You and I have visited by phone on several occasions in the last few months concerning FCC requirement for our corporation, RICKochet Communications, Inc., to pay FY 1995 regulatory fees after having been "on the air" for only one month (September, 1995) during that fiscal year. You have also voiced your concern in this matter, and you have stated to me that you would look further into this situation. For your convenience, I have enclosed copies of all related paperwork I have in my possession.

I know that FCC Chairman Kinnard and at least several of the other commissioners are very concerned about the number of minority-owned broadcast stations. To reiterate what I have told you by phone - I am the president and general manager of this station. I was able to receive funding to purchase KSMX through an SBA minority loan program. Because of the immediate FCC regulatory fee requirement, I feel like I am being "punished" for making this bold effort to purchase a station and get it back on the air after it had been "dark" for more than a year.

Here is another issue that is extremely unsettling for me: For more than one year now, there has been in existence a "pirate" radio station operating in Portales, New Mexico. This station is playing Spanish music. Upon hearing about the station, I did not give it much thought until one of our account executives reported to me that several of her clients said they were going to "try" the Spanish station in lieu of doing business with us. At that point, I became concerned about the unlicensed operation, and I formally notified the FCC of its existence.

The "pirate" remains on the air even today. Throughout this past month I have heard all kinds of local advertising on the station - from politicians to grocery stores, restaurants to bookstores. I have since found out that one of our formally frequent advertisers, El Rancho, is spending \$300 per month with the station. El Rancho hasn't done business with us in over a year, just about the same amount of time that the "pirate" has been on the air. What a coincidence!

Is there something wrong with this picture? The \$300 per month El Rancho budget alone could help us to pay the \$1,400 in regulatory fees owed for the fiscal year for which we were in operation for one month. Please help me to get the regulatory fee problem rectified. As I have told you by phone, I will gladly pay a pro-rated amount for FY 1995. Thank you for your immediate assistance in this matter.

Sincerely,



Sandi Usrey Bergman
President/General Manager

cc: Wayne Coy

