

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554 DOCKET FILE COPY ORIGINAL

JUN 22 1999

86-285

OFFICE OF
MANAGING DIRECTOR

Mr. Angel Vera Maury
President
Las Raices Pepinianas, Inc.
Apartado 1670
Ave Ricardo Serrano 21
San Sebastian, PR 00685

Re: Petitions for Reduction of Regulatory Fee
Fee Control # 9808318835325020
Fee Paid: \$622

Dear Mr. Maury:

This is in response to your request for a deferment and reduction of the Fiscal Year (FY) 1997 regulatory fees for AM Radio Station WLRP, San Sebastian, Puerto Rico.

You argue that because of Puerto Rico's small area, mountainous terrain and rural population, the Commission has waived its rules to permit stations to operate with greater power and higher antenna than would otherwise be allowed. As a result, you contend that WLRP is credited for fee purposes with a larger theoretical area of coverage than it actually serves, and a larger but unreachable population base, resulting in a disproportionate increase in its fee obligations. You further argue that the Puerto Rican population is not mobile, that each station serves its community of license, and while a station's signal may extend into other communities, that does not mean the station serves those communities. Finally, you argue that because of the depressed nature of the Puerto Rican economy, payment of the full fee will cause a severe financial strain and affect WLRP's ability to serve the public. You urge the Commission to reduce the fee for WLRP to no more than a 38% increase over the FY 1996 fees, the amount of the increase attributable to the broadcast radio industry.

In order to determine the population attributable to each station for fee purposes, we calculated the station's field strength contours, considering all factors such as mountainous terrain which may reduce coverage. The calculated field strength signal contour was then overlaid on U.S. Census data to obtain an estimate of population coverage for each station. Thus, the fee schedule accurately reflects the population within each station's protected contour.

In FY 1996, the Mass Media Radio Regulatory Fees were predicated solely on the class of station irrespective of the size of the population served by each station. The FY 1997 fee schedule sought to eliminate the inequities in the 1996 fee schedule by predicating the fees on both the class of station and the size of the population served. As a result, not all stations experienced the same increase in fees and there is no basis for selectively reducing the fees for some licensees to no more than 38% of the regulatory fees they paid in 1996.

We recognize that by relying on protected daytime contours for FY 1997, some stations were credited with serving populations not considered to be within their "core" service areas. However, 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 protected service contour. The 0.5 mV/m contour extends beyond and includes populations not within a licensee's primary service area. Therefore, as a matter of equity, recalculating a station's service area using a different contour for measuring population would require recalculating the 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 and that licensees are treated equally.

We also 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. WLRP, for example, has complained that it is attributed with service to populations from other communities which it does not serve. We therefore, decided to use the city grade contour to calculate FY 1998 radio regulatory fees. However, the 0.5 mV/m contour is appropriate for calculating the FY 1997 regulatory fees because that contour represents the area in which listeners receive the station's protected signal. Thus, the Commission will not reduce, on an ad hoc basis, an individual station's regulatory fee solely because its population served would be lower had we relied on a different service contour.

We further note that you argue that the regulatory fees will cause WLRP a financial hardship, and could affect its ability to serve the public. 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

Mr. Angel Vera Maury

3.

(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, WLRP has failed to establish a compelling case of financial hardship and the request for reduction of the FY 97 regulatory fee is dismissed. However, in view of the allegations of financial hardship, WLRP may refile its request reduction or waiver of the fee payment with appropriate supporting documentation, within 30 days from the date of this letter.

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

Sincerely,


Mark Veger
Chief Financial Officer

JERRY

9808318835325020

FCC/MELLON

OCT 13 199

In the Matter of)
 :)
 Petition for Declaratory)
 Ruling)
 _____)
LAS RAICES PEPINIANAS INC)

TO: The Commission

**PETITION FOR DECLARATORY RULING AND FOR
 WAIVER OF REGULATORY FEE INCREASE**

LAS RAICES PEPINIANAS ("Licensee"), pursuant to Section 1.2 of the Federal
 LAS
 Communications Commission's Rules, hereby petitions for a ruling declaring that its exempt, in
 part, from payment of the regulatory fee increase applicable to its radio station. This submission
 is accompanied by a Petition for Reduction of Payment of Regulatory Fee Increase.

I. Introduction

1. On June 26, 1997, the FCC issued its revised schedule of annual regulatory fees for 1997. See Commission Report and Order, MD Docket No. 96-186 (Released June 26, 1997) ("FY 1997 Fee Order"). The regulatory fees contained therein represented a substantial increase in the fees due for these stations in previous years. Part of that increase results from an overall increase in costs for enforcement, policy and rulemaking, international and user information activities in FY 1997, which the Commission is obligated to recover. The amount of such increase attributable to the radio industry is 38%. Accordingly, the Licensee is submitting

Erica BCB 10-22-98

herewith the amount of last year's annual regulatory fee and an additional 38% of that amount. The remainder of the fee increase is due to the FCC's new methodology of calculating annual regulatory fees for AM and FM Stations. Licensee is willing to pay the amount submitted herewith, and seeks only a reduction of any increase over and above the 38%, as such increase is based on the FCC's fees determination methodology. In support of this request, the following is submitted.

II. Argument

2. Section 9(d) of the Communications Act of 1934, as amended, provides that "[t]he Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest." 47 U.S.C. 159(d); see also 47 C.F.R. § 1.1166 (1995). Petitions for reduction of a fee must be accompanied by the full fee payment less the amount of the requested reduction. 47 C.F.R. § 1.1166(d) (1995).

3. In its FY 1997 Fee Order, the FCC instituted a new fee structure for assessment of AM and FM broadcast fees for FY 1997. The Commission's objective in doing so was to more accurately "associate population density and service area contours with license data." FY 1997 Fee Order, at page 19. By basing fees on class of station and population served, the FCC hoped to provide "a fair and equitable means of distinguishing between stations located in metropolitan areas and those located in rural areas." Id. at 23. The expected result is that generally larger stations and those located in larger metropolitan areas will be more likely to be assessed higher fees and small stations and those located in rural areas will be more likely to be assessed lower fees. Id. While Licensee does not challenge the Commission's contention that generally these objectives have been realized due to its implementation of the new methodology, it is noted that proportionately, with respect to the fee increase, small rural stations on the island of Puerto Rico,

including the Station at issue here, are bearing a significantly greater share of the increase than the large metropolitan stations.

4. The disproportionate fee increase appears to be the combined result of several factors unique to Puerto Rico, not just one specific circumstance. As is more fully described below, these factors include the Island's unusual geographical characteristics, its dense but predominately rural population, the implementation of certain technical standards, which although in compliance with Commission requirements, are at variance with similarly situated stations located in the 48 contiguous states, and the inherent localism of the stations.

5. First, a number of factors particular to an island location converge to result in disproportionate fees for small stations in Puerto Rico. Geographically, Puerto Rico is small and its terrain is quite rugged. Puerto Rico is approximately 90 miles long (east to west) and thirty miles wide (north to south), bisected east to west by a central mountain range which effectively blocks broadcast signals directed across its heights. Isolated high points also exist throughout the island which make it difficult to sustain a good quality broadcast signal even at shorter distances.

6. Recognizing the inherent difficulties these geographical considerations pose to coverage and the need to enhance the abilities of the Puerto Rico stations to better serve the needs of their audiences, the FCC has authorized, through waivers and/or specific rules and regulations, the use of more powerful transmitters and/or larger antennas than would otherwise be permitted.^{1/} Additionally, the FCC has adopted special short spacing rules for Puerto Rico

^{1/} For example, Class A stations in Puerto Rico are authorized a maximum ERP of 6kW and a reference HAAT of 240 m. While Class A stations in the 48 contiguous states are authorized the same maximum ERP, the maximum authorized reference HAAT is only 100 m. The same comparison applies to Class B1 and Class B stations. While the maximum allowable ERP is the same, Puerto Rico stations have been authorized a greater reference HAAT. See 47 C.F.R. § 73.211.

stations, which permit the construction of a greater number of stations in a smaller area than would be the case on the mainland. See 47 C.F.R. § 73.215. Taken together, these specialized technical rules artificially inflate the annual regulatory fees due for these stations under the FCC's new fee methodology.

7. While admittedly the variances mentioned above are necessary to Puerto Rican radio operations, their impact with respect to the regulatory fee obligations of small rural stations in Puerto Rico, including the Station at issue here, is profound. First, the short spacing rules create significant congestion in the radio market, particularly in the rural areas. Consequently, there is more contour overlap and thus more contour interference. The effects of this congestion are further magnified by the fact that 90% of the radio stations on the Island are located along the coastline. The implication being that some portion of these stations' signals are transmitting over the ocean. Finally, even though the terrain, contour overlap and interference generally preclude the Station from transmitting a signal of any quality beyond its community of license, the expanded facilities requirements (i.e., ERP and HAAT variances) produce a greater maximum theoretical class contour distance for the Station.^{2/} Thus, because the new fee methodology is tied to both the class of the station and the population being served, and because the Station has a larger theoretical area of coverage and therefore a seemingly larger population base, albeit a technically unreachable population base, the Station has seen a disproportionate increase in its fee obligations.

^{2/} This is best illustrated by comparing the maximum limits for Puerto Rico FM stations to those of the same class in the 48 contiguous states. The maximum contour distances for FM stations in Puerto Rico is as follows: 42 k for Class A stations, 46 k for Class B1 stations, and 78 k for Class B stations. In contrast, the maximum contour distances for the same class of stations on the mainland is: 28 k for Class A stations, 39 k for Class B1 stations, and 52 k for Class B stations.

8. Moreover, although Puerto Rico is rather small, it has a strong radio presence. Roughly 120 licensed or authorized radio stations exist on the island, the majority of which are small, privately owned stations who serve rural communities. Puerto Rico is also densely populated. Approximately the size of the State of Connecticut, it is home to a total 1990 Census population of 3,522,037 persons. These people, however, are not highly mobile like the residents of Connecticut who commute daily to New York to work. Rather, all of the daily activities of the residents of Puerto Rico occur within their own or neighboring communities, which are considered as distinct as the cities of Washington, New York and Boston. This localization is further evidenced by the findings of the U.S. Census Bureau, which has divided the Island into four Metropolitan Statistical Areas (“MSAs”),^{3/} and by the Commission, who has utilized such MSAs when considering waivers of the one-to-a-market multiple ownership rule to help define applicable broadcast markets in Puerto Rico. See WLDI, Inc. (Assignor) and Pedro Roman Collazo (Assignee) for Assignment of License of Station WRAI(AM), San Juan, Puerto Rico, 1 CR 862, 10 FCC Rcd 12150 (September 28, 1995).

9. The existence of these alternative MSAs demonstrates that population, commuting, and business patterns are fractured. Thus, the mere fact that a station’s signal from one market might spill into the population center of another’s doesn’t mean people there will be listeners, or more importantly, that advertisers will buy time on the station. This impact is even greater on the rural stations which have populated areas but are not considered stations in the

^{3/} An MSA comprises one or more counties containing either a place with at least 50,000 inhabitants or an urbanized area and a Metropolitan Area (MA) total population of at least 100,000. Contiguous counties are included if they have close social and economic links with the area’s population nucleus.

populated area by listeners or advertisers.^{4/}

10. Given the Commission's intent to treat Puerto Rico specially, as evidenced by these different technical rules and standards, and given its intent to more accurately associate the regulatory fee assessment with population density and the fact that a completely opposite result is reached when this methodology is applied to the Station because of the artificial factors which inflate the Station's population base, it would be unfair and inequitable to require Licensee to pay the full amount of the fees currently due. Moreover, because of the generally more depressed nature of the Puerto Rico economy, increases such as these confer a disproportionately greater burden on Puerto Rico licensees. In this instance, the increase will cause the Licensee to suffer severe financial strain and limit its ability to serve the public.

11. As indicated above, the Commission has the authority to reduce or defer the regulatory fee requirement in instances where reduction or deferral would promote the public interest. See 47 C.F.R. § 1.1166 (1997). For the reasons noted above, the Commission should exercise this discretion in the case of Licensee.

III. Conclusion

Licensee has demonstrated that as a result of the artificial factors influencing the Station's area of coverage and population base, application of the current fee schedule and imposition of a regulatory fee increase over and above the amount mandated by Congress would result in a grossly unfair burden. In order for Licensee to continue its operations and meet the needs of its listeners, Licensee respectfully requests that the Commission exercise its authority in this case

^{4/} Because stations are strongly tied to their community of license, most if not all of a station's advertising dollars come from local advertisers. These advertisers service only local consumers and therefore do not generally purchase advertising outside the community of license.

and exempt Licensee from the regulatory fee increase requirement, over and above the 38% increase mandated by Congress.

Respectfully submitted,


NAME: ANGEL VERA MAURY
TITLE: PRESIDENT

Dated: 9 DE SEPTIEMBRE DE 1998

In the Matter of)
)
 Petition for Deferment)
 of Payment)
)
)
)
)
)
LAS RAICES PEPINIANAS INC)

TO: The Commission

**PETITION FOR DEFERMENT OF
 PAYMENT OF REGULATORY FEE INCREASE**

LAS RAICES PEPINIANAS INC (“Licensee”), licensee of WLRP SAN SEBASTIAN, PR

(the “Station”), pursuant to Section 1.1166 of the Federal Communications Commission’s Rules, hereby petitions for a deferment of the payment of part of the regulatory fee increase applicable to this Station. A petition is being filed simultaneously herewith requesting a ruling declaring Licensee to be exempt from payment of the regulatory fee increase over and above a 38% increase on the basis that any additional increase is due to the FCC’s new fee methodology, which when applied to the Station results in a disproportionate and inequitable fee requirement. In support of this request, the following is submitted.

1. On June 26, 1997, the FCC issued its revised schedule of annual regulatory fees for 1997. See Commission Report and Order, MD Docket No. 96-186 (Released June 26, 1997). With respect to Licensee, the regulatory fees contained therein represented a substantial increase in the fees due for the Station as compared to previous years.

2. Part of the regulatory fee increase results from an overall increase in costs for enforcement, policy and rulemaking, international and user information activities in FY 1997, which the Commission is obligated to recover. The amount of such increase attributable to the radio industry is 38%. The remainder of the fee increase is due to the Commission's new methodology of calculating annual regulatory fees for AM and FM Stations.

3. Licensee is willing to pay the amount of last year's annual regulatory fee and an additional 38% of that amount. However, because the increase over and above 38% is based on the FCC's fees determination methodology, which results in a disproportionate fee increase when applied to Licensee, it is seeking a reduction of any increase over and above the 38%.

4. Requiring Licensee to pay the fees currently due would be unfair, inequitable and contrary to the Commission's intent in establishing the new fee methodology, which was designed to more accurately associate population density and service area contours with license data. Here, the Station is obligated to pay a disproportionate share of the regulatory fee increase because such increase is tied to the Station's population base, which is artificially inflated due to the influences of geography and certain technical standards utilized by the Station pursuant to FCC rules and regulations. Additionally, because the fee increase is so substantial in comparison with previous years and because the economy of Puerto Rico is generally depressed, requiring Licensee to pay the full amount of the fee increase will cause Licensee to suffer significant financial strain and will severely limit its ability to serve the public.

Accordingly, pending the outcome of Licensee's Petition for Declaratory Ruling, Licensee requests deferment of the payment of the portion of the regulatory fee increase over and above the 38% mandated by Congress.

Respectfully submitted,



NAME: ANGEL VERA MAURY
TITLE: PRESIDENT

Dated: 9 DE SEPTIEMBRE DE 1998

Payment Transactions Detail Report

Date: 11/25/98

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
9808318835325020	LAS RAICES PEPINIANAS INC APARTADO 1670 AVE RICARDO SERRANO 21 SAN SEBASTIAN PR 00685	FCC2059087	08/27/98

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
\$622.00	\$622.00	2	MUB8	1	KH6106	LAS RAICES PEPINIANAS INC	00685		\$11.00	1	PMT
\$622.00	\$622.00	3	MUB8	1	KPJ747	LAS RAICES PEPINIANAS INC	00685		\$11.00	1	PMT
\$622.00	\$622.00	1	MBB8	1	WLRP	LAS RAICES PEPINIANAS INC	00685		\$600.00	1	PMT
Total		3							\$622.00		

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
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OFFICE OF
MANAGING DIRECTOR

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Ms. Jane Campbell
Secretary-Treasurer
Lonerock Television Company
Lonerock Route
Condon, OR 97823

RE: Request for Waiver and Refund of
Regulatory Fees for Fiscal Years 1994 and 1995
Lonerock Television Company
Fee Control No. 9407278835014024 &
9509088835467010

Dear Ms. Campbell:

This is in response to the request for waiver of regulatory fees for Fiscal Years (FY) 1994 and 1995 filed on behalf of Lonerock Television Company, Condon, Oregon. We apologize for failing to respond to your request in a timely manner.

By letter dated December 14, 1998, you requested waiver and refund of the regulatory fees paid by Lonerock Television Company for FYs 1994 and 1995. The Commission in establishing the regulatory fee program said that it would "accept petitions for waiver, reduction and deferments [of regulatory fees] so long as they are filed no later than the date payment is due." *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5345 (1994). Your 1998 request is untimely and is therefore denied.

This action does not affect the waiver granted on October 20, 1998 and applicable to regulatory fees for future years so long as the status of Lonerock Television Company does not change. If you have any questions concerning the denial or waiver, please call the Credit & Debt Management Center at 418-1995.

Sincerely,


Mark Reger
Chief Financial Officer

→ 9407278835014024
È 9509088835467010

December 14, 1998

Lonerock Television Company
Lonerock Route
Condon, OR 97823

Mr. Tom Putnam
Federal Communications Commission
1919 M St. NW
Washington, D. C. 20554

Dear Mr. Putnam,

This letter is to request a refund of FCC regulatory fees paid in 1994 and 1995. The Lonerock Television Company has been granted a waiver of regulatory fees and also would have qualified for the waiver in 1994 and 1995 had we been aware of it.

Also, I am sending you copies of the canceled checks showing payment of the fees.

Thank you for your consideration in this matter.

Sincerely,

Jane Campbell

Jane Campbell
Secretary/Treasurer

Payment Transactions Detail Report

Date: 3/8/99

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Fcc Account Number	Payer TIN	Received Date							
9509088835467010	LONEROCK TELEVISION COMPANY LONEROCK ROUTE	0931176361		09/07/95							
	CONDON	OR	97823								
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
\$170.00	\$170.00	1	MLPN	1	K10CR	LONEROCK TELEVISION COMPANY			\$170.00	1	PMT
Total		1							\$170.00		

Payment Transactions Detail Report

Date: 3/8/99

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name			Fcc Account Number	Payer TIN	Received Date						
9407278835014024	LONEROCK TELEVISION CO LONEROCK CT			5033843196		07/11/94						
	LONEROCK	OR	97823									
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	
\$135.00	\$135.00	1	MSTN	1	K10CR	\$			\$135.00	1	PMT	
Total	1								\$135.00			

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
NOV 18 1999

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OFFICE OF
MANAGING DIRECTOR

86-285

Bradford D. Carey, Esq.
Hardy & Carey, L.L.P.
110 Veterans Boulevard
Suite 300
Metairie, Louisiana 70005

RE: Response to Notice of Underpayment
Long Family Partnership
Fee Control No. 9809188835206002
Fee Paid \$1,075.00

Dear Mr. Carey:

This is in response to the Response to Notice of Underpayment and Petition for Reconsideration relating to payment of the Fiscal Year (FY) 1998 regulatory fees, filed on behalf of the Long Family Partnership, licensee of WHKY-TV, Hickory, North Carolina.

You submit that the Long Family Partnership FY 1998 regulatory fee payment of \$1,075.00 was not an underpayment. On February 10, 1995, the Commission granted WHKY status as a UHF remaining market station for purposes of regulatory fees. You represent that neither the signal coverage nor the population density of the area served by WHKY have significantly changed from 1995. Therefore, you are correct. The Long Family Partnership is not responsible for any additional regulatory fee amount or late charge penalty.

If you have any questions concerning this letter, please call Credit & Debt Management Center at 418-1995.

Sincerely,


Mark Reger
Chief Financial Officer

REC-7

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED
MAR 22 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Collection of Annual Regulatory)
Fees (due September 18, 1998))
)
for Station WHKY-TV)
Hickory, North Carolina)

to: Chief, Billings & Collections Branch

RESPONSE TO NOTICE OF UNDERPAYMENT
and
PETITION FOR RECONSIDERATION

The Long Family Partnership (the "Long Family"), the licensee of station WHKY-TV, Hickory, North Carolina, by its undersigned Counsel hereby states its response to the letter of the Chief, Billings & Collections Branch (the "Chief") dated March 3, 1999 (the "Letter") and seeks reconsideration of the order therein contained directing the Long Family to pay an additional \$5,575 plus a 25 percent penalty fee.

The Letter stated that:

[a]fter a close examination of our records, we have determined that an incorrect payment of \$1,075 was received for [station WHKY-TV]. The correct fee for this station should be \$6,650, a difference of \$5,575

and directed that the difference and a twenty five percent late penalty be paid; or that, if the licensee believes that the amount submitted is the correct amount, it should submit documentation supporting that position within twenty days of the letter.

The Long Family respectfully submits that the correct fee was paid and that the demands of the Letter that additional fees and penalties be paid should be rescinded and that adequate documentation thereof was filed with the fee payment and is attached hereto..

In support whereof, the following is shown:

WHKY-TV is licensed to serve Hickory, North Carolina with a population of 20,727.¹ WHKY-TV is licensed to, and since its inception has served Hickory, North Carolina, not the more populous city of Charlotte. *id.*

By letter dated February 10, 1995 (the "Waiver Grant"), the Associate Managing Director for Operations, of the Commission's Office of Managing Director granted the *Petition for Refund of Annual Regulatory Fee* that the Long Family had filed with the Commission on July 29, 1994 (the "Waiver Request") and ruled that the Commission:

will regard Hickory as a non-top 100 market station and, therefore, assess WHKY-TV a regulatory fee for FY 1994 of...the fee assessable for a remaining market UHF station.

The Waiver Grant further provided that

[a]bsent significant changes in signal coverage or population density, WHKY-TV will be treated as a remaining market station for regulatory fee purposes in succeeding years. A copy of this letter should be maintained and submitted with any future correspondence with the Commission concerning the imposition of the regulatory fee for station WHKY-TV.

The Long Family received a refund of the fee difference for stations in markets 26-50 for that year and has paid the fee for stations not in the top 100 markets each year since then, accompanied with a copy of the Waiver Grant.

By letter dated September 16, 1998, (the "1998 Cover Letter") Thomas E. Long, Partner in the Long Family Partnership, forwarded to the Commission through its Lock Box Bank, its check in the amount of \$1075, in payment of the fee for stations that are not

¹See *Petition for Refund of Annual Regulatory Fee* filed with the Commission by the Long Family Partnership on July 29, 1994.

considered to be in the top 100 markets, together with a copy of the Waiver Grant and Form 159.

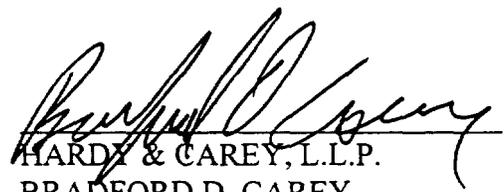
As stated in the 1998 Cover Letter, the Long Family has not altered the signal coverage of WHKY-TV; nor have there been significant changes in population density.

The Long Family is, therefore, entitled to pay the lesser fee of \$1075 for which stations outside the top 100 markets are assessed, rather than the much greater fee of \$5,575 for which stations in markets 26-50 are assessed. That payment was correct and there is no reason or justification for the imposition of a penalty.

A copy of the filing, including the 1998 Cover Letter, is annexed hereto as Attachment A to Exhibit One, the statement of Thomas E. Long.

In view of the foregoing, it is respectfully urged that this Response to Notice of Underpayment accepted and Petition for Reconsideration be granted and that the Commission affirm that the correct fee was paid and rescind the order that the Long Family pay the fee difference of \$5,575 and the penalty of \$1,393.75.

Respectfully submitted,
The Long Family Partnership



HARDY & CAREY, L.L.P.
BRADFORD D. CAREY
110 Veterans Boulevard, Suite 300
Metairie, Louisiana 70005
Telephone: (504) 830-4646

Attorneys for The Long Family Partnership

Dated as of March 22, 1999

Exhibit One

DECLARATION UNDER PENALTY OF PERJURY

I, Thomas E. Long, hereby state and declare as follows.

1. My mailing address is: P.O. Box 1059
Hickory, NC 2863-1059

2. I am a Partner in the Long Family Partnership, the licensee of station WHKY-TV, Hickory, North Carolina.

3. WHKY-TV serves Hickory, North Carolina, the community to which it is licensed and does not endeavor to serve the Charlotte, North Carolina market, which is considerably different and distant.

4. Because WHKY-TV does not endeavor to serve Charlotte, North Carolina, it is inappropriate for WHKY-TV to be considered to be within the range of markets from 26-50. When the Commission first collected annual regulatory fees, the Long Family Partnership had a petition filed with the it seeking a waiver under which WHKY-TV would pay the annual regulatory fee for stations not within the 100 biggest television markets.

5. By letter dated February 10, 1995, the Commission granted our request and ruled that we were not obliged to pay the annual regulatory fee which otherwise would be due from a station in markets 26-50. Instead, the letter ruled, we need only pay the annual regulatory fee for stations that are not within the top 100 markets.

6. Each year subsequent to the grant of the waiver, we have paid the annual regulatory fee for UHF television stations located not within the top 100 markets.

7. Annexed hereto, as Attachment A is a copy of the cover letter and Form 159 that I filed with the Commission, through the Mellon Bank, in payment of the regulatory fee due in September, 1999. A copy of the letter from the Commission granting the waiver was attached when the letter was sent to the Mellon Bank, and is attached now.

8. I am unaware of any reason for which the Commission might have rescinded the waiver.

This Declaration is executed this 18th day of March, 1999 under the pains and penalties of perjury under the laws of the United States of America

By: Thomas E. Long

Attachment A



September 16, 1998

Attn: Acting Secretary
Federal Communications Commission
c/o Mellon Bank
525 William Penn Way, 27th Floor - Room 153-2713
Pittsburgh, PA 15259

Via UPS Letter

Attn.: FCC Module Supervisor - Lockbox # 358835

RE: WHKY-TV - Hickory, NC - Annual Regulatory Fee

Dear Acting Secretary:

By letter dated February 10, 1995, (the "Letter") the Commission, by its Associate Managing Director of Operations, granted the *Petition of The Long Family Partnership for a Reduction of Annual Regulatory Fee* (the "Petition"). The Petition had been filed on behalf of The Long Family Partnership (the "Long Family") by its counsel (Hardy and Carey) on July 29, 1994 and sought reduction of the Annual Regulatory Fee from that which otherwise would be due from a station assigned to the Charlotte ADI (\$9,600) to the fee due from a UHF station not in a top 100 ADI (\$4,000).

As a result of the action of the Commission granting the Petition, the Long Family was assessed the fee due for UHF stations not in the top 100 markets for 1994 and subsequent years.

As set forth in the Letter, a copy of which is attached hereto, absent significant changes in signal coverage or population density, WHKY-TV will be treated as a remaining market station for regulatory fee purposes in succeeding years. The Long Family hereby represents that it has not altered the signal coverage of WHKY-TV; nor have there been significant changes in population density.

IN ACCORD WITH THE DECISION OF THE MANAGING DIRECTOR'S OFFICE, THERE IS FORWARDED HERewith THE ANNUAL REGULATORY FEE FOR WHKY-TV IN THE AMOUNT THAT IS DUE FROM "REMAINING MARKETS."

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas E. Long', written over a horizontal line.

Thomas E. Long
Partner

Enclosures

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

February 10, 1995

OFFICE OF
MANAGING DIRECTOR

Mr. Bradford D. Carey, Esquire
Hardy & Carey
111 Veterans Boulevard
Metairie, LA 70005

Re: Long Family Partnership
WHKY-TV
Hickory, North Carolina
Fee Control # 9408028835125003

Dear Mr. Carey:

This is in response to your request for a determination concerning the applicable Fiscal Year 1994 regulatory fee for Long Family Partnership (Long), licensee of UHF Station WHKY-TV, Hickory, North Carolina.

You state that although WHKY-TV is assigned by Arbitron to the Charlotte, North Carolina ADI (Area of Dominant Influence) Market, its Grade B signal does not reach the City of Charlotte. Charlotte is among the largest fifty television markets and as such is subject to a fee of \$9,600. You contend that it is inequitable to require Long to pay the regulatory fee assessed for stations operating in the Charlotte market because WHKY-TV is licensed to Hickory, which is a community with a population of 20,727, and does not serve Charlotte. You urge that Long should be assessed the regulatory fee for a UHF station serving a non-top 100 or "remaining market." You have submitted a check for \$9,600, the fee applicable for a UHF Station serving markets 26-50, and request that the Commission refund the difference between \$9,600 and \$4,000, which would be the fee for a UHF Station serving a remaining market.

Our review of the record discloses that Arbitron has included WHKY-TV in the Charlotte, North Carolina Market, the 30th largest market. WHKY-TV's predicted Grade B Contour, however, does not cover the City of Charlotte or any other major metropolitan area. Moreover, Broadcasting & Cable Yearbook 1994, p. c-202, lists Hickory as a Non-ADI market, i.e., a single-county market whose "preponderance of viewing is not to the home market station." WHKY-TV's home county, Catawba County, is assigned to the Charlotte ADI because the preponderance of its TV households view the programming of stations licensed to Charlotte rather than to stations licensed to communities within the county. Moreover, according to Arbitron, there are 114,300 TV households in WHKY-

Mr. Bradford D. Carey, Esquire
Page 2

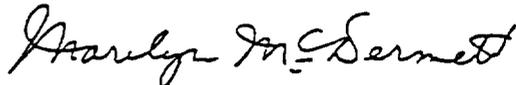
TV's service area, which is a fewer number of TV households than any of the top 100 markets.

Under these circumstances, we will regard Hickory as a non-top 100 market station and, therefore, assess WHKY-TV a regulatory fee for FY 1994 of \$4,000, the fee assessable for a remaining market UHF station. Thus, Long is entitled to a refund of \$5,600.

Absent significant changes in signal coverage or population density, WHKY-TV will be treated as a remaining market station for regulatory fee purposes in succeeding years. A copy of this letter should be maintained and submitted with any future correspondence with the Commission concerning the imposition of the regulatory fee for station WHKY-TV.

A check, made payable to the maker of the original check in the amount of \$5,600, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please call the Chief, Fee Section at (202) 418-1995.

Sincerely,



Marilyn J. McDermott
Associate Managing Director
for Operations

Payment Transactions Detail Report

Date: 07/19/1999

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name			Fcc Account Number	Payer TIN	Received Date					
9809188835206002	WHKY PO BOX 1059			FCC2042396		9/17/1998 00:00:0					
	HICKORY		NC	28603							
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
\$1,075.00	\$1,075.00	1	MJU8	1	WHKYTV WHKY		286031059		\$1,075.00	1	PMT
Total									<u>\$1,075.00</u>		

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

APR 20 1999

OFFICE OF
MANAGING DIRECTOR

C & DM Cent

DOCKET FILE COPY ORIGINAL

66-285

Mr. J. Ardell Sink
President
Mark Media, Inc.
P.O. Box 744
Burnsville, N.C. 28714

Re: Request for Reduction and Refund of
FY 1997 Regulatory Fees
Radio Station WKYK

Dear Mr. Sink:

This is in response to your request for a partial refund of the Fiscal Year (FY) 1997 regulatory fee for Mark Media, Inc. as licensee of Radio Station WKYK, Burnsville, North Carolina.

WKYK paid an FY 1997 regulatory fee of \$1,200 based on signal coverage of 463,003 people. WKYK paid an FY 1998 regulatory fee of \$600 based on signal coverage of 25,612 people. You assert that the FY 1998 regulatory fee was based on the correct population and you request a \$600 refund, the difference between the FY 1997 and FY 1998 regulatory fees.

The FY 1997 regulatory fees for all radio stations were derived by calculating the populations within the interference free contour of each individual station. We recognized that some broadcasters believed 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 in response to complaints from members of the broadcast industry, we calculated FY 1998 radio regulatory fees using each station's city grade contour.

The interference free contour, however, was appropriate for calculating the FY 1997 regulatory fees because that contour represented the area in which listeners received the station's protected signal. Consequently, as a matter of equity, recalculating a station's FY 1997 fees using the city grade contour for measuring populations and assessing fees, would require recalculating the 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 and to treat all licensees equally. Thus, the Commission will not reduce, on an ad hoc basis, an individual station's regulatory fee solely because its population served would be lower had we relied on a different service contour or that

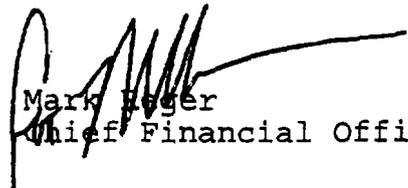
Mr. J. Ardell Sink

2.

because of the modification of our methodology for computing fees, it paid a lower regulatory fee in FY 1998.

Accordingly, your request for a reduction and partial refund of the FY 1997 regulatory fee for Radio Station WKYK is denied. If you have any questions concerning the regulatory fees, please call the Chief, Fee Section, at (202) 418-1995.

Sincerely,


Mark Eger
Chief Financial Officer

Jerry
AM STEREO
K_{YK} 94
5000 watts

9709198835499009

P.O. Box 744, 401 Sawmill Road
Burnsville, N.C. 28714
(704) 682-3798, N.C. Watts (800) 642-9595
FAY - 928 - 652 - C 998

September 22, 1998

Office of the Managing Director
Federal Communications Commission
1919 M. Street, N. W., Room 450
Washington, D. C. 20554

Atten: Regulatory Fee Waiver/Reduction Request

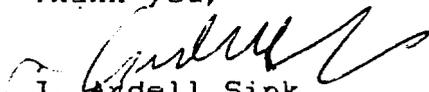
Ref: Radio Station WKYK, Burnsville 1997 Regulatory Fees

Dear Sir:

I am requesting a refund of the difference paid by Radio Station WKYK in the regulatory fee paid in 1997 and 1998. In 1997 WKYK paid a \$1,200 (ck # 9731) regulatory fee based on the population of 463,003. The 1998 fee of \$600 (ck# 10748) was paid on a population of 25,612. The 1998 population is correct for our size market.

Therefore, I request a refund of \$600, the difference between the 1997 fee and the 1998 fee paid. Please make the check to Mark Media, Inc. (WKYK), P. O. Box 607, Burnsville, N. C. 28714.

Thank you,


J. Ardell Sink
President

Payment Transactions Detail Report

Date: 1/22/98

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
9709198835499009	MARK MEDIA INC PO BOX 744 BURNSVILLE NC 28714	FCC2004323	09/17/97

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
\$1,225.00	\$1,225.00	2	MUB7	1	KQA842	MARK MEDIA INC	28714		\$25.00	1	PMT
\$1,225.00	\$1,225.00	1	MGE7	1	WKYKAM	MARK MEDIA INC	28714		\$1,200.00	1	PMT
Total		2							\$1,225.00		