

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

NOV 21 2000

CREDIT & DEBIT MANAGEMENT  
CENTER. OMD

OFFICE OF  
MANAGING DIRECTOR

Kenneth C. Howard, Jr., Esq.  
Jennifer Dine, Esq.  
Baker & Hostetler, L.L.P.  
1050 Connecticut Ave., NW  
Suite 1100  
Washington, D.C. 20036-5304

Re: KSRB(AM), Seattle, Washington, Request for Filing  
Fee Waiver; Facility ID. No. 57834  
Fee Control No. 9910208190366004

Dear Mr. Howard and Ms. Dine:

This is in response to your October 19, 1999 request for waiver of a \$725.00 filing fee paid on behalf of Orca Radio, Inc. (Orca) in connection with an application to increase nighttime power for Station KSRB(AM), Seattle, Washington.

You state that Orca filed an application to increase daytime as well as nighttime power on August 5, 1999. You state that on September 22, 1999, Commission staff informally advised Orca that the engineering data associated with the nighttime request were faulty and that the daytime power increase could be granted before commencement of the fall audience measurement period only if the proposed nighttime increase were deleted from the application. You state that because commencement of the fall audience measurement period was imminent and KSRB(AM) depends on ratings to attract advertisers and maintain its financial viability, Orca immediately filed a request to delete the nighttime proposal, after which the Commission granted Orca's daytime modification request.

You state that after filing the request to delete the nighttime proposal, Orca determined that the engineering studies associated with the nighttime proposal had been complete and accurate and that the staff's informal determination regarding those studies was inaccurate. You maintain that "[b]ut for the FCC's faulty instruction, Orca's original application to increase KSRB(AM)'s nighttime power would have been granted" at the same time as its daytime proposal. You therefore request that the Commission waive the filing fee associated with Orca's October 19 application to increase nighttime power for the station.

The Commission may waive filing fees only upon a showing of good cause and a finding that the public interest will be served thereby. *See* 47 U.S.C. §158(d)(2); *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 961 (1987); 47 C.F.R. §1.1117. The

Commission has noted that section 158(d)(2) fee waivers are permitted "only on a case-by-case basis following a demonstration that the public interest clearly overrides the private interest of the requester." *See Implementation of Section 9 of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, 9 FCC Rcd 5333, 5344 (1994).

Orca's reliance upon the Commission staff's informal advice regarding Orca's nighttime power data is insufficient grounds for waiver of our filing fee. There is nothing in the Commission's rules that entitles an applicant to rely upon informal advice or opinions that may be expressed by Commission staff concerning our rules and policies. In any event, Orca voluntarily withdrew its nighttime power proposal based on its own judgment that its interests would be best served by facilitating an immediate grant of its daytime power increase. Under the circumstances, we do not find that you have demonstrated good cause for waiver of the filing fee or that the public interest would be served by doing so. Based on the foregoing, your request for waiver is denied.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger", written over a horizontal line.

<sup>fr</sup>  
Mark A. Reger  
Chief Financial Officer

**BAKER  
&  
HOSTETLER LLP  
COUNSELLORS AT LAW**

WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036-5304 • (202) 861-1500  
FAX (202) 861-1783  
WRITER'S DIRECT DIAL NUMBER

(202) 861-1580

October 19, 1999

**EXPEDITED ACTION REQUESTED**  
**Via BERRY BEST COURIER**

Magalie Roman Salas, Secretary  
Federal Communications Commission  
Mass Media Services  
P.O. Box 358190  
Pittsburgh, PA 15251-5190

**RE: KSRB(AM), Seattle, Washington**  
**Application for Construction Permit – Minor Modification**  
**Request for Expedited Action**  
**Request for Filing Fee Waiver**

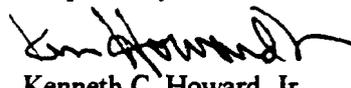
Dear Ms. Salas:

Orca Radio, Inc. ("Orca"), through counsel, hereby files an Application for Construction Permit (FCC Form 301) for a minor change in licensed facility KSRB(AM), Seattle, Washington. A remittance advice (FCC Form 159) and check payable to the Federal Communications Commission for the required \$725 filing fee are also enclosed.

Orca also hereby files a Request for Expedited Action of the above-referenced application, and a Request for Filing Fee Waiver.

If you require any additional information, please contact the undersigned.

Respectfully,

  
Kenneth C. Howard, Jr.  
Jennifer Dine  
Counsel for Orca Radio, Inc.

cc: William E. Kennard  
Linda Blair  
Edward P. DeLaHunt  
Son Nguyen  
James Crutchfield  
Andrew Fishel ✓

Enc. (4)

RECEIVED  
OCT 22 11 21 AM '99  
ASSOC. MNG. DIR.  
FINANCIAL OPERATIONS  
(407-649-4000)

**BAKER**  
&  
**HOSTETLER** LLP  
COUNSELLORS AT LAW

---

WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036-5304 • (202) 861-1500  
FAX (202) 861-1783  
WRITER'S DIRECT DIAL NUMBER

(202) 861-1580

October 19, 1999

**EXPEDITED ACTION REQUESTED**  
**Via BERRY BEST COURIER**

Magalie Roman Salas, Secretary  
Federal Communications Commission  
Mass Media Services  
P.O. Box 358190  
Pittsburgh, PA 15251-5190

Re: **KSRB(AM), Seattle, Washington, Facility ID No. 57834**  
**Application for Construction Permit – Minor Modification**  
File No. \_\_\_\_\_

**Request for Expedited Action**  
**Request for Filing Fee Waiver**

Dear Ms. Salas:

Orca Radio, Inc. ("Orca"), licensee of commercial radio station KSRB(AM), Seattle, Washington, through counsel, hereby requests expedited action of its minor modification application to increase the nighttime power of licensed station KSRB(AM) from 5 kilowatts to 6 kilowatts.

Orca initially filed a minor modification application on August 5, 1999 (File No. BP-990805AC) requesting an increase in both daytime and nighttime power for KSRB(AM). Orca also filed a Request for Expedited Action so that KSRB(AM), an Urban Contemporary station, could extend its signal to a predominantly African-American area underserved by radio broadcasters during the Fall audience measurement period and attract advertisers, which are necessary for the format's survival.

On September 22, 1999, FCC staff advised Orca that the engineering data for the nighttime power increase was faulty. FCC staff further instructed Orca that the daytime power increase could be granted before commencement of the audience measurement period only if the proposed nighttime power increase was deleted from the application. Because commencement of the audience measurement period was imminent and KSRB(AM) depends on ratings to attract advertisers and maintain its financial viability, Orca immediately followed the FCC instruction and, on September 23, 1999, filed a request to delete the proposed nighttime power increase from the application. The FCC then granted KSRB(AM)'s daytime power increase from 5 kilowatts to 10 kilowatts on September 28, 1999.

Upon further review, Orca has clearly established that its engineering data for the nighttime portion of the application is accurate and complete, and the FCC staff's informal determination that the data was inaccurate and that the proposed nighttime power increase would create impermissible interference to a Canadian radio station was apparently based on an incorrect standard and resulted in an erroneous finding as to a material question of fact.

The engineering study submitted with Orca's new minor modification application determined allowed radiation toward Canadian class A stations in accordance with the *Agreement Between the Government of the United States of America and the Government of Canada Relating to the AM Broadcasting Service in the Medium Frequency Band* (January 1984) ("agreement"). See also Federal Communications Commission, Planning & Negotiations Division, International Bureau, *Report on International Negotiations, Spectrum Policy and Notifications, 1999 Report* (July 1999) at 7. Orca's engineering study shows that the field from the proposed KSRB(AM) nighttime pattern is below the 50 percent exclusion level and below the smallest value presently considered in calculating the RSS value at all study points along the contour. Therefore, the proposed power increase from 5 kilowatts to 6 kilowatts would not cause any impermissible interference to any Canadian station.

However, the FCC's informal determination that the proposed power increase would cause impermissible interference to Canadian station CKX, Brandon, Manitoba, apparently failed to consider the proposed power increase in accordance with the agreement. The FCC's instruction to dismiss the nighttime portion of the application was therefore erroneously based on miscalculated information. But for the FCC's faulty instruction, Orca's original application to increase KSRB(AM)'s nighttime power would have been granted on September 28, 1999 along with KSRB(AM)'s daytime power increase.

The Commission honored Orca's request for expedited action in its grant of KSRB(AM)'s daytime power increase. Expedited action of the present application is necessary so that KSRB(AM) can extend nighttime coverage to those communities, including predominantly African American communities currently underserved by radio broadcasters, that are now receiving KSRB(AM)'s daytime signal. Because the Commission granted expedited action of Orca's request for KSRB(AM)'s daytime power increase, it is reasonable that it should also grant expedited action for the present application.

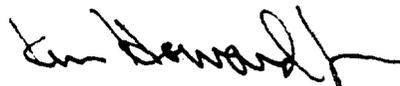
Further, Orca submitted a \$725 filing fee with its August 5, 1999 application, and has submitted another \$725 filing fee with its new minor modification application requesting the same nighttime power increase. Orca is filing a new application only because the FCC wrongly advised it to delete those portions of the initial application requesting the nighttime power increase. Because of FCC staff error, Orca has paid a total of \$1,450 in filing fees for essentially the same minor modification application. Accordingly, Orca has good cause to submit a request for waiver of the filing fee for the present application. See 47 C.F.R. § 1.1117. Requiring Orca to pay a significant filing fee twice would be contrary to the public interest. Such a substantial amount of money – \$725 – is better spent on providing programming to the residents of Seattle, including the currently underserved African American population within KSRB(AM)'s proposed coverage area, than on administrative costs accrued only because of staff error.

Magalie Roman Salas, Secretary  
October 19, 1999  
Page 3

The Commission erroneously rejected Orca's engineering data in its initial request to increase KSRB(AM)'s nighttime power from 5 kilowatts to 6 kilowatts. Therefore, Orca respectfully requests that the Commission remedy its mistake and expeditiously grant the present application for the same minor modification for station KSRB(AM).

Orca also requests a waiver of the \$725 filing fee. Without a filing fee waiver, Orca would be required to pay a significant fee twice - for a total of \$1,450 - because of FCC staff error. Such a result would be neither fair nor reasonable, and is contrary to the public interest.

Respectfully,



Kenneth C. Howard, Jr.  
Jennifer Dine

Counsel for Orca Radio, Inc.  
KSRB(AM), Seattle, Washington

Baker & Hostetler LLP  
1050 Connecticut Avenue, N.W.  
Suite 1100  
Washington, D.C. 20036-5304

Telephone: (202) 861-1500

Date: October 18, 1999

cc: (via hand delivery)  
William E. Kennard, Chairman  
Roy Stewart, Chief, Mass Media Bureau  
Linda Blair, Chief, Audio Services Division  
Edward DeLaHunt, Assistant Division Chief - Engineering, Audio Services Division  
Son Nguyen, Supervisory Engineer, Audio Services Division  
James Crutchfield, Supervisory Analyst, Audio Services Division  
Andrew Fishel, Managing Director ✓