

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

*No action
necessary*

OFFICE OF
MANAGING DIRECTOR

August 28, 2001

86-285

Eric W. DeSilva
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Re: Petitions for Waiver
Fee Control Nos.: 00000RROG-01-004
00000RROG-01-005

Dear Mr. De Silva:

This letter is in response to your request, submitted on behalf of **Advanced Radio Telecom Corp. (ART)**, for waiver pursuant to Section 1.1117 of the Commission's Rules, 47 C.F.R. § 1.1117, of application fees in the amount of \$41,425.00 in connection with the filing of applications seeking a pro forma transfer of control from ART to ART as Debtor-in-Possession. You also seek a waiver of the provisions of Section 1.1117(e) of the Commission's Rules, 47 C.F.R. § 1.1117(e), which would ordinarily require submission of the fees along with both the transfer of control applications and the request for waiver of the application fees.

You state that ART is filing pro forma transfer of control applications to facilitate its reorganization under Chapter XI of the Bankruptcy Code and that the public interest would be served by not requiring ART, which is in bankruptcy proceedings, to convey to the FCC assets that are needed for ongoing operations and that are otherwise expected to be available to satisfy innocent creditors when ART's debts are settled.

Section 1.1117 of the Commission's Rules, 47 C.F.R. § 1.1117, provides that regulatory fees may be waived upon a showing of good cause and a finding that the public interest will be served thereby. We find that ART's filing of a Chapter 11 petition in bankruptcy court substantiates its claim of financial hardship and demonstrates good cause for waiver of the filing fees. See Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759, 12762 (1995) (evidence of bankruptcy or receivership sufficient to establish financial hardship for purposes of waiver of regulatory fees). Therefore, your requests for waiver of the provisions of Section 1.1117(e) and for waiver of application filing fees in the amount of \$41,425.00 are granted.

Eric W. DeSilva

2.

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

Sincerely,

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

Mark A. Reger
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

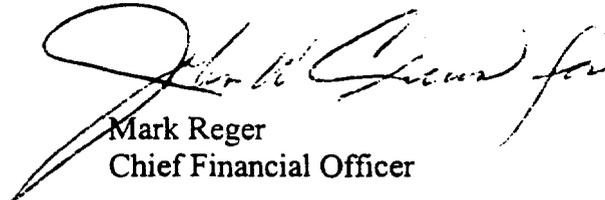
June 26, 2001

Eric DeSilva
Counsel for Advanced Radio
Telecom Corporation
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Dear Sir:

This letter is acknowledging receipt of your letter dated June 19, 2001, on behalf of Advanced Radio Telecom Corporation. Within 30 days of this letter we will mail you either a resolution to your item or a letter telling you when you can expect a resolution. If you have any questions concerning this letter please call the Office of the Chief Financial Officer at (202) 418-1925.

Sincerely,



Mark Reger
Chief Financial Officer

**Federal Communications Commission
Office of the Managing Director**

C.A.# _____

To:

- | | |
|--|---|
| <input type="checkbox"/> Chairman | <input checked="" type="checkbox"/> Managing Director |
| <input type="checkbox"/> Commissioner | <input type="checkbox"/> Deputy Managing Director - RL |
| <input type="checkbox"/> Inspector General | <input type="checkbox"/> Deputy Managing Director - BS |
| <input type="checkbox"/> General Counsel | <input type="checkbox"/> Staff Assistant to Managing Director |
| <input type="checkbox"/> Chief, OET | <input type="checkbox"/> Assistant for Management |
| <input type="checkbox"/> Chief, Plans and Policy | <input type="checkbox"/> Assoc. MD - PERM |
| <input type="checkbox"/> Chief, Adm. Law Judge | <input type="checkbox"/> Assoc. MD - HRM |
| <input type="checkbox"/> Chief, MMB | <input type="checkbox"/> Assoc. MD - AO |
| <input type="checkbox"/> Chief, CSB | <input checked="" type="checkbox"/> Assoc. MD - FO |
| <input type="checkbox"/> Chief, CCB | <input type="checkbox"/> Security Operations Staff |
| <input type="checkbox"/> Chief, WTB | <input type="checkbox"/> Director, ITC |
| <input type="checkbox"/> Chief, CIB | <input type="checkbox"/> The Secretary |
| <input type="checkbox"/> Chief, International Bureau | <input type="checkbox"/> Other |
| <input type="checkbox"/> Director, OLIA | |
| <input type="checkbox"/> Director, Public Affairs | |
| <input type="checkbox"/> Director, OCBO | |
| <input type="checkbox"/> Chief, Workplace Diversity | |
| <input type="checkbox"/> A/V Management Officer | |

JUN 1 10 50 AM '01
 ASSOC. MNG. DIR.
 FINANCIAL OPERATIONS
 (201F-50)

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> Appropriate Action | <input type="checkbox"/> Coordination | <input checked="" type="checkbox"/> Information |
| <input type="checkbox"/> Recommendation/Comment | <input type="checkbox"/> Briefing Paper | <input type="checkbox"/> As Requested |
| <input type="checkbox"/> Review | <input type="checkbox"/> Written Response | <input type="checkbox"/> Distribution |
| <input type="checkbox"/> Signature | <input type="checkbox"/> Verbal Response | <input type="checkbox"/> See Me |
| <input type="checkbox"/> Reply for _____ | <input type="checkbox"/> Other: _____ | |

CONTROLLED ASSIGNMENT: New Confirm Due Date _____

Remarks

gloria
2 pg letter and to
AP for

From: _____

Date: JUN 20 2001

0000RRDG-01-004

Wiley, Rein & Fielding

1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Eric W. DeSilva
(202) 719-3182
edesilva@wrf.com

Fax: (202) 719-7049
www.wrf.com

June 19, 2001

Magalie Roman Salas, Secretary
Attn: Mark Reger, Associate Managing Director Financial Operations
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RECEIVED
JUN 21 10 51 AM '01
ASSOC. MNG. DIR.
FINANCIAL OPERATIONS

Dear Managing Director:

In this transaction Advanced Radio Telecom Corp. ("ART"), and its wholly-owned subsidiaries ART Licensing Corp. ("ART Licensing") and DCT Telecommunications, Inc. ("DCT"), seek FCC consent to an involuntary *pro forma* transfer of control from ART to ART as debtor-in-possession.¹ ART requests a waiver of the filing fee requirements for these transfer of control applications under Section 1.1117 of the Commission's Rules. In a separate but related, filing ART also requests a waiver of Section 1.1117(e) of the Commission's Rules, so that the transfer of control applications may be filed without the filing fees.²

ART is filing *pro forma* transfers of control applications to facilitate its reorganization under Chapter XI of the Bankruptcy code and accordingly request a waiver of the filing fees due to financial hardship. The bankrupt status of ART provides good cause for the waiver of the filing fees. Additionally, a waiver of the filing fees will serve the public interest by enabling ART to preserve assets that will accrue to the benefit of innocent creditors.

In the related filing, ART asks the Commission to waive Section 1.1117(e) of its rules to allow ART, and its subsidiaries, to file the transfer of control application without ART having to make the \$41,425 in filing fees available to the FCC while ART is trying to settle a bankruptcy proceeding. The public interest would be served by not requiring a licensee in bankruptcy proceedings to place assets into the FCC's control that are needed for ongoing operations and otherwise are expected to be available to satisfy innocent creditors when the debts are settled.

¹ The ULS filing numbers associated with the transaction are 0000495196 for Advanced Radio Telecom Corp., 0000495058 for ART Licensing Corp., and 0000495098 for DCT Telecommunications, Inc.

² 47 C.F.R. Sec. 1.1117(e) ordinarily requires an applicant seeking a fee waiver to submit the fee with the application and request for a waiver and provides for the reimbursement of the fee if the waiver is granted.

Wiley, Rein & Fielding

If you have any questions regarding these requests please contact Eric DeSilva at (202) 719-3182. Thank you.

Sincerely,



Eric DeSilva

Counsel for Advanced Radio Telecom Corp.

cc: Jeffery Tobias
Mary Shultz
Roger Noel

By this filing, Advanced Radio Telecom Corp. ("ART"), and its wholly-owned subsidiaries ART Licensing Corp. ("ART Licensing") and DCT Telecommunications, Inc. ("DCT"), request a waiver under Section 1.1117 of the Commission's rules of the filing fees associated with its transfer of control applications. ART is filing *pro forma* transfers of control applications to facilitate its reorganization under Chapter XI of the Bankruptcy code and, accordingly, requests a waiver of the filing fees due to financial hardship.

Section 1.1117 of the Commission's rules provides that filing fees may be waived upon a showing of good cause and a finding that the public interest will be served thereby. The bankrupt status of ART provides good cause for the waiver of the filing fees. In the Commission's Implementation of Section of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year Order the Commission determined that "evidence of bankruptcy is sufficient to establish financial hardship."¹ Additionally, a waiver of the filing fees will serve the public interest by enabling ART to preserve assets that will accrue to the benefit of innocent creditors.² The filing fees for the *pro forma* transfer total \$41,425, which is a significant resource that is needed to preserve ongoing operations and could otherwise be used to satisfy the claims of innocent creditors. Thus ART's circumstances support a waiver of the filing fees.

For the foregoing reasons, ART, and its subsidiaries, respectfully request that the Commission waive the filing fees associated with the transfer of control applications.

¹ Implementation of Section of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, 10 FCC Rcd 12759, 12762 (1995)(hereinafter Implementation Order). *See also* MobileMedia Corp., 14 FCC Rcd 8017 (1999)(applying the Implementation Order determination to approve waiver of application filing fees).

² *See* MobileMedia at ¶40.

**Federal Communications Commission
Office of the Managing Director**

C.A.#

To:

- | | |
|--|---|
| <input type="checkbox"/> Chairman | <input checked="" type="checkbox"/> Managing Director |
| <input type="checkbox"/> Commissioner | <input type="checkbox"/> Deputy Managing Director - RL |
| <input type="checkbox"/> Inspector General | <input type="checkbox"/> Deputy Managing Director - BS |
| <input type="checkbox"/> General Counsel | <input type="checkbox"/> Staff Assistant to Managing Director |
| <input type="checkbox"/> Chief, OET | <input type="checkbox"/> Assistant for Management |
| <input type="checkbox"/> Chief, Plans and Policy | <input type="checkbox"/> Assoc. MD - PERM |
| <input type="checkbox"/> Chief, Adm. Law Judge | <input type="checkbox"/> Assoc. MD - HRM |
| <input type="checkbox"/> Chief, MMB | <input type="checkbox"/> Assoc. MD - AO |
| <input type="checkbox"/> Chief, CSB | <input checked="" type="checkbox"/> Assoc. MD - FO |
| <input type="checkbox"/> Chief, CCB | <input type="checkbox"/> Security Operations Staff |
| <input type="checkbox"/> Chief, WTB | <input type="checkbox"/> Director, ITC |
| <input type="checkbox"/> Chief, CIB | <input type="checkbox"/> The Secretary |
| <input type="checkbox"/> Chief, International Bureau | <input type="checkbox"/> Other |
| <input type="checkbox"/> Director, OLIA | |
| <input type="checkbox"/> Director, Public Affairs | |
| <input type="checkbox"/> Director, OCBO | |
| <input type="checkbox"/> Chief, Workplace Diversity | |
| <input type="checkbox"/> AV Management Officer | |

ASSOC. MNG. DIR.
FINANCIAL OPERATIONS
(MNF-FO)
JUN 21 10 50 AM '01

- | | | |
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| <input checked="" type="checkbox"/> Appropriate Action | <input type="checkbox"/> Coordination | <input checked="" type="checkbox"/> Information |
| <input type="checkbox"/> Recommendation/Comment | <input type="checkbox"/> Briefing Paper | <input type="checkbox"/> As Requested |
| <input type="checkbox"/> Review | <input type="checkbox"/> Written Response | <input type="checkbox"/> Distribution |
| <input type="checkbox"/> Signature | <input type="checkbox"/> Verbal Response | <input type="checkbox"/> See Me |
| <input type="checkbox"/> Reply for _____ | <input type="checkbox"/> Other: _____ | |

CONTROLLED ASSIGNMENT: New Confirm Due Date _____

Remarks

Shelia
2 Dg Letter and to AD for

MANAGING DIRECTOR

From: _____

Date: JUN 20 2001

0000RROG-014005 Wiley, Rein & Fielding

1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Eric W. DeSilva
(202) 719-3182
edesilva@wrf.com

Fax: (202) 719-7049
www.wrf.com

June 19, 2001

Magalie Roman Salas, Secretary
Attn: Mark Reger, Associate Managing Director Financial Operations
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

REC'D
JUN 21 10 50 AM '01
ASSOC. MNG. DIR.
FINANCIAL OPERATIONS

Dear Managing Director:

In this transaction Advanced Radio Telecom Corp. ("ART"), and its wholly-owned subsidiaries ART Licensing Corp. ("ART Licensing") and DCT Telecommunications, Inc. ("DCT"), request a waiver of Section 1.1117(e) of the Commission's Rules, so that the transfer of control applications may be filed without the requisite filing fees.¹

In a separate but related filing, ART seeks FCC consent to an involuntary *pro forma* transfer of control from ART to ART as debtor-in-possession. ART is filing *pro forma* transfers of control applications to facilitate its reorganization under Chapter XI of the Bankruptcy code and accordingly requests a waiver of the filing fees under² Section 1.1117 of the Commission's rules due to financial hardship.

ART, and its subsidiaries, request a waiver of Section 1.1117(e) of the Commission's rules to allow the transfer of control applications to be filed without requiring the financial troubled companies to make the \$41,425 in filing fees available to the FCC while trying to settle a bankruptcy proceeding. The public interest would be served by not requiring a licensee in bankruptcy proceedings to place assets into the FCC's control that are needed for ongoing operations and otherwise are expected to be available to satisfy innocent creditors when the debts are settled.

¹ 47 C.F.R. Sec. 1.1117(e) ordinarily requires an applicant seeking a fee waiver to submit the fee with the application and request for a waiver and provides for the reimbursement of the fee if the waiver is granted.

² The ULS filing numbers associated with the transaction are 0000495196 for Advanced Radio Telecom Corp., 0000495058 for ART Licensing Corp., and 0000495098 for DCT Telecommunications, Inc.

Wiley, Rein & Fielding

If you have any questions regarding these requests please contact Eric DeSilva at (202) 719-3182. Thank you.

Sincerely,



Eric DeSilva

Counsel for Advanced Radio Telecom Corp.

cc: Jeffery Tobias
Mary Shultz
Roger Noel

In this transaction Advanced Radio Telecom Corp. ("ART"), and its wholly-owned subsidiaries ART Licensing Corp. ("ART Licensing") and DCT Telecommunications, Inc. ("DCT"), request a waiver of Section 1.1117(e) of the Commission's Rules, so that the transfer of control applications may be filed without the requisite filing fees.¹

In a separate but related filing, ART seeks FCC consent to an involuntary *pro forma* transfer of control from ART to ART as debtor-in-possession. ART requests a waiver of the filing fees for these transfer of control applications under Section 1.1117 of the Commission's Rules. ART is filing *pro forma* transfers of control applications to facilitate its reorganization under Chapter XI of the Bankruptcy code and accordingly requests a waiver of the filing fees due to financial hardship. The bankrupt status of ART provides good cause for the waiver of the filing fees.² Additionally, a waiver of the filing fees will serve the public interest by enabling ART to preserve assets that will accrue to the benefit of innocent creditors.³

Consequently, ART requests the Commission to waive Section 1.1117(e) of its rules to allow ART to file the application and the waiver request without paying the fees and then having them reimbursed. Section 1.3 of the Commission's rules authorizes the Commission to waive any specific requirement of its rules upon request where good cause is shown.⁴ Good cause exist where special circumstance support a finding that strict adherence would not be in the public interest and where a grant would not undermine the underlying policy objective.

The public interest would be served by not requiring a licensee in bankruptcy proceedings to place assets that are needed to satisfy innocent creditors into the FCC control, potentially making the assets unavailable when the debts are settled. The FCC has previously recognized

¹ 47 C.F.R. Sec. 1.1117(e) requires an applicant seeking a waiver to submit the fee with the application and request for a waiver and provides for the reimbursement of the fee if the waiver is granted.

² Implementation of Section of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, 10 FCC Rcd 12759, 12762 (1995)(hereinafter *Implementation Order*)(determining that bankruptcy provides good cause for a fee waiver as a general standard). See also MobileMedia Corp., 14 FCC Rcd 8017 (1999)(applying the *Implementation Order* determination to approve waiver of application filing fees).

³ See MobileMedia at ¶40.

⁴ 47 C.F.R. §1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown."). *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

that enabling bankrupt licensees to conserve assets to accrue to the benefit of innocent creditors is in the public interest.⁵ The FCC should uphold this precedent, which supports the Bankruptcy Code's requirement that debtor's conserve assets during such proceedings.

Additionally, a waiver would not undermine the Commission's policies because the Commission created a presumption that bankruptcy status is good cause for granting a fee waiver, so there is minimal possibility that the application will be delayed due to the fees being required but not paid. The Commission requires applicants requesting a waiver to pay their fees prior to grant of the waiver to ensure that if the waiver is denied the processing of the application will not be delayed while the proper fees are submitted. The precedent supporting ART's request for a waiver is based on the *Implementation Order*, proceeding where the Commission intended to create a general standard of granting fee waivers to licensees in bankruptcy proceedings. The determination that bankruptcy provides good cause for a waiver makes it unlikely that ART's fee waiver request will be denied or the application delayed. However, if ART pays the \$41.425 in filing fees and waits for reimbursement the bankruptcy proceedings will be disrupted or delayed while the assets are unavailable for the satisfaction of debts. So in ART's circumstance a waiver of the requirement to submit filing fees with the request for a waiver of the fees would not undermine the FCC's policy of avoiding delays if a fee waiver is denied.

For the foregoing reasons, ART respectfully request that the Commission waive the requirements of Section 1.1117(e) of the Commission's rules.

⁵ See *MobileMedia* at ¶40.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

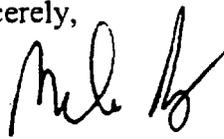
July 31, 2001

Eric W. DeSilva
Counsel for Advanced Radiuo Telecom Corp.
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Dear Sir:

This letter is acknowledging receipt of your letter dated June 19, 2001, on behalf of Advanced Radio Telecom Corp. (ART Licensing) & DCT Telecommunications, Inc. (DCT). Within 30 days of this letter we will mail you either a resolution to your item or a letter telling you when you can expect a resolution. If you have any questions concerning this letter please call the Office of the Chief Financial Officer at (202) 418-1925.

Sincerely,



Mark Reger
Chief Financial Officer



United States Government
Federal Communications Commission

M E M O R A N D U M

DATE: July 17, 2001

TO: Mark Reger

FROM: Eva Trostle

SUBJECT: Enclosed is a fee waiver request that arrived in Gettysburg. I suspect this is a copy for Mary Shultz since she was carbon copied but I've been told to forward this information to you.

Thanks

7/30

*Shelia Date Stamp at FO.
This is a two p letter
cc: Antel, Claudette
sent to John Ritter in OGC
tracker is my file for
August 30.
MMK*

ASSOC. MNG. DIR.
FINANCIAL OPERATIONS
(4110)

JUL 31 7 19 AM '01

RECEIVED

Wiley, Rein & Fielding

1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Eric W. DeSilva
(202) 719-3182
edesilva@wrf.com

June 19, 2001

Fax: (202) 719-7049
www.wrf.com

Magalie Roman Salas, Secretary
Attn: Mark Reger, Associate Managing Director Financial Operations
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Managing Director:

In this transaction Advanced Radio Telecom Corp. ("ART"), and its wholly-owned subsidiaries ART Licensing Corp. ("ART Licensing") and DCT Telecommunications, Inc. ("DCT"), seek FCC consent to an involuntary *pro forma* transfer of control from ART to ART as debtor-in-possession. ART requests a waiver of the filing fee requirements for these transfer of control applications under Section 1.1117 of the Commission's Rules. In a separate but related filing ART also requests a waiver of Section 1.1117(e) of the Commission's Rules, so that the transfer of control applications may be filed without the filing fees.²

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In the related filing, ART asks the Commission to waive Section 1.1117(e) of its rules to allow ART, and its subsidiaries, to file the transfer of control application without ART having to make the \$41,425 in filing fees available to the FCC while ART is trying to settle a bankruptcy proceeding. The public interest would be served by not requiring a licensee in bankruptcy proceedings to place assets into the FCC's control that are needed for ongoing operations and otherwise are expected to be available to satisfy innocent creditors when the debts are settled.

¹ The ULS filing numbers associated with the transaction are 0000495196 for Advanced Radio Telecom Corp., 0000495058 for ART Licensing Corp., and 0000495098 for DCT Telecommunications, Inc.

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Wiley, Rein & Fielding

If you have any questions regarding these requests please contact Eric DeSilva at (202) 719-3182. Thank you.

Sincerely,



Eric DeSilva

Counsel for Advanced Radio Telecom Corp.

cc: Jeffery Tobias
Mary Shultz
Roger Noel

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Section 1.1117 of the Commission's rules provides that filing fees may be waived upon a showing of good cause and a finding that the public interest will be served thereby. The bankrupt status of ART provides good cause for the waiver of the filing fees. In the Commission's Implementation of Section of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year Order the Commission determined that "evidence of bankruptcy is sufficient to establish financial hardship."¹ Additionally, a waiver of the filing fees will serve the public interest by enabling ART to preserve assets that will accrue to the benefit of innocent creditors.² The filing fees for the *pro forma* transfer total \$41,425, which is a significant resource that is needed to preserve ongoing operations and could otherwise be used to satisfy the claims of innocent creditors. Thus ART's circumstances support a waiver of the filing fees.

Fore the foregoing reasons, ART, and its subsidiaries, respectfully request that the Commission waive the filing fees associated with the transfer of control applications.

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Wiley, Rein & Fielding

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(202) 719-7000

Eric W. DeSilva
(202) 719-3182
edesilva@wrf.com

Fax: (202) 719-7049
www.wrf.com

June 19, 2001



Magalie Roman Salas, Secretary
Attn: Mark Reger, Associate Managing Director Financial Operations
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Managing Director:

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Wiley, Rein & Fielding

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Eric DeSilva

Counsel for Advanced Radio Telecom Corp.

cc: Jeffery Tobias
Mary Shultz
Roger Noel

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² Implementation of Section of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, 10 FCC Rcd 12759, 12762 (1995)(hereinafter *Implementation Order*)(determining that bankruptcy provides good cause for a fee waiver as a general standard). See also MobileMedia Corp., 14 FCC Rcd 8017 (1999)(applying the *Implementation Order* determination to approve waiver of application filing fees).

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For the foregoing reasons, ART respectfully request that the Commission waive the requirements of Section 1.1117(e) of the Commission's rules.

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