

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

NOV 1 2001

OFFICE OF
MANAGING DIRECTOR

James L. Oyster, Esq.
108 Oyster Lane
Castleton, Virginia 22716-9720

Re: V.I. Stereo Communications Corp., WVIS (FM),
Christiansted, St. Croix, U.S.V.I.
Request for Waiver of Regulatory Fee
Fee Control No. 00000RROG-01-041

Dear Mr. Oyster:

This is in response to the petition to defer and/or waive the fiscal year (FY) 2001 regulatory fee on the basis of financial hardship which you filed on September 21, 2001 on behalf of V.I. Stereo Communications Corp. (VIS) (2001 Request for Waiver). For the reasons stated below, we deny your request for waiver and deferral of the fiscal year (FY) 2001 regulatory fee of \$850.00.

The Commission may waive, reduce, or defer regulatory fees only upon a showing of good cause and a finding that the public interest will be served thereby. *See* 47 U.S.C. §159(d); 47 C.F.R. §1.1166; *see also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *on recon.*, *Memorandum Opinion and Order*, 10 FCC Rcd 12,759, para. 12 (1995) (regulatory fees may be waived, deferred, or reduced on a case-by-case basis in extraordinary and compelling circumstances upon a clear showing that a waiver would override the public interest in reimbursing the Commission for its regulatory costs). The Commission will waive, reduce or defer its regulatory fees in those instances where a petitioner presents a compelling case of financial hardship. *See Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *on recon.*, 10 FCC Rcd 12759 (1995). Regulatees can establish financial hardship by submitting

information 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 12761-12762.

The arguments you raise to support your 2001 Request for Waiver are virtually identical to those raised in the petitions to defer and/or waive the fiscal years 1998 and 1999 regulatory fees that you filed with the Commission on behalf of VIS on the basis of financial hardship (1998 and 1999 Requests for Waiver, respectively). Indeed, in addition to repeating the arguments raised in your 1998 and 1999 Requests for Waiver in your 2001 Request for Waiver, you incorporate by reference the balance sheets for VIS which you submitted in connection with the previous waiver requests. The Commission denied VIS's 1998 and 1999 Requests for Waiver and required payment of the regulatory fees for those years after finding that VIS had failed to establish a compelling case of financial hardship. See Letters from Mark Reger, Chief Financial Officer, Office of the Managing Director, FCC, to James L. Oyster, Esq. (both dated April 12, 2001) (April 12 Letters). Specifically, the Commission determined that VIS had failed to demonstrate that paying the regulatory fee would affect the ability of VIS to maintain service to the public and that waiver of the fee would override the public's interest in collecting the fee. *Id.*

You have submitted no arguments or information to support your claim of financial hardship as a basis for a waiver or deferral of the regulatory fee that have not already been considered and rejected by the Commission in the April 12 Letters. Further, you have offered no arguments or information that would persuade us that the Commission's decisions in rejecting your previous requests are incorrect or should otherwise be overruled, or that the Commission's decisions in the April 12 Letters are not applicable to the instant waiver request. We therefore find that you have failed to make a compelling showing that the public interest would be served by a grant of your request. Accordingly, we find no basis to support your request for a waiver and deferral of VIS's 2001 regulatory fee and we deny your request. Because you did not pay the fee with the petition for relief, the regulatory fee of \$850.00 for FY 2001 is now due.

If this debt is not paid, this debt may be transferred to the Secretary of the Treasury for collection or to the United States Department of Justice to commence a lawsuit to enforce payment, and/or to apply other administrative sanctions. 47 C.F.R. §§1.1161, 1.1164, 1.1940. If the Commission has to initiate collection efforts to obtain the amount owed, you may be charged the accompanying administrative costs. Any payment received more than 30 days after the date of this letter may also be subject to interest.

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

Sincerely,



for Mark A. Reger
Chief Financial Officer

hurricanes (making it necessary to go off the air or operate at reduced power) and the fact that the station is a lame duck. WVIS is laboring under an extreme economic hardship.

3. The sole principal of the corporation is Joseph Bahr. As indicated in previous balance sheets submitted in connection with previous requests for waiver (incorporated herein by reference), he has outstanding loans to the corporation in the amount of \$113,471.00. As further indicated, income from operation is nominal at best and does not cover the debt owed to Mr. Bahr personally. Essentially, the station was placed on the air to avoid losing the permit but is not a viable operation at its present location. When on the air, the station operated without revenues, operating simply to preserve the license. The Commission has finalized its order authorizing the station's move to Vieques, which is necessary in order for the station to realize any significant income. Unfortunately, the owner of the transmitter site advised that the station would not be permitted to operate from that location. The applicant was able to find a new site, but the Commission has not yet granted permission to operate from the new site. Until the Commission approves that permit, WVIS remains a non-viable operation.

WHEREFORE THE PREMISES CONSIDERED, it is respectfully requested that the annual regulatory fee be deferred until such time as the station can be reestablished at its proposed new location in Vieques. It is further requested that the fee be waived in light of the current economic hardship demonstrated herein.

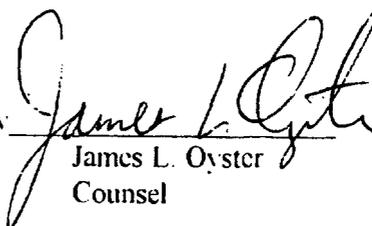
Respectfully submitted.

Law Offices
JAMES L. OYSTER
108 Oyster Lane
Castleton, Virginia 22716-9720

(540) 937-4800

September 20, 2001

V.I. STEREO COMMUNICATIONS CORP.

By 
James L. Oyster
Counsel

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

In the Matter of)	
)	
Applications of)	Fee Control Nos. 9701108195067002 &
Wade Communications, Inc.,)	9511288195347001 &
Ellen R. Evans d/b/a Heartland)	9304268195092005
Communications, and)	
B.R. Clayton and Martha S. Clayton d/b/a)	
Middleton Radio)	

MEMORANDUM OPINION AND ORDER

Adopted: November 9, 2001 Released: November 16, 2001

By the Commission:

I. INTRODUCTION

1. The Commission has before it a joint Application for Review, filed by Wade Communications, Inc., Ellen R. Evans d/b/a Heartland Communications, and B.R. Clayton and Martha S. Clayton d/b/a Middleton Radio (collectively, "Applicants"). The Applicants seek review of three decisions of the Office of Managing Director denying the Applicants' requests for refunds of filing fees.¹ For the reasons below, we deny the Application for review.

II. BACKGROUND

2. Each of the three Applicants, in separate proceedings, had filed an application for an FM radio station construction permit, located respectively in New York, Missouri, and Tennessee. Each application was mutually exclusive with other applications.² All of the applications had been filed prior to the enactment of the Balanced Budget Act of 1997, which amended section

¹ See letters dated November 18, 1999, from Mark A. Reger, Chief Financial Officer, to Timothy K. Brady, Esq.

² See Request for Refund of Filing Fee filed on December 2, 1998, by Timothy K. Brady, attorney for Wade Communications, Inc. ("Wade Request") at p.1; Request for Refund of Filing Fee filed on December 2, 1998, by Timothy K. Brady, attorney for Ellen R. Evans d/b/a Heartland Communications, ("Evans Request") at p.1; Request for Refund of Filing Fee filed on December 2, 1998, by Timothy K. Brady, attorney for B.R. Clayton and Martha S. Clayton d/b/a Middleton Radio, ("Clayton Request") at p.1.

309(j) of the Communications Act ("Act"), 47 U.S.C. 309(j), to require competitive bidding, rather than comparative hearings, to award licenses to mutually exclusive applicants for commercial broadcast licenses.³ However, the Balanced Budget Act also amended the Act to add a new section 309(l) that authorized the Commission, in its discretion, to use competitive bidding or comparative hearings to award licenses to pending mutually exclusive broadcast applicants if the competing applications had been filed prior to July 1, 1997.⁴ In addition, section 309(l) provided for an 180-day period during which such pre-July 1 broadcast applicants could enter into settlement agreements that would resolve mutual exclusivity and be entitled to mandatory waivers of FCC rules limiting the amount of settlement payments between the applicants.⁵ Each of the instant Applicants took advantage of these provisions, and in January 1998, filed settlement agreements with the Commission. The agreements were subsequently approved and resulted in dismissal of the Applicants' applications in April and September 1998, and award of each license to a remaining applicant.⁶

3. Subsequent to the filing of the Applicants' settlement agreements, the Commission completed a rulemaking proceeding in August, 1998, in which it determined that any remaining pre-July 1, 1997 broadcast applications should be awarded by competitive bidding.⁷ Specifically, it noted that "despite the 180-day period during which we waived our settlement rules as required by Section 309(l)(3), there are approximately 150 proceedings involving more than 600 pre-July 1, 1997 mutually exclusive applications that remain to be decided."⁸ Concluding that the use of auctions would "generally expedite service and better serve the public interest in these cases, the Commission concluded that "auctions will generally be fairer and more expeditious than deciding the pending mutually exclusive applications filed before July 1, 1997 through the comparative hearing process."⁹ The Commission stated, however, that "pending applicants in all

³ *Id.*

⁴ 47 U.S.C. § 309(l).

⁵ *Id.*

⁶ See Wade Request, at p.2 (settlement agreement filed for Commission approval on January 30, 1998; approval granted March 3, 1998); Evans Request, at p.2 (settlement agreement filed for Commission approval on January 28, 1998; approval granted April 16, 1998); Clayton Request, at p.2 (settlement agreement filed for Commission approval on January 30, 1998; approval granted September 21, 1998).

⁷ See *First Report and Order in the matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses ("First Report and Order")*, 13 FCC Rcd 15920, 15931-32 (1998).

⁸ See *First Report and Order*, 13 FCC Rcd at 15933.

⁹ *Id.*

comparative licensing cases subject to resolution by competitive bidding pursuant to Section 309(i) may file a pleading disavowing intent to participate in the auction and seek dismissal of their applications.”¹⁰ The Commission further stated that, “[o]nce dismissal of any such application is final, we will entertain requests for refunds of any hearing and filing fees actually paid by such applicants.”¹¹ Finally, in contrast to the *NPRM*, which had proposed that such refunds would be paid “once the grant of the construction permit to the winning bidder is final and the license has been paid for in full,”¹² the Commission determined that refunds would be paid “once dismissal of any such application is final”¹³

4. On December 4, 1998, Applicants filed requests for refund of their filing fees. Applicants stated that their applications were “subject to section 309(i)” and they “elected not to have the disposition of their applications determined by competitive bidding.”¹⁴ Applicants stated that they were therefore entitled to refunds under the *First Report and Order*.¹⁵

5. The Office of Managing Director, by the Chief Financial Officer, denied Applicants’ requests. The Chief Financial Officer found that the Applicants were not entitled to refunds because their applications had been resolved by negotiated settlements and thus did not qualify for the refunds authorized in the *First Report and Order*.¹⁶

III. DISCUSSION

6. In the Application for Review, Applicants argue that the Office of Managing Director erred in not refunding the filing fees in these matters and the decisions should be reversed.¹⁷ For the reasons below, we deny the Application for Review.

¹⁰ *Id.* at 15957.

¹¹ *Id.*

¹² 12 FCC Rcd 22363, 22370-71 (1997).

¹³ 13 FCC Rcd 15920, 15957.

¹⁴ Wade Request, at p.1; Evans Request, at p.1; Clayton Request, at p.1.

¹⁵ *Id.* at 2.

¹⁶ See letters dated November 18, 1999, from Mark A. Reger, Chief Financial Officer, to Timothy K. Brady, Esq.

¹⁷ Application for Review at 5.

7. The Applicants first argue that nothing in the *First Report and Order* suggests they are not eligible for the refunds of filing fees that they have requested.¹⁸ Applicants further argue that “the *First Report and Order* gave no hint that entering into a settlement agreement would preclude an applicant of obtaining a refund of its filing fee.”¹⁹ We disagree. As indicated in paragraph 3 above, both the general context and specific language of the *First Report and Order* clearly state our intention that refunds of filing fees would only apply to the remaining pre-July 1, 1997 applicants for licenses or permits who had not resolved mutual exclusivity through negotiated agreements during the 180-day period and whose pending mutually exclusive applications would therefore be resolved pursuant to our decision to use competitive bidding.²⁰ The permits for which Applicants applied, in contrast, were not awarded by auction but pursuant to the settlement agreements into which the Applicants separately entered prior to the Commission’s decision in the *First Report and Order*.

8. Similarly, Applicants argue that their requests for refunds should be granted because they “anticipated receiving such refunds, based on the clear language of the *First Report and Order*, and took that expectation into consideration in determining to request dismissal of their applications.”²¹ At the outset, none of the Applicants could have so relied on the *First Report and Order* because they entered into and filed their settlement agreements with the Commission before we adopted it on August 6, 1998.²² In any event, as discussed above, nothing in the *First Report and Order* indicated that refunds of filing fees would be granted to applicants that had already settled and resolved mutual exclusivity during the 180-day period; rather the relevant language refers only to remaining, pending mutually exclusive application proceedings for which it was necessary to award the licenses by auction. Nor could Applicants or others have relied on the *Notice of Proposed Rulemaking* in that proceeding (“*NPRM*”), 12 FCC Rcd 22363 (1997). As noted above, in the *NPRM*, our tentative proposal was to refund filing fees to applicants choosing not to participate in the related auction, with “all such refunds [to] be paid once the grant of the construction permit to the *winning bidder* is final.”²³ Our proposed relief was clearly

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 4-5

²⁰ 13 FCC Rcd 15920, 15957.

²¹ Application for Review at 5.

²² See Wade Request, at p.2 (settlement agreement filed on January 30, 1998); Evans Request, at p.2 (settlement agreement filed on January 28, 1998); Clayton Request, at p.2 (settlement agreement filed on January 30, 1998).

²³ 12 FCC Rcd 22363, 22370-71 (1997) (emphasis added).

limited to situations in which the construction permit at issue was awarded by auction, not pursuant to a settlement agreement.

9. Finally, the Applicants argue that the Commission's rationale for granting refunds applies with equal weight to the Applicants, pointing to the Commission's statement in the First Report and Order that the "extraordinary step" of refunding filing fees was "in recognition of the fact that these applicants might not have filed their applications if they had known the permit would be awarded by competitive bidding."²⁴ We note, however, that any applicants that settled within the 180-day period were entitled to negotiate payments from the other mutually exclusive applicants that would cover their costs, including their filing fees, and moreover, pursuant to the statutorily mandated waiver requirement in section 309(l), could also negotiate payment amounts that exceeded their costs.²⁵ Therefore, any equities that might apply to non-settling applicants and warrant refund of filing fees do not apply with the same force to these applicants.²⁶

10. After careful review of the issues raised in the Application for Review, we do not find any basis for modifying the decision of the Office of Managing Director denying Applicants' requests for refunds of filing fees.

IV. ORDERING CLAUSES

ACCORDINGLY, IT IS ORDERED that the Application for Review, filed on December 20, 1999, by Wade Communications, Inc., Ellen R. Evans d/b/a Heartland Communications, and B.R. Clayton and Martha S. Clayton d/b/a Middleton Radio IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

²⁴ 13 FCC Rcd 15920, 15957-58.

²⁵ 12 FCC Rcd 22363, 22375.

²⁶ See also Federal Communications Commission, Public Notice, Report No. 44629A, Notice of Mass Media Bureau Action on AM and FM Broadcast Settlement Agreements and Applications (Dec. 10, 1999) (granting request of short-form applicants to settle, but rejecting request for refund of filing fees as outside scope of First Report and Order refund provisions and noting that parties to settlement are permitted to reimburse dismissing applicants for previously paid application filing fees.)

9304268195092005

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

RECEIVED

DEC 20 1999

FCC MAIL ROOM

In re)	
WADE COMMUNICATIONS, INC.)	File No. BPH-930423MC
Ellen R. Evans d/b/a)	
HEARTLAND COMMUNICATIONS)	File No. BPH-951127MG
B. R. Clayton and Martha S. Clayton)	
d/b/a Middleton Radio)	File No. BPH-970109MA
)	
Request for Fee Refund)	
To: The Commission)	

APPLICATION FOR REVIEW

Wade Communications, Inc., Ellen R. Evans d/b/a Heartland Communications and B. R. Clayton and Martha S. Clayton d/b/a Middleton Radio ("Applicants") herewith submit their joint application for review of actions taken pursuant to delegated authority by letters of the Managing Director, dated November 18, 1999 (copies attached), denying their respective Requests for Refund of Filing Fee, filed December 4, 1998. In support whereof the following is shown:

Background.

1. Wade Communications, Inc. is a former applicant (File No. BPH-930423MC) for a new FM station to operate on Channel 241A at Norwood, New York. Ellen R. Evans d/b/a Heartland Communications is a former applicant (File No. BPH-951127MG) for a new FM station to operate on Channel 230A at Scott City,

Missouri. B. R. Clayton and Martha S. Clayton d/b/a Middleton Radio are former applicants (File No. BPH-970109MA) for a new FM station to operate on Channel 264C3 at Middleton, Tennessee.

2. On December 4, 1998 each of the Applicants filed with the Commission a Request for Refund of Filing Fee. Prior to that date each had requested dismissal of its application with prejudice and each application had been dismissed by final order of the Commission. In their respective Requests each of the Applicants sought refund of the filing fees each had paid at the time their applications were filed. They did so pursuant to the Commission's First Report and Order (FCC 98-194) in MM Docket No. 97-234, 63 Fed. Reg. 48615 (September 11, 1998). In the First Report and Order the Commission indicated (at paragraphs 101-103) that it would refund the filing fees paid by applicants who:

- (a) were subject to the provisions of 47 USC 309(1) and
- (b) elected not to continue prosecuting their applications through the competitive bidding process.

3. By letters dated November 18, 1999 (copies attached), the Managing Director, acting pursuant to delegated authority, denied each of the Applicant's respective Requests. In so doing the Managing Director took the position that because the Applicants dismissed their respective applications pursuant to negotiated settlement agreements, "their situation does not fall within the parameters established by the Commission for the refund of fees."

Question Presented:

4. The following question of law is presented:

Whether applicants who were subject to 47 USC 309(1) and who elected to dismiss their applications rather than continue prosecuting their applications and participate in the competitive bidding process are precluded from receiving refunds of their filing fees, solely because they dismissed their applications in the context of a negotiated settlement.

Argument.

5. Contrary to the position of the Managing Director, nothing in the First Report and Order suggests that applicants, who are otherwise eligible for refund of their filing fees, lose that eligibility if they dismiss their applications in the context of a negotiated settlement. Furthermore, both the rationale stated by the Commission for granting filing fee refunds and the justification offered by the Commission for excluding applicants who elect to participate in the auction, support the conclusion that dismissal in the context of a settlement should not preclude the grant of a filing fee refund to which an applicant is otherwise eligible.

6. The Commission's stated rationale for granting filing fee refunds was that applicants subject to 47 USC 309(1) may not have filed their applications, had they known that the permit would be awarded by competitive bidding. First Report and Order at para. 103. Furthermore, the Commission drew the line of eligibility on the basis of whether or not an applicant elected to continue prosecuting its application by participating in the

auction. First Report and Order at paras. 101, 103. Those that did not elect to continue prosecuting their applications through the competitive bidding process were entitled to refunds and those who elected to continue prosecution of their applications through competitive bidding were not. The Commission announced no further requirement for eligibility for a filing fee refund, other than the prerequisite that applicants seeking refunds disavow any intention to continue prosecution of their application through the auction process and request dismissal of their applications prior to the Form 175 filing deadline and that such dismissal become final. First Report and Order at paras. 102, 104.

7. Here, the rationale for refunding filing fees applied with equal weight to the Applicants. Each of the Applicants was subject to 47 USC 309(1) and each elected not to continue prosecution of its application through the competitive bidding process. Prior to the deadline for submission of Form 175 each had filed a pleading with the Commission disavowing any intention to continue prosecuting their applications and requesting dismissal of their applications with prejudice. Prior to December 4, 1998 when their respective Requests for Refund were filed, the applications of each had been dismissed with prejudice by the Commission and those actions had become final. Thus, the Applicants had met each and every requirement imposed by the First Report and Order. The First Report and Order gave no hint that entering into a settlement agreement would preclude an

applicant of obtaining a refund of its filing fee. On the contrary, the Applicants properly anticipated receiving such refunds, based upon the clear language of the First Report and Order, and took that expectation into consideration in determining to request dismissal of their applications. The Managing Director has pointed to no language in the First Report and Order that would preclude the requested refunds, simply on the basis that the Applicants dismissed their respective applications in the context of a negotiated settlement. Accordingly, the action taken pursuant to delegated authority is without any legal basis and should be reversed and the filing fees, previously paid, should be refunded as requested.

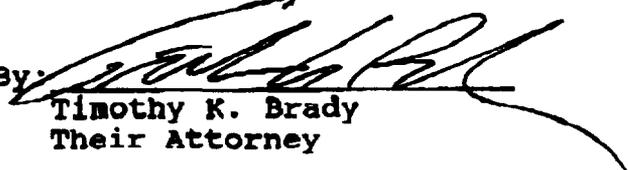
WHEREFORE, premises considered, the respective Requests for Refund, filed by the Applicants on December 4, 1998, should be GRANTED.

Respectfully submitted,

WADE COMMUNICATIONS, INC.

Ellen R. Evans d/b/a
Heartland Communications

B. R. Clayton and Martha S. Clayton
d/b/a Middleton Radio

By: 
Timothy K. Brady
Their Attorney

P.O. Box 71309
Newnan, GA 30271-1309
770-252-2620

December 20, 1999

TIMOTHY K. BRADY
ATTORNEY
P.O. BOX 71309
NEWNAN, GA 30271-1309
770-252-2620

April 4, 2001

BY FAX

TO: CLAUDETTE PRIDE

FM: Timothy K. Brady

RE: NORWOOD, NY

Here is the the Application for Review, per your request.

TOTAL PAGES: 9, including this page.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

NOV 18 1999

OFFICE OF
MANAGING DIRECTORTimothy K. Brady, Esq.
P.O. Box 986
Brentwood, TN 37024-0986RE: Request for Refund of Application Fee
B.R. and Martha S. Clayton, d.b.a. Middleton Radio
File No. BPH-970109MA
Fee Control No. 9701108195067002

Dear Mr. Brady:

This is in response to the request for refund of the application fee for a new FM radio station, filed on behalf of B.R. and Martha S. Clayton, d.b.a. Middleton Radio. You request that we waive and refund the filing fee paid by the Claytons under the refund provisions of the *First Report and Order in the Matter of Implementation of Section 309(j) of the Communications Act*, 13 FCC Red. 15920 (1998) (*First Report and Order*).

In the *First Report and Order*, the Commission determined that it would refund filing fees when applications for new stations were submitted prior to July 1, 1997, and are dismissed on pleadings disavowing interest in participating in the subsequently announced competitive bidding process. *Id.*, at 15,957. You argue that the Claytons filed their application before July 1, 1997, and elected not to participate in the competitive bidding process. The Claytons' application, however, was dismissed with prejudice pursuant to the terms of a negotiated settlement agreement. Their situation does not fall within the parameters established by the Commission for the refund of fees with respect to such applications. Therefore, your request is denied.

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

Sincerely,


Mark Reger
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
NOV 18 1998

OFFICE OF
MANAGING DIRECTOR

Timothy K. Brady, Esq.
P.O. Box 986
Brentwood, TN 37024-0986

RE: Request for Refund of Application Fee
Ellen R. Evans, d.b.a. Heartland Communications
File No. BPH-951127MG
Fee Control No. 9511288195347001

Dear Mr. Brady:

This is in response to the request for refund of the application fee for a new FM radio station, filed on behalf of Ellen R. Evans, d.b.a. Heartland Communications. You request that we waive and refund the filing fee paid by Ms. Evans under the refund provisions of the *First Report and Order in the Matter of Implementation of Section 309(j) of the Communications Act*, 13 FCC Rcd. 15920 (1998) (*First Report and Order*).

In the *First Report and Order*, the Commission determined that it would refund filing fees when applications for new stations were submitted prior to July 1, 1997, and are dismissed on pleadings disavowing interest in participating in the subsequently announced competitive bidding process. *Id.*, at 15,957. You argue that Ms. Evans filed her application before July 1, 1997, and elected not to participate in the competitive bidding process. Ms. Evans' application, however, was dismissed with prejudice pursuant to the terms of a negotiated settlement agreement. This situation does not fall within the parameters established by the Commission for the refund of fees with respect to such applications. Therefore, your request is denied.

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

Sincerely,


Mark Reger
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

NOV 18 1999

Timothy K. Brady, Esq.
P.O. Box 986
Brentwood, TN 37024-0986

RE: Request for Refund of Application Fee
Wade Communications, Inc.
File No. BPH-930423MC
Fee Control No. 9304268195092005

Dear Mr. Brady:

This is in response to the request for refund of the application fee for a new FM radio station, filed on behalf of Wade Communications, Inc. You request that we waive and refund the filing fee paid by Wade Communications, Inc. under the refund provisions of the *First Report and Order in the Matter of Implementation of Section 309(f) of the Communications Act*, 13 FCC Rcd. 15920 (1998) (*First Report and Order*).

In the *First Report and Order*, the Commission determined that it would refund filing fees when applications for new stations were submitted prior to July 1, 1997, and are dismissed on pleadings disavowing interest in participating in the subsequently announced competitive bidding process. *Id.*, at 15,957. You argue that Wade Communications, Inc. filed its application before July 1, 1997, and elected not to participate in the competitive bidding process. Wade Communications Inc.'s application, however, was dismissed with prejudice pursuant to the terms of a negotiated settlement agreement. Its situation does not fall within the parameters established by the Commission for the refund of fees with respect to such applications. Therefore, your request is denied.

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

Sincerely,


Mark Reger
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

NOV 13 2001

OFFICE OF
MANAGING DIRECTOR

Mr. Freddie Kirkland
WBKH
Post Office Box 15216
Hattiesburg, Mississippi 39404

Re: Request for Waiver of FY 2001
Regulatory Fee

Fee Control No.: 00000RROG-01-020

Dear Mr. Kirkland:

This letter responds to your request for a waiver of the regulatory fee for Fiscal Year (FY) 2001 filed with respect to AM station WBKH, Hattiesburg, Mississippi.

You state that WBKH is a Christian radio station whose income derives mostly from the support of local churches. At present, you assert that the station is suffering financially due to transmitter trouble and that any other expense could result in WBKH having to go off the air. In support of your waiver request, you submit a profit and loss statement for 2000, a current earnings statement through August 31, 2001, and a bill for repairs.

In establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994); recon. granted, 10 FCC Rcd 12759 (1995).

Our review of your submission does not support your claim of financial hardship. Your profit and loss statement for 2000 shows net business income in the amount of \$10,865.85, and your earnings statement for the first eight months of 2001 shows net business income in the amount of \$5,849.15, from which the regulatory fee of \$700 could be paid. You provide no further evidence of financial need. Accordingly, your request for waiver is denied.

Mr. Freddie Kirkland

2.

Payment of the FY 2001 regulatory fee for WBKH in the amount of \$700 is now due. Payment should be submitted together with FCC Form 159 (copy enclosed) within 30 days from the date of this letter. If payment is not received within 30 days, WBKH will be assessed a late fee of 25% of the unpaid amount of the regulatory fee. If you have any questions concerning the regulatory fee payment, 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", with a large, stylized initial "M" at the beginning.

 Mark A. Reger
Chief Financial Officer

Enclosure

00000 RROG-01-020



RECEIVED
FCC

2001 SEP 11 A 7 42

ACCOUNT PROCESSING
GROUP-DPT/RPT/TMT

To Whom It May Concern,

I am requesting a waiver of the regulatory fee for WBKH. WBKH is the only station licensed to Southern Air Communications. WBKH is a Christian radio station operated strictly as a Ministry. There are no employees at WBKH as we can not afford to pay them. WBKH is ran by myself with an automation system. WBKH's income comes mostly from local churchs who support us and a few local christian business. At the present time our finances are suffering in the worst way due to transmitter trouble we have had in the past year. I feel any other expense will result in WBKH having to go off the air which will result in our community loosing our public service and our elderly audience, who depend on us , will loose a station they have tuned into for many years. Even though WBKH is not listed as a non profit organization, we do not make a profit and everything made goes back into the ministry.

Attached I have enclosed the following:

- Profit and loss statement for 2000
- Current earnings for 2001 (thru 8/31/01)
- copy of unpaid expenses for repairs

You will notice on the profit and loss statements the net income, this is the amount I recieve to live on and pay my living expenses. I live on the stations property in a mobile home in order to cut expenses.

If there is any other document you will need in making your decision please let me know. I can be contacted at WBKH P.O. Box 15216 Hattiesburg, Ms 39404.

Our future is in your hands and that of the LORD.

Thank you,

Freddie Kirkland
General Manager

Southern Air Communications

FRN: 0003 - 7311 - 89

MONTHLY STATEMENT

WHITE'S ELECTRONICS & ENGINEERING
P.O. BOX 250, 116 MAIN STREET
COLLINS, MS 39428-0250
WAYNE WHITE, Owner

PHONE 765-4522

BALANCE: 748.80

NAME: WBKH Radio Station
ADDRESS: P.O. Box 15216
CITY, ST: Hattiesburg, Ms. 39404

307-7795
PAGER: 821-3138
PHONE: 582-9595

ACCT #: Eng:

DATE: 08-31-01

INVOICE:	DATE:	AMOUNT:	CREDIT:	BALANCE:
Balance fwd..				--0--
Oct.. 1999	10-28-99	100.00	--0--	100.00
Emergency Service Station off Air, Friday Morn:			////////	////////
----- Ck 2329	11-13-99 Ref: 4584	-----	50.00	50.00
----- Ck 2337	11-22-99 Ref: 8002	-----	50.00	--0--
-----12/4--12/8	11-25-99	120.00	--0--	120.00
037569	03-15-00	65.00	--0--	185.00
037685	04-16-00	90.95	--0--	275.95
037696	04-26-00	90.95	--0--	366.90
123196	01-30-01	90.95	--0--	457.85
123607	03-15-01	90.95	--0--	548.80
123566	05-18-01	100.00	--0--	648.80
039172	07-09-01	100.00	--0--	748.80
----- Ck 2642	08-15-01 Ref: 2571	-----	100.00	648.90
-----	08-31-01	100.00	--0--	748.90

Thank You, Wayne White

WE APPRECIATE YOUR BUSINESS

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
NOV 1 2001

OFFICE OF
MANAGING DIRECTOR

Mr. James E. Cloud
WMJR AM1380
2909 Richmond Road
Suite 5
Lexington, Kentucky 40509

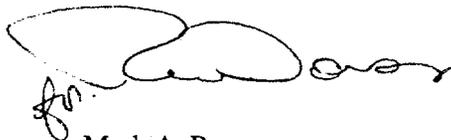
Re: WMJR AM1380, Thy Kingdom Come Network
2000 Regulatory Fee
Fee Control No. 00000RROG-01-045

Dear Mr. Cloud:

This is in response to your request (dated September 25, 2001) for a refund of the \$650.00 regulatory fee and \$162.50 late charge penalty paid for Fiscal Year (FY) 2000 for WMJR AM1380, Thy Kingdom Come Network (WMJR), based upon its status as a nonprofit, tax-exempt entity under section 501 of the U.S. Internal Revenue Code. You state that WMJR is a section 501 (c)(3) tax-exempt private foundation.

The Commission's rules provide that entities that qualify as tax-exempt, nonprofit organizations under section 501 of the Internal Revenue Code are exempt from the requirement to pay regulatory fees. 47 C.F.R. §1.1162(c). The burden is on the licensee to document fully the eligibility for waiver, otherwise the regulatory fee is due. Acceptable documentation for eligibility for the waiver may include Internal Revenue Service determination letters, state or government certifications, or other documentation that nonprofit status has been approved by a state or other governmental authority. *Id.* You have provided no documentation to support your claim that WMJR is a tax-exempt, nonprofit organization under section 501(c)(3) of the Internal Revenue Code. We therefore deny your request for a refund of the regulatory fee and late charge penalty paid for FY 2000 for WMJR. Nevertheless, in light of your general allegations, you may file a further request for relief with respect to the \$812.50 FY 2000 fees paid for WMJR together with an appropriate supporting showing within 30 days from the date of this letter. If you have any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer

00000 KEDG - 01 - 045



RF9

2909 Richmond Road ■ Suite 5
Lexington, KY 40509

www.wmjr.net

■ Ph: 859-268-4748 ■ Fax: 859-268-5270 ■

FAX COVER SHEET

TO: Ms. Susan Deabue
FCC - Revenue & Receivables Opn. Group
 FAX: 202-418-2843

FROM: James E. Chead

DATE: 9/26/01 TIME: 12:18 (AM/PM)

NUMBER OF PAGES (INCLUDING COVER SHEET): 4

FOR REVIEW AS REQUESTED PLEASE ADVISE

COMMENTS:

Please confirm receipt of this
letter, ref # 2000-9MB-0793

Thank you!



A Service of Thy Kingdom Come Network, Inc.

25 September 2001

Ms. Susan Donahue, RROG
Federal Communications Commission
445 12th St., S.W.
Suite 1A820
Washington, DC 20554

RE: 2000 Regulatory Fee #2000-9MB-0793
Thy Kingdom Come Network, Inc. (WMJR-AM)

Dear Ms. Donahue,

Please accept this letter as a formal request for refund of \$ 812.50 for payment for 2000 Annual Regulatory Fees which we paid in error.

After receiving you letter, we submitted payment in the amount of \$650.00 plus 25% penalty for a total of \$812.50, with check #1336, dated 05/17/01.

Without the advise from our attorney, and by not fully understanding our requirements with the FCC, we immediately submitted payment so as not to incur further penalties.

Thy Kingdom Come Network (WMJR am),Employer ID#61-1256833, is a Section 501C (3) exempt private Foundation. If you wish to confirm our status, please contact our attorney Patricia Chuh, Pepper & Corazzini, LLP, 1776 K St., NW #200 Washington, DC 20006, phone #202-296-0600.

If you need additional information from us, please contact us at the address below.
Thank you for your immediate attention.

Your truly,

James E. Cloud,
 JEC/ic

WMJR AM1380
2909 Richmond Road
Suite 5
Lexington, KY 40509
Tel: 859-268-4748
Fax: 859-268-5270
Web: www.wmjr.net