

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

NOV 27 2001

86-285

Aaron P. Shainis, Esq.
Shainis & Peltzman, Chartered
1850 M Street, N.W.
Suite 240
Washington, D.C. 20036

Re: Hispanic Keys Broadcasting Corp., Station
WWTU(TV), Key West, Florida
Request for Waiver of FY 2001 Regulatory Fee
Fee Control No. 00000RROG-01-028

Dear Mr. Shainis:

This is in response to your letter dated September 26, 2001, filed on behalf of Hispanic Keys Broadcasting Corp. (Hispanic Keys), licensee of Station WWTU(TV), Key West, Florida, requesting a waiver of the fiscal year (FY) 2001 regulatory fee. You request a waiver of the \$32,825.00 regulatory fee on the grounds of financial hardship.

You state that the Commission's Cable Services Bureau (Bureau) recently modified the Miami-Ft. Lauderdale, Florida designated market area (DMA) so as to exclude for purposes of the cable television mandatory broadcast signal carriage rules those communities served by the Adelpia South Dade County, Key Biscayne, and North Dade Country Cable Systems. See *Adelpia Cable Partners, L.P. d/b/a Adelpia Cable Communications, for Modification of the Miami-Ft. Lauderdale, Florida DMA*, Memorandum Opinion and Order, 16 FCC Rcd 5328 (CSB 2001) (*Adelpia Cable Partners*). You state that WWTU(TV) is an independent, full power television station operating on Channel 8, and that it is authorized to serve Key West, Florida, an area within the Miami, Florida DMA. You assert that the Bureau's decision in *Adelpia Cable Partners* has denied WWTU(TV) its "must-carriage" rights under the 1992 Cable Act and the Commission's rules and, as a result, the station cannot afford to pay its FY 2001 regulatory fees. You also claim that payment of the regulatory fees would result in material reduction of service to the current service area of Station WWTU(TV). In support, you include a "Declaration" from C. Michael Curry (Curry) (the Vice President of Hispanic Keys) in which he states that the station has been struggling since it commenced operations and that its financial situation has been exacerbated by recent indebtedness. Curry states that because the station's signal is no longer carried in the Miami DMA (as a result of the Bureau's decision in *Adelpia Cable Partners*) WWTU(TV)'s revenues have been severely diminished and that payment of the regulatory fee would cause the station to cease operation.

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.

In the absence of such documentation, or other relevant showing, you have failed to establish a compelling case for relief. Therefore, your request for waiver of Station WWTU(TV)'s regulatory fees is denied. Payment of the FY 2001 regulatory fee in the amount of \$32,825.00 for Station WWTU(TV) is now due. The \$32,825.00 should be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter.

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

Sincerely,



for Mark A. Reger
Chief Financial Officer

Enclosure

Shainis & Peltzman, Chartered

Counselors at Law

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September 26, 2001

RECEIVED

SEP 26 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: WWTU(TV)
Key West, Florida

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Office of the Managing Director
Federal Communications Commission
445 12th Street, S.W., Room 1-A625
Washington, D.C. 20554
Attention: Regulatory Fee Waiver/Reduction Request

Dear Sir:

Hispanic Keys Broadcasting Corp. is the licensee of WWTU(TV), Key West, Florida, and W21AX, Miami, Florida. The Commission, pursuant to its August 7, 2001 Public Notice, *FY2001 Mass Media Regulatory Fees*, assessed W21AX, which is a derivative low power television station (i.e., Class A), the regulatory fee amount of \$305. WWTU, which is licensed to Key West, Florida, but is located in the Miami, Fort Lauderdale, Florida market, was assessed regulatory fees of \$32,825.00. Hispanic Keys is paying its regulatory fee for W21AX. However, it cannot afford to pay the \$32,825.00 regulatory fee for WWTU. In support of its position, the following should be noted by the Commission.

By *Memorandum Opinion and Order*, 16 FCC Rcd 5328 (2001) (the "DMA Order"), granted the Petition of Adelfia Cable Partners, L.P., d/b/a Adelfia Cable Communications ("Adelfia"), and modified the Miami-Ft. Lauderdale, Florida designated market area (the "Miami DMA") of WWTU in such a manner as to exclude, for purposes of the cable television mandatory broadcast signal carriage rules, those communities served by the Adelfia South Dade County, Key Biscayne, and North Dade County Cable Systems.¹ It is undisputed that WWTU is an independent, full power television station operating on Channel 8, authorized to serve Key West, Florida, which places it in the Miami, Florida DMA. It is similarly uncontested that Adelfia's cable communities are located within the Miami DMA. WWTU is lawfully entitled to mandatory carriage regulation with respect to every cable television system located in the Miami DMA under the 1992 Cable Act and the Commission's rules. Section 614 of the Communications Act creates an affirmative duty for every cable operator to carry, on all cable

¹ On April 9, 2001, Hispanic Keys filed a Petition for Reconsideration of this *Memorandum Opinion and Order*.

Shainis & Meltzman, Chartered

systems of that operator, signals of local commercial television stations located in those stations' market. The 1992 Cable Act and the Commission's rules define a station's "market" for this purpose as its ADI, now DMA. In light of the fact that WWTU has been denied must-carry rights within almost its entire DMA,² it cannot afford to pay the regulatory fees for WWTU. Moreover, payment by the Station of the regulatory fee (\$32,825.00), at the same time as the filing of the instant waiver request would result in the material reduction of service to the current service area of WWTU. In this regard, see the attached Declaration of Michael Curry, Vice President, Hispanic Keys Broadcasting Corp. In that Declaration, Mr. Curry makes it clear that, based on its revenues, Hispanic Keys is unable to pay the regulatory fees for WWTU. Moreover, payment of the regulatory fees would cause such extreme financial hardship to the Station that it might be forced to cease operations.

In light of the foregoing, it is urged that the Commission grant Hispanic Keys waiver of the payment of the 2001 regulatory fees relative to WWTU.

Sincerely yours,



Aaron P. Shainis

Counsel for

HISPANIC KEYS BROADCASTING CORP.

Enclosure

² The Commission in other decisions has drastically curtailed WWTU's ability to serve its DMA by consistently restricting service to communities in and around Miami. See *Cable Satellite of South Miami, Inc.*, 13 FCC Rcd 298 (1998); *Gulf and Pacific Communications, L.P.*, 12 FCC Rcd 21986 (1987); *Rifkin/Narragansett South Florida, CATV Limited Partnership d/b/a Gold Coast Cablevision*, 11 FCC Rcd 21090 (1996); *Continental Cablevision of Jacksonville, Inc. d/b/a Continental Cablevision of Broward County, Inc. et al.*, 11 FCC Rcd 14909 (1996), *recon. denied*, 14 FCC Rcd 13783 (1998).

Declaration of C. Michael Curry

C. Michael Curry, Vice President of Hispanic Keys Broadcasting Corp., (Hispanic Keys) the licensee of WWTU(TV), Key West, Florida, and W21AX, Miami Florida, hereby states the following.

Hispanic Keys Broadcasting Corp. is unable to pay the regulatory fees for WWTU(TV), Key West, Florida. In this regard WWTU has been struggling since it commenced operations. Moreover, it had not paid regulatory fees for a number of years due to its financial situation. Approximately a year ago, Hispanic Keys borrowed the money to pay past due regulatory fees. However, its borrowing ability is now severely curtailed, and its financial situation has been exacerbated by this indebtedness. Moreover, due to the lack of signal carriage in the Miami DMA, its revenues are severely diminished. Accordingly, while the Commission for regulatory fee purposes, considers WWTU to be in the Miami-Ft. Lauderdale market, for practical purposes it cannot effectively compete due to the lack of signal carriage with the other stations in the Miami-Ft. Lauderdale market. Accordingly, due to this competitive disadvantage, WWTU has diminished revenues which makes it impossible for it to pay the fees assigned to its market. Moreover, payment of the fees would cause WWTU to cease operation. Accordingly, a waiver is justified.

The foregoing Declaration is true and correct to the best of my knowledge and belief and is made under penalty of perjury.


C. Michael Curry

Date: September 26, 2001

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