

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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(CHRON)

OCT 10 2000

OFFICE OF
MANAGING DIRECTOR

Lee J. Peltzman, Esquire
Shainis & Peltzman, Chartered
Counselors at Law
1901 L Street, N.W., Suite 290
Washington, D.C. 20036

Dear Mr. Peltzman:

This is in response to your letter dated January 14, 2000, requesting reconsideration of our decision dated December 10, 1999. For the reasons stated below, your request is denied.

As you should know, on July 18, 1998, the Commission denied Mr. Goodall's initial request for a waiver of regulatory fees for fiscal year 1997. Mr. Goodall did not pay the fees within the allowed time, but instead submitted further request for relief with additional inadequate information. We provided a full explanation of the reasons for our denial and unequivocally informed Mr. Goodall that he failed to establish financial need from the information provided. Your correspondence does not change the result. Your discussion of the examples we highlighted in our letter to Mr. Goodall does not establish good cause for waiver of the regulatory fees due for fiscal year 1997.

Title 47, United States Code, §159(d) grants the Commission authority to waive the fee "in any specific instance for good cause shown, where such action would promote the public interest." The authority to waive fees is narrowly defined (*See Conference Report, H.R. Rep. No. 453, 99th Cong., 1st Sess. 423*), and it rests upon an established standard with two elements: whether an extraordinary or compelling reason has been demonstrated; and would the waiver of the fee override the public interest to collect the fee. The Commission's implementing rules are at 47 CFR §1.1166.

When we considered the merits of Mr. Goodall's petition, we found that it did not establish good cause for the waiver and it did not demonstrate that such waiver would promote the public interest. In that regard, each regulatee must properly document a request for waiver that will be evaluated against the Commission's standard.

Petitioners seeking a waiver, deferral, or reduction of a regulatory fee based on financial hardship may submit any relevant information in support of their request. We will review the supporting documents and base our ruling upon information submitted and any additional information available in our records. If petitioner presents a compelling case of financial hardship, no payment of the regulatory fee will be due. If the supporting materials do not present sufficient evidence of hardship, we will deny the petition. If the fee has not already been submitted, the petitioner will have 30 days to file its regulatory fee in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.

R&O, *In re Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346, at ¶ 35 (Jun 8, 1994). Later in response to request for clarification, we explained:

We will grant waivers of the fees on a sufficient showing of financial hardship. Mere allegations or documentation of financial loss, standing alone, will not support a waiver request. Rather we will grant a waiver only when the impact of the regulatory fee will affect a regulatee's ability to serve the public. It will be incumbent upon each regulatee to fully document its financial position and show it lacks sufficient funds to pay the regulatory fees and maintain its service to the public.

Memorandum Opinion and Order, *In re Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, at ¶ 13 (Jun 22, 1995).

Mr. Goodall's submission did not meet that standard, and our letter dated December 10, 1999 included the following caution;

However, submission of document numbers alone and without explanation is not enough. This is especially so when it appears that the plain entries are inflated and inaccurate. Yours did not substantiate a claim of financial hardship or establish a compelling need. The originating bases of your request are non-payment of Federal taxes in 1994 and local taxes from 1990. . . .

Because your requests for waiver of fees during the past several years arise from the same facts, I must caution you that future requests for waiver alleging the same base may be dismissed pursuant to 47 CFR § 1.1166(c) unless complete and detailed documentation of the financial hardship is furnished. A petition for waiver must be accompanied by the required fee unless accompanied by a separate petition to defer payment due to financial hardship supported by documentation of the financial hardship.

The time has passed for further consideration of the matters submitted in 1997. We denied the request for waiver, and we requested prompt payment of the fees. A properly completed form FCC 159 and \$1,678.47 is due at the Commission within 20 days from the date of this letter. This includes 5% interest and 6% penalty from Dec 10, 1999 to Sept 30 2001. In addition to sanctions permitted by 47 CFR § 1.1164, failure to make timely payment may result in additional interest, additional penalties and administrative costs for collection as permitted by 31 USC § 3717 and 47 CFR § 1.1940, and immediate referral for collection. If you have and questions concerning this letter, please call the Revenue & Receivable Group at (202) 418-1995.

Sincerely,



fr Mark A. Reger
Chief, Financial Officer

Copy to:

Mr. Van D. Goodall, Jr.
President
KRZI, Inc.
PostOffice Box 8093
Waco, Texas 76714-8093

KRZI, Inc.

Payoff Date: 9/30/01

Short Name	Applicant Name	Regulatory Fee	Interest Rate	Decision Date	Days Outstanding	Interest	Penalty 6%	Total Due
KRZI-AM	Van Goodall	\$ 1,000.00	5.00%	12/10/99	660	90.41	108.49	
KEYR-FM	Van Goodall	400.00	5.00%	12/10/99	660	36.16	43.40	
Totals		\$ 1,400.00				126.58	151.89	\$ 1,678.47

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Counselors at Law

Suite 290

1901 I Street, N.W.
Washington, D.C. 20036

(202) 293-0011

Fax (202) 293-0810

Of Counsel

William H. Buross, III
Ruth S. Baker-Battist
Robert J. Keller

Aaron H. Shainis
Lee J. Heltzman

January 14, 2000

RECEIVED

JAN 14 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Federal Communications Commission
Office of Managing Director
445 - 12th Street, S.W., Room 1-A633
Washington, DC 20554

Dear Sir/Madam:

This is being written on behalf of KRZI, Inc. with respect to the December 10, 1999 letter from Mark Reger to Van D. Goodall, Jr., President of KRZI, Inc ("Commission Letter") received by Mr. Goodall on December 17, 1999. During 1997, KRZI, Inc., was the licensee of Station KRZI(AM), Waco, Texas, and KEYR(FM), Marlin, Texas. The Commission Letter denies a petition for waiver filed by KRZI, Inc. of the \$1,400 FCC regulatory fee for the Fiscal Year 1997. By this letter, KRZI, Inc. requests that the Commission review its ruling.

The Commission Letter is based on faulty premises. For example, the letter points out that a list of expenses provided by KRZI, Inc. contained an itemized expense listing allocating \$3,950 for FCC fees. The Commission "assumes" that this was an anticipated payment of the \$1,400 in regulatory fees and that the fee amount is therefore misstated. The Commission is incorrect in its assumptions. KRZI, Inc. did not list the FY97 fees in any financial statement. In fact, the \$3,950 filing fee reference was for its actual filing fees. KRZI, Inc. filed renewal applications for its stations as well as Ownership Reports during 1997 (BRH-970730YB and BR-970730YW). KRZI, Inc. also filed an application for minor change in licensed facilities for Station KEYR(FM) (BPH-970505IA) and an application to migrate to the expanded band for Station KRZI(AM) (BP-970616AW). The minor change application was filed as a result of a nine-plus-year rulemaking. The Commission required that the expanded band application be filed no later than June 1997. KRZI, Inc. would have preferred not to have to pay any filing fees during the year 1997, however, it was required to do so under the Commission's rules. Certainly, KRZI, Inc. should not be accused of wrong-doing by the Commission as the December 10, 1999 letter infers¹ for paying those FCC-mandated fees.

The Commission Letter also appears to challenge payments made by KRZI, Inc. for employee gas allowance, group health insurance and miscellaneous fees. It is comforting to

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Federal Communications Commission
Office of Managing Director
January 14, 2000
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know that the Commission is such an acknowledged expert in broadcasting management that it knows what is required for a station to pay in order to retain the services of its employees. The fact is that KRZI, Inc. competes against large multiple owners such as AMFM, which in 1997, when it was Capstar, owned six stations in the Waco market and controlled 76% of the revenues in the market. The benefit package which KRZI, Inc. offered its employees in 1997 did not come close to matching the packages offered by other stations in the market. Thus, KRZI, Inc. did not offer such benefits as dental insurance or a 401(k) benefit plan, as its competitors did. The decision to have an employee gas allowance and pay group health insurance were not payments that KRZI, Inc. willingly made. Rather, they were necessary business expenses made in order to retain the services of its employees. As such, they should be considered as part of its employees' salaries. KRZI, Inc. could have attempted to operate its Station without employees in order to better justify its waiver request, but it thought it better to attempt to stay in business. KRZI, Inc. did not think it wise to have its employees quit because they were not being paid a reasonably competitive wage so that the Station could squeeze out a few extra dollars to pay the Commission its yearly regulatory fees. In addition, it should be noted that there is no line item for insurance for the Station because KRZI, Inc. could not afford it.

The Commission Letter also points to an apparent discrepancy in salaries between those contained in the list of 1997 itemized expenses and those salaries contained in a separate employee personnel listing. The Commission finds an unexplained difference of \$7,342.80. That difference reflects the fact that the smaller amounts listed in the 1997 itemized expenses for KRZI, Inc. included net salaries after taxes, while the larger amounts listed in the personnel listing reflected total gross salaries. Additionally, the employee gas allowance, which is listed as a separate line item in the list of itemized expenses, makes up part of the salaries contained in the separate personnel listing.

With respect to salaries paid, the Commission Letter does not reflect the fact that in 1997 Van Goodall, Jr., President of KRZI, Inc. and General Manager of the stations in question, was not paid any salary nor distributed any payment as a principal, despite the fact that he worked at the Station from 60-80 hours a week, 52 weeks a year.

The Commission further requests an explanation concerning the efforts by KRZI, Inc. to resolve its federal and state tax delinquencies. In fact, KRZI, Inc. has largely become current on its tax liabilities. In 1997, while waiting for its ten-year-old proposed upgrade to become law. KRZI, Inc. did slip further behind in the payment of its taxes. However, the federal taxes which were owed in 1997 were paid late that year. Similarly, most of the local taxes which were owed were paid in 1998. At present, the stations are only a few thousand dollars in arrears and the business is presently paying its overdue taxes on an installment plan.

Shainis & Peltzman, Chartered

Federal Communications Commission
Office of Managing Director
January 14, 2000
Page - 3 -

The tenor of the Commission Letter is that KRZI, Inc. should have explained itself better, including its tax arrearage and the category of its taxes which were unpaid. Of course, if KRZI, Inc. were a solvent company, it would have retained the services of an accountant to take care of all of this and provide the Commission with all of the exact figures it needed. However, if the corporation had the money to retain those accounting services, there would be no need to file for a hardship waiver in this case. (It should be noted that the present letter written by counsel is being done without compensation from KRZI, Inc.)

This would appear to be an open-and-shut case to any fair-minded reviewer. Stations which operate with a net operating loss of several thousand dollars (not a paper loss), and employ the President of the company, who serves as full-time General Manager, without any compensation are operating under a very real financial hardship. Through adjustments, however, the Commission attempts to reduce the amount that the Stations were in the red in order to make a sizable operating loss seem somewhat less. The Commission then second-guesses whether the Stations should have attempted to remain in business or simply thrown in the towel, paid their employees non-competitive wages with benefits below those of every station in the market, and refused to implement an upgrade that had been before the Commission for almost a decade, or failed to go forward with expansion efforts that the Commission had required AM stations to do pursuant to FCC-dictated timetables. Of course, if KEYR(FM) had failed to file its minor change application, after requesting a dozen delays from the FCC in order to scrape up the necessary money, the Commission no doubt would have accused the Station of proceeding through a rulemaking, and utilizing the FCC's resources with no intention of implementing the Commission's decision. Either way, KRZI, Inc. would be faced with a "no win" situation -- being second-guessed by different offices of the FCC.

KRZI, Inc. will provide the Commission with whatever other documents it reasonably requests. The FCC should keep in mind in making such requests that KRZI, Inc. neither employs an accountant nor a bookkeeper.

In view of the above, KRZI, Inc. again requests that the Commission grant it a waiver of its FY97 regulatory fees.

Sincerely,


Lee J. Peltzman
Counsel for
KRZI, INC.



FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF GENERAL COUNSEL

memorandum

TO: Donna Viert, OGC
Tom Putnam, OMD

FROM: Paul K. Cascio

SUBJECT: Reconsideration: Application for Waiver of 1997 Regulatory Fee Radio Stations
KRZI-AM, Waco, Texas and KEYR-FM, Marlin, Texas

DATE: October 2, 2000

Lee J. Peltzman, Shainis & Peltzman, representing¹ Mr. Van Goodall, Jr., President of KRZI, Inc., wrote on January 14, 2000 requesting further review of the decision dated December 10, 1999 (Decision). That decision denied Mr. Goodall's request of October 21, 1998 to review the Commission's denial of a waiver of the regulatory fees for FY 1997. We recommend denial of this request and that the demand for payment includes charges for interest and penalties. We recommend sending the response by certified mail, return receipt requested.

Mr. Peltzman's letter raises the following points: The Commission made incorrect assumptions about the itemized expenses. The Commission should not challenge station management decisions that were necessary to maintain operations. Different formats for the itemization of salaries resulted in different amounts in the forms supplied. In response to the Commission's query about unpaid taxes, Mr. Peltzman states that the station has paid most of the arrearages for its tax liability. In closing, Mr. Peltzman asserts that the station is suffering significant financial losses, but that second-guessing by the Commission creates a "no win" situation.

Mr. Peltzman seeks reconsideration of a matter that had been submitted on reconsideration. We denied Mr. Goodall's request for reconsideration dated October 31, 1998. That request was a reconsideration of our dismissal on July 16, 1998 of a requested waiver of the FY 1997 regulatory fees.

¹ At page three of the request for reconsideration, Mr. Peltzman pointedly states that the letter was composed by counsel "without compensation from KRZI, Inc.").

The burden of establishing grounds for waiver rests with the petitioner. Mr. Goodall seemingly refused to acknowledge that standard, but instead submitted documents even before 1997 with recurring inadequacies. Our letter to Mr. Goodall pointed out examples of incomplete or unexplained information and concluded with the following guidance and admonition on required proof:

Accordingly, your request is denied. Your reasons fail to meet the standard of "good cause shown [that] would promote the public interest." The Commission may 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 (1995). 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.

However, submission of document numbers alone and without explanation is not enough. This is especially so when it appears that the plain entries are inflated and inaccurate. Yours did not substantiate a claim of financial hardship or establish a compelling need. The originating bases for your request are non-payment of Federal taxes in 1994 and local taxes from 1990. I am left to assume that part or all of the Federal tax liability remains due. In light of other expenses, your business decision to pay other employee benefits to the detriment of Federal tax obligations and FCC regulatory fees is not good cause to waive the 1997 fees.

Because your requests for waiver of fees during the past several years arise from the same facts, I must caution you that future requests for waiver alleging the same base may be dismissed pursuant to 47 CFR §1.1166(c) unless complete and detailed documentation of the financial hardship is furnished. A petition for waiver must be accompanied by the required fee unless accompanied by a separate petition to defer payment due to financial hardship supported by documentation of the financial hardship.

The Fiscal Year 1997 regulatory fee of \$1,400 (\$1,000 for station KRZI-AM and \$400 for KEYR-FM) is due now. The aggregate fee should be filed along with Form FCC 159 within 30 days.

Despite the detail of our explanation, Mr. Peltzman's letter does not contribute to the analysis or provide a basis for relief. The request for reconsideration should be summarily denied and demand made for immediate payment plus interest and penalties. Moreover, Mr. Peltzman should be notified that nonpayment may result in collection efforts and that his client may be subject to other administrative sanctions as permitted by 47 CFR §1.1164.

Lee J. Peltzman
Shainis & Peltzman, Chartered
Counselors at Law
1901 L Street, N.W., Suite 290
Washington, D.C. 20036

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When we considered the merits of Mr. Goodall's petition, we found that it did not establish good cause for the waiver and it did not demonstrate that such waiver would promote the public interest. In that regard, each regulatee must properly document a request for waiver that will be evaluated against the Commission's standard.

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The time has passed for further consideration of the matters submitted in 1997. We denied the request for waiver, and we requested prompt payment of the fees. A properly completed form FCC 159 and payment of the fiscal year 1997 regulatory fees, \$1,400, plus interest from December 10, 1999 and an additional "penalty charge, not to exceed 6 percent a year," is due at the Commission within 20 days from the date of this letter. You must call the Credit and Debt Management Center at (202) 418-1995, for a payoff figure. In addition to sanctions permitted by 47 CFR §1.1164, failure to make timely payment may result in additional interest, additional penalties and administrative costs for collection as permitted by 31 USC §3717 and 47 CFR §1.1940, and immediate referral for collection.

Sincerely,

Mark Reger
Chief Financial Officer

Copy furnished:

Mr. Van D. Goodall, Jr.
President
KRZI, Inc.
P.O. Box 8093
Waco, Texas 76714-8093

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Counselors at Law

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Of Counsel
 William H. DuRoss, III
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 Robert J. Keller

January 14, 2000

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JAN 14 2000

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 OFFICE OF THE SECRETARY

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The Commission Letter is based on faulty premises. For example, the letter points out that a list of expenses provided by KRZI, Inc. contained an itemized expense listing allocating \$3,950 for FCC fees. The Commission "assumes" that this was an anticipated payment of the \$1,400 in regulatory fees and that the fee amount is therefore misstated. The Commission is incorrect in its assumptions. KRZI, Inc. did not list the FY97 fees in any financial statement. In fact, the \$3,950 filing fee reference was for its actual filing fees. KRZI, Inc. filed renewal applications for its stations as well as Ownership Reports during 1997 (BRH-970730YB and BR-970730YW). KRZI, Inc. also filed an application for minor change in licensed facilities for Station KEYR(FM) (BPH-970505IA) and an application to migrate to the expanded band for Station KRZI(AM) (BP-970616AW). The minor change application was filed as a result of a nine-plus-year rulemaking. The Commission required that the expanded band application be filed no later than June 1997. KRZI, Inc. would have preferred not to have to pay any filing fees during the year 1997, however, it was required to do so under the Commission's rules. Certainly, KRZI, Inc. should not be accused of wrong-doing by the Commission as the December 10, 1999 letter infers¹ for paying those FCC-mandated fees.

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In view of the above, KRZI, Inc. again requests that the Commission grant it a waiver of its FY97 regulatory fees.

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