

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

APR 04 2003

OFFICE OF
MANAGING DIRECTOR

David L. Nace
Lukas, Nace, Gutierrez & Sachs Chartered
1111 Nineteenth Street, N.W.
Suite 1200
Washington, D.C. 20036

Re: Request for Suspension or Waiver of
MDS Post-Construction Filing Fees
Fee Control No. 00000RROG-03-054

Dear Mr. Nace:

This is in response to your request to suspend the post-construction filing fee requirements for all Multipoint Distribution Service and Multichannel Multipoint Distribution Service (together, MDS) licensees or, in the alternative, to waive the post-construction filing fees of \$25,155 of Sioux Valley Rural Television, Inc. (Sioux Valley) in connection with certain authorized modifications to its MDS stations in the Sioux Falls Basic Trading Area (BTA). You argue that it appears that the post-construction filing fees required of MDS licensees are excessive when compared to the fees of other radio services regulated by the Wireless Telecommunications Bureau. You also state that in 1996, Sioux Valley was granted the BTA Authorization for the Sioux Falls, South Dakota BTA after making the high bid for that authorization in the Commission's auction, and that auction winners in other radio services have not been required to pay filing fees to make filings relating to licenses purchased at auction.

With regard to the alleged "excessive" nature of the fee at issue in comparison with fees in other services, we point out that the fees set forth in the Commission's fee schedule represent an average cost of processing and "a fair approximation as to how the Commission's costs should be distributed." See Establishment of a Fee Collection Program, 5 FCC Rcd 3558, 3574 (1990). Although fees may be waived upon a showing of good cause in the circumstances of an individual case, the Commission's discretion to waive fees is narrowly construed, see Establishment of a Fee Collection Program, 2 FCC Rcd 947, 962 (1987), modified, 3 FCC Rcd 5987 at para. 5 (1988), and Congress has not granted the Commission authority to amend the application fee schedule in order to achieve fee parity between regulatory services. See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 7988, 8127 (1994). Hence, the disparities you cite do not establish good cause for a waiver.

For the same reason, we cannot grant a waiver based on the assertion that auction winners in other radio services have not been required to pay filing fees. Finally, insofar as you suggest that the Commission consider suspending or reducing the filing fees for MDS applications generally, we find that your argument does not address the particular circumstances affecting Sioux Valley, as is required in order to justify a waiver in this instance. See 47 CFR 1.1117(b); Letter to Nextel Communications, Inc. (August 27, 1996), rev. denied, 15 FCC Rcd 3126 (2000). Any general relief for all MDS licensees – even on an interim basis – will not be considered through the waiver process. Id.

Accordingly, your requests for suspension or waiver of Sioux Valley's post-construction filing fees in connection with certain authorized modifications to its MDS stations in the Sioux Falls BTA are denied. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer

00000RROG-03-059

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* NOT ADMITTED IN D.C.

November 18, 2002

Mark Reger, Chief Financial Officer
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: FCC Filing Fees
Wireless Telecommunications Bureau

Dear Mr. Reger:

This letter is submitted on behalf of Sioux Valley Rural Television, Inc. ("Sioux Valley"), a licensee in the Multipoint Distribution Service and Multichannel Multipoint Distribution Service (together, "MDS"). Sioux Valley provides video and wireless Internet access services to rural and small market customers from several FCC authorized MDS transmitting locations in southeastern South Dakota.

The Commission announced in March of this year that regulatory responsibility for the MDS would be transferred from the Mass Media Bureau to the Wireless Telecommunications Bureau. It would appear that the issue of filing fees payable by MDS licensees is a matter that is due for review, and Sioux Valley respectfully requests such a review to rectify a longstanding problem that affects Sioux Valley and every other MDS licensee that seeks to introduce or improve services through facilities construction or modification.

More than a decade ago, the Commission's filing fee schedule was introduced with MDS filing fees payable (1) at the time of application for new or modified facilities on a per "station" basis, and (2) at the time of completion of authorized construction on a per "channel" basis. That two-step sequence for filing fee payments has remained in place over the years, and the currently effective filing fee schedule provides for a fee of \$210 per station at the time application is filed for a Conditional License or Major Modification of a Conditional License, and a fee of \$610 per channel

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at the time a Certificate of Completion of Construction is filed.¹ The Commission will note that multichannel MDS stations typically are authorized for four channels each, while MDS channels 1, 2/2A and the three allocated H-channels typically are authorized with one channel each per station.

Compared with other radio services regulated by the Wireless Telecommunications Bureau, it appears that the post-construction filing fees required of MDS licensees are excessive in amount and, in Sioux Valley's experience, burdensome and a deterrent to service improvements that can be accomplished through modifications to MDS facilities. Whatever the rationale may have been when these fees were introduced, the industry has changed over the years and MDS licensees now typically operate with as many as 13 MDS channels per transmitter location, and at the same time compete with direct broadcast satellite operators that offer well over 100 channels of programming. Data services offered by MDS licensees typically compete with offerings by local exchange carriers, cable television operators and direct broadcast satellite companies.

Sioux Valley has three transmitter sites with 13 MDS channels authorized at each location; accordingly, it would cost Sioux Valley \$25,155 in filing fees under the fee schedule to take effect next month simply to report the completion of authorized construction modifications to all 36 channels. And that payment would follow filing fees paid on a "per station" basis for the filing of major modification applications.. Filing fees of this magnitude are out of proportion with fees charged by the Wireless Telecommunications Bureau to licensees of cellular, microwave and paging systems, for example, who pay only modest, "per call sign" fees when applications are filed and either pay nothing or a nominal amount when authorized construction is completed. The question arises, if other licensees regulated by the Wireless Telecommunications Bureau do not pay filing fees on a "per channel" basis, why should MDS licensees be obligated to continue to pay fees in that manner?

We submit that there is an additional reason why the Commission should provide filing relief for Sioux Valley and similarly situated MDS licensees. In 1996, Sioux Valley was granted the BTA Authorization for the Sioux Falls, SD Basic Trading Area after making the high bid for that authorization in the Commission's auction. Auction winners in other radio services, including the broadband *Personal Communications Services*, have not been required to pay filing fees to make filings relating to licenses purchased at auction. The Commission should not treat MDS differently and burden auction winners with exorbitant filing fee requirements.

Sioux Valley is aware that the Commission may soon initiate a Notice of Proposed

¹ These filing fees are scheduled to be increased to \$220 per station and \$645 per channel, respectively, when the new filing fee schedule becomes effective on December 5, 2002.

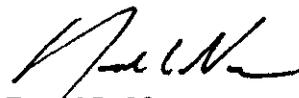
Mr. Mark Reger
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Rulemaking or a Notice of Inquiry to evaluate issues that include a proposed new "bandplan" proposed by a trade association of MDS licensees known as Wireless Telecommunications Communications International. If the Commission is inclined to address the question of filing fees as part of that multifaceted proceeding, Sioux Valley urges the Commission as an interim measure to suspend the post-construction filing fee requirement for all MDS licensees pending further review. There is an immediate fairness issue and an urgency to Sioux Valley and other MDS licensees that the Commission address the filing fee problem sooner than would be feasible as part of a broad general rulemaking or inquiry.

While general relief is requested, if the Commission does not find it suitable at this time to modify or suspend the post-construction filing fees, Sioux Valley hereby requests a waiver of the post-construction filing fee requirement to allow it to submit certifications of completion of construction without filing fees in connection with certain authorized modifications to its MDS stations in the Sioux Falls Basic Trading Area. As already described, the scheduled filing fees are extraordinary when compared to amounts charged to other Commission licensees, and Sioux Valley will be deterred from making service improvements that would trigger the post-construction filing fee obligation.

We appreciate your consideration of these requests. Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,



David L. Nace

cc: John J. Schauble
Gregory Intoccia
D'Wana R. Terry