

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUL 27 2004

FILE

OFFICE OF  
MANAGING DIRECTOR

Jeremy Lansman  
3700 Woodland Drive, #800  
Anchorage, AK 99517

Re: KYES(TV)  
Request for Waiver of Application Fee  
Fee Control No. 00000RROG-04-059

Dear Mr. Lansman:

This is in response to your request dated May 22, 2004 (and supplemented May 28, 2004), submitted on behalf of KYES(TV), for a waiver and refund of the filing fee associated with an application for a minor change filed on FCC Form 301 ("Application for Construction Permit for Commercial Broadcast Station"). Our records reflect that KYES has not paid the \$800.00 application fee at issue here.

You assert that the application fee is financially "burdensome" and "an insult to KYES as well as to our pocketbook." You also state that "KYES qualified to not pay the annual regulatory fee as a station in 'financial distress.'"

The Commission has discretion to waive filing fees upon a showing of good cause and a finding that the public interest will be served thereby.<sup>1</sup> We construe our waiver authority under section 8 of the Communications Act, 47 U.S.C. §158(d)(2), narrowly and will grant waivers on a case-by-case basis to specific applicants upon a showing of "extraordinary and compelling circumstances."<sup>2</sup>

In establishing its fee program, the Commission recognized that in certain instances payment of a fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its fees in those instances where a petitioner presents a "compelling case of financial hardship."<sup>3</sup> The Commission has stated that regulatees can establish financial need by submitting:

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<sup>1</sup> See 47 U.S.C. §158(d)(2); 47 C.F.R. §1.1117(a); *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 5 FCC Rcd 3558, 3572-73 (1990).

<sup>2</sup> See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, paras. 70, 87-88 (1987); *Sirius Satellite Radio, Inc.*, 18 FCC Rcd 12551 (2003).

<sup>3</sup> See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *on recon.*, 10 FCC Rcd 12759 (1995) (*Implementation of Section 9 Reconsideration*).

[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 12761-62. In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the fee and maintain service to the public. Thus, even if a station loses money, any funds paid to principals, deductions for depreciation, or similar items are considered funds available to pay the fees.

The Office of Managing Director (OMD) granted KYES a waiver of the fiscal year (FY) 2003 regulatory fee on grounds of financial hardship.<sup>4</sup> OMD granted the station a waiver of the FY 2003 regulatory fees based upon its review of a "Profit and Loss" statement for the period from January 1, 2003 through December 2, 2003, that indicated that the licensee for KYES suffered a financial loss during that time period which was only partially offset by depreciation, payroll expenses attributable to its principals, and expenses identified as "Miscellaneous." The FCC Form 301 application at issue here was filed on August 7, 2003, during the same time period for which OMD determined in the *January 13 Letter* that the licensee for KYES had suffered a financial loss for purposes of a waiver of the FY 2003 regulatory fee. Thus, in view of this determination which was based on contemporaneous information already on file, we also find that KYES suffered a financial loss for purposes of the application fee at issue here. We therefore find good cause to warrant a waiver of the application fee and grant your request.<sup>5</sup>

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

Sincerely,



Mark A. Reger  
Chief Financial Officer

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<sup>4</sup> See Letter from Mark A. Reger, Chief Financial Officer, Office of Managing Director, FCC, to Jeremy Lansman (dated Jan. 13, 2004) (*January 13 Letter*).

<sup>5</sup> Because we grant your request for a waiver of the application fee on the basis of financial hardship, we do not address the additional allegations that you raise in support of your request.

**Tom Putnam**

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**From:** Regina Dorsey  
**Sent:** Friday, May 28, 2004 9:10 AM  
**To:** Tom Putnam  
**Subject:** FW: DTV filing fees

Please review and treat as a waiver request. -- submit to OGC. Thanks

-----Original Message-----

**From:** Jeremy Lansman [mailto:jeremyl@yestv5.com]  
**Sent:** Monday, May 24, 2004 1:38 PM  
**To:** Regina Dorsey  
**Cc:** Hossein Hashemzadeh; Michael Powell  
**Subject:** RE: DTV filing fees

Hello Regina and Hossein;

How do we build a DTV station for \$5,000? Can this e-mail be considered a request for a fee waiver?

Costs for converting the analog translator to DTV were mostly the costs of a Ktech exciter, at about \$1,000 via e-bay, a DTV stream multiplexer which allows picking the received program(s) and mixing them into a new transport stream, about \$2,000 via e-bay, and a transport stream reclocker, another e-bay find. The UHF translator was in storage and mostly are retired State of Alaska Ratnet transmitters. The antenna was formerly used by our former translator, K18CS. A screwdriver and hammer converted it from channel 18 to 22. I have several 18 kW low band VHF transmitters in storage. When I hook the VHF equipment up to the equipment now used on the very low power UHF signal, it should make KYES-DT the strongest DTV signal in the USA.

A few months back I was given two DTV encoders by the local cable company. I was they told didn't work. I have been using one to provide the first high quality digital radio service via DTV. IBOC is only allowed 96 kb/s for digital radio. ATSC allows up to 680 kb/s.

That is the story thus far. Rather than complain about KYES not being able to afford to convert to digital (we can't), I just went ahead and provided the first, and thus far only HD signal to the state of Alaska. Now, to be told I have to spend \$800 on a Minor Change is an insult to KYES as well as to our pocketbook.

} filing fee

Rather than having to seek a waiver, I believe I should be getting an award!

So, maybe we can get a waiver? Let me know. Thanks.

Jeremy

At 08:04 AM 5/24/04 -0400, you wrote:

>Hi Jeremy:

>

>I am impressed that you were able to get a full service station on the  
>air for 5000 dollars, they tell me it costs any where from 20,000 to  
>80,000 to convert one of these TV translators to digital operations.  
>Any way, the fee for form 301 minor changes is 800 dollars regardless  
>of TV or DT. Unfortunately, our division can not waive any filing fees  
>for any reason, if you want to you can send your request to managing  
>director office and they will be able to make a decision on your  
>request.

>

>-----Original Message-----

>From: Jeremy Lansman [mailto:jeremyl@yestv5.com]

>Sent: Saturday, May 22, 2004 5:29 PM

>To: Hossein Hashemzadeh

>Subject: DTV filing fees

>

>

>Hello and good day Hossein;

>

>I am told you are the person to talk to regarding this matter.

>

>KYES-(TV) filed for a minor change to its DTV construction permit  
>(BMPCDT  
>20030807AAE) to comply with a channel change order in MM Docket No.  
>00-99, RM-9858. The change was requested by KYES so that we could use  
>our several  
>old 18 kW VHF transmitters to approximate our analog coverage (we are  
>watched more than 135 miles out) on channel 5 with digital on channel  
>6. When finished, KYES expects to have the highest power low V DTV  
>facility in the United States. All at scrap metal prices.

>

>I am now told that the application for channel 6 has not been processed  
>due to lack of payment of a filing fee. I find no fees listed as  
>specifically  
>applicable to Digital Television. I do note that an \$800 fee is called  
>for

>where the station is conventional analog television.  
>I find no fees for DTV service. Since there are no fees listed for DTV  
>service, I believe there are no fees to be paid. However, if our  
>station  
>were required to pay a fee, I would object for the following reasons:  
>  
>KYES-DT is one of only two DTV stations on the air in our market, and  
>the first to get on the air, about 9 months ago, via an STA using an  
>old analog  
>translator operating from my garage in my home. I felt it was better to  
>  
>provide a signal to the few who are interested, than to have the dial  
>empty of signals. KYES-DT is the only station transmitting high  
>definition signals anywhere in the state of Alaska. The other  
>Anchorage signal, and  
>the others in Fairbanks, and Sitka are standard definition only.  
>  
>KYES qualified to not pay the annual regulatory fee as a station in  
>"financial distress." In spite of being in distress, KYES made serious  
>effort to meet its government mandate to provide digital television  
>service to Anchorage. It was the first signal on the air in Anchorage.  
>KYES-DT  
>  
>was put on the air for approximately \$5,000. It hardly makes sense to  
>charge more than \$10% of what it took to get on the air for granting  
>an  
>  
>application that will, if granted, allow KYES to completely fulfill its  
>mandate by jumping to high power, even though KYES has no expectation  
>of  
>  
>any financial return on the investment whatsoever now or in the future.  
>  
>I must build the DTV facility out of used parts and scrap in a market  
>where to get anyone to see the signal I have to loan them a receiver  
>(bought at  
>Best Buy at returned item prices). It is unconscionable for the  
>government  
>to stick us with a burdensome fee on top of all the work I must still do  
>  
>for little or no return.  
>  
>In LPTV you have said that a fee not listed is not feeable, as with  
>minor changes for LPTV. If so, then the minor change application for  
>KYES-DT should not incur a fee. Please let me know your thoughts.

>  
>  
>Yours  
>  
>Jeremy