

00000 RROG-04-090

ORIGINAL

Before the  
**Federal Communications Commission**  
Washington, DC 20554

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AUG 19 2004

Federal Communications Commission  
Office of Secretary

In the Matter of

Request for Fee Waiver and Petition  
For Deferment

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Fee Control No. \_\_\_\_\_

Robin Broadcasting Co., LLC

To: Secretary

Attn: Office of the Managing Director, Room 1-A625  
Regulatory Fee Waiver Request

**Request of Robin Broadcasting Co., LLC, for Waiver of 2004 Regulatory Fee  
and Petition for Deferment**

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FINANCIAL OPERATIONS  
CENTER

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**Request of ROBIN for Waiver of 2004 Regulatory Fee and Petition for Deferment**

Robin Broadcasting Company, LLC (“Robin”), licensee of WSBS-CA (formerly WVEB-CA), Channel 21, Miami, FL (and one associated auxiliary license) (“Station”), respectfully submits this **Request for Waiver of 2004 Regulatory Fee and Petition for Deferment** (“Request”).<sup>1</sup> Robin has been the licensee of the Station for only eight months, since December 18, 2003.

In establishing a Congressionally-mandated regulatory fee program a decade ago, the FCC recognized that, in certain instances, the payment of a regulatory fee may impose an undue financial hardship upon a licensee. Accordingly, the FCC’s adoption of a regulatory fee scheme expressly included the opportunity in appropriate cases for the FCC to grant waivers of its fee requirements where “petitioner presents a compelling case of financial hardship.” **See Implementation of Section 9 of the Communications Act**, 9 FCC Rcd 5333, 5344 (1994), **recon. granted**, 10 FCC Rcd 12759 (1995); **see also** 47 USC 159(d). In its decision on reconsideration, the Commission explained that a waiver would be appropriate only when “the impact of the regulatory fee will affect a regulatee’s ability to serve the public.” **Id.**, 10 FCC Rcd at 12762 para. 13.

In reviewing a Petitioner’s evidence as to “financial hardship,” the FCC relies on a licensee’s “cash flow,” as opposed to the entity’s “profits” in determining whether the stations(s) lack sufficient funds to pay the regulatory fees and maintain service to the public. Thus, (a) funds paid to principals, (b) any deductions for “expenses” such as

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<sup>1</sup> The Petition for Deferment is appropriate because Robin also is seeking to “toll” the payment of the disputed fee pending resolution of its Request. **See** 9 FCC Rcd, **infra**, at 5345 para. 34.

depreciation or amortization and (c) similar non-cash items that do not affect "cash flow" must be excluded in any petitioner's financial showing of "hardship."

In support of Robin's Request, the Licensee submits a Profit and Loss Statement, prepared by one of Robin's officers in consultation with Robin's certified public accountants, which shows a net operating loss of nearly \$60,000.00 (Sixty Thousand Dollars) during just the first seven months of 2004. See Appendix A. As shown in the January-through-July 2004 P&L, the net operating loss for Robin does NOT include any payments to principals, any depreciation expenses, or any amortization charges. Id. The proper exclusion of those non-cash expense items is separately confirmed by the P&L's sponsoring LLC member. Id. No officer or Member of Robin LLC has ever been paid a salary. Id. <sup>2</sup> This is a compelling showing of serious financial hardship. There are no "funds available" to pay the regulatory fee. <sup>3</sup>

Moreover, there are additional compelling and extraordinary reasons in this case why the public interest would better be served by the FCC's grant of this Request. First, this Station was acquired by Robin's distinguished owners (Dr. William C. De La Pena and his wife) only eight months ago. The FCC has expressly found that this Station (and its previously co-owned full power station, WVIB (TV)) was a "failing" enterprise, operating for years with a negative cash flow and having NEVER generated a profit. <sup>4</sup> Moreover, the FCC can take official notice that its Office of the Managing Director has granted the Station a waiver of the FCC's annual regulatory fees in recent years. <sup>5</sup>

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<sup>2</sup> See 10 FCC Rcd at 12762 para. 13.

<sup>3</sup> It should be noted for the record that, as a courtesy to Robin and in view of Robin's severe financial problems and the undersigned counsel's legal representation of Robin's affiliated companies for the past several years, Robin LLC is not being charged for any of the legal services or expenses involved in the preparation or filing of this Request.

<sup>4</sup> See Hispanic Keys Broadcasting, Inc., DA 04-675, rel. March 11, 2004 (at paras. 4-7).

<sup>5</sup> The prior licensee's Request for Waiver of the 2003 fees is still pending.

Second, the programming of this former "infomercial" Class A station is scheduled for "re-launch" this Fall; this "programming re-launch" is expected to be as successful (but also as costly) as the Fall 2003 "re-launch" of Robin's sister-station WSBS-TV (channel 22, Key West), whose programming has won high praise from the critics and scored audience ratings that often match those of the local flagship station of network giant Telemundo.<sup>6</sup> Indeed, that affiliate Station is presently the only full-power TV station in the United States that broadcasts LIVE, LOCAL PRIMETIME programming in Spanish, much of which is directed to the discussion of controversial issues of public importance. This affiliated Station, WSBS-CA, and its affiliate WGEN-TV, Key West, are planning a re-launch of WSBS-CA, Miami, this Fall; and the "re-launched Station is slated to include similar, unique foreign language programming – the very type of programming that FCC Chairman Michael Powell has urged licensees to broadcast.<sup>7</sup> See Localism Rulemaking, Notice of Inquiry, FCC 04-129, released July 1, 2004. As explained by one of the LLC members, Robin is striving to keep its "start-up" losses as modest as possible but, in that context, a forced payment of FCC regulatory fees -- for a Station that already has lost nearly sixty thousand dollars this year -- could adversely implicate the planned programming re-launch of the Station this Fall with innovative public interest programming. See Appendix A, supra. See 10 FCC Rcd at 12761-2 para. 13 (waiver is appropriate where the impact of a regulatory fee might affect a regulatee's ability to serve the public).

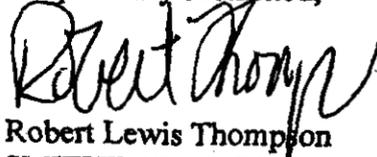
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<sup>6</sup> See Miami Herald, August 16, 2004, attached hereto as Appendix B.

<sup>7</sup> After "re-launch," this Station plans to simulcast WGEN-TV's innovative primetime programming.

In sum, it is not only this (new) Licensee's dire financial straits and its operating losses that make this a compelling case for a waiver of annual regulatory fees, but this is also an extraordinary case where the Licensee's commitment to unique public interest programming – even in the midst of serious financial losses – overwhelmingly makes a grant of this Request appropriate. In short, a waiver for Robin from the FCC's 2004 annual regulatory fees manifestly is in the public interest. See 10 FCC Rcd at 12762 para. 13.

Respectfully submitted,



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Counsel for Robin Broadcasting  
Company, LLC

August 19, 2004

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**APPENDIX A**

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**AFFIDAVIT**

Robin De La Pena, under penalty of perjury, declares as follows:

I am a Co-Trustee of the Sole Member of Robin Broadcasting Co., LLC ("Robin" or "Robin LLC"), licensee of WSBS-CA (formerly WVEB-CA), Channel 8, Key West, FL and one associated auxiliary license.

I prepared, in consultation with Robin LLC's certified public accountants, the Profit & Loss Statement (January through July, 2004), which is attached as Appendix A to Robin LLC's Request for Waiver of 2004 Regulatory Fees and Petition to Defer Payments.

I affirm that none of the Robin LLC's principals has ever been paid salaries or any other remuneration by the LLC and none of the expenses of Robin LLC, as shown on Appendix A, involves payments to principals of the LLC. In addition, this will confirm that the net loss shown on: Appendix A is exclusive of any charges for depreciation or amortization.

Finally, Robin LLC – which became licensee of Ch. 21, Miami, only last December -- has been forced to postpone its "relaunch" and "programming upgrade" of this longtime "infomercial" television station because of much larger than forecast losses. The LLC is presently working to reduce every expense item. The turnaround costs entailed in transforming a largely "infomercial-only" TV station into one that offers more diverse programming – even some in foreign languages -- are substantial; it normally takes years for such stations to achieve profitability. The licensee is committed to bringing innovative new programming to South Florida but, in its "start-up" year and its "turnaround" period, it would best serve the public interest for this pioneering station to be granted a waiver of any FCC regulatory fees.

Executed this 19th day of August, 2004.



Robin De La Pena  
Co-Trustee of LLC Member