

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

March 14, 2007

Waiver Granted

✓
James A. Stenger, Esq.
Thelen Reid & Priest, LLP
701 Eighth Street, NW
Washington, D.C. 20001-3721

Re: Request for Deferral of FY 2006 Regulatory
Fee
Control No. RROG-06-00007801

Dear Mr. Stenger:

This responds to your September 8, 2006 letter filed on behalf of Ben B. Floyd, court-appointed Trustee for Ortiz Broadcasting Corporation (**Ortiz**), requesting deferral of the regulatory fee for Fiscal Year (FY) 2006 for KTRG (TV) (KTRG), Del Rio, Texas.¹ You request deferral on the grounds that Ortiz remains in bankruptcy and that applications for renewal of the license and assignment of the license to the court-approved buyer remain pending before the Commission? As indicated below, we grant a waiver of KTRG's FY 2006 regulatory fee.

In support of your request, you attach a copy of a June 7, 2006 letter decision from Mark Stephens, Acting Chief Financial Officer, which granted waiver of KTRG's regulatory fees for FY 2004 and FY 2005 because of Ortiz's bankruptcy? You note that your instant request for deferral is consistent with that decision! Further, at the request of the Commission staff, you have provided a copy of the relevant Docket Report from the United States Bankruptcy Court, Southern District of Texas? The Docket Report establishes that Ortiz filed a voluntary petition for Chapter 11 bankruptcy in that Court on June 3, 2002,⁶ that the Court subsequently issued an Order converting the case to Chapter

¹ Deferral Request from James A. Stenger, Esq. for Ortiz Broadcasting Corporation, to Marlene H. Dortch, Secretary, FCC, filed Sept. 8, 2006 (Request) at 1.

² *Id.*

³ Attachment to Request, Letter from Mark Stephens, Acting Chief Financial Officer, granting regulatory fee waiver for FY 2004 and FY 2005, dated June 7, 2006 at 1.

⁴ Request at 1

⁵ Docket Report, U.S. Bankruptcy Court, Southern District of Texas (Corpus Christi), Bankruptcy Petition #: 02-21146, Debtor In Possession, Ortiz Broadcasting Corp., June 18, 2007 (Docket Report).

⁶ Docket Report at 2.

James A. Stenger, Esq.

2.

7 on February 17, 2005,⁷ and that the bankruptcy proceedings were still ongoing on September 19, 2006,⁸ the FY 2006 regulatory fee deadline.

The Commission will grant waivers of its regulatory fees on a sufficient showing of financial hardship, and evidence of bankruptcy or receivership at the time the fees are due is sufficient to establish financial hardship. See *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd, 12759, 12761-62 (1995) (waivers granted for licensees whose stations are bankrupt, undergoing Chapter 11 reorganization, or in receivership). Based on the documents that you have submitted concerning Ortiz's bankruptcy status, we will grant Ortiz a waiver of the regulatory fee for KTRG for FY 2006.

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

Sincerely,



Mark A. Stephens
Chief Financial Officer

⁷ *Id.* at 16-18.

Id. at 36.

See *Public Notice. Payment Methods and Procedures for Fiscal Year 2006 Regulatory Fees*, 21 FCC Rcd 9514 (2006) (stating that licensees and regulatees must make annual regulatory fee payments by 11:59 PM September 19, 2006); see also *Public Notice, FY 2006 Regulatory Fees Due No Later Than September 19, 2006*, rel. July 31, 2006.

FD W/NET TRACKING
CNTL# 7891

Thelen Reid & Priest LLP
Attorneys At Law

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September 8, 2006

RECEIVED

SEP - 8 2006

Federal Communications Commission
Office of Secretary

Marlene H. Dortch, Secretary
Federal Communications Commission
c/o Natck, Inc.
236 Massachusetts Avenue, N.E., Suite 110
Washington, DC 20002

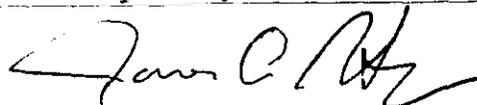
Re: Ortiz Broadcasting Corporation
FRN: 0003750643
Deferral Request for 2006 Regulatory Fees,
For Television Station KTRG, Del Rio, Texas

Dear Ms. Dortch:

On behalf of Mr. Ben B. Floyd, court-appointed Chapter 7 trustee in bankruptcy for Ortiz Broadcasting Corporation ("OBC"), we respectfully request a **deferral** of the annual regulatory fee for calendar year 2006 for television station KTRG, Del Rio, Texas. **The** grounds for **this** request **are** that OBC remains in bankruptcy and applications for renewal of the license and assignment of the license to the court approved buyer remain pending before the Commission. **This** request for deferment of the 2006 fee is consistent with the Commission's decision of June 7, 2006, with regard to the **2004** and **2005** regulatory fees, copy attached. Also attached is a copy of the **post** card notice for the **2005 fee**.

Should additional information be necessary in connection with the matter, kindly communicate directly with the undersigned.

—Respectfully submitted,



James A. Stenger

Encl

cc: Ben B. Floyd, Esq.
Ortiz Broadcasting Corporation

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

DE OF
AGING DIRECTOR

June 7, 2006

James A. Stenger
Thelen Reid & Priest LLP
Counsel for Ben B. Floyd, Trustee,
Ortiz Broadcasting Corporation
701 Pennsylvania Avenue, N.W.
Suite 800
Washington, DC 20004

Re: **KTRG (TV), Del Rio, Texas**
Request for Deferment of FY 2004 and
FY 2005 Regulatory Fees
Fee Control No. 00000RROG-05-054

Dear Mr. Stenger:

This responds to your June 15, 2005, letter on behalf of Ben B. Floyd, Trustee for Ortiz Broadcasting Corporation (Ortiz Broadcasting), requesting deferment and reduction of the regulatory fees for fiscal years (FYs) 2004 and **2005** for **KTRG (TV)** in **Del Rio, Texas**. You request deferment on grounds of financial hardship because **Ortiz Broadcasting** is in bankruptcy. In support of fee reduction, **you** assert **that** **KTRG (TV)** was assessed a fee of \$29,175, due for stations in DMA markets **26-50**, but should be assessed a fee of **\$4,050**, due for stations in "Remaining **Markets**." **Our records** indicate that you have not paid the regulatory fees at issue.

In support of your request, on July 14, 2005 and September **8, 2005**, **you** submitted additional documentation, which shows that Ortiz Broadcasting filed a petition for Chapter 11 bankruptcy in the **U.S Bankruptcy Court**, Southern District of Texas, on June 3, 2002. The documentation also shows that Ortiz remained in bankruptcy through ~~and including September 7, 2005, the close of the FY 2005 fee window.~~

The Commission will grant waivers of its regulatory fees on a sufficient showing of financial hardship. Evidence of bankruptcy or receivership at the time the fees are due is sufficient to establish financial hardship. See Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759, 12761-62 (1995) (waivers granted for licensees whose stations are bankrupt, undergoing Chapter 11 reorganization, or in receivership). Based on the documents you submitted concerning Ortiz Broadcasting's bankruptcy status, we will grant a waiver of the regulatory fees for FY 2004 and FY 2005.

¹ In light of this result, it is unnecessary to address your "Remaining Markets" argument for fee reduction.

James A. Stenger

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

Sincerely,



 Mark A. Stephens
Acting Chief Financial Officer

16 P6 ## 835

FCC Regulatory Fee Notification For:

FACILITY ID 55762



PRESORTED
FIRST CLASS MAIL
U.S. POSTAGE
PAID
BATON ROUGE, LA
PERMIT NO. 801

Call Sign	KTRG
Licensee	ORTIZ BROADCASTING CORPORATION
City	DEL RIO
Service	TV Station
Status	Licensed
Channel	10
TV Band	VHF
Market Rank	37
Market	San Antonio TX
Notification ID	40576

Form 159 Information	
Call Sign	KTRG
FCC Code 1	55762
FCC Code 2	TX DEL RIO
Pmt Type Code	0655
Pmt Amount	\$ 32,875.00

*****AUTO**3-DIGIT 200
 ORTIZ BROADCASTING CORPORATION
 C/O JAMES A. STENGER
 LAW OFFICES
 701 8TH ST NW STE 800
 WASHINGTON, DC 20001-3854





FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554



OFFICE OF
MANAGING DIRECTOR

March 14, 2007

David Tillotson, Esq.
4606 Charleston Terrace, N.W.
Washington, D.C. 20007-1911

Re: Pensacola Acts, Inc., Praise 95, Inc.
Station W39BP, Pensacola, FL
Fiscal Years 2003, 2004, 2005, and 2006
Regulatory Fees
Fee Control No. 0609079365891557

Dear Mr. Tillotson:

This is in response to your request dated **January 23, 2007 (Request)**, on behalf of Pensacola Acts, Inc. (Pensacola) for a refund of the **\$420.00** regulatory fee for fiscal year (FY) 2006.¹ You also request that the Office of Managing Director (OMD) cancel the **\$395.00** and **\$385.00** regulatory fees for **FYs 2005** and **2004**, respectively, and the associated **\$98.75** and **\$96.25** late charge penalties for late payment of the **FYs 2005 and 2004** regulatory fees, respectively. **Our** records reflect that Pensacola has not paid the regulatory fees and associated penalties for **N s 2005 and 2004**. **Our records also** indicate that Pensacola has not paid the **\$365.00** regulatory fee and associated **\$91.25** late charge penalty for FY 2003. For the reasons set forth below, we **grant** your request and we also cancel the regulatory fee and penalty for FY 2003.

You assert that Pensacola “is incorporated in Florida as a not for profit corporation and, as such, is exempt from the requirement that it pay regulatory and other fees.”² In support, you submit the first page of Pensacola’s articles of incorporation. In subsequent correspondence, you submit a copy of Pensacola’s articles of incorporation establishing the entity as a nonprofit corporation under the Florida Not for Profit Corporation Act, as certified by the State of Florida.³ The articles of incorporation were initially signed on

¹ As discussed *infra*, Pensacola’s name was changed to Praise 95, Inc. on December 31, 2000. Pensacola notified Commission staff of the name change on January 29, 2007. See Email from David Tillotson to Joanne Wall (Jan. 29, 2007); see also Email from David Tillotson to Marlene H. Dortch, Secretary, F.C.C. (Jan. 31, 2007). Although the name of the corporation has been changed to Praise 95, Inc., we refer to the corporation in this letter decision as Pensacola.

² Request at 1

³ See Email from David Tillotson to Joanne Wall (Feb. 21, 2007). The State of Florida certified the articles of incorporation, as amended, on February 14, 2007.

April 4, 1984, and were subsequently amended on January 6, 1989, and further amended on December 31, 2000, to change the corporation's name from Pensacola to Praise 95, Inc.

The Commission's rules provide that an entity that qualifies "as a nonprofit, tax-exempt, entity by state or other governmental authority" is exempt from the requirement to pay regulatory fees.⁴ The State of Florida's certification of the articles of incorporation forming Pensacola as a Florida nonprofit corporation, as amended, establishes that Pensacola is not required to pay regulatory fees. Accordingly, we grant your request for a refund of the \$420.00 regulatory fee for FY 2006. For the same reason, we also cancel the regulatory fees and associated late charge penalties for FYs 2003, 2004, and 2005.

You should note that Pensacola is under a continuing obligation to report to the Commission any changes that could affect its qualification for this fee exemption, such as a change in corporate or nonprofit status. You should retain this letter and submit a copy of it with any future correspondence with the Commission concerning regulatory fees for Pensacola.

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

Sincerely,



Mark A. Stephens
Chief Financial Officer

⁴ See 47 C.F.R. §1.1162(c); see also *id.* §1.1162(c)(1) ("Acceptable documentation may include . . . state . . . certifications . . . that non-profit status has been approved by a state . . . authority.").

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0609079365891557

Mr. Mark Stephens
Office of Managing Director
Federal Communications Commission
Washington, DC 20554

Re: Regulatory Fees Assessed Against/Paid By Station W39BP

Dear Mark:

I am writing on behalf of Pensacola Acts, Inc. ("Pensacola Acts") licensee of LPW station W39BP, Pensacola, Florida, to request a refund of the \$420 regulatory fee that was paid with respect to W39BP for FY 2006 and to further request that the bills to Pensacola Acts for FY 2004 and FY 2005 regulatory fees with respect to W39BP and late payment penalties which are shown in the attached print-out from the Commission's "red light" display system be canceled.

Attached to this email is the first page of Pensacola Acts' Articles of Incorporation which establish that Pensacola Act is incorporated in Florida as a not for profit corporation and, as such, is exempt from the requirement that it pay regulatory and other fees.

Sincerely,



David Tillotson

Phone: 2026256241
Fax: 2029652018

Law Office of David Tillotson
4606 Charleston Terrace, N.W.
Washington DC 20007-1911
Phone: 2026256241
Fax: 2029652018

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

March 8, 2007

Waiver Denied

Katrina C. Gleber, Esq.
Leventhal Senter & Lerman, PLLC
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006-1809

Re: ShootingStar Broadcasting of New England, LLC
Station WZMY-TV, Derry, NH
Fiscal Year 2005 Regulatory Fees
Fee Control No. 0605088340143001

Dear Ms. Gleber:

This is in response to your request filed May 15, 2006 (Request), on behalf of ShootingStar Broadcasting of New England, LLC (ShootingStar), licensee of Station WZMY-TV, Derry, New Hampshire, for a refund of the \$625.00 penalty for late payment of the fiscal year (FY) 2005 regulatory fee imposed by the Office of the Managing Director (OMD) in a letter ruling dated March 2, 2006.¹ Our records reflect that ShootingStar has paid the penalty. For the reasons stated below, we deny your request.

You recite that in a letter ruling dated August 22, 1995, OMD granted Station WZMY-TV "a waiver to permit payment of a reduced regulatory fee" and "assessed the [s]tation a regulatory fee for a UHF station in the 11th through 25th market category rather than the 1st through 10th market category."² You state that "[f]or the past ten years, the [s]tation has paid its regulatory fees in accordance with this market ranking." You assert that "in FY 2005, the Commission assessed the Station an increased regulatory fee to correspond with the fee charged UHF stations in the 1st through 10th markets but did not provide any underlying rationale for this change."⁴ You maintain that the station's "technical facilities have not changed since the waiver was granted."⁵ You claim that "[b]ecause

¹ See Letter from Mark A. Reger, Chief Financial Officer, OMD, FCC, to Diane Sutter (Mar. 2, 2006) (2006 Letter Decision) (denying request to reduce FY 2005 regulatory fee and imposing penalty for late payment).

² See Request at 1 (citing Letter from Marilyn J. McDermott, Associate Managing Director for Operations, FCC, to Donna L. Cole (Aug. 22, 1995) (1995 Letter Decision)).

³ Request at 1.

⁴ Id.

⁵ Id.

ShootingStar did not receive any explanation for the change in status, ShootingStar assumed that the Commission had inadvertently failed to apply the waiver and requested a continuance of the [fee] waiver, which OMD subsequently **denied in the 2006 Letter Decision.**”⁶ You contend that “when the Commission notified ShootingStar of its 2005 regulatory fee payment, it provided no notice that the 1995 fee waiver **would** not be applied and no explanation for a change in **practice.**”⁷ You therefore assert that “ShootingStar had no reason to expect that it would owe a regulatory fee for the higher tier market in FY 2005 and timely paid the reduced regulatory fee in accordance **with** the terms of the [1995 Letter Decision]”⁸ You aver that “[t]o require ShootingStar to pay a penalty in these circumstances would be inequitable and inconsistent **with well-established precedent**” and that ““elementary fairness requires clarity of **standards** sufficient to apprise **an** applicant of what is expected.””⁹

In the *1995 Letter Decision*, OMD reduced the station’s regulatory fee for FY 1994 **from** that assessed a UHF television station in the 1st **through** 10th market category to that charged a UHF television station in the 11” through 25” market category. OMD stated that although the station “is within the Boston, Massachusetts Television **Market, which** is the 6” largest market, its] predicted Grade B contour does not reach the **City of Boston,**” and the *Television and Cable Fact Book* for 1994 indicates that the number of television households encompassed in the station’s service area (*i.e.*, 1,209,300) is comparable to the number of households served by stations in the 11” **through 25th** market category.” OMD stated that “[a]bsent significant changes in population or coverage area, [the station] . . . will be considered **as a[n]** 11” through 25th market station in succeeding years.””

In the *2006 Letter Decision*, OMD stated that the station is in the Boston, Massachusetts television market, which is the 5” largest market, and that the station’s service **area** encompasses 2,120,540 television households.” OMD determined that **the** number of

⁶ *Id.* 1-2.

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.* (quoting *Bamford v. FCC*, 355 F.2d 78, 82 (D.C. Cir. 1975) and citing *Communications and Control v. FCC*, 374 F.3d 1329 (D.C. Cir. 2004) and *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1996)).

¹⁰ *1995 Letter Decision* at 1.

¹¹ *Id.*

¹² *2006 Letter Decision* at 2 (citing *Television & Cable Factbook 2006, No. 74, A-1 and A-I447* (2006 ed.) (*Factbook*)). OMD noted that the Nielsen DMA, TV Household information and television market rankings in the *Factbook* are based on the 2005

television households in the station's service area had therefore increased **from** 1,209,300 in 1995 to 2,120,540 in 2005, an increase of approximately **75 percent**.¹³ OMD stated that the number of television households **now** served by the station was equivalent to the number of television households served by a television station located in the **1st through 10th market category**.¹⁴ Based on these facts, OMD determined that the change in the number of television households covered by the station's service area since the **1995 Letter Decision** had been significant and denied ShootingStar's request that the station be considered as a station in the 11th through 25th market category pursuant to the **1995 Letter Decision**.¹⁵ OMD also found that ShootingStar had failed to provide sufficient grounds to reduce the regulatory fees for WZMY-TV below those assessed other stations in the 1st through 10th market category.¹⁶ OMD therefore denied WZMY-TV's request for a reduction in the FY 2005 regulatory fee and determined that payment of the balance of ShootingStar's FY 2005 regulatory fee of \$2,500.00 was due, plus the **25 percent** late charge penalty of \$625.00 (for a total payment of **\$3,125.00**).¹⁷

The Communications Act of 1934, as amended, requires the Commission to assess a late charge penalty of 25 percent on any regulatory fee not paid in a timely **manner**.¹⁸ It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year. Your request does not indicate or substantiate that Station WZMY-TV met this obligation for FY 2005. Moreover, your contention that the **1995 Letter Decision** granted the station a waiver of the regulatory fees for FY 1994 and subsequent years **and** that the 2006 **Letter Decision** constituted an unexplained change in practice is unfounded. The **1995 Letter Decision** granted the station a waiver of the regulatory fee only for FY 1994. The **1995 Letter Decision** expressly stated that for subsequent years, the station "will be considered" as a station in the 11th through 25th market category "[a]bsent significant changes in population or coverage area[.]"¹⁹

Nielsen **U.S.** Television Household Estimates and that the **Factbook** refers to Station WZMY-TV as Station WNDS(TV). *Id.* at A-1 and A-1447.

¹³ See **2006 Letter Decision** at 2.

¹⁴ *Id.* (citing **Factbook** at A-1)

¹⁵ *Id.*

¹⁶ *Id.* (finding that Shooting Star's "current service encompassing 2,120,540 households places it squarely in the 1st through 10th market category") (citing **Implementation of Section 9 of the Communications Act**, 10 FCC Rcd 12759,12763 (1995)).

¹⁷ *Id.* at 2-3.

¹⁸ See 47 U.S.C. §159(c).

¹⁹ **1995 Letter Decision** at 1 (*emphasis added*). This is a standard condition in OMD fee rulings of this nature.

Thus, OMD would consider the station to be in the 11th through 25th market category in a particular succeeding year pursuant to the terms of the **1995 Letter Decision only** provided there had been no significant changes in the station's population or coverage area.²⁰ As discussed above, OMD determined in the 2006 **Letter Decision** that **in fact** there had been significant changes in the station's population and coverage, including a 75 percent increase in the number of households, and therefore denied the **waiver** request for FY 2005. Given the explicit terms of the **1995 Letter Decision** regarding a reduction of the regulatory fee for FY 1994 and treatment of the station in subsequent years, we find that Shooting Star was fairly apprised of OMD's standards and the cases you cite provide no support for your request. We therefore deny your request for a waiver of the late charge penalty for FY 2005.

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

Sincerely,



Mark A. Stephens
Chief Financial Officer

²⁰ We point out that in demonstrating whether a waiver is warranted, the burden rests with the petitioner. See *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971). Moreover, the Commission's rules provide that regulatory fees "may be waived, reduced or deferred *in specific instances, on a case-by-case basis* where good cause **is** shown[.]" 47 C.F.R. §1.1166 (1995 and 2006) (*emphasis added*).



LEVENTHAL SENTER & LE

RETURN

May 11, 2006

VIA HAND DELIVERY

Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Attn: Chief Financial Officer, Room 1-A625

RECEIVED

MAY 11 2006

Federal Communications Commission
Office of Secretary

Re: FY2005 Regulatory Fees For Station WZMY-TV,
Derry, New Hampshire. Facility ID #14682

Dear Mr. Reger:

This letter is submitted on behalf of ShootingStar Broadcasting of New England, LLC ("*ShootingStar*"), licensee of Station WZMY-TV, Derry, New Hampshire (previously call *sign* WNDS) ("*Station*") to respectfully request a refund of the late penalty payment imposed by the Office of the Managing Director (the "*OMD*") pursuant to its letter decision issued on March 2, 2006 (the "*Letter Decision*").¹

On August 22, 1995, the OMD granted the Station a waiver to permit payment of a reduced regulatory fee. See Attachment A (the "*Fee Waiver*"). In the *Fee Waiver*, the OMD recognized that even though the Station was assigned to ~~the~~ Boston, Massachusetts Designated Market Area, the Station's predicted Grade E contour did not cover the City of Boston. Therefore, the OMD assessed the Station a regulatory fee for a UHF station in the 11th through 25th market category rather than the 1st through 10th market category. For the past ten years, the Station has paid its regulatory fees in accordance with this market ranking. Yet, in FY2005, the Commission assessed the Station an increased regulatory fee to correspond with the fee charged UHF stations in the 1st through 10th markets but did not provide any underlying rationale for this change. Further, the Station's technical facilities have not changed since the waiver was granted. Because ShootingStar did not receive any explanation for the change in status, ShootingStar assumed that the Commission had inadvertently failed to apply the waiver and requested a continuance of the Fee Waiver. ShootingStar timely paid the amount due and owing for

¹ This letter is being filed within 30 days of the issuance of the Public Notice announcing the Letter Decision. See Public Notice DA 06-827 (rel. Apr. 11, 2006).



Federal Communications Commission

May 11, 2006

Page 2

a UHF station in the 11th through 25th market category and requested that the Commission continue to apply the waiver.

In its Letter Decision, the OMD denied ShootingStar's request for continued treatment pursuant to the Fee Waiver and also imposed a 25% late penalty charge. ShootingStar has timely paid the additional \$2,500 plus the \$625 late penalty charge. See attached copy of payment. However, ShootingStar respectfully requests a refund of the \$625 late penalty payment as it reasonably relied on the Fee Waiver which had been in effect for ten years and should not be subjected to this penalty.

As noted, when the Commission notified ShootingStar of its 2005 regulatory fee payment, it provided no notice that the 1995 fee waiver would not be applied and no explanation for a change in practice. Thus, ShootingStar had no reason to expect that it would owe a regulatory fee for the higher tier market in FY2005 and timely paid the reduced regulatory fee in accordance with the terms of the Fee Waiver originally issued ten years earlier in 1995. To require ShootingStar to pay a penalty in these circumstances would be inequitable and inconsistent with well-established precedent. "[E]lementary fairness requires clarity of standards sufficient to apprise an applicant of what is expected." *Bamford v. FCC*, 535 F.2d 78, 82 (D.C. Cir. 1975). See also *Communications and Control v. FCC*, 374 F.3d 1329, 1336 (D.C. Cir. 2004) (finding that dismissal of an application without providing the applicant an opportunity to correct an error was a departure from regular Commission practice and rendered the agency's rationale arbitrary and capricious). See generally *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1995). Following its receipt of the OMD's decision that an additional \$2,500 payment was owed, ShootingStar timely paid this additional amount. However, ShootingStar should not be penalized for its reasonable reliance on the Fee Waiver. Therefore, ShootingStar respectfully requests a refund of the \$625 late penalty charge.

Please date-stamp the enclosed "Return Copy" of this filing and return it to the courier delivering the package. In the event there are any questions concerning this matter, please contact the undersigned.

Respectfully submitted,



Sally A. Buckman
Counsel to ShootingStar

² Even though the Letter Decision requested payment within 30 days of issuance, a Bill for Collection was subsequently issued on March 20, 2006, by the Revenues and Receivables Operations Group (Bill Number 06FY056001) specifying a due date of May 6, 2006. See Attachment C.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

March 8, 2007

PAID

Shirley S. Fujimoto, Esq.
Attorney for Sola Communications, L.L.C.
McDermott Will & Emery LLP
600 Thirteenth Street, N.W.
Washington, DC 20005-3096

Re: Sola Communications, L.L.C.
Request for Waiver of Filing Fees
Fee Control No. 0605128994886770

Dear Counsel:

This letter responds to your Petition filed June 16, 2006 on behalf of Sola Communications, L.L.C. (Sola Communications) for waiver and refund of the filing fees in connection with its applications for assignment of private land mobile radio, private microwave, satellite earth station, and satellite VSAT station licenses, as well as for special temporary authority (STA) to operate the earth station and VSAT licenses pending the grant of the assignment applications.¹ Our records show that you have paid these fees, which total \$54,560.²

You assert in your Petition that the bankrupt status of Sola Communications establishes financial hardship and good cause for waiver of the filing fees.³ In particular, you state that bankruptcy proceedings commenced in September 2005 and that in May 2006 Sola Communications filed the applications at issue to facilitate the restructuring of its business and to emerge from Chapter 11 bankruptcy protection: You also state that waiver would promote the public interest in uninterrupted communications in the Gulf of Mexico and the Gulf Coast region.⁵ In support of your request, you attach an order of the United States Bankruptcy Court for the Western District of Louisiana, Lafayette Division

¹ Sola Communications, L.L.C. Petition for Waiver and Refund of Filing Fees (filed June 16, 2006) (Petition).

² On January 4, 2007, you supplemented your original request with information to establish the total amount of fees at issue here, See E-mail from Jeff Sheldon, McDermott, Will & Emery LLP (Jan. 4, 2007); Petition at Exhibit 5 (receipts for \$54, 250); Petition at Exhibit 5 (receipt for remaining \$310).

³ See, e.g., Petition at 4.

⁴ Petition at 2

⁵ Id.

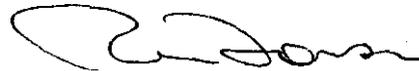
Grave to Beverly
on 4/9/07

dated May **26,2006**, confirming a reorganization plan for Sola Communications.⁶ You also attach copies of the applications at issue.'

Section 1.1117 of the Commission's rules, 47 C.F.R. §1.1117, provides that filing fees may be waived upon a showing of good cause and a finding that the public interest will be served thereby. *See 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). We find that the bankruptcy filing involving Sola Communications substantiates your claim of financial hardship and demonstrates good cause for waiver of the filing fees. *See MobileMedia Corporation*, 14FCC Rcd 8017, 8027 (1999) (bankruptcy establishes good cause for waiver of filing fee). Moreover, waiver of the filing fees will serve the public interest by protecting the interests of innocent creditors. Therefore, your request for waiver of the application filing fees in connection with Sola Communications' bankruptcy proceedings is granted.

A check in the amount of **\$54,560**, made payable to the original maker, will be sent to you at the earliest practicable time. If you have any questions concerning this letter, please contact the Revenue and Receivables Operation Group at (202) 418-1995.

Sincerely,



Mark A. Stephens
Chief Financial Officer

⁶ Petition at Exhibit 3.

⁷ Petition at Atts. 2, 4, and 5

FU W
CNTL# 75 44^{NING}

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

16051289 4886770

In the Matter of)
)
Sola Communications, L.L.C.)
Petition for Waiver of Filing Fees;)
Application File Nos. 0002617997,)
0002606304, SES-ASG-INTR2006-01257,)
SES-ASG-INTR2006-01258,)
SES-ASG-INTR2006-01323,)
SES-ASG-INTR2006-01324,)
SES-ASG-INTR2006-00854,)
SES-ASG-INTR2006-00856)

RECEIVED - FCC
JUN 16 2006

To: Office of the Managing Director

Federal Communication Commission
Bureau / Office

PETITION FOR WAIVER AND REFUND OF FILING FEES

Sola Communications, L.L.C. ("Sola"), through its undersigned counsel and pursuant to section 1.1117(a) of the Federal Communications Commission's ("FCC") rules, respectfully requests a waiver of the filing fees associated with the above-referenced applications.

Specifically, Sola seeks a waiver of sections 1.1102 and 1.1107 of the FCC's rules' in connection with its filing of applications for the assignment of private land mobile radio, private microwave, satellite earth station, and satellite VSAT station licenses, as well as for special temporary authority (STA) to operate the earth station and VSAT licenses pending the grant of the assignment applications.³

¹ 47 C.F.R. § 1.1117(a) (2005); see 47 U.S.C. § 158(d)(2) (2001)

² *Id.* §§ 1.1102; 1.1107

³ The applications involved the following licenses: (1) 72 Private, Conventional Industrial/Business Pool (IG) licenses; (2) 12 Private, Point-to-Point Microwave Industrial/Business Pool (MG) licenses; (3) 7 Non-Common Carrier Domestic Fixed Satellite Service Transmit/Receive Earth Station licenses; and (4) 5 Non-Common Carrier Domestic Fixed Satellite Service Transmit/Receive VSAT licenses.

Sola filed these applications to facilitate the restructuring of its business and emerge from Chapter 11 bankruptcy protection. To ensure prompt processing of the applications, Sola paid filing fees in the amount of \$54,560.00 when it filed the applications.⁴ As set forth below, a waiver is appropriate because the filing fees arose from Sola's bankruptcy-related applications. A waiver would also promote the public interest in uninterrupted communications in the Gulf of Mexico and the Gulf Coast region.

I. BACKGROUND

Sola provides communications, safety and control systems, engineering, contracting, and network management services, primarily in the Gulf of Mexico, but also in the Gulf Coast region and for domestic companies abroad. Sola provides voice and data communications services to its customers on land, on moving vessels, and to oil rigs and platforms in the Gulf of Mexico. In many instances, Sola serves as the sole source of voice or data communications for these rigs and platforms, providing essential communications contact with the mainland. Sola also provides mission-critical communications services to a variety of customers that require extreme reliability, including federal, state, and local public safety agencies.

On September 30, 2005, a petition was filed by certain creditors of Sola with the U.S. Bankruptcy Court for the Western District of Louisiana requesting an Order for Relief against Sola under Chapter 11 of the U.S. Bankruptcy Code.⁵ On October 3, 2005, the Bankruptcy Court entered an Order for Relief against Sola under Chapter 11. On October 7, 2005, an involuntary petition was filed against Employee Acquisition Company, L.L.C. ("EAC"), a holding company formed solely to hold the ownership interests in Sola, in the same Bankruptcy

⁴ 47 C.F.R. §§ 1.1102; 1.1107

⁵ Case No. 05-52696, attached as Exhibit 1

Court, also requesting an Order for Relief against EAC under Chapter 11.⁶ On March 27, 2006, the Bankruptcy Court issued an Order for Relief against EAC under Chapter 11

As a result of the commencement of these bankruptcy proceedings, Sola filed applications requesting FCC consent to the involuntary *pro forma* assignment of Sola's FCC licenses to Sola Communications, L.L.C., Debtor in Possession ("Sola DIP) and paid the associated filing fees.⁷ The FCC consented to the *pro forma* assignments of the satellite authorizations on May 16, 2006,⁸ and the private land mobile and microwave licenses to Sola DIP on May 18, 2006.⁹

On May 24, 2006, Sola and EAC filed a final version of the Joint Plan of Reorganization (the "Plan") with the Bankruptcy Court pursuant to which Sola and EAC will be reorganized and emerge from bankruptcy. (As used herein, the terms "Reorganized Sola" and "Reorganized EAC" refer to the companies as reorganized under the Plan). On May 26, 2006, the Bankruptcy Court issued an Order Confirming the Joint Plan of Reorganization of Sola and EAC.¹⁰ Pursuant to the Plan, Reorganized EAC will retain ownership of its 100 percent equity interest in Reorganized Sola. The current equity interests in EAC will be cancelled as of June 6, 2006, the effective date of the Plan, and Reorganized EAC will issue new membership interests, representing 100 percent of the equity in Reorganized EAC, to Communications Mezzanine

⁶

⁷

Copies of these assignment applications and confirmation of payment are attached as Exhibit

^{2.}

⁸

Satellite Communications Services Information Re: Actions Taken, Report No. SES-00821, *Public Notice* 2-3 (May 17, 2006).

⁹

Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of License Applications, *De Facto* Transfer Lease Applications and Spectrum Manager Lease Notifications Action, Report No. 2515, *Public Notice* 29 (May 24, 2006).

¹⁰ Attached as Exhibit 3.

Finance. L.L.C. (“CMF”). Thus, as of June 6, 2006, Sola Communications, L.L.C., as reorganized, will be indirectly controlled by CMF.

On May 19, 2006, Sola filed applications to assign its FCC licenses from Sola DIP to Reorganized Sola.” Sola also filed requests for STA to allow Reorganized Sola to operate the satellite earth station and VSAT stations pending FCC review of the assignment applications.¹² The FCC consented to the assignment of the private land mobile and private microwave licenses on June 1, 2006,¹³ and to the requests for STA on June 6, 2006.¹⁴

Sola had to file the referenced assignment applications and requests for STA to emerge from bankruptcy and continue operations. As the licensee of several private land mobile, private microwave, earth station, and VSAT stations, Sola incurred filing fees of \$54,650.00 in connection with its bankruptcy-related applications. These filing fees impose a substantial hardship on a licensee emerging from bankruptcy and are contrary to the public interest. Thus, Sola requests that the FCC waive these filing fees

II. WAIVER REQUEST

Section 158(d)(2) of the Communications Act allows the FCC to waive filing fees “for good cause shown, where such action would promote the public interest.”¹⁵ Section 1.1117(a) of the FCC’s rules parallels that statute, providing that filing fees may be waived “where good

¹¹ Copies of these assignment applications and confirmation of payment are attached as Exhibit 4.

¹² Attached as Exhibit 5.

¹³ Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of License Applications, *De Facto* Transfer Lease Applications and Spectrum Manager Lease Notifications Action, Report No. 2534, *Public Notice 25* (June 7, 2004)

¹⁴ Satellite Communications Services Information Re: Actions Taken, Report No. SES-00827, *Public Notice* 11-12 (May 17, 2006).

¹⁵ 47 U.S.C. § 158(d)(2).

cause is shown and where waiver or deferral of the fee would promote the public interest.”¹⁶ As described below, Sola satisfies the good cause and public interest standards for a waiver of the filing fees in sections 1.1102 and 1.1107 of the FCC’s rules.”

The FCC has previously determined that bankruptcy constitutes “good cause” to waive application filing fees.¹⁸ For example, in *MobileMedia Corporation*, the FCC waived application filing fees under section 1.1117 arising from the reorganization of a bankrupt paging carrier based solely on the fact that the carrier’s bankruptcy status served as “good cause” for waiver of application filing fees.” The FCC has granted waivers of filing fees associated with assignment applications for licensees entering into and emerging from bankruptcy?¹⁹ as well as of filing fees associated with applications for special temporary authority, upon a showing that the licensee filed a petition for bankruptcy.²¹ Licensees may request refunds after submitting the application and paying the filing fee.²²

¹⁶ 47 C.F.R. § 1.1117(a).

¹⁷ *Id.* §§ 1.1102, 1.1107.

¹⁸ In re *MobileMedia Corporation*, WT Docket No. 97-115, *Memorandum Opinion and Order*, 14 FCC Rcd 8017, 8027 ¶¶ 39-40 (1999) [hereinafter *MobileMedia Order*]; see In re Implementation of Section 9 of the Communications Act; Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, MD Docket No. 94-19, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12762 ¶ 14 (1995) (“Evidence of bankruptcy or receivership is sufficient to establish financial hardship.”).

¹⁹ *MobileMedia Order*, 14 FCC Rcd at 8027 ¶¶ 39-40.

²⁰ *E.g.*, US Airways Inc. Request for Waiver of Application Fees, Gen. Docket No. 86-285, *Public Notice*, DA 06-998 (2006); Northwest Airlines, Inc. Request for Waiver and Deferral of Application Fees, Gen. Docket No. 86-285, *Public Notice*, DA 06-998 (2006); Global Crossing Telecommunications, Inc. Request for Waiver of Filing Fees, Gen. Docket No. 86-285, *Public Notice*, 18 FCC Rcd 1 (2003); Nucentrix Broadband Networks, Inc. Request for Waiver of Application Fees, Gen. Docket No. 86-285, *Public Notice*, 18 FCC Rcd 25713 (2003).

²¹ *E.g.*, Runnels Broadcasting System Request for Waiver and Refund of Filing Fee, Gen. Docket No. 86-285, *Public Notice*, 18 FCC Rcd 20527 (2003).

²² *E.g.*, Letter from Mark A. Reger, Chief Financial Officer, Office of Managing Director, FCC to Michael J. Walsh, Jr., Esq., Counsel to US Airways, Inc. (Mar. 15, 2006) (on file in Gen.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

March 14, 2007

POSTED

Matthew H. McCormick, Esq.
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W.
Suite 200
Washington, D.C. 20036-3101

Re: Request for Refund of FY 2006
Regulatory Fee
Tri-Valley Broadcasting Corp.
Station **W275AS**, Greenfield, MA
Fee Control No. **0609189365895016**

Dear Mr. McCormick:

This is in response to your request filed December **19, 2006** (*Request*), on behalf of Tri-Valley Broadcasting Corp. (Tri-Valley), licensee of FM translator station **W275AS**, Greenfield, Massachusetts (the Station), for a refund of the **\$420.00** fiscal year (FY) **2006** regulatory fee. For the reasons that follow, we grant your request.

You assert that although the Station paid a regulatory fee for FY **2006**, no regulatory fee was due because the authorization for the Station was not issued before October **1, 2005**.¹ Our records reflect that the Media Bureau granted Tri-Valley a license for the Station on October **26, 2005**. Because Tri-Valley did not hold a license for the Station on or before October **1, 2005**, the corporation is not required to pay a **FY 2006** regulatory fee for the Station? We therefore grant your request for a refund of the **FY 2006** regulatory fee for FM translator station **W275AS**.

¹ *Request* at 1 (citing *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, 21 FCC Rcd **8092,150** (2006) (2006 *Report and Order*)).

² See *2006 Report and Order*, at ¶ 50 (“Regulatory fees must be paid . . . for all broadcast facility licenses granted on or before October 1, 2005.”); see also *Media Regulatory Fees Paid Sheet* at 4 (“Who Must Pay: Holders [of] . . . FM translator. . . licenses . . . whose license was granted before October **1, 2005**.”); 47 C.F.R. § 1.1153.

Matthew J. McCormick, Esq.

2.

A check made payable to the maker of the original check, and drawn in the amount of \$420.00, will be sent to you at the earliest practicable time. **If you have any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.**

Sincerely,



Mark A. Stephens
Chief Financial Officer

COPY

IRWIN, CAMPBELL & TANNENWALD, P.C.

NO WASTE PROGRAM
CNFL# 8240

1730 RHODE ISLAND AVENUE, N.W.
SUITE 200
WASHINGTON, D.C. 20036-3101
(202) 728-0400
FAX (202) 728-0354
http://Jaww.ictpc.com

0609189365895016

MATTHEW H. MCCORMICK
(202) 117-3978
mhardy@ictpc.com

December 19, 2006

VIA HAND DELIVERY

Anthony Hale, Managing Director
Office of the Managing Director
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Request for Refund of Regulatory Fee
Tri-Valley Broadcasting Corporation
W275AS, Greenfield, Massachusetts, Facility ID 147371

Dear Managing Director Hale:

Tri-Valley Broadcasting Corporation ("Tri-Valley") hereby respectfully requests a refund of the 2006 regulatory fee for FM Translator Station W275AS, Greenfield, Massachusetts, Facility ID 147371. Tri-Valley mistakenly paid a regulatory fee for W275AS. In fact, no fee was due for W275AS for Fiscal Year 2006.

Each broadcast station licensee was assessed a Fiscal Year 2006 regulatory fee for each authorization issued before October 1, 2005. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006, Report and Order*, FCC 06-102, MD Docket No. 06-68, para. 50 (2006). The authorization for W275AS was granted on October 25, 2005. *See Attachment A.* Therefore, Tri-Valley was not assessed a 2006 regulatory fee for W275AS.

Tri-Valley submitted a payment of \$420.00 to the Commission on September 18, 2006, which it requests be refunded. Copies of the "Report for Submitted Fees" from the Commission's Fee Filer system and the "Pay.Gov Payment Confirmation" e-mail Tri-Valley received as evidence that the \$420.00 was submitted are enclosed herein as Attachment B.

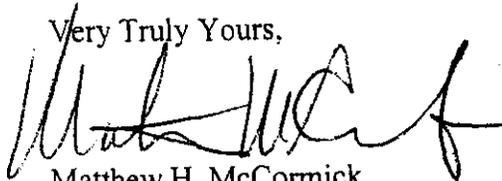
Request for Refund of Regulatory Fee
December 19, 2006
Page 2

Please forward the refund to the following address:

Tri-Valley Broadcasting Corporation
30 Warwick Road
Winchester, NH 03470-2819

If you have any questions regarding this matter, please do not hesitate to contact **me**.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Matthew H. McCormick', written in a cursive style.

Matthew H. McCormick
Counsel to Tri-Valley Broadcasting Corporation

Encls.

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

PAID

OFFICE OF
MANAGING DIRECTOR

March 14, 2007

Kent Bressie, Esq.
Harris, Wiltshire & Granis, LLP
1200 18th Street, N.W.
Suite 1200
Washington, D.C. 20036-2560

Re: Tyco Telecommunications (US), Inc.
FY 2005 Regulatory Fee
Fee Control No. **RROG-06-00007928**

Dear Mr. Bressie:

This is in response to your email correspondence dated October 2, 2006 (*Request*), submitted on behalf of Tyco Telecommunications (US), Inc. ("TycoUS") for a **waiver or reduction of the \$49,265.30 (FY) 2005 regulatory fee**. **Our records reflect that you have not paid the regulatory fee**. For the reasons set forth below, we **find that Tyco is not required to pay the FY 2005 regulatory fee**.

You state that Tyco US received a "bill [dated September 22, 2006] for unpaid ITSP [(interstate telecommunications service provider) regulatory fees [for FY 2005]]."¹ You assert that Tyco US "sold its telecommunications provider business to VSNL Telecommunications (US) Inc. [(VSNL US)] in a transaction that closed on June 30, 2005, . . . [and therefore] should not be liable for payment [after that date], as it was not receiving the revenues or operating the assets by that time."²

Our records reflect that in a public notice dated April 29, 2005, the International Bureau granted an application to assign Tyco US's submarine cable landing licenses to VSNL US,³ and that the assignment was consummated on August 1, 2005.⁴ Because Tyco US assigned its licenses to VSNL US after October 1, 2004, and thus did not hold the cable landing licenses that are the subject of the interstate telecommunications service at issue here on the due date for submitting FY 2005 regulatory fees (*i.e.*, September 7, 2005), Tyco US is not required to pay a FY 2005 regulatory fee.⁵ We therefore cancel the

¹ *Request* at 1.

² *Id*

³ *See Public Notice, Actions Taken under Cable Landing License Act*, 20 FCC Rcd 8557 (International Bur. 2005).

⁴ *See Letter from* Randall W. Sifers, Esq., to Marlene H. Dortch, Secretary, FCC (Aug. 1, 2005).

Kent Bressie, Esq.

2.

\$49,265.30 bill sent to Tyco US for unpaid FY 2005 regulatory fees and grant your request for waiver.⁶

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

Sincerely,



Mark A. Stephens
Chief Financial Officer

⁵ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2005*, 20 FCC Rcd 12259, ¶46(b) (2005) (Wireline Services fees “must be paid for any authorization issued on or before October 1, 2004. However, where a license or permit is transferred or assigned after October 1, 2004, responsibility for payment rests with the holder of the license or permit as of the Fee Due Date”).

⁶ Because we find that Tyco US is not required to pay a FY 2005 regulatory fee, it is unnecessary to reach the other questions you raise pertaining to the basis of the fee assessment.

Sherry Elkheshin

From: Kent Bressie [KBRESSIE@harriswiltshire.com]
Date: Monday, October 02, 2006 3:24 PM
Sherry Elkheshin
Cathy Hsu
Subject: Regulatory fee inquiry
Attachments: Tyco Telecom ITSP Fee Bill 2005.pdf



Tyco Telecom ITSP
Fee Bill 200...

Ms. Elkheshin,

I am writing to follow up on my telephone inquiry regarding the bill for unpaid ITSP regulatory fees (bill number 06RE009484) issued to Tyco Telecommunications (US) Inc. ("Tyco Telecom") (FRN 0003293388) on September 22, 2006, in the amount of \$49,265.30. The bill does not make clear the basis of assessment, so I am writing to inquire further in that regard.

First, what is the calendar period of assessment for the fees? The fee amount does **not** appear to correspond to the revenues for any particular Form 499-A filing. Moreover, Tyco Telecom sold its telecommunications provider business to VSNL Telecommunications (US) Inc. in a transaction that closed on June 30, 2005. Consequently, if any of the fee assessment relates to ownership of the telecommunications provider business after June 30, 2005, Tyco Telecom should not be liable for payment, as it was not receiving the revenues or operating the assets by that time.

Second, are international revenues included in the basis of the assessment, **or just** domestic revenues? Tyco Telecom was one of the largest payors of regulatory fees for International Bearer Circuits between 2002 and 2005. If the assessment in the current bill includes international revenues, that means that the FCC would be double-charging carriers for regulatory fees on the same services.

I would ask that the FCC extend the window for payment without penalties until these questions have been resolved.

Please contact me by telephone or email, **as** noted below.

Yours sincerely,

Kent D. Bressie
Counsel for Tyco Telecommunications (US) Inc.

HARRIS, WILTSHIRE & GRANNIS LLP
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FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

March 8, 2007

Waiver Granted

Peter Tannenwald
Irwin, Campbell & Tannenwald, P.C.
Counsel for Robert J. Maccini, Receiver,
WCIN-AM
1730 Rhode Island Avenue, N.W., Ste. 200
Washington, DC 20036-3101

Re: ~~WCIN-AM~~, Cincinnati, Ohio
Request for Waiver and Deferment
of FY 2006 Regulatory Fee
Fee Control No. RROG-07-00008124

Dear Mr. Tannenwald

This responds to your August 18, 2006 ~~Letter~~, on behalf of Mr. Robert J. Maccini, Receiver and licensee of broadcast station WCIN-AM, Cincinnati, Ohio (WCIN-AM), requesting waiver and deferment of the regulatory fee for fiscal year (FY) 2006 on account of financial hardship. ~~Our records indicate that you have not paid the regulatory fee, which amounts to \$4,750.~~ As we explain below, your request is **granted**.

In your Letter, you state that WCIN-AM is currently in receivership and that the license was assigned to Mr. Maccini as a court-appointed receiver on February 21, 2006, under File No. BAL-20060124AGL.² You attach an order by the United States District Court, Southern District of Ohio, Western Division, appointing Robert J. Maccini as Receiver of J4 Broadcasting, which operates WCIN-AM, on January 18, 2005.³

The Commission will grant waivers of its regulatory fees on a sufficient showing of financial hardship. Evidence of bankruptcy or receivership at the time the fees are due is sufficient to establish financial hardship. See Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759, 12761-62 (1995) (waivers granted for licensees whose stations are bankrupt, undergoing Chapter 11 reorganization, or in receivership). Based on the documents you submitted concerning WCIN-AM's receivership status, we will grant a waiver of the regulatory fee for FY 2006.

¹ Letter from Peter Tannenwald to Office of the Managing Director, FCC (dated August 18, 2006) (Letter).

² Letter at 1.

³ Letter at Attachment.

Peter Tannenwald

2.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. Stephens', written in a cursive style.

Mark A. Stephens
Chief Financial Officer

ORIGINAL

IRWIN, CAMPBELL & TANNENWALD, P.C.

ATTORNEYS AT LAW
1730 RHODE ISLAND AVENUE, N.W. 212
SUITE 200
WASHINGTON, D.C. 20036-3101
(202) 728-0400
FAX (202) 728-0354
<http://m.ictpc.com>

RECEIVED - FCC

AUG 18 2006

Federal Communication Commission
Bureau/Office

PETER TANNENWALD
(202) 728-0401 EXT. 105
pranncnwnld@icrpf.com

August 18, 2006

BY HAND DELIVERY

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

Re: Robert J. Maccini, Receiver
WCIN(AM), Facility ID 32953
FRN 0004-2892-60

Regulatory Fee Waiver Request and
Request for Deferment of Payment Without Penalty

Dear Sir/Madam:

On behalf of Robert J. Maccini, Receiver, licensee of broadcast station **WCIN(AM)**, Cincinnati, Ohio, this is to request a waiver of the annual regulatory fee for FY2006, due September 19, 2006. The amount of the fee is \$4,750.

WCIN is currently in receivership and is being operated by Mr. Maccini as a court-appointed receiver. The license was involuntarily assigned to the Receiver under File No. BAL-20060124AGL, granted February 21, 2006, 2006.

Receivership has been acknowledged by the Commission as evidence of financial hardship that justifies relief from the regulatory fees required by 47 USC Sec. 159. *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12159, 12762 (par. 14) (1995) ("Evidence of bankruptcy or receivership is sufficient to establish financial hardship."). Attached hereto is a copy of the court order appointing the Receiver that was submitted with BAL-20060124AGL and establishes existence of the receivership.

Federal Communications Commission

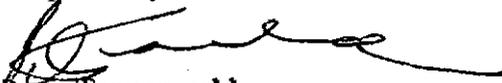
August 18, 2006

Page 2

In addition, because of the current financial distress of the station, it is requested that the Commission waive the requirement of Section 1.1166(c) of the Rules that waiver petitions be accompanied by payment with a request for refund. The station just completed a very costly engineering proof of performance, filed August 15, 2006, as an amendment to File No. BL-20060411ACU. The station has had to obtain interim bank financing during the bankruptcy to pay for engineering costs, and cash resources are extremely limited.

The Managing Director recently granted both a waiver of the regulatory fee obligation and a waiver of the Section 1.1166(c) pre-payment obligation in the matter of On Top Communications of Mississippi, LLC, Letter of May 31, 2006, Fee Control No. RROG-06-00006906. It is respectfully submitted that WCIN is in similar circumstances and merits grant of the same waivers.

Respectfully submitted,



Peter Tannenwald

Counsel for Robert J. Maccini, Receiver

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

March 14, 2007

PAID

Mr. Tim Lavender
WHAY Radio
Post Office Box 69
Whitley City, KY 42653

Re: Request for Waiver of Late Penalty
For Fiscal Year 2006 Regulatory Fee
Fee Control No. 0609218835128002
Bill No. 0620000167

Dear Mr. Lavender:

This is in response to your request filed on behalf of WHAY Radio (WHAY) for waiver of the late payment penalty associated with the fiscal year ~~(N)~~2006 regulatory fee.¹ Our records reflect that on September 20, 2006, subsequent to the September 19, 2006 regulatory fee deadline: we received payment of WHAY's \$575.00 regulatory fee but that we have not yet received the \$143.75 penalty. As indicated below, your request is denied.

In support of your request, you assert that **WHAY** mailed its \$575.00 payment by certified mail, return receipt required, on September 18, 2006, prior to the due date. You attach copies of a Certified Mail Receipt from the U.S. Postal Service dated September 18, 2006, a Return Receipt date-stamped by Mellon Bank on September 20, 2006, and your FCC Form 159 dated September 18, 2006.³ You claim that it was your understanding from the FCC Regulatory Fee Notification for Facility ID 67124, a copy of which you also attach to your request, that fees had to be postmarked by September 19, 2006, and that no mention was made that they had to be received by that date.⁴

¹ Waiver Request from Tim Lavender for WHAY Radio, filed October 16, 2006 (Request) at 1.

² *Public Notice, Payment Methods and Procedures for Fiscal Year 2006 Regulatory Fees*, 21 FCC Rcd 9514 (2006) (stating in first sentence that licensees must make annual regulatory fees payments by 11:59 PM September 19, 2006); *Public Notice, FY 2006 Regulatory Fees Due No Later Than September 19, 2006*, rel. July 31, 2006; *Public Notice, Fee Filer Now Available for 2006 Regulatory Fees*, 21 FCC Rcd 9524 (2006) (including centered, bold printed statement "Due Date for Paying Regulatory Fees is September 19, 2006").

³ Attachments to Request: U.S. Postal Service Certified Mail Receipt, dated September 18, 2006; PS Form 3811, Domestic Return Receipt, date-stamped Mellon Bank, September 20, 2006; FCC Form 159B dated September 18, 2006.

⁴ Attachment to Request: FCC Regulatory Fee Assessment Notice 0001-7863-42 (stating "Due Date: The due date for payment of 2006 regulatory fees is September 19, 2006").

Mr. Tim Lavender

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The Commission's rules are clear that licensees such as WHAY are required to pay to the Commission an annual regulatory fee in a timely manner.⁵ It is the obligation of the licensees responsible for regulatory fee payments to ensure the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year.⁶ Since 1994, when the Commission implemented section 9 of the Act, which requires the annual assessment and collection of regulatory fees, it has made clear that "[a] regulatory fee is untimely paid when it is not received at the lockbox bank by the date we establish for payment."⁷ In the FY 2006 Report and Order, the Commission reiterated:

As a reminder to all licensees, section 159(c) of the Communications Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, REGULATORY FEE PAYMENT MUST BE RECEIVED AND STAMPED AT THE LOCKBOX BANK BY THE LAST DAY OF THE REGULATORY FEE FILING WINDOW, AND NOT MERELY POSTMARKED BY THE LAST DAY OF THE WINDOW. (Emphasis in original)

FY 2006 Report and Order at 8107, ¶ 52.

Your request does not indicate or substantiate compliance with this obligation. As a Commission licensee, WHAY is charged with the responsibility to familiarize itself with the Commission's rules and requirements. The Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances." *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970). Furthermore, as noted above, the Communications Act of 1934, as amended, requires the Commission to assess a late charge penalty of 25 percent on any regulatory fee not paid in a timely manner?

⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, Report and Order, 21 FCC Rcd 8092, 8107, ¶ 52; (2006) 47 U.S.C. § 159(c); 47 C.F.R. § 1.1164.

Id.

⁷ *Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, Report and Order, 9 FCC Rcd 5333, 5353, ¶ 59 (1994).

47 U.S.C. § 159(c).

Mr. Tim Lavender

3.

Since WHAY did not meet its obligation to file its regulatory fee to **be timely received by** the Commission by September 19, 2006, the last date for payment of **FY 2006 fees**, we deny your request for waiver of the penalty for late payment of its **FY 2006 regulatory fee**.

Payment of WHAY's late payment penalty of \$143.75 for **FY 2006** is now **due**. It **must** be filed together with a copy of Bill No. 0620000167 within 30 days **from the date of this** letter. If you have any questions concerning this matter please **contact the Revenue and Receivables Operations Group** at **(202) 418-1995**.

Sincerely,



Mark A. Stephens
Chief Financial Officer

⁹ See note 2, *supra*.

8078

WHAY RADIO **FCC/MELLON**
P.O. BOX 69
WHITLEY CITY, KY. 42653
phone (606) 376-2218
fax (606) 376-5146
email: whayradio@highland.net

OCT 16 2006

October 12, 2006

Federal Communications Commission
Revenue & Receivable Oper.
P.O. Box 358340
Pittsburgh, Pa. 15251-8340

Re: WHAY Radio
Bill number 0620000167
Payer FRN# 0001786342
Applicant FRN 0001786342
FCN: 0609218835128002

Dear Sir/Madam:

We received your current bill of 9-22-06, for \$143.75 for assessed penalty for late regulatory **fee**. The attached documents show that we mailed the payment of \$575.00 by certified mail, return receipt required on September 18, 2006. This was prior to the due date.

It **was** our understanding by the FCC Regulatory Fee Notification for Facility ID 67124 that **our** fees had to be postmarked by September 19, 2006. No mention **was** made that **they** had to be received by that date.

If there is a late fee assessment for fees not <received> by September 19, 2006, a fact not made clear in the assessment notice, WHAY Radio is asking that the assessment of this late fee be **waived or excused**.

Please let us know in time for us to get the late fee in your hands by 10-22-06, if you choose not to waive the fee.

Very Truly Yours,-



Tim Lavender