



PUBLIC NOTICE

Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

News media information 202 / 418-5000
Fax-On-Demand 202 / 418-2830
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

DA- 07-1825

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 24, 2007

FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC

The Managing Director is responsible for fee decisions in response to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. A public notice of these fee decisions is published in the FCC record.

The decisions are placed in General Docket 86-285 and are available for public inspection. A copy of the decision is also placed in the appropriate docket, if one exists.

The following Managing Director fee decisions are released for public information:

Allband Communications Cooperative - Request for waiver of application fees. **Denied** (March 14, 2007) [*See Establishment of a Fee Collection Program To Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Gen. Docket No. 86-285, 2 FCC Rcd 947, 961 para. 88 (1987)*]

Cbeyond Communications, LLC- Request for waiver of FY 2006 regulatory fee late payment penalty. **Denied** (March 14, 2007) [*See 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)*]

Christian Broadcasting of New Orleans, Inc. WBOK (AM) - Request for waiver of FY 2006 regulatory fee. **Granted** (March 8, 2007) [*See Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759, 12762 (1995)*]

GHB Radio, Inc. WTIX (AM) - Request for waiver refund of FY 2006 regulatory fee. **Granted** (March 8, 2007) [*See Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759, 12762 (1995)*]

MTC Matrixes – Request for waiver of application fee. **Granted** (March 8, 2007) [*See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994); recon. granted, 10 FCC Rcd 12759 (1995)*]

Net Radio Group Communications, LLC – Request for waiver and refund of application fee. **Granted** (March 14, 2007) [*See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 3 FCC Rcd 3558, 3572-73 (1990)*]

Ortiz Broadcasting Corporation KTRG (TV) –

Request for deferral of FY 2006 regulatory fee.

Granted (March 14, 2007) [*See* Implementation of Section 9 of the Communications Act, 10 FCC Rcd, 12759, 12761-62 (1995)]

Pensacola Acts, Inc., Praise 95, Inc. Station

W39BP - Request for refund of FYs 2003, 2004, 2005, and 2006 regulatory fees. **Granted** (March 14, 2007) [*See* 47 C.F.R. §1.1162(c); see also *id.* §1.1162(c)(1)]

ShootingStar Broadcasting of New England, LLC Station WZMY (TV) - Request for refund of FY 2005 late fee penalty. **Denied** (March 8, 2007) [*See* 47 U.S.C. §159(c)]

Sola Communications, LLC - Request for waiver and refund of application fees. **Granted** (March 8, 2007) [*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)]

Tri-Valley Broadcasting Corp - Request for refund of FY 2006 regulatory fee. **Granted** (March 14, 2007) [*See* Assessment and Collection of Regulatory Fees for Fiscal Year 2006, 21 FCC Rcd 8092, ¶ 50 (2006) (2006 Report and Order)]

Tyco Telecommunications (US), Inc. - Request for waiver of FY 2005 regulatory fee. **Granted** (March 14, 2007) [*See* Assessment and Collection of Regulatory Fees for Fiscal Year 2005, 20 FCC Rcd 12259, ¶46(b) (2005)]

WCIN-AM, Cincinnati, Ohio WCIN (AM) - Request for waiver and deferment of FY 2006 regulatory fee. **Granted** (March 8, 2007) [*See* Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759, 12761-62 (1995)]

WHAY Radio - Request for waiver of FY 2006 late fee penalty. **Denied** (March 14, 2007) [*See* 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]

Wire Tele-View Corporation - Request for waiver of FY 2006 late fee penalty. **Denied** (March 8, 2007) [*See* 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]

WMGR AM 930/ TV 22 - Request for waiver of FY 2006 late fee penalty. **Denied** (March 14, 2007) [*See* 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]

WRNN License Company, LLC Station WRNN-DT - Request for refund of FY 2005 regulatory fee. **Granted** (March 14, 2007) [*See* 2005 Report and Order, 20 FCC Rcd at 12266-67, and 12273, paras. 18-19, 23, and 46a]

NOTE: ANY QUESTIONS REGARDING THIS REPORT SHOULD BE DIRECTED TO THE REVENUE AND RECEIVABLES OPERATIONS GROUP AT (202) 418-1995.

✓
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

VICE OF
AGING DIRECTOR

March 14, 2007

Request
Denied

Paul M. Hartman
General Manager
Allband Communications Cooperative
Post Office Box 246
Hillman, MI 49746

Re: Allband Communications Cooperative
Request for Waiver of Application Filing Fee
Fee Control No. RROG-06-00008139

Dear Mr. Hartman:

This is in response to your letter dated November 2, 2006¹ on behalf of Allband Communications Cooperative (Allband) requesting a waiver of the filing fee associated with an application for waiver of the data collection requirements set forth in sections 36.611 and 36.612 of the Commission's rules. Our records indicate that Allband has not paid the application fee at issue, which amounts to \$6,840. For the reasons stated herein, we deny your request.

In support of your request, you state that Allband is a nonprofit cooperative incumbent local exchange (ILEC) company that is certificated by the Michigan Public Service Commission to provide basic telephone service to a currently unserved area in Northeastern Lower Michigan, anticipated to have begun November 2006.² You also state that the Commission recently granted Allband's request that it be recognized as exempt from paying regulatory fees.³

At the outset, insofar as your letter seeks a general fee exemption premised upon the October 19, 2006 ruling of the Chief Financial Officer, please be advised that Allband's nonprofit status does not exempt it from payment of the application filing fees at issue here. In contrast to the Commission's regulatory fee exemption that is broadly applicable to qualified nonprofit entities,⁴ and which provided the basis for the October 19, 2006 ruling, the application filing fee exemption for nonprofit entities applies more narrowly to

¹ Letter from Paul M. Hartman, Allband Communications Cooperative (November 2, 2006) (Letter).

² Letter.

³ Letter. On December 29, 2006, you provided a copy of an October 19, 2006 letter from Mark Stephens, Chief Financial Officer, verifying Allband's status as exempt from paying regulatory fees. See Facsimile from Paul Hartman, Allband Communications Cooperative at 2 (Jan. 1, 2007).

⁴ See 47 U.S.C. § 159(h); 47 C.F.R. § 1.1162(c).

"[a]pplicants in the Special Emergency Radio and Public Safety Radio Services"⁵ and to qualifying noncommercial educational broadcast entities.⁶ None of the specific fee exemption categories set forth in Section 1.1114 appears applicable to Allband.

As to your waiver request, pursuant to Section 1.1117 of the rules, an application fee may be waived or deferred in specific instances where good cause is shown and where waiver or deferral of the fee would promote the public interest.⁷ The Commission construes its waiver authority under Section 8 of the Communications Act narrowly and will grant waivers on a case-by-case basis to specific applicants upon a showing of extraordinary and compelling circumstances.⁸ In most instances, the general public interest in reimbursing the government for services provided far outweighs the private interest in waiving or deferring the small, incremental costs represented by these fees.⁹ The facts you recite in your Letter, which concern Allband's nonprofit status and its plans to provide basic telephone service to an unserved area, do not address the good cause and public interest standards set forth in our rules and, without more, do not establish "extraordinary and compelling circumstances" required to obtain a waiver. We therefore deny your waiver request.

Payment of the application filing fee in the amount of \$6,840 is now due. The fee should be filed with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. 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

Enclosure

⁵ 47 U.S.C. § 158(d)(1); 47 C.F.R. § 1.1114(b). Section 1.1114(b) further provides that "[a]pplicants claiming nonprofit status must include a current Internal Revenue Service Determination Letter documenting this nonprofit status." *Id.*

⁶ 47 C.F.R. § 1.1114(c)-(e).

⁷ See 47 U.S.C. § 158(d)(2); 47 C.F.R. § 1.1117(a).

⁸ See *Establishment of a Fee Collection Program To Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, Gen. Docket No. 86-285, 2 FCC Rcd 947, 961 para. 88 (1987); *Sirius Satellite Radio Inc.*, 18 FCC Rcd 12551 (2003).

⁹ See *Establishment of a Fee Collection Program To Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, Gen. Docket No. 86-285, 2 FCC Rcd 947, 961 para. 88 (1987).



Allband Communications Cooperative
P.O. Box 246
Hillman, Michigan 49746
989-255-1406

8/39
RR06-06-00008/39

November 2, 2006

Mr. Anthony J. Dale
Managing Director
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Mr. Dale,

Allband Communications Cooperative is requesting a waiver of the fees associated with the filing of a waiver of Sections 36.611 and 36.612. Allband has already submitted the request for the waiver of Sections 36.611 and 36.612 to the Wireline Competition Bureau.

Allband is a non-profit cooperative. Allband, an ILEC¹ certificated by the Michigan Public Service Commission to serve a currently unserved area in Northeastern Lower Michigan is working to start providing basic telephone service hopefully in November 2006. In a letter dated September 22, 2006 Allband requested recognition as an exempt entity. This request was granted in a letter dated October 19, 2006 from Mark A. Stephens, Chief Financial Officer.

If there are any questions, please do not hesitate to contact me. Thank you for your assistance.

Sincerely,

Paul M. Hartman
General Manager
Allband Communications Cooperative
989-255-1406
paul.hartman@allband.org

¹ Allband Communications Cooperative Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission's Rules, WC 05-174 DA 05-2268 released August 11, 2005

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
MAR 14 2007

*Request Denied
Payment Due*

OFFICE OF
MANAGING DIRECTOR

Craig Neeld
Compliance Reporting Specialist
Technologies Management, Inc.
210 N. Park Ave.
Winter Park, FL 32789

Re: Cbeyond Communications, LLC
FY 2006 Regulatory Fee
Fee Control No. 0702088340500001

Dear Mr. Neeld:

This responds to your request dated February 2, 2007 (*Request*), filed on behalf of Cbeyond Communications, LLC (Cbeyond) for a waiver of the penalty for late payment of the fiscal year (FY) 2006 regulatory fee. Our records reflect that Cbeyond has paid the \$50,015.70 FY 2006 regulatory fee, but not the \$12,503.93 late penalty. As explained below, we deny your request.

You recite that Cbeyond "received its 2006 Interstate Telecommunications Service Provider [ITSP] regulatory fee bill on February 1, 2007."¹ You state that "[t]his invoice was not generated in 2006, and was only released when its absence was questioned by [Cbeyond]."² You assert that FCC staff advised you on January 25, 2007, that the "invoice was not generated due to an error in the FCC's billing system . . . [and that] once the error was corrected, the invoice was generated."³ You claim that the late penalty is "inappropriate" because "the late payment is due to the FCC's error of not generating a timely invoice[.]"⁴

The Communications Act of 1934, as amended, requires the Commission to assess a penalty of 25 percent on any regulatory fee not paid in a timely manner.⁵ The Commission's rules provide that a timely payment is one received at the Commission's lockbox bank by the due date.⁶ 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

¹ *Request* at 1.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ 47 U.S.C. §159(c)(1).

⁶ 47 C.F.R. §1.1164.

indicate or substantiate that Cbeyond met this obligation with respect to the FY 2006 regulatory fee. Although Cbeyond may have relied upon receiving a bill from the Commission in paying the FY 2006 regulatory fee, this does not support a waiver of the late charge penalty. The Commission takes great care to inform its licensees of the due dates, amounts of the fees, and payment methods in public notices and fact sheets, which information it also posts on its web site, www.fcc.gov. For the FY 2006 regulatory fees, the Commission timely released several public notices and news releases informing licensees of the September 19, 2006 deadline for filing regulatory fees and explaining how to calculate the ITSP regulatory fee, and posted these items on its web site.⁷ 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.”⁸ Accordingly, we deny your request for waiver of the penalty for late payment of the fiscal year 2006 regulatory fee.

Payment of Cbeyond’s \$12,503.93 penalty for late payment of the FY 2006 regulatory fee is now due. The late charge penalty should be submitted, together with a Form 159 (copy enclosed), within 30 days of the day of this letter. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Stephens
Chief Financial Officer

Enclosure

⁷ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2006, Report and Order*, 21 FCC Rcd 8092 (2006); Public Notice, *FY 2006 Regulatory Fees Due No Later Than September 19, 2006*, 2006 WL 2129092 (July 31, 2006) (announcing the September 19, 2006 filing deadline and stating that late payments will be assessed a 25 percent late payment penalty); Public Notice, *Fee Filer Now Available for 2006 Regulatory Fees*, DA 06-1661 (Aug. 21, 2006) (reminding of filing deadline); *Regulatory Fees Fact Sheet, What You Owe – Interstate Telecommunications Service Providers (ITSP) for FY 2006* (Aug. 2006) (stating “that there is a penalty for not submitting the entire fee in a timely manner” and providing instructions for calculating and paying the FY 2006 regulatory fee, with specific instructions for those who did not receive a bill).

⁸ See *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).

8302

Judith Haley

From: ARINQUIRIES
Sent: Friday, February 02, 2007 4:36 PM
To: Judith Haley
Subject: FW: Request for Waiver of Late Payment Penalty - Cbeyond Communications, LLC

Stephen French
Spier Technologies
/CORES Help Desk
Room: 2-A629
2-418-1878

---Original Message---

From: Craig Neeld [mailto:cneeld@tminc.com]
Sent: Friday, February 02, 2007 3:31 PM
Subject: ARINQUIRIES
To: Carey Roesel
Subject: Request for Waiver of Late Payment Penalty - Cbeyond Communications, LLC

Whom It May Concern:

Cbeyond Communications, LLC (FRN 0003759602) received its 2006 Interstate Telephone Service Provider Regulatory Fee Bill on February 1, 2007. This invoice was not generated in 2006, and was only released when its absence was questioned by the Company. Per my telephone conversation with Jim Lande of the FCC on January 25, 2007, the Company's invoice was not generated due to an error in the FCC's billing system. Once the error was corrected, the invoice was generated.

Cbeyond is in the process of remitting payment for the regular invoice amount of \$50,015.70. However, Cbeyond feels that the 25% late payment penalty of \$12,503.93 is inappropriate given that the late payment is due to the FCC's error of not generating a timely invoice, and Cbeyond seeks a waiver of this penalty.

Please contact me for any additional information required, and for updates on the status of this request.

Thank you,

Craig Neeld
Spier Technologies Management, Inc.
407-740-3008

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

March 8, 2007

PAID

VICE OF
MANAGING DIRECTOR

John C. Trent, Esq.
Counsel for Christian Broadcasting of
New Orleans, Inc.
Putbrese, Hunsaker and Trent, P.C.
200 South Church Street
Woodstock, VA 22664

Re: Request for Waiver of Fiscal Year 2006 Regulatory
Fee for Station WBOK (AM), Facility No. 10907
Fee Control No. RROG-06-00007720

Dear Mr. Trent:

This is in response to your request for waiver of the Fiscal Year (FY) 2006 regulatory fee filed on behalf of Christian Broadcasting of New Orleans, Inc. (CBNO), licensee of Station WBOK (AM) (WBOK), New Orleans, Louisiana.¹ You explain that WBOK was unable to produce any income because it was silent from August 29, 2005 until July 24, 2006.² As indicated below, your request is granted.

In support of your request, you state that on August 29, 2005, WBOK's station was badly damaged during Hurricane Katrina. You relate that the upper portion of the station's licensed antenna tower was damaged and that the studio building was under water. You report that you notified the FCC on September 14, 2005 that WBOK was silent, and that on September 15, 2005, the Commission granted your request to remain silent. You state that on July 24, 2006, CBNO was able to arrange for a mobile unit from which WBOK could begin operating with emergency antenna facilities.³ You reference and enclose a letter dated August 4, 2006 from Charles N. Miller, Engineer, Audio Division, Media Bureau, granting WBOK Special Temporary Authority (STA) to operate with the emergency antenna facilities until February 4, 2007.⁴ Finally, you explain that because WBOK was silent for eleven months, it was not able to produce any income, and therefore, you request a waiver of the FY 2006 regulatory fee.

¹ Waiver Request from John C. Trent, Esq., Counsel for Christian Broadcasting of New Orleans, Inc., dated Aug. 30, 2006 (Request) at 1.

² *Id.*

³ *Id.*

⁴ Attachment to Request, Letter from Charles N. Miller, granting STA, dated Aug. 4, 2006 (Attachment) at 1.

John C. Trent, Esq.

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In *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, 12762 (1995), the Commission determined that the imposition of a regulatory fee could be an impediment to the restoration of service by dark, or silent, stations and that it therefore would waive the fee requirement for stations which have ceased operation.⁵

Our records confirm that WBOK notified the Commission that it was silent on September 14, 2005, that it received authority to operate with emergency facilities on August 4, 2006, and that it filed for and received the required STAs both to go dark and to utilize the emergency antenna facilities. In keeping with the Commission's stated policy to grant waivers to stations that are dark without any further showing of financial hardship, and in light of WBOK's representation that it lacked the ability to earn any income because it was silent for eleven months, your request to waive WBOK's FY 2006 regulatory fee is granted.

We note that this waiver applies only to WBOK's FY 2006 regulatory fee. As a reminder, WBOK's STA to operate with the emergency antenna facilities expired on February 4, 2007.⁶ Further, the letter granting the STA stated that you must notify the Commission when licensed operation is restored and reminded you that timely restoration of permanent facilities is the licensee's responsibility and should be undertaken expeditiously.⁷

⁵ The Commission stated:

We will also grant petitions for waivers of the regulatory fees on grounds of financial hardship from licensees of broadcast stations which are dark (not operating). When a station is dark, it generally is either without or with greatly reduced revenues. Moreover, broadcast stations which are dark must request permission to suspend operation pursuant to Section 73.1740(a)(4) of the Rules. 47 C.F.R. § 73.1740(a)(4). Petitions to go dark are generally based on financial hardship. Under these circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship.

10 FCC Rcd 12759, 12762 ¶15 (1995).

⁶ Attachment at 1.

⁷ *Id.* at 2.

John C. Trent, Esq.

3.

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

John C. Trent
Todd A. Steiner
OF COUNSEL: Lauren A. Colby**
David M. Hunsaker
(1944 - 2002)
Keith E. Putbress
(Retired)
*Licensed in PA
**Licensed in MD NY, DC

Law Office
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A Professional Corporation
200 South Church Street
Woodstock, Virginia 22664

Telephone:
(540) 459-7646

Facsimile:
(540) 459-7656

JCT e-mail: fcman3@shentel.net
TAS e-mail: tsteiner@shentel.net
LAC e-mail: jac@lcolbv.com

August 30, 2006

RECEIVED - FCC

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

AUG 30 2006

Federal Communication Commission
Bureau / Office

Re: WBOK (AM), New Orleans, LA (Facility ID 10917)
Request for Waiver of 2006 Regulatory Fees

FAN #
00142-49387

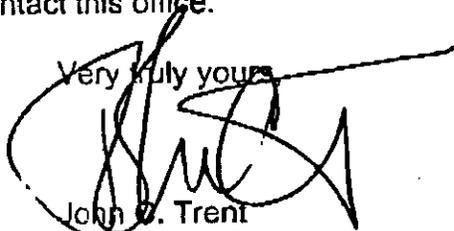
Dear Sir or Madam:

On behalf of Christian Broadcasting of New Orleans, Inc. ("CBNO"), we are hereby requesting consideration of a waiver of the 2006 Regulatory Fees for Radio Station WBOK (AM), New Orleans, Louisiana (the "Station"). On August 29, 2005, the Station was badly damaged during Hurricane Katrina. The upper portion of the Station's licensed antenna tower was damaged and the studio building was under water. CBNO notified the Commission on September 14, 2005 that the Station was silent. On September 15, 2005, the FCC granted the request for the Station to remain silent. The Station had been silent since August 29, 2005.

On July 24, 2006, CBNO was able to arrange for a mobile unit from which the Station could begin operations with emergency antenna facilities. By letter dated August 4, 2006, the Commission granted Special Temporary Authority for the Station to operate with the emergency antenna facilities until February 4, 2007. (copy enclosed). However, since the Station had been silent for eleven months, the Station has not been able to produce any income. Therefore, due to the hardships suffered from Hurricane Katrina, CBNO is by this letter requesting consideration for a waiver of the 2006 Regulatory Fees.

If you have any questions, please contact this office.

Very truly yours



John C. Trent

Enclosure

cc: Lauren A. Colby, Esquire
L.E. Willis, Sr.

2006 AUG 31 P 2:29
RECEIVED

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

PAID
4/3/07

March 8, 2007

OFFICE OF
MANAGING DIRECTOR

Matthew H. McCormick, Esq.
Counsel for GHB Radio, Inc.
1730 Rhode Island Avenue, N.W.
Suite 200
Washington, D.C. 20036-3101

Re: Request for Waiver and Refund of FY 2006 Regulatory
Fee for Station WTIK (AM), Facility No. 40996
Fee Control No. 0609158835537007

Dear Mr. McCormick:

This is in response to your request for waiver and refund of the Fiscal Year (FY) 2006 regulatory fee filed on behalf of GHB Radio, Inc, licensee of Station WTIK (AM) (WTIK), Winston-Salem, NC.¹ You maintain that WTIK is currently silent, pursuant to Commission authority, and was silent at the time that the FY 2006 regulatory fees were due.² As indicated below, your request is granted.

In *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, 12762 (1995), the Commission determined that the imposition of a regulatory fee could be an impediment to the restoration of service by silent or dark stations and that it therefore would waive the fee requirement for stations which have ceased operation.

Our records indicate that WTIK went silent on January 27, 2006. Our records also confirm that WTIK was still silent on September 19, 2006, the final due date for FY 2006 regulatory fees,³ and that it had Commission authority to remain silent. Thus, your request to waive WTIK's FY 2006 regulatory fee is granted. Further, our records verify that WTIK timely submitted a check for payment of WTIK's FY 2006 regulatory fee of \$1,425.00 on September 14, 2006. Accordingly, we will refund WTIK's FY 2006

¹ Waiver and Refund Request from Matthew H. McCormick, Esq., Counsel for GHB Radio, Inc., filed Oct. 25, 2006 (Request) at 1.

² *Id.*

³ 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.

Matthew H. McCormick, Esq.

2.

regulatory fee payment. We will forward a check in the amount of \$1,425.00 at the earliest practicable time.

Please note that this regulatory fee waiver applies only to FY 2006. Our records reflect that WTIX returned to the air on December 26, 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

ORIGINAL

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

Matthew H. McCormick
(202) 777-3973
mmccormick@ictpc.com

0609158835537007

October 25, 2006

RECEIVED - FCC

Federal Communications Commission
Office of Managing Director
445 - 12th Street S.W., Room 1-A625
Washington, DC 20554

OCT 25 2006

Federal Communication Commission
Bureau / Office

ATTN: Regulatory Fee Waiver Request

Re: Waiver and Refund of Regulatory Fee
GHB Radio, Inc., FRN 0004-9588-64
WTIX(AM), Winston-Salem, NC (Facility Id. No. 40996)

Dear Sir or Madam:

GHB Radio, Inc. ("GHB"), by and through its counsel, respectfully requests a waiver and refund of the Fiscal Year 2006 Regulatory Fee submitted for WTIX(AM), Winston-Salem, North Carolina, (Facility Id. No. 40996) in the amount of \$1,425.00. The Regulatory Fee was submitted to the Commission via check on September 14, 2006. A date stamped copy of the FCC Form 159 that accompanied the fee was submitted with the request.

A waiver and refund of the Fiscal Year 2006 Regulatory Fee is warranted because WTIX, pursuant to Commission authority, presently is "silent" and was so at the time of the fee deadline. See FCC File Nos. BLSTA-20060202AJL and BLSTA-06060801AAA. The Commission previously has stated that waiver of the regulatory fee requirement for a silent broadcast station is warranted because imposition of the fee is counterproductive to a licensee's efforts to resume operations. *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, Para. 15 (1995).

¹ With the same Form 159, GHB submitted the Fiscal Year 2006 Regulatory Fee for Station WBLO, Thomasville, North Carolina (Facility Id. No. 54552) in the amount of \$2,375.00. GHB is not seeking waiver and refund of that fee.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

March 8, 2007

OF
NG DIRECTOR

Marcus T. Travenia, Owner
MTC Matrixes
6807 14th Avenue, S.E.
Lacey, Washington 98503

Re: Request for Waiver of Application Filing
Fee on behalf of MTC Matrixes
Fee Control No. RROG-06-00007860

Request Granted
No Pymt. Due
For Appl. Fee

Dear Mr. Travenia:

This responds to your waiver request filed September 20, 2006 on behalf of MTC Matrixes (MTC) following our May 23, 2006 decision dismissing your previous request for deferral and waiver of the application filing fee associated with MTC's request for authority pursuant to section 214 of the Communications Act, as amended, for the provision of international common carrier services.¹ Our records indicate that MTC has not paid this fee, which amounts to \$895. For the reasons set forth below, we grant your request.

At the outset, although styled as a request for reconsideration, we will treat your Letter as a refiled waiver request because it purports to provide the type of documentation that we stated was missing from your previous submission and for which we determined dismissal of that request was warranted.² Even so, the deadline for refiled your waiver request, as we advised you previously, was 30 days following the date of our May 23 Dismissal, i.e., June 22, 2006.³ You assert that your request was delayed until September 13, 2006 because our May 23 Dismissal was sent to the wrong address.⁴ Our records indicate, however, that you contacted FCC staff by telephone on June 1, 2006 concerning the May 23 Dismissal. Thus, there is no question that you had received our May 23 Dismissal by that date and well in advance of the June 22, 2006 deadline for refiled your waiver request. We also note that the address to which we sent our May 23 Dismissal is

¹ Letter from Marcus Tyrone Travenia, Owner, MTC to Mark Stephens, FCC (dated Sept. 13, 2006) (Letter).

² Letter from Mark Stephens, Acting Chief Financial Officer, FCC to Marcus Tyrone Travenia, Owner, MTC (dated May 23, 2006) (May 23 Dismissal). A proper request for reconsideration of our May 23 Dismissal would have challenged our grounds for dismissing your request, which your Letter does not do. See 47 C.F.R. § 1.106.

³ May 23 Dismissal.

⁴ Letter.

Marcus T. Travenia, Owner

one that you had represented, in your most recent supplements to that underlying file, as belonging to MTC Matrixes.⁵ Even though your refiled request is late, we will consider it in the interest of reaching a decision on the merits and because no other party will be prejudiced.

As to the merits, in our May 23 Dismissal, we dismissed your waiver request for lack of documentation to support a financial hardship claim for MTC (as distinguished from you personally).⁶ In your Letter, you indicate that you only make \$783 per month and after all bills only \$223 remains for you to live on.⁷ Among the papers you submit in support of your reconsideration request, you include MTC's business plan and cash flow projection for calendar year 2006. You assert no other grounds for waiver of the application filing fee.

As we advised you previously, in establishing a 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."⁸ The Commission further held that regulatees can establish financial need by submitting:

[I]nformation such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.⁹

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 entity lacks sufficient funds to pay the fee. Further, although deductions for amortization and depreciation, which do not affect cash flow, and payments to principals reduce gross income for tax purposes, those deductions also represent money that is considered to be available to pay the fee.

In this case, the documentation you submitted establishes good cause for waiver of the filing fee at issue. MTC's business plan indicates that "[n]o money is currently being made," that MTC will not sell any services before obtaining its section 214 authorization, and that you have no one to co-sign for a loan.¹⁰ Although MTC's cash flow projection

⁵ Facsimile Transmittal from Marcus Travenia, Cover Page (dated March 13, 2006).

⁶ May 23 Dismissal.

⁷ Letter.

⁸ See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994); *recon. granted*, 10 FCC Rcd 12759 (1995).

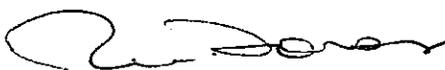
⁹ 10 FCC Rcd at 12761-62.

Marcus T. Travenia, Owner

indicates that, beginning in September 2006, funds from sales, a bank loan, and other sources will become available to pay the section 214 application fee,¹¹ it is evident from your business plan that all of these figures are dependent on events that have not occurred and that MTC has no other sources of funds available to pay the application fee. Accordingly, your request for waiver of the application filing fee in the amount of \$895 is granted.

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

¹⁰ Letter, Attachment at 2 (MTC Business Plan).

¹¹ Letter, Attachment at 1, 2 (MTC 2006 Cash Flow Projection).

September 13, 2006

RECEIVED & INSPECTED
SEP 20 2006
FCC - MAIL ROOM

Mark Stephens
FCC Managing Director
445 12TH Street, SW Room 1A625
Washington, DC 20554

 ORIGINAL

7860
RROG-06-00007860

RE: Reconsideration For Waiver of 214 Licensing fees
With Business Plan.

Dear: FCC Managing Director,

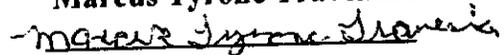
I MARCUS TYRONE TRAVENIA® d.b.a. MTC MATRIXES request that the office of Managing Director Waive all regulatory fees for Marcus Tyrone Travenia®, in accordance with response from the FCC asking that I submit a copy of a Business plan with my request for waiver of fees for 214 authorization. The response from the FCC regarding my request for fee waivers were erroneously sent to the wrong address witch caused a delay in my reconsideration request. I am on SSD I only make \$783 Per month after all bills I only have \$223 dollars a month to live on.

Attached is a copy of all letters and responses from myself and the FCC in regards to Waiver of fee request. Also attached is a copy of my business plan for MARCUS TYRONE TRAVENIA® d.b.a. MTC MATRIXES. I am asking that the FCC waive 214 Licensing fees. And ask for a response to this letter within 30 days of receipt of this letter. Thank you for considering this request.

MARCUS TYRONE TRAVENIA® d.b.a
MTC MATRIXES
U.B.I#602-279-392
FRN# 0014767412
6807 14TH AVE SE.
LACEY, WA 98503
(360) 459-8264
FAX (360) 413-5064
SOLE PROPRIETOR

cc Ragen Dorsey

Sincerely, Owner

Marcus Tyrone Travenia®


REGINA DORSEY, SPECIAL ASST TO CFO

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

March 14, 2007

Jeffrey L. Burtch, Assignor and Trustee
Chapter 7 Estate of Net Radio Group
Communications, LLC
Cooch & Taylor
824 Market Street, Suite 1000
Wilmington, DE 19801

Warren C. Havens, Assignee
2649 Benvenue Avenue, #1
Berkeley, CA 94704

Re: Request for Waiver of Application Filing
Fees on behalf of Net Radio Group
Communications, LLC
Fee Control No. RROG-06-00007611

Dear Mr. Burtch and Mr. Havens:

This letter responds to your request dated March 9, 2006 for waiver and refund of the application filing fees for assignment of 127 220-MHz licenses, currently held by the Chapter 7 Estate of Net Radio Group (Estate), to Mr. Havens.¹ Our records indicate that you have paid these fees, the total amount of which is \$6,985. As indicated below, we grant your request.

In support of this request, you assert that the Estate is currently the subject of proceedings under Chapter 7 of the Bankruptcy Code.² In view of the ongoing bankruptcy, you request a waiver and refund of the licensee's application filing fees because of financial hardship.

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, 3 FCC Rcd 3558, 3572-73 (1990). Section 1.1117 further provides that an applicant seeking a waiver of the filing fee requirement include the applicable fee with its waiver request, and also provides that the fee will be returned if the waiver is granted. Id.

¹ Request for Waiver and Refund of Filing Fees filed by Jeffrey L. Burtch and Warren C. Havens (March 9, 2006) (Request).

² See Request at 2, 12. On January 10, 2007 you provided, through counsel, a copy of the bankruptcy case docket, which establishes that the Estate was in bankruptcy proceedings at the time you filed the applications at issue. Letter from John D. McLaughlin, Jr., Young Conaway Stargatt & Taylor LLP (January 10, 2007).

*Give To Beverly
on 4/09/07
R*

Jeffrey L. Burch, Assignor
Warren C. Havens, Assignee

2.

We find that the bankruptcy filing involving the Estate substantiates your claim of financial hardship and demonstrates good cause for waiver and refund of the filing fees at issue here. See MobileMedia Corporation, 14 FCC Rcd 8017, 8027 (1999) (bankruptcy establishes good cause for waiver of filing fee).

A check, made payable to the maker of the original check and drawn in the amount of \$6,985, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Stephens
Chief Financial Officer

Before the
Federal Communications Commission
Washington, D.C. 20554

7611

In the matter of

Form 603 Application of
Assignor: Chapter 7 Bankruptcy Estate of
Net Radio Group Communications, LLC

) File No. 0002482294

)

~~00000RR0G-06-~~
RR0G-06-00007611

To the Office of the Managing Director

Request for Waiver And Refund of Filing Fees
Expedited Action Requested

Request

Assignor Jeffrey L. Burch, Trustee of the Chapter 7 Estate of Net Radio Communications LLC (the "Trustee," the "Estate," "NRG"), Assignor, and Warren C. Havens, the major creditor of the Estate and here the Assignee (together, the "Applicants") submit this request to waive and refund in full the filing fees paid under Section 1.1102 of the Commission Rules (the "Fees") in regards to its filing the above-referenced application (the "Application," the "Refund Request").

In the alternative, if a full waiver and refund is not granted, then the Applicants seek a waiver and refund to the maximum extent the Commission finds appropriate.

This Request is submitted along with the Application, the filing fees due under Section 1.1102 (the "Fees"), and the accompanying Form 159 in accordance with Section 1.1117(e). These are being sent, in accordance with Section 1.1117(c), to the Commissions' lockbox address for the Application set forth in Section 1.1102.¹

¹ To expedite process of the Application, the Applicants are submitting the Fees with the Application rather than, as allowed under FCC rules and procedure on ULS, submitting the

Assignor (Trustee, Chapter 7 Estate of Net Radio Group Communications, LLC)
 Assignee (Warren C. Havens, Lead Creditor in the Estate)
 Request for Fee Waiver, March 9, 2006

The waiver request is made under Section 1.1117 of the Commission Rules,² and the refund request is made under Section 1.1113(5) and 1.1117(e).³ The licenses involved in the Application are all of the FCC licenses held by the Estate (the "Licenses").

Assignee, who is the major creditor in the Estate, is paying the Fees, under a provision in the Licenses Sale (defined below) agreement between Assignor and Assignee, and under such provision may seek a refund of the Fees along with the Assignment application, as is here sought. This provision, and the potential under FCC rules and precedents for a refund of the Fees, enabled the Estate-Assignor and the Estate-Lead-Creditor—Assignee, to agree upon a higher cash price to be paid by Assignee to the Estate, for the benefit of all other creditors of the Estate, including the FCC, as further discussed below. Assignee, the lead creditor in the Estate, was an innocent party in the affairs of NRG and lost over a million dollars of his debt in NRG. Assignee and Assignee's legal counsel, experience in FCC practice, assisted the Estate without charge for his time and cost in having the Licenses transferred to the Estate when the bankruptcy commenced, in the securing from the FCC for the Licenses (and virtually all geographic 220 MHz licenses) an extension of the construction deadline in order to maintain the Licenses to preserve value in the Estate, and in other matters. All of these Assignee actions, and a refund of the Fees, will serve the fundamental public-interest purposes of US Bankruptcy law.

Application without the Fees and with a showing of hardship. (Such showing could be made, and is made herein.)

² Sec. 1.1117 Petitions and applications for review.

(a) The fees established by this subpart may be waived or deferred in specific instances where good cause is shown and where waiver or deferral of the fee would promote the public interest.

³ Under Section 1.1113(5) there will be a "return or refund of charges when a waiver is granted" Under 1.117(e) "[s]ubmitted fees will be returned if a waiver is granted."

Chapter 7 Bankruptcy Status and Liquidation of NRG,
and Related Previous Fee Waiver

See the filing fee waiver request submitted by the Trustee with the application for assignment of all of the Licenses to the Estate (the "Initial Request") for a background of the NRG bankruptcy and bankruptcy court orders establishing the bankruptcy and the Trustee.⁴ This was granted: see Exhibit 2. For similar reasons cited in the Initial Request, the instant Refund Request should be granted, as discussed below.

Along with the Initial Request, the Estate filed a Form 601 request for extension of the construction deadline of all of Licenses affected by the Court's Order for Relief (and a Form 602, reporting ownership by the Estate of these licenses and control by the Trustee). This extension request was based upon the "blanket" (essentially, service-wide) extension request for geographic 220 MHz licenses submitted by Warren C. Havens (the "Havens Request"). The FCC granted the Havens Request⁵ and pursuant thereto, the Estate's extension request. By such, the subject Licenses remain valid and have a November 2007 construction milestone.

Pursuant to bankruptcy procedures and court approval, the Trustee auctioned the Licenses (which were the substantial assets of the Estate). The Licenses were sold to the high bidder, Warren C. Havens, and the sale was approved by the Bankruptcy Court: see Exhibit 1 hereto (the "Licenses Sale"). The Licenses Sale contract contained a provision that, in addition to giving up

⁴ Submitted by Warren C. Havens, as assistant to Jeffrey L. Burch, Esq., Trustee of the Estate, dated March 20, 2004, and delivered by Federal Express to the Managing Director on March 22, 2004. This was granted in a letter on or about June 15, 2005, and the requested refund was issued.

⁵ In the Matter of Request of Warren C. Havens for Waiver or Extension of The Five-Year Construction Requirement For 220 MHz Service Phase II Economic Area and Regional Licensees, *Memorandum Opinion and Order*, DA-04-2100, released July 13, 2004 (by the Chief, Wireless Telecommunications Bureau).

his creditor claims in the Estate (which exceeded 1 million dollars and constituted the vast majority of all claims), the buyer pay a certain amount of cash to the Estate which would allow, along with existing Estate cash, payment of the majority or a large percentage of all other creditor's claims, including the FCC claim. The FCC is a creditor based upon sums owed by NRG in regard to 220 MHz auction withdrawals. Mr. Havens, as the lead creditor organizing the filing of involuntary bankruptcy of NRG, contacted FCC counsel to invite the submission of the FCC claim, which was then filed. See end of Exhibit 2, Declaration of Warren Havens.

This Application is submitted to affect the Licenses Sale. This Licenses Sale was found by the Trustee, Trustee's counsel, and the Court as in the best interests of the creditors and the Estate, and thus fulfilling the important, well-established public-interest purposes of Federal Bankruptcy law. Also, as just noted, this particular sale also benefits the FCC as a creditor and this adds to the public interest benefits of the Licenses Sale. Further, the Licenses Sale is in the public interest since the buyer is an established licensee and controlling-party in licensees in 220 MHz and the adjacent AMTS service,⁶ and has capability and plans to use the Licenses for high public interest purposes (see preceding footnote, as further described below, and in Exhibit 2), and had it not been for the Havens Request, the subject Licenses and many other 220 MHz

⁶ Warren C. Havens is the person with the majority controlling interest in AMTS Consortium LLC, Telesaurus VPC LLC, and Intelligent Transportation and Monitoring Wireless LLC, each of which were high bidders for AMTS geographic licenses in FCC Auctions 57 (2004) and 61 (2005) and combined hold most of the AMTS geographic licenses in the nation (issued or to be issued and fully paid for). These AMTS licenses are in 217-220 MHz, which is adjacent to the Estate's licenses in 220 MHz service. In the Havens Request (see text above), Warren C. Havens successfully argued to the Commission (which was supported by most all commenting parties) that 220 MHz service largely failed due to the failure of 5 kHz wide equipment and related matters, and discussed his (and his LLC's) efforts toward obtaining newer wider-band equipment that would operate in 220 MHz and adjacent spectrum: this is well underway and will utilize AMTS and 220 MHz frequencies. For more, see Exhibit 2.

licenses would have previously expired as indicated above. The Havens Request, submitted to enable the Estate to retain value in its assets for the benefit of innocent creditors to fulfill Bankruptcy law public interest purposes, also fulfilled Commission public interest purposes of extending for good cause most all 220 MHz geographic licenses' construction deadlines by a blanket request and grant, and this saved substantial Commission resources that would otherwise have been spent on probably dozens of individual extension requests.

The NRG Bankruptcy Is Grounds for Relief

The Commission has a well-established policy with regard to bankruptcy generally being grounds to waive application fees, and clearly being so in cases such as NRG's bankruptcy where (i) the applicant is a small entity, (ii) it is clearly financially distressed (in Chapter 7), and as indicated above, after the Licenses Sale (sale of all of the Estate's substantial non-cash assets), it will have cash only for partial payment of creditor claims, *and all other expenditures cut into such payments*, and (iii) the subject fees are very modest in quantity per standards (a waiver cap) set by the Commission.

This policy is set forth In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order* (the "R&O").⁷

iv. Adjustment of Fee Waiver Policies

11. In our NPRM, we addressed the policies applicable to granting fee waivers based on financial hardship.⁸ We emphasized that under existing policy, although evidence of bankruptcy or receivership is generally sufficient to establish financial hardship, case-by-case review of fee waiver requests is necessary to

⁷ MD Docket No. 03-83, released July 25, 2003.

⁸ Footnote in original:

Notice of Proposed Rulemaking, 68 FR 17577 (released April 10, 2003), paragraphs 10-12 (the "NRPM").

determine whether a waiver would be in the public interest, even in bankruptcy cases. We also sought comment on whether we should set a cap on the amount of fees that we will generally waive in circumstances involving bankruptcy and otherwise. We tentatively proposed a cap of either \$500,000 or \$1 million on the amount of fees that would be waived for a single entity and its affiliates.

12. Only one commenter, the Verizon telephone companies (Verizon)[], responded to this proposal. Verizon asserts that the Commission should not grant fee waivers based on bankruptcy. According to Verizon, doing so unfairly shifts the cost of the bankrupt's failure to the Commission and to the bankrupt's competitors, who will have to pay higher fees and suffer competitive disadvantage. . . .

13. Although we share Verizon's concern over the impact that bankruptcies may have on our ability to collect fees, we find that Verizon's proposals go too far. We continue to believe that in appropriate circumstances the public is served by assisting financially distressed telecommunications companies, especially small entities, by granting them relief or partial relief from Section 8 and Section 9 fees, and thereby assisting them in remaining effective competitors in the telecommunications marketplace. We also believe that bankruptcy generally represents sufficient evidence of financial hardship to warrant granting a waiver. Our concerns in this regard are distinct from those taken into account by a bankruptcy court in setting the respective priorities of various types of obligations and discounting them where appropriate.⁹ Bankruptcy law does not limit our ability to forego collecting fees¹⁰ where the public interest warrants, and we therefore act independently of the bankruptcy law to this extent. On the other

⁹ Footnote in original:

Verizon notes that in our NPRM we stated with respect to fees in excess of the proposed cap: "By leaving the ultimate disposition of these large fees to bankruptcy law, rather than waiving them, we believe that we would be giving due regard to our congressionally-mandated obligation to collect regulatory fees. Moreover, we believe that we would also be giving due regard to our practice, approved by the courts, of reconciling our regulatory responsibilities with the goals of the Bankruptcy Act." Verizon contends that we should treat all fees from companies in bankruptcy consistent with this approach. We believe, however, that smaller fees warrant a different public interest balancing than larger fees and that we should continue to grant waivers for smaller amounts. [Underlining added.]

¹⁰ Footnote in original:

See 11 U.S.C. §§ 501, 502(a), 726 (claims have priority only upon creditor's timely filing of a proof of claim).

hand, we continue to believe that very large waivers would excessively impair our ability to comply with our statutory fee collection responsibilities. Even under existing policy, we might decline a request for such a waiver on a case-by-case basis.

14. Additionally, we believe that a cap on waivers would be a useful means of implementing our policy concerns.¹¹ We adopt a cap of \$500,000 applicable both to bankrupt and other regulates asserting financial hardship, and we will amend the rules accordingly.¹² We believe that granting fee waivers of greater than this amount would tend to have a negative impact on our ability to meet our statutory responsibilities. Fees owed above the cap would be subject to the provisions of the Bankruptcy Act in cases of bankruptcy. In other cases of asserted financial hardship, we may consider waiver, partial waiver, or deferral of fees above the cap on a case-by-case basis. As noted in the *NPRM*, in computing the cap we will aggregate all subsidiaries and other affiliated entities of a particular regulatee. Additionally, in computing the cap we will aggregate the total Section 8 application fees and Section 9 regulatory fees for a given fiscal year, including Section 9 fees due in a fiscal year but paid prior to the due date. The cap will apply to all waiver requests pending as of the effective date of the new rule. Adoption of the fee waiver cap does not limit our ability to grant or deny any current pending waiver requests. We anticipate that we will revisit the amount of the cap in subsequent fee rulemakings as warranted by changing conditions. We may also give further consideration to Verizon's proposals if our further experience suggests that this would be desirable.

[Underlining and italics added. Footnotes in original so noted, some deleted.]

The above *R&O* policy decision on fee waivers adopted the Commission's proposal in the preceding *Notice of Proposed Rulemaking*, as follows:¹³

¹¹ Footnote in original:

The fee waiver cap we adopt is intended to limit the circumstances in which financial hardship will be considered as a basis for granting a fee waiver. It does not affect the procedures for processing waiver requests.

¹² Section 1.1116 was amended to reflect the above: see 68 FR 48469, Aug. 13, 2003.

¹³ *Notice of Proposed Rulemaking*, 68 FR 17577 (released April 10, 2003) (the "*NPRM*").

Assignor (Trustee, Chapter 7 Estate of Net Radio Group Communications, LLC)
 Assignee (Warren C. Havens, Lead Creditor in the Estate)
 Request for Fee Waiver, March 9, 2006

iv. Adjustment of Fee Waiver Policies

10. Section 9 of the Communications Act (47 U.S.C. §159) requires the Commission to assess and collect regulatory fees to cover the costs of certain regulatory activities. The statute also specifies when these fees may be waived.¹⁴ Additionally, Section 8 of the Communications Act (47 U.S.C. §158) requires the Commission to collect application fees to reimburse the United States for amounts appropriated to the Commission (see 47 U.S.C. §158(e)). These fees may also be waived.¹⁵ The Commission clarified the general policies applicable to waivers, including those based on financial hardship, in Implementation of Section 9 of the Communications Act.¹⁶ that "We will grant waivers of the fees on a sufficient showing of financial hardship."¹⁷ We further stated that: "It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public." [] Additionally, we explained that "Evidence of bankruptcy or receivership is sufficient to establish financial hardship. . . . Thus, we will waive the regulatory fees for licensees whose stations are bankrupt, undergoing Chapter 11 reorganizations or in receivership." []¹⁸

14 Footnote in original:

Section 9(d) (47 U.S.C. §159(d)) provides that: "The Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest." See also 47 C.F.R. §1.1166 (implementing statutory provision).

15 Footnote in original:

Section 8(d) (2) (47 U.S.C. §158(d)(2)) provides that: "The Commission may waive or defer [payment of an application fee] in any specific instance for good cause shown, where such action would promote the public interest." See also 47 C.F.R. §1.1117 (implementing statutory provision).

16 Footnote in original:

We held generally that we would waive regulatory fees on a case-by-case basis upon a demonstration of: "'extraordinary and compelling circumstances' outweighing the public interest in recouping the cost of the Commission's regulatory services from a particular regulatee." 9 FCC Rcd at 5344 ¶ 29. See also 9 FCC Rcd 5333 (1994), recon. granted, 10 FCC Rcd 12759 (1995)

17 Footnote in original:

10 FCC Rcd at 12761 ¶ 13.

18 Footnote in original:

Assignor (Trustee, Chapter 7 Estate of Net Radio Group Communications, LLC)
 Assignee (Warren C. Havens, Lead Creditor in the Estate)
 Request for Fee Waiver, March 9, 2006

11. Although fee waivers will generally be given in cases of financial hardship, we nevertheless note that even under our current policies, in some circumstances a significant question may exist as to whether bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions. A policy of automatically granting a waiver, in the case of large entities owing millions of dollars in fees, for example, might have significant impact on the Commission's overall ability to collect fees to reimburse the government for its costs as required by law. Therefore, under such circumstances a waiver may well not promote the public interest, as provided in sections 8(d)(2) and 9(d). We therefore emphasize that under the statutory waiver provisions, case-by-case review of fee waiver requests is necessary to determine the public interest, even in bankruptcy cases.

12. We also seek comment on whether we should set a cap on the amount of fees that we will generally waive in circumstances involving bankruptcy or otherwise. [See R&O decision on this, above.]

[Underlining, italics, and item in bracket added. Footnotes in original so noted, some deleted.]

Above, in the *NPRM*, the Commission makes clear that generally bankruptcy is grounds for waiver of Section 8¹⁹ applications fees—such as the instant Application fees—not only annual regulatory fees, and in this regard the leading precedent is cited, Mobilemedia Corp (see footnote).

In sum, in the *NPRM* and the subsequent *R&O* essentially adopting the *NPRM*'s proposal, the Commission made clear (i) that the exceptions to the general policy of granting Section 8 application fee waivers in cases of applicant bankruptcy are “large entities owing millions of dollars in fees,” (ii) that the policy clearly applied to “financially distressed telecommunications companies, *especially small entities,*” and (iii) that it “should continue to

See also Mobilemedia Corp., 14 FCC Rcd 8017, 8027 ¶ 40 (1999) (applying this policy to Section 8 application fees). [Second underlining added. Herein, “*Mobilemedia.*”]

grant waivers for smaller amounts." This Request squarely satisfies the standards set forth in the above policy, and in numerous Commission and DA precedents implementing the above, prior to and after the above *NPRM* and *R&O*.

For example, in *MobileMedia*,²⁰ cited by the Commission in the *NPRM* above, the Commission found:

39. Application fees. MobileMedia seeks a waiver of several thousand dollars in application fees paid in conjunction with the applications related to the reorganization. MobileMedia submits that relief from the fees is appropriate to enable a bankrupt company to conserve its resources for the benefit of innocent creditors as contemplated by the bankruptcy code. The Bureau does not oppose this request.

40. 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. We find that MobileMedia's bankruptcy establishes good cause for waiver of the filing fee. Cf. Implementation of Section 9 of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, 10 FCC Rcd 12759, 12762 (1995) (finding evidence of bankruptcy or receivership sufficient to establish financial hardship for purposes of waiver of regulatory fees). Moreover, waiver of the fee will serve the public interest by enabling Mobilemedia to preserve assets that will accrue to innocent creditors. Thus, under the circumstances of this case, we find that waiver of the filing fee is appropriate.

[Underlining added.]

In the instant case, not only is NRG a much smaller company than MobileMedia, but also the innocent principal creditor, Mr. Havens is paying the FCC Fees involved, providing by this benefits to the Estate and the other creditors including the FCC (see above). Thus, the above rational of the Commission is especially supportive of grant of this Refund Request.²¹

²⁰ Mobilemedia Corp., 14 FCC Rcd 8017, 8027 ¶ 40 (1999).

²¹ Moreover, Mr. Havens has prepared and submitted to the Commission, at his cost, a petition to extend or waive the five-year construction requirement for EA and Regional 220 MHz license, in part to benefit the Estate by provide the foundation for the instant Application to

Failure of 220 MHz Equipment and Service Opportunities
Also Justify Grant of Relief, and Such Grant Would Be
Consistent with the No-Fees Policy for Like "Difficult" Services

In addition, the circumstances in which the Estate requested and was granted an extension of its 220 MHz licenses (as indicated above), also warrant grant of this Request under the above-stated policy, independent of the bankrupt status described above. These circumstances are described in detail in the Havens Request which the Estate cites as the basis for its extension request, and reflected in the FCC *MO&O* granting this (see FN 5 above), in sum: the 220 MHz service is itself "bankrupt"—all of the trunked radio equipment made for 220 MHz trunked licenses failed and has been discontinued, and without this, the business cases and attempts failed. The Trustee diligently acted to preserve the Licenses and then sold them in the Licenses Sale to a qualified party, Assignor Warren C. Havens, to use for the Commission's public-service goals for these licenses. However, currently, the above-noted failed condition of 220 MHz trunked equipment and depressed business prospects impose substantial economic hardships that warrants grant of this Request. Assignor is acting diligently at substantial cost to develop quality advanced equipment for use in the 220 MHz service and adjacent AMTS service: see Declaration of Mr. Havens in Exhibit 2 hereto.

The Commission has recognized that there should be no application fees imposed upon radio services that have special burdens. For example, in the geographic "Multilateration" Location and Monitoring Service, there are no fees charged. LMS is relatively new service where licenses have substantial technical hurdles and regulatory limitations, including uses of the

extend the construction deadline of the Estate's license (the "Havens Petition"). See Public Notice DA 04-122, released January 21, 2004. As stated in that petition, he is also active in developing new advanced 220 MHz equipment needed to make viable construction and operation of the Estate's licenses possible, to add value to the licenses, and to enable them to be used for the Commission's purpose of valuable services to the public.

Assignor (Trustee, Chapter 7 Estate of Net Radio Group Communications, LLC)
Assignee (Warren C. Havens, Lead Creditor in the Estate)
Request for Fee Waiver, March 9, 2006

spectrum by unlicensed Part 15 devices, restrictions on interconnection, etc. Similarly, while not initially planned by the Commission, the 220 MHz service did have from the start similar serious hurdles and restrictions, as became manifest in time and as were detailed in the Havens Request and in the Commission's order granting that request. This is a further reason to grant this Request, in addition to the reasons noted above that 220 MHz equipment vendors and equipment failed, and that Assignee is in full bankruptcy liquidation, with many innocent creditors incurring major losses.

Notification Rather Than Application for Approval
Further Justifies Grant of Relief

The Chapter 7 bankruptcy status of NRG, including Estate's holding and the Trustee controlling the FCC licenses formerly held by NRG by involuntary assignment, was created by action of the United States Bankruptcy Court independent of action or approval by the Federal Communications Commission. FCC fees are charged to offset costs of the FCC in reviewing, considering, and making determinations of applications for approval or consent.²² Where only a notification is involved, it should not charge fees, or at the most should charge much lower fees. As noted above, the FCC did grant the Initial Request and refund the application fees involving this involuntary assignment. The instant Application is to complete the bankruptcy process, and whereas this is a voluntary sale in that the Trustee, per bankruptcy law procedure, found the highest and best offer and accepted it (the instant Licenses Sale) it is the requirement of Chapter 7 Bankruptcy to liquidate the Estate, and this Licenses Sale is for that purpose. There is no meaning to the initial involuntary assignment of the Licenses without the eventual liquidation

22

See 47 U.S.C. §159(a).

Page 13

Assignor (Trustee, Chapter 7 Estate of Net Radio Group Communications, LLC)
Assignee (Warren C. Havens, Lead Creditor in the Estate)
Request for Fee Waiver, March 9, 2006

sale of the Licenses. Accordingly, for the same reason that the initial assignment justified a refund of the FCC application fees, grant of this Refund Request is warranted.

Conclusion

Accordingly, due to the above-described bankruptcy situation, the above-noted failed state of 220 MHz equipment and business opportunities (which Assignee, and his LLCs, are diligently endeavoring to solve), the benefit to the FCC as creditor in the Estate of the Licenses Sale under the subject Application, and the other reasons given above, this Refund Request should be granted and the Application filing fees promptly refunded in full. In the alternative, if a full waiver and refund is not granted, then the Commission should waive and refund the Fees to the extent it finds appropriate.

Expedited Action Request

Petitioner seeks expedited action for the financial-hardship reasons and other reasons described above.

[Execution on next page.]

Assignor (Trustee, Chapter 7 Estate of Net Radio Group Communications, LLC)
Assignee (Warren C. Havens, Lead Creditor in the Estate)
Request for Fee Waiver, March 9, 2006

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Respectfully submitted,

[Submitted electronically. Signature on file.]

Jeffrey L. Burtch
Assignor
March 9, 2006

Trustee, Chapter 7 Estate of Net Radio Group Communications, LLC
Cooch & Taylor
824 Market Street, Suite 1000
Wilmington, DE 19801
Telephone: 302-652-3641
Fax: 302-652-5379

[Submitted electronically. Signature on file.]

Warren C. Havens,
Assignee (and principal creditor, and the party paying the Fees)

March 9, 2006

2649 Benvenue Avenue, #1
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Telephone: 510- 841-2220 x 30, or 848-7797
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Exhibits 1 and 2 follow.