



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> 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- 07-2792

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

## PUBLIC NOTICE

Released: June 26, 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:

**Absolute Broadcasting, LLC WGAM (AM) and WSMN (AM)** – Request for waiver of FY 2006 late payment penalty. **Denied** (May 24, 2007) [See FY 2006 Report and Order at 8107, ¶ 52; 47 U.S.C. § 159(c); 47 C.F.R. § 1.1164]

**EchoStar Satellite LLC** - Request for waiver of application fees. **Granted** (May 09, 2007) [See 47 U.S.C. §158(d)(2)]

**Dee G. Meek** – Request waiver of application fee. **Granted** (May 10, 2007) [See 47 U.S.C. §158(d)(2); 47 C.F.R. §1.1117(a); Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 5 FCC Rcd 3558, 3572-73 (1990)]

**United States Wireless Systems, Inc. stations KNSC883, KNSC881, KNSC879, KNSC882, and KNSC884** – Request for deferment and waiver of FY 2006 regulatory fee. **Granted** (May 09, 2007) [See Assessment and Collection of Regulatory Fees for Fiscal Year 2006, 21 FCC Rcd 8092, 8106, ¶ 50(c) (2006) (“Wireless Services Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services . . . : Fees must be paid for any authorization that was issued on or before October 1, 2005.”); 47 C.F.R. §1.1152]

**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

MAY 24 2007

DOCKET FILE COPY ORIGINAL

OFFICE OF  
MANAGING DIRECTOR

Jerry DiGrezio, General Manager  
Absolute Broadcasting, LLC.  
141 Main Street  
Nashua, NH 03060

Re: Request for Waiver of Late Payment  
Penalty for FY 2006 Regulatory Fee  
Fee Control No. RROG-06-00008018

Dear Mr. DiGrezio:

This is in response to your request sent on behalf of Absolute Broadcasting, LLC (Absolute) for waiver of the late payment penalty associated with the fiscal year (FY) 2006 regulatory fees for Stations WGAM-AM and WSMN-AM.<sup>1</sup> Our records reflect that on September 29, 2006, subsequent to the September 19, 2006 payment deadline,<sup>2</sup> we received a \$2,400.00 payment for Absolute's FY 2006 regulatory fees, but that we have not yet received the \$600.00 penalty. As indicated below, your request for waiver of the 25 per cent penalty is denied.

In support of your request, you assert that on September 15, 2006, you "wrote 4 checks of which two were mailed that day."<sup>3</sup> You state that check number 2077 was deposited on September 19, 2006 and that the check to the FCC, number 2074, did not clear on the September statement.<sup>4</sup> You theorize that the FCC received your check on time but held it for some reason and did not deposit it until sometime later. You remark that Absolute's bank balance on September 15, 2006 was \$39,959.19 so there was no business reason to hold the check.<sup>5</sup> As evidence, you provide copies of pages 3, 6 and 7 of the September

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<sup>1</sup> Waiver Request from Jerry DiGrezio, General Manager, Absolute Broadcasting, LLC, dated October 12, 2006 (Request).

<sup>2</sup> *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*, released 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").

<sup>3</sup> Request at 1.

<sup>4</sup> *Id.* We assume you are implying that check numbers 2074 and 2077 are the two checks that you mailed on September 15, 2006. As discussed below, however, the date of receipt of a regulatory fee payment at the designated lockbox at the Mellon Bank determines its timeliness, not the date of mailing or postmark. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, Report and Order, 21 FCC Rcd 8092, 8107, ¶ 52 (2006) (*FY 2006 Report and Order*); 47 C.F.R. § 1.1164

<sup>5</sup> Request at 1.

bank statement for Absolute's TD Banknorth, N.A. account, showing the daily account activity, the daily balance, and copies of the cleared checks.<sup>6</sup>

According to our records, we received check number 2074 made payable to the FCC for \$2400.00 on September 20<sup>th</sup> at our headquarters at 445 12<sup>th</sup> St., S.W., Washington, D.C. 20554.<sup>7</sup> Our records indicate further that on September 26, 2006, the staff of the Commission's Accounting Processing Group filled out an FCC Form 159 and forwarded it along with the \$2,400.00 check to the Mellon Bank with instructions to "process without signature." The Mellon Bank date stamped the FCC Form 159 on September 28, 2006 and processed the check on September 29, 2006.

The Commission's rules are clear that licensees such as Absolute are required to pay to the Commission an annual regulatory fee in a timely manner.<sup>8</sup> 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.<sup>9</sup> 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."<sup>10</sup> *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*, 21 FCC Rcd at 8107, ¶ 52.<sup>11</sup>

<sup>6</sup> Attachments to Request: Statement of Account, Absolute Broadcasting, LLC, TD Banknorth, N.A., Statement Period: "Sep 01 2006-Sep30 2006," pp 3, 6, 7.

<sup>7</sup> The check was accompanied by two printed pages from the FCC's Website, dated September 13, 2006, entitled "2006 AM & FM Radio Station Fees Search Page," one page each for Station WGAM and Station WSMN. It did not include an FCC Form 159. See 47 C.F.R. § 1.1157 (c) (requiring an FCC Form 159, Remittance Advice, to accompany regulatory fee payments).

<sup>8</sup> *FY 2006 Report and Order*, at 8107, ¶ 52; 47 U.S.C. § 159(c); 47 C.F.R. § 1.1164.

<sup>9</sup> *Id.*

<sup>10</sup> *Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, Report and Order, 9 FCC Rcd 5333, 5353, ¶ 59 (1994).

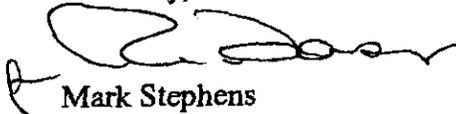
<sup>11</sup> See also 47 C.F.R. § 1.1159 (stating that regulatory fee payments must be directed to the addresses set forth in the rules); 47 C.F.R. § 1.1153 (setting out filing locations for payment of regulatory fees for mass media services, specifying post office boxes at the Mellon Bank in Pittsburgh, Pennsylvania).

Your request does not indicate or substantiate compliance with this obligation. As a Commission licensee, Absolute 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.<sup>12</sup>

Since Absolute did not meet its obligation to file its regulatory fees to be timely received by the Commission by September 19, 2006, the last date for payment of FY 2006 fees,<sup>13</sup> we deny your request for waiver of the penalty for late payment of its FY 2006 regulatory fees.

Payment of Absolute's penalty of \$600.00 is now due. It should be submitted, together with an FCC Form within 30 days of 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 Stephens  
Chief Financial Officer

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<sup>12</sup> 47 U.S.C. §159(c).

<sup>13</sup> See note 2, *supra*.

**Fax**

**ABSOLUTE BROADCASTING, LLC**

WGAM - 900 The Game  
WSMN - 1590  
WGAM - 1250 The Game  
141 Main Street  
Nashua, New Hampshire 03060  
(603) 880-0502 Fax: (603) 880-0278

8018  
RROG-06-0000-8017

To: Mr. Steven French

Re: F.C.C. Fine

Date: October 12, 2006

Fax Number: 202-418-7869

Number of Pages (including cover): 4

**Notes:**

Dear Mr. French:

I am writing concerning the fine proposed by the F.C.C. On September 15, 2006 I wrote 4 checks of which two were mailed that day. Please note that check #2077 was deposited on September 19, 2006. Check # 2074 which was made payable to the F.C.C. did not clear on this statement. My suspicion is that they received the check in time however it was held for some reason and not deposited until sometime later. Please also note that the account balance on September 15, 2006 was \$39,050.19 so there was no business reason to hold the check.

In light of the foregoing facts I am asking for a waiver of the penalties imposed.

Thank you for your assistance in this matter.

  
Jerry DiGrezio  
General manager

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 9 2007

OFFICE OF  
MANAGING DIRECTOR

Pantelis Michalopoulos, Esq.  
Petra A. Vorwig, Esq.  
Steptoe & Johnson LLP  
1330 Connecticut Ave., N.W.  
Washington, DC 20036-1795

Re: EchoStar Satellite L.L.C.  
Petition for Waiver of Application Fees  
Fee Control Number RROG-07-00008408

Dear Counsel:

This is in response to your request for waiver of application fees filed March 1, 2007 (*Request*), submitted on behalf of EchoStar Satellite L.L.C. (EchoStar) in connection with an application for consent to the *pro forma* assignment of authority to operate one million receive-only earth stations with the EchoStar 5 satellite to EchoStar's wholly-owned subsidiary, EchoStar Satellite Operating Corporation (ESOC).<sup>1</sup> You request that the Commission find that no fee is required, *i.e.*, waive these fees, or find that the Very Small Aperture Terminal (VSAT) assignment application fee of \$2,380.00 is "appropriate."<sup>2</sup> Our records reflect that EchoStar paid a \$2,380.00 filing fee with the *Application*. As discussed herein, we grant your request and accept the proffered fee payment.

You recite that EchoStar requests consent to assign its authorization for one million technically identical receive-only earth station antennas "to implement an internal corporate restructuring."<sup>3</sup> You state that in the absence of any provision under the Commission's rules specifying a charge for this type of application in the DBS service, the application could be subject either to the \$2,380.00 application fee to assign a fixed satellite VSAT system under Section 1.1107(6)(c), 47 C.F.R. § 1.1107(6)(c), or the \$475.00 application fee to assign the first of the one million receive-only earth stations and the \$160.00 fee for each of the additional 999,999 stations under Section 1.1107(5)(c), 47 C.F.R. § 1.1107(5)(c), for a total fee of \$160,000,315.00.<sup>4</sup> You note that "[t]he Commission has granted a similar waiver for EchoStar's initial application [to operate the one million receive-only earth stations] based on its similarity to a VSAT

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<sup>1</sup> *Request* at 1 (citing *EchoStar Pro Forma Assignment Application*, File No. SES-ASG-\_\_\_\_\_-\_\_\_\_\_- (filed Feb. 28, 2007) (*Application*)).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

system.”<sup>5</sup> Citing *Streamlining the Commission’s Rules and Regulations for Satellite Application and Licensing Procedures*, 11 FCC Rcd 21581, 21592 (1996), you assert that EchoStar’s system is consistent with the Commission’s definition of “VSAT networks which are networks of technically identical small antennas that generally communicate with a larger hub station and operate in the 12/14 GHz frequency bands.”<sup>6</sup> You aver that “many of the processing activities required to review the *pro forma* assignment . . . are simply not required in reviewing EchoStar’s *Application*[,] . . . including, f[or] example [that] the Commission need not review 1,000,000 different stations to grant [the *Application*].”<sup>7</sup> You also maintain that the Commission has accepted application fees for VSAT networks in similar contexts.<sup>8</sup>

The Commission has discretion to waive filing fees “in any specific instance for good cause shown, where such action would promote the public interest.”<sup>9</sup> We construe this waiver authority narrowly, and limit its application to only those situations where the applicant has made the requisite showing of good cause and demonstrated that the action would promote the public interest.

In the *EchoStar Letter Decision*, the Office of Managing Director (OMD) observed that the Commission previously has noted the special circumstances among earth station licenses to receive satellite transmissions, including the processing extended to large numbers of “technically identical small antenna earth station facilities.”<sup>10</sup> OMD therefore found that, based on the circumstances of EchoStar’s application, EchoStar’s plan

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<sup>5</sup> *Id.* at 3 (citing Letter from Mark A. Reger, Chief Financial Officer (CFO), Office of Managing Director (OMD), FCC, to Pantelis Michalopoulos, Esq., *et al.*, (May 23, 2005) (*EchoStar Letter Decision*)).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 4 (stating that “the Commission only needs to review one set of technical parameters for all of the technically identical earth stations”).

<sup>8</sup> *Id.* at 5. In support, you cite *DIRECTV Enterprises*, 19 FCC Rcd 15529 (International Bur. 2004) (granting DIRECTV’s request for blanket authorization for one million receive-only earth stations to provide “local-into-local” signals to U.S. consumers using a DIRECTV satellite operating pursuant to a Canadian space station authorization issued to Telesat Canada) and *Digital Broadband Application Corp.*, 18 FCC Rcd 9455 (International Bur. 2003).

<sup>9</sup> 47 U.S.C. §158(d)(2).

<sup>10</sup> See *EchoStar Letter Decision* at 2 (quoting *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Report and Order*, 2 FCC Rcd 947, ¶¶ 245-248 (1987)).

comports with the Commission's expressed intent in the *DISCO II* decision.<sup>11</sup> OMD explained that, as in that situation, "Commission staff will expend fewer resources and will be able to more efficiently process EchoStar's application because the multiple earth stations are technically identical."<sup>12</sup> OMD therefore found "that the public interest is served in permitting a blanket application and waiving the fees that would have been required to accompany one million separate license requests."<sup>13</sup> For the same reasons supporting OMD's decision to grant EchoStar a waiver of the application fees in the *EchoStar Letter Decision*, we find that the public interest is served in waiving the fees that would have been required to accompany one million separate applications to assign the earth stations at issue here.

Your request is granted to the extent stated herein and the Commission accepts your check of \$2,380.00. If you have any questions concerning this letter, please call the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
Chief Financial Officer

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<sup>11</sup> See *id.* (citing *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, Report and Order*, 12 FCC Rcd 24094, ¶¶ 201-204 (1997) (*DISCO II*)).

<sup>12</sup> See *EchoStar Letter Decision* at 3.

<sup>13</sup> See *id.* In reaching its decision, OMD cited Letter from Mark A. Reger, CFO, OMD, FCC, to Gary M. Epstein, Esq., *et al.* (dated June 15, 2004) and Letter from Mark Reger, CFO, OMD, FCC, to Patricia J. Paoletta, Esq., Todd M. Stansbury, Esq., and Jennifer D. Hindin, Esq. (dated June 24, 2002).



such fees may be waived where good cause is shown and the public interest would be served.<sup>4</sup>

As demonstrated below, good cause exists for, and the public interest would be served by, waiver of fees in this case because the application fee would not be commensurate with the Commission's actual costs of processing EchoStar's Application and would represent a regulatory barrier to EchoStar's proposed assignment. If the Commission determines that a fee is required, EchoStar requests that the Commission find that the "VSAT" application fee of \$2,380 is appropriate. To avoid any delays in processing, EchoStar has already paid the \$2,380 fee, to which the instant request to provide service to up to a million receive-only dishes is similar.

## **I. BACKGROUND**

EchoStar is requesting consent to assign its authorization for 1,000,000 receive-only earth station antennas in order to implement an internal corporate restructuring. The Commission's Rules do not designate any specific charges for this type of application being filed in the DBS service. The schedule of Commission fees includes the following charges for similar applications:

- Assignment Application for a Fixed Satellite Very Small Aperture Terminal (VSAT) System = \$2,380.00<sup>5</sup>
- Assignment of Receive-Only Earth Stations = \$475.00 for the first station and \$160.00 for each additional station.<sup>6</sup>

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<sup>4</sup> 47 C.F.R. § 1.1117; 47 U.S.C. § 158(d)(2).

<sup>5</sup> 47 C.F.R. § 1.1107(6)(c).

<sup>6</sup> 47 C.F.R. § 1.1107(5)(c).

Even setting aside the *pro forma* nature of the instant application, EchoStar's network of DBS earth stations is most like a VSAT system, it should therefore be subject to at most the \$2,380.00 application fee for an assignment application for a VSAT system. The Commission has granted a similar waiver for EchoStar's initial application based on its similarity to a VSAT system.<sup>7</sup>

EchoStar's system architecture consists of as many as 1,000,000 technically identical earth stations operating in the DBS portion of the Ku-band. This architecture is consistent with the FCC's definition of VSAT networks as networks of technically identical small antennas that generally communicate with a larger hub station and operate in the 12/14 GHz frequency bands.<sup>8</sup> Because EchoStar believes that its system is most like a VSAT network, it has paid the \$2,380.00 application fee to avoid processing delays. However, if the Commission determines that the fee for receive-only earth stations applies to each of EchoStar's 1,000,000 consumer units, EchoStar seeks a waiver of that \$160,000,315.00 application fee.

## **II. GOOD CAUSE EXISTS FOR, AND THE PUBLIC INTEREST WOULD BE SERVED BY, WAIVER OF THE RECEIVE-ONLY EARTH STATION APPLICATION FEE**

The Commission has the authority to waive application fees where -- such as here -- good cause is shown and the public interest would be served.<sup>9</sup> As demonstrated below, a fee

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<sup>7</sup> See Letter from Mark E. Reger, Chief Financial Officer, FCC, to Pantelis Michalopoulos, Counsel for EchoStar Satellite L.L.C., dated May 23, 2005.

<sup>8</sup> See *Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, Order, 11 FCC Rcd 21581, 21592 (1996).

<sup>9</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

of over \$160 million would be prohibitively high for EchoStar to effect its *pro forma* assignment and would not be commensurate with Commission processing resources.

**A. FCC Application Fees are Intended to Recover the Costs of Standard Application Processing**

The Commission's schedule of application fees is intended to reimburse the government for the work involved in providing certain regulatory services associated with processing applications. In setting the fees, the Commission has noted that "the charges represent a rough approximation of the Commission's actual cost of providing the regulatory actions listed" and that "the very core of this effort is to reimburse the government -- and the general public -- for the regulatory services provided to certain members of the public."<sup>10</sup> However, in certain instances, the Commission's schedule of filing fees may not reasonably approximate the costs involved in handling a particular application or may not otherwise serve the public interest. For this reason, the Commission's Rules and the Act allow for parties to seek a waiver of the application fees.<sup>11</sup>

A filing fee waiver is warranted here because many of the processing activities required to review the requested *pro forma* assignment -- the costs of which the application fees are designed to recover -- are simply not required in reviewing EchoStar's Application. For example, the Commission need not review 1,000,000 different stations to grant EchoStar's Application. Rather, as in the case of a VSAT network, the Commission only needs to review one set of technical parameters for all of the technically identical earth stations -- or would need

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<sup>10</sup> *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, Report and Order, 2 FCC Rcd 947, 948 (1987).

<sup>11</sup> *See supra* note 4.

to if this were not a *pro forma* request. The Commission also has already evaluated the financial and technical qualifications of EchoStar and ESOC and has previously consented to the assignment of several other EchoStar licenses to ESOC.<sup>12</sup>

In similar contexts, the Commission has accepted application fees for VSAT networks. *See, e.g., Application of DIRECTV Enterprises, LLC*, DA 04-2526 (rel. Aug. 13, 2004) (approving application in which applicant paid VSAT application fee for 1,000,000 receive-only terminals to be used for DBS service from a Canadian satellite); *see also In the Matter of Digital Broadband Application Corp.*, Order, 18 FCC Rcd 9455 (2003) (approving application in which applicant paid VSAT and fixed satellite transmit/receive earth station application fees for one hub earth station to be used with one million two-way FSS and DBS service from Canadian satellites). Thus, the \$2,380.00 application fee paid for this Application would be consistent with past practice and fairly compensate the Commission for the costs involved in its review.

**B. The Public Interest Would Be Served by Granting the Requested Fee Waiver**

In addition to being supported by the requisite good cause, granting EchoStar's request for a waiver of application fees for its Application is also consistent with the public interest. As described in the Application, the assignment of the licenses will allow EchoStar to implement internal corporate and accounting improvements and yield significant other benefits, many of which will be passed on to ESOC's customers.

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<sup>12</sup> See Public Notice, File Nos. SAT-ASG-20050623-00134, SAT-ASG-20050623-00135, DA 05-1931 (rel. July 1, 2005); Public Notice, File Nos. SES-ASG-20050623-00811, SES-ASG-20050624-00814, Report No. SES-00726 (rel. June 29, 2005).



FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

February 2007

OFFICE OF  
MANAGING DIRECTOR

Mr. Dee G. Meek  
3655 Oak Bay Road  
Port Hadlock, WA 98339

Re: Call Sign WBN3743  
Request for Waiver of Application Fee  
Fee Control No. RROG-06-00007669

Dear Mr. Meek:

This is in response to your request dated August 10, 2006 (*Request*) for a waiver of the \$55.00 application fee to modify the license for Call Sign WBN3743 to add a very high frequency (VHF) maritime radio with Digital Selective Calling (DSC) capabilities (*Application*). Our records reflect that you have not paid the application fee at issue here. For the reasons stated herein, we grant your request.

You recite that you are a member of the United States (U.S.) Coast Guard Auxiliary (Auxiliary)<sup>1</sup> in Port Ludlow, Washington and that your boat, "Elmore," "is a licensed Coast Guard Facility, that is used for search and rescue, environmental and safety patrolling, as well as training with the active Coast Guard of both the U.S. and Canada."<sup>2</sup> You state that "the Auxiliary is encouraging all members with boats to utilize radios with . . . [Digital Selective Calling] capabilities that would permit faster and more secure communication."<sup>3</sup> You include a letter dated May 31, 2002, from the U.S. Coast Guard entitled "New Operational Vessel Facility Transmittal Sheet" approving your vessel as an "operational facility" with the U.S. Coast Guard through April 30, 2003.<sup>4</sup> A handwritten note on that letter states that "[t]his status has been renewed every year since, and is still current."<sup>5</sup>

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<sup>1</sup> The Auxiliary's website describes itself as a non-profit, section 501(c)(3) organization incorporated under the laws of the District of Columbia and composed entirely of volunteers. See <http://www.cgauxa.org>.

<sup>2</sup> *Request* at 1.

<sup>3</sup> *Id.*

<sup>4</sup> See Letter from Commander, Thirteenth Coast Guard District, U.S. Coast Guard, to Dee G. Meek (May 31, 2002).

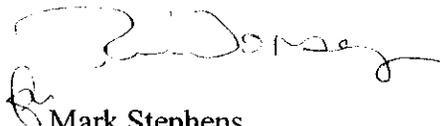
<sup>5</sup> *Id.*

The Commission has discretion to waive filing fees upon a showing of good cause and a finding that the public interest will be served thereby.<sup>6</sup> We construe our waiver authority under section 8 of the Communications Act, 47 U.S.C. §158(d)(2), narrowly and will grant waivers on a case-by-case basis to specific applicants upon a showing of "extraordinary and compelling circumstances."<sup>7</sup>

Our records reflect that in a Notice of Dismissal dated March 21, 2007, the Wireless Telecommunications Bureau found your *Application* procedurally defective and dismissed it without prejudice to refile a procedurally perfected application in accordance with section 1.934 of the Commission's rules, 47 C.F.R. §1.934.<sup>8</sup> You thereupon immediately filed a revised version of the *Application*, along with the appropriate filing fee, which the Bureau granted.<sup>9</sup> Under the circumstances of this case where your original application was dismissed without prejudice and you subsequently filed the appropriate application fee with the revised application, we find that a waiver of the original application filing fee is warranted. We therefore grant your request for a waiver of the \$55.00 application filing fee associated with the originally-filed application.

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

Sincerely,

  
Mark Stephens  
Chief Financial Officer

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<sup>6</sup> See 47 U.S.C. §158(d)(2); 47 C.F.R. §1.1117(a); *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 5 FCC Rcd 3558, 3572-73 (1990).

<sup>7</sup> See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 958 (1987) (1987 Report and Order); *Sirius Satellite Radio, Inc.*, 18 FCC Rcd 12551 (2003).

<sup>8</sup> See FCC, Wireless Telecommunications Bureau, *Notice of Dismissal*, FCC Form 699, to Dee G. Meek (Mar. 21, 2007) ("The application was submitted to the Commission without an original signature or with an invalid signature.").

<sup>9</sup> See Email from Scot Stone to Joanne Wall (Mar. 21, 2007).

7669

PROC-06-00007669

Managing Director  
Federal Communications Commission  
445 12<sup>th</sup> st., SW. Room 1A625  
Washington, DC 20554

Subject: Fee waiver for license modification

Dear Sir

10 Aug 2006

I am applying for a waiver of the \$55.00 fee for a modification of the existing license for my boat "ELMORE". I plan on adding a VHF radio that has DSC capabilities.

I am a member of U.S. Coast Guard Auxiliary, District 13, Division 4, Flotilla 41, in Port Ludlow, Washington. My boat is a licensed Coast Guard Facility, that is used for search and rescue, environmental and safety patrolling, as well as training with the active Coast Guard of both the U.S. and Canada.

In an effort to improve our operational efficiency, the Auxiliary is encouraging all members with boats to utilize radios with the DSC capabilities that would permit faster and more secure communication.

I have enclosed a letter of acceptance from the Coast Guard, when my boat was first accepted as a facility, and a letter from the Coast Guard thanking our participation in a coordinated Coast Guard/Naval exercise, in which several of our facilities were used.

Thank you for your consideration



Dee G. Meek  
SO-MT Div 4, FSO-MT Flot 41



THE COMMANDANT OF THE UNITED STATES COAST GUARD  
WASHINGTON 20593

18 August 2005

The Commandant of the Coast Guard takes pleasure in presenting the  
COAST GUARD MERITORIOUS TEAM COMMENDATION to:

THE EXERCISE SEAHAWK SEAWARD  
OPPOSITION FORCES TRAINING TEAM

For services as set forth in the following

CITATION:

"For exceptionally meritorious service from 8 August 2005 to 18 August 2005, while serving on the Exercise Seahawk Seaward Opposition Forces Training Team provided by the Coast Guard Auxiliary of Coast Guard District Thirteen. During this period, the Seaward Training Team distinguished themselves by providing round-the-clock, on-the-water simulation of terrorist threats in a training environment for Naval Coastal Warfare units participating in exercise Seahawk in the waters surrounding Naval Magazine Indian Island. This team provided realistic scenarios which enabled Coast Guard and Navy littoral warfare units of Naval Coastal Warfare Squadron THREE ZERO and its subordinates to complete 78 mission essential training events in the areas for force protection of a deep water port while deployed abroad. The training this team made possible directly improved the ability of the involved units to evaluate and differentiate hostile and friendly contacts, and to defend themselves, personnel and equipment under their command. Ultimately, this prepared them in saving lives and equipment when these Coastal Warriors are sent into harm's way. This also allowed the Naval Coastal Warfare Units to prepare for real world operations they will face in their pending deployment to the Middle East. The dedication, pride and professionalism displayed by the Seahawk 2005 Opposition Forces Training Team are in keeping with the highest traditions of the United States Coast Guard."

The Operational Distinguishing Device is authorized.

For the Commandant,

A handwritten signature in black ink, appearing to read "Mark S. Zecca".

MARK S. ZECCA

Captain, U. S. Coast Guard

Commander, Naval Coastal Warfare Squadron THREE ZERO

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 9 2007

OFFICE OF  
MANAGING DIRECTOR

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

Re: United States Wireless Systems, Inc.  
FY 2006 Regulatory Fees  
Fee Control No. RROG-06-00008015

Dear Mr. Stenger:

This letter responds to your request filed September 8, 2006 (*Request*), on behalf of United States Wireless Systems, Inc. (USWS) for a deferment and waiver of the fiscal year (FY) 2006 regulatory fees for Broadband Radio Service (BRS) stations KN5C883, KN5C881, KN5C879, KN5C882, and KN5C884 (the Stations).<sup>1</sup> Our records reflect that USWS has not paid the regulatory fees at issue here. For the reasons set forth below, we find that USWS does not owe FY 2006 regulatory fees for the Stations.

You recite that "USWS went into Chapter 11 bankruptcy in 2001 and obtained deferrals of its regulatory fees for 2001-2003."<sup>2</sup> You state that "USWS emerged as a reorganized company in 2004 and paid its regulatory fees for 2004 . . . [but] was unable to pay its regulatory fees for 2005 and sought deferment thereof[.]"<sup>3</sup> You assert that "[s]ince then, the FCC approved the sale of some assets to Sprint but an application to sell the . . . stations to Sprint remains pending, as well as the request to reinstate these call signs into ULS [the Universal Licensing System]."<sup>4</sup> You "request[] a fee deferment for 2006 until the call signs are reinstated and the sale to Sprint is consummated."<sup>5</sup>

On July 29, 2004, the Commission released a Report and Order comprehensively restructuring the rules with respect to BRS and Educational Broadband Service (EBS),

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<sup>1</sup> In subsequent correspondence, you state that these stations "were licensed to provide MDS [*i.e.*, Multipoint Distribution Service] (now known as Broadband Radio Service or BRS)." See Email from James Stenger to Joanne Wall (Feb. 28, 2007).

<sup>2</sup> *Request* at 1.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* Our records reflect that the sale of assets to Sprint involves separate stations not at issue here.

<sup>5</sup> *Id.*

including instituting geographic area licensing for BRS and EBS facilities.<sup>6</sup> To implement geographic licensing for these services, the Wireless Telecommunications Bureau (Bureau) announced that on July 11, 2005, “BRS and EBS licenses will be converted to geographic licenses . . . [and that n]ew licenses will not be issued for converted stations.”<sup>7</sup> The Bureau stated that “[a]fter conversion to geographic area licensing is complete, site-based licenses . . . will be moved to the ULS archive.”<sup>8</sup> The conversion to geographic area licensing took place “on or shortly after July 11, 2005, . . . and the Station [l]icenses [at issue here] were eliminated from the list of active licenses and moved to the ULS archive.”<sup>9</sup>

On September 9, 2005, USWS filed a petition for reconsideration (*Petition*) seeking reinstatement of the Stations’ licenses as active licenses in ULS on the grounds that the deletion of the licenses from ULS was a ministerial error. In a ruling addressing USWS’s *Petition* dated November 20, 2006, *see supra* note 9, the Bureau held that although USWS “has operating rights that should be reflected in ULS[,] . . . we do not believe that

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<sup>6</sup> *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, et al.*; WT Docket Nos. 03-66, et al., Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14189 (2004) (*BRS/EBS R&O*) (“We conclude that all BRS and EBS licensees will be licensed on a geographic area basis.”); *see also* 47 C.F.R. § 27.1207(b) (“Blanket licenses are granted for each market and frequency block. Blanket licenses cover all mobile and response stations. Blanket licenses also cover all fixed stations anywhere within the authorized service area, [with the exceptions set forth in sections 27.1207(1)(1) and 27.1207(2)]”). The geographic area for BRS licensing purposes is the Basic Trading Area (BTA) Authorization. *See* §§ 27.1206-08.

<sup>7</sup> *Wireless Telecommunications Bureau Announces Changes to the Universal Licensing System (ULS) to Accommodate the Broadband Radio Service and Educational Broadband Service and Reminds Licensees That Use of ULS Forms and Electronic Filing for These Service Become Mandatory on July 11, 2005, Public Notice*, 20 FCC Rcd 11554, 11555 (WTB June 28, 2005) (*2005 Public Notice*).

<sup>8</sup> *Id.* at 11556.

<sup>9</sup> *See* Letter from John J. Schauble, Deputy Chief, Broadband Division, Wireless Telecommunications Bureau, FCC, to James A. Stenger, Esq., at 3 (Nov. 20, 2006) (*November 20, 2006 Letter*).

the proper means of reflecting those rights is to reinstate the Station [l]icenses.”<sup>10</sup> Instead, the Bureau “add[ed] an appropriate notation to the ULS record for the McAllen BTA Authorization [to reflect those operating rights].”<sup>11</sup>

We find that because USWS did not hold an authorization for the McAllen, Texas, BTA or otherwise hold a license relating to the Stations on or before October 1, 2005, the corporation is not required to pay a regulatory fee for FY 2006.<sup>12</sup> As discussed above, the licenses for the Stations were deactivated on July 11, 2005, pursuant to the *BRS/EBS R&O* and the *2005 Public Notice*. Further, the Bureau subsequently rejected USWS’s request that the licenses be reinstated and that a separate license be issued for USWS’s operating rights under the McAllen, Texas, BTA Authorization.<sup>13</sup> Moreover, USWS did not hold the authorization for the McAllen, Texas, BTA at any time relevant here. We therefore find that USWS does not owe FY 2006 regulatory fees for stations KNSC883, KNSC881, KNSC879, KNSC882, and KNSC884.

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

Sincerely,



Mark Stephens  
Chief Financial Officer

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<sup>10</sup> *November 20, 2006 Letter* at 3 (“[i]n instituting geographic area licensing for BRS and EBS, the Commission eliminated the rules that provided for site-specific licenses such as the Station [l]icenses, except in certain circumstances not applicable here”); *id.* (because USWS’s operating “rights are a subset of the rights issued under the McAllen BTA Authorization[, . . . it would be inappropriate to issue [USWS] . . . separate licenses for [these] . . . rights”). At no time did USWS hold the authorization for the McAllen, Texas, BTA.

<sup>11</sup> *November 20, 2006 Letter* at 3 (in light of its “determination that . . . [USWS] should not receive a separate license for its operating rights,” the Bureau also dismissed the assignment application and renewal applications that USWS filed in conjunction with the *Petition*).

<sup>12</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, 21 FCC Rcd 8092, 8106, ¶ 50(c) (2006) (“Wireless Services: Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services . . . : Fees must be paid for any authorization that was issued on or before October 1, 2005.”); 47 C.F.R. §1.1152.

<sup>13</sup> *November 20, 2006 Letter* at 3.

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September 8, 2006

SEP - 8 2006

Federal Communications Commission  
Office of Secretary

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

**Re: United States Wireless Systems, Inc.**  
FRN: 0006394308  
Fee Deferral Request for 2006 Regulatory Fees

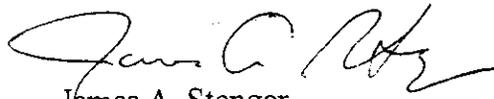
Dear Ms. Dortch:

On behalf of United States Wireless Systems, Inc. ("USWS"), we respectfully request a waiver of the regulatory fees for fiscal year 2006 for the following stations: KN5C883, KN5C881, KN5C879, KN5C882, and KN5C884. These call signs were removed from ULS but a petition to reinstate them and an application to assign them to Sprint Nextel Corp. ("Sprint") are pending.

USWS went into Chapter 11 bankruptcy in 2001 and obtained deferrals of its regulatory fees for 2001-2003. USWS emerged as a reorganized company in 2004 and paid its regulatory fees for 2004 out of the proceeds of the sale of certain assets of the estate. However, the reorganized company was unable to pay its regulatory fees for 2005 and sought a deferment thereof by letter of August 20, 2005. Since then, the FCC approved the sale of some assets to Sprint but an application to sell the referenced stations to Sprint remains pending, as well as the request to reinstate these call signs into ULS. Under the circumstances, USWS requests a fee deferment for 2006 until the call signs are reinstated and the sale to Sprint is consummated.

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

Respectfully submitted,

  
James A. Stenger

cc: Ben B. Floyd, Esq.,  
Trustee