



PUBLIC NOTICE

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

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DA-08-1214

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

PUBLIC NOTICE

Released: May 29, 2008

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:

Alpha & Omega Communications, LLC – Request for FY 2007 regulatory fees. **Granted** (April 28, 2008) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon. granted, 10 FCC Rcd 12759 (1995)]

EchoStar Satellite Operating Corporation – Request for waiver application fees. **Granted** (April 4, 2008) [See 47 U.S.C. §158(d)(2)]

Marcus Tyrone Travenia d/b MTC Matrixes - Request for waiver of regulatory fees. **Dismissed** (April 4, 2008) [See Assessment and Collection of Regulatory Fees for Fiscal Year 2007, 22 FCC Rcd 15712, 15727-28 (2007)]

Sunbelt Communications Company Station KBMO (TV) - Request for waiver of FY 2006 regulatory fee late payment penalty. **Granted** (April 17, 2008) [See 47 C.F.R. §1.1153]

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

APR 28 2008

OFFICE OF
MANAGING DIRECTOR

Barry D. Wood, Esq.
Wood, Maines & Nolan, Chtd.
4121 Wilson Blvd., Suite 101
Arlington, VA 22203-4143

Re: Alpha & Omega Communications, LLC
Request for Waiver of FY 2007 Regulatory Fees
Fee Control No. RROG-08-00009824

Dear Mr. Wood:

This is in response to your request filed September 19, 2007 (*Request*), on behalf of Alpha & Omega Communications, LLC (Alpha), for a waiver of the fiscal year (FY) 2007 regulatory fees for television Station KTMW, Salt Lake City, Utah, Class A television station KCLP-CA, Boise, Idaho, and television translators K49GD, Spanish Fork, K55IT, Provo, K59GS, Salt Lake City, and K58FT, Huntsville (all Utah) (*Stations*), on the basis of financial hardship. Our records reflect that Alpha has not paid the regulatory fees at issue. For the reasons that follow, we grant your request.

You recite that since January 2, 2006, when "Alpha lost access to the systems of the two national satellite television operators. . . . [i]ts o]perating losses . . . have been substantial."¹ You assert that "[s]mall, gospel-centered broadcasters such as Alpha do not have the profit potential that other commercial broadcasters enjoy."² You claim that Alpha will incur "massive expense for retooling of KTMW's transmission facility, and probably substantial down time while the change [to digital broadcasting] is being effectuated[.]"³ You maintain that "KCLP-CA is at a distinct disadvantage when compared with the other commercial stations in the Boise DMA . . . due to its very limited power as well as the religious nature of its programming."⁴ In subsequent correspondence, you submit a copy of Alpha's "Income and Expenses, Oct. 1, 2006 thru Sept. 30, 2007" (*FY Year 2007 Financial Statement*) as it reflects the income and expenses of the *Stations*, as well as those of Class A television Station KCLP-CA, Boise,

¹ *Request* at 1.

² *Id.* at 2.

³ *Id.*

⁴ *Id.* at 3.

Idaho.⁵ You aver that the "revenue contributed by the Boise station is minimal, and neither station is profitable on its own."⁶ You claim that "[t]he losses would have been much greater except that only minimal wages were paid during this period . . . [and that] Alpha's controlling owners received no compensation from the station."⁷ In later correspondence, you state that only one "principal of Alpha & Omega . . . received any money from the station operation [during the fiscal year.]"⁸

In establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship."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 station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Thus, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.

Alpha's *FY Year 2007 Financial Statement* indicates that Alpha suffered a financial loss in the period from October 1, 2006 through September 30, 2007, which was only partially offset by depreciation and compensation paid to one principal of Alpha. Given that Alpha suffered a financial loss in the twelve months ending September 30, 2007, we grant your request for a waiver of the regulatory fees for FY 2007.

You have also requested confidential treatment of the financial data that you submitted with your request for fee relief. Pursuant to section 0.459(d)(1) of the Commission's rules, 47 C.F.R. §0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records. The records are treated confidentially in the meantime. If a request for access to the information submitted in conjunction with your regulatory fees is received, you will be notified and afforded the opportunity to respond at that time.

⁵ Letter from Barry D. Wood, Esq. to Marlene H. Dortch, Secretary, FCC (Jan. 15, 2008) (*Letter*). Alpha is the licensee of Station KCLP-CA.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ Email from Barry D. Wood to Joanne Wall (Mar. 10, 2008).

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', with a stylized flourish at the end.

Mark Stephens
Chief Financial Officer

RR06-08-00009824

WOOD, MAINES & NOLAN

CHARTERED

ATTORNEYS AT LAW

4121 WILSON BLVD., SUITE 101

ARLINGTON, VIRGINIA 22203-4143

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NON-PUBLIC

September 19, 2007

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

FILED/ACCEPTED

SEP 19 2007

Federal Communications Commission
Office of the Secretary

Attn: Office of Managing Director

Re: Alpha & Omega Communications, LLC
KTMW, Salt Lake City, Utah
Facility Id No. 10177
KCLP-CA, Boise, Idaho
Facility Id No. 27621
K49GD, Spanish Fork, Utah
Facility Id No. 29213
K55IT, Provo, Utah
Facility Id No. 29215
K59GS, Salt Lake City, Utah
Facility Id No. 1135
K58FT, Huntsville, Utah
Facility Id No. 29216

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NON-PUBLIC

Request for Waiver of Regulatory Fees - FY 2007

CONFIDENTIAL TREATMENT REQUESTED

Dear Ms. Dortch:

On behalf of our client Alpha & Omega Communications, LLC ("Alpha"), licensee of television station KTMW, Salt Lake City, Utah; Class A television station KCLP-CA, Boise, Idaho, and television translators K49GD, Spanish Fork, K55IT, Provo, K59GS, Salt Lake City and K58FT, Huntsville (all Utah) and pursuant to Section 1.1166 of the Rules, we hereby request, for federal fiscal year 2007, a waiver of regulatory fees for these stations. Confidential treatment is requested regarding the financial data that is

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voluntarily disclosed to the Commission in this letter and that will be supplied in financial statements to be developed by the licensee and its accountants.

In recognition of the operating losses that Alpha has suffered over the years, the FCC granted waivers for Alpha like the one requested here, through FY 2004. However, in FY 2005 Alpha's revenues improved somewhat. Accordingly, it did not request a waiver at that time. Rather, it paid regulatory fees in respect of its stations for FY 2005 and FY 2006. Unfortunately, the progress that KTMW had made was interrupted on January 1, 2006, when Alpha lost access to the systems of the two national satellite television operators. Operating losses since then have been substantial. It has therefore become necessary again for Alpha to seek relief from the requirement to pay FCC regulatory fees.

The extreme financial hardship under which the licensee is laboring prevents payment of the regulatory fees, including any payment subject to a refund pending action by the Commission on this request for a waiver of the fees.

Section 1.1165 of the Rules allows the Commission to waive, reduce or defer regulatory fees where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. Waiver of the FY 2007 regulatory fees for these stations would promote the public interest by allowing them to remain on the air and serve their communities of license.

Small, gospel-centered broadcasters such as Alpha do not have the profit potential that other commercial broadcasters enjoy. Although KTMW and its various translators serve communities in the Salt Lake City DMA (Nielsen market number 35), they face financial challenges with their gospel programming. While KTMW makes an important contribution to diversity, the stations have a limited potential for revenues from the sale of broadcast time, and donations are not sufficient to make up the difference.

In addition to the other financial problems that Alpha has faced over the past two years, it is approaching the statutory deadline for conversion to digital broadcasting. This will entail a massive expense for retooling of KTMW's transmission facility, and probably substantial down time while the change is being effectuated, if it can even be accomplished at the snow-bound site that Alpha and most of the other television stations in the Salt Lake City DMA use.

Similarly, KCLP-CA is at a distinct disadvantage when compared with the other commercial stations in the Boise DMA (Nielsen market number 113), due to its very limited power as well as the religious nature of its programming.

Inasmuch as federal FY 2007 has not come to a close, the licensee cannot provide precise financial information for the period relevant to this request. However, station management believes that the final results will show substantial operating losses, adequate to justify a grant of the requested waiver. The necessary financial documentation will be submitted to the Commission as a supplement to this request once it is available.

In attempting to deal with the revenue shortfalls of KTMW, KCLP-CA and associated stations, Alpha has done its best to keep expenses at a minimum. For example, among the largest single items of expenses is the rent for the site used for KTMW's transmitter and antenna. It is simply necessary, in order to reach the bulk of the population in this market, for those facilities to be located at a high-elevation site (Little Farnsworth Peak). This is a function of a long term lease, so the licensee does not have the option of paying less rent for its mountain top location. Erecting a tall tower on the valley floor would be vastly more expensive even than staying on the current site. Consequently, costs such as site rent cannot be reduced if service to the public is to be maintained.

Payment of the assessed regulatory fees would therefore work an extreme hardship on these stations. The Commission should appreciate that Alpha's owners are providing service, in the public interest, to Salt Lake City, Boise and the surrounding areas, without any material financial benefit to the owners.

Confidential Treatment of Data

As before, this request for waiver or deferral of regulatory fees will require that Alpha submit to the Commission confidential financial data. Pursuant to Section 0.459(b) of the Rules, we therefore request confidential treatment of all financial matters mentioned herein, and the more specific financial information to be provided as a supplement hereto. The factors set forth in Section 0.459 apply to this situation as follows:

(b) Each such request shall contain a statement of the reasons for withholding the materials from inspection (see §0.457) and of the facts upon which those records are based, including:

(1) Identification of the specific information for which confidential treatment is sought;

Marlene Dortch
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Alpha seeks confidential treatment of all of the financial information included in this letter and that which it plans to file as a supplement hereto once its accountants have finished compiling such information.

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission;

Alpha is requesting a waiver of payment regulatory fees for FY 2007.

(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged;

Alpha does not disclose this data to others, except its attorneys and accountants, who are under an ethical obligation not to disclose it.

(4) Explanation of the degree to which the information concerns a service that is subject to competition;

Alpha competes in the commercial television service and is subject to competition from other such broadcasters, as well as other commercial media, in the Salt Lake City and Boise markets.

(5) Explanation of how disclosure of the information could result in substantial competitive harm;

Disclosure of the financial information would result in substantial competitive harm for the reasons that led the Commission to provide blanket confidentiality on all Form 324 financial reports filed by broadcasters over several decades. Those reasons include the danger that a given station's suppliers and customers may go elsewhere if they learn of the nature of the broadcaster's financial situation. Customers may not commit to longer-term contracts if they have any reason to believe that a station may go dark because of a lack of funding. In addition, a station's competitors may be quick to exploit a perceived inability to match marketing efforts. In this case, such competitive harm to Alpha could damage its ability to contract for optimum programming, and to fund equipment purchases.

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure;

Alpha has not shared its financial information with others.

(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties;

The information is not available to the public and has not been previously disclosed except to Alpha's accountants and attorneys.

(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure; and

The financial material presented to the Commission should not be available for public disclosure for a period of ten years after a final decision regarding the grant of Alpha's request. After ten years, the financial data should no longer compromise Alpha with respect to its ministry and the stations' competitors.

(9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

Confidential treatment of these materials is essential if the privacy of Alpha's owners is to be respected.

(e) If the materials are submitted voluntarily (i.e., absent any direction by the Commission), the person submitting them may request the Commission to return the materials without consideration if the request for confidentiality should be denied. In that event, the materials will ordinarily be returned (e.g., an application will be returned if it cannot be considered on a confidential basis). Only in the unusual instance where the public interest so requires will the materials be made available for public inspection. However, no materials submitted with a request for confidentiality will be returned if a request for inspection is filed under §0.461. If submission of the materials is required by the Commission and the request for confidentiality is denied, the materials will be made available for public inspection.

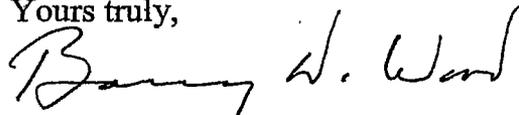
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Alpha is submitting, and will submit, the subject information voluntarily. Should the Commission determine not to afford the information confidential treatment, Alpha urges that the Commission agree to consider allowing Alpha to submit the information with the confidential materials therein redacted.

In the unlikely event that the Commission should deny this request, this letter should be considered as a petition, due to financial hardship, for deferral of any duty to pay the regulatory fees for FY 2007, for the purpose of satisfying Section 1.1166 of the Rules.

If you have any questions regarding this matter, please call either Stu Nolan of this firm, or the undersigned.

Yours truly,



Barry D. Wood
counsel for Alpha & Omega
Communications, LLC