



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

News media information 202 / 418-5000  
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Internet: <http://www.fcc.gov>  
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DA-09-1324

**DOCKET FILE COPY ORIGINAL**

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

## PUBLIC NOTICE

Released: June 16, 2009

### 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:

**ADX Communications of Escambia Station W293BA** - Request for refund of FY 2008 regulatory fee. **Granted** (May 07, 2009) [See Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Report and Order and Further Notice of Proposed Rulemaking, 2008 WL 3318967 (Aug. 8, 2008) (Report and Order) ]

**Castay Media, Inc. Stations KFRA (AM) and KV4955** - Request for waiver of FY 2008 regulatory fees. **Dismissed** (May 01, 2009) [See 47 U.S.C. §159 (d)]

**North Orange County Community College District Stations WHZ-330 WHZ 331 and WHZ-332** - Request for Waiver of FY08 regulatory fees. **Denied** (May 07, 2009) [See 47 C.F.R. §1.1162 (c)]

**Mr. Ralph Di Pasquale Station WCY6902-** Request for refund of renewal application fee. **Denied** (May 07, 2009) [See 47 C.F.R. §1.1108]

**Mr. Russell E. Johnson** - Request for waiver of filing fee. **Dismissed without prejudice** (May 07, 2009) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon. granted, 10 FCC Rcd 12759 (1995)]

**Sorenson-Southeast Radio, LLC. Station WZGA (FM)** - Request for waiver of application fee. **Granted** (May 07, 2009) [See 47 C.F.R. §1.1112 (a) (2)]

**Stereo 97 Inc. Station KAVV (FM) and KAVV (FM 1)** - Request for waiver of FY 2008 and reconsideration of FY 2007 regulatory fees. FY 2008 **Granted** and FY 07 **Denied** (May 7, 2009) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon. granted, 10 FCC Rcd 12759 (1995)]

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**Wayside Temple and Christian Faith Broadcast  
Inc. Stations W33B3, WGGN (FM), WGGN-TV,  
WJKW, WLLA and WLRD - Request for refund of  
FY08 regulatory fees. Denied (May 07, 2009) [See 47  
C.F.R. §1.1162 (c)]**

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 7 2009

OFFICE OF  
MANAGING DIRECTOR

Dan J. Alpert, Esq.  
2120 N. 21<sup>st</sup> Road  
Arlington, VA 22201

Re: Request for Refund of FY 2008  
Regulatory Fee  
Station W293BA  
Fee Control No. 0809079084883314

Dear Mr. Alpert:

This is in response to your request filed November 21, 2008 (*Request*), on behalf of ADX Communications of Pensacola (ADX), licensee of FM translator station W293BA (Station), for a refund of the \$365.00 fiscal year (FY) 2008 regulatory fee. Our records reflect that the regulatory fee was paid. For the reasons that follow, we grant your request.

You assert that although the Station paid a regulatory fee for FY 2008, no regulatory fee was due because the license for W293BA was granted after the date for determining when broadcast facilities are required to pay regulatory fees for FY 2008 (*i.e.*, October 1, 2007).<sup>1</sup> Our records confirm that ADX did not hold a license for the Station on or before October 1, 2007, and is therefore not required to pay a FY 2008 regulatory fee for the Station.<sup>2</sup> We therefore grant your request for a refund of the FY 2008 regulatory fee for FM translator station W293BA.

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<sup>1</sup> *Request* at 1 (citing *Regulatory Fees Fact Sheet [for Media Services Licenses for FY 2008]* (August 2008) (*Media Regulatory Fees Fact Sheet*). You erroneously state that the license for the Station was granted on October 2, 2008; the license was granted on October 2, 2007. See Federal Communications Commission FM Broadcast Translator/Booster Station License, FCC Form 351B, ADX Communications of Pensacola, at 1.

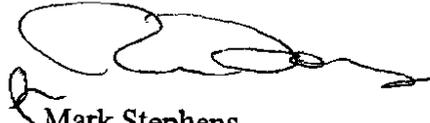
<sup>2</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Report and Order and Further Notice of Proposed Rulemaking*, 2008 WL 3318967, ¶76 (FCC 08-182, released Aug. 8, 2008) (“Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2007.”); *Media Regulatory Fees Fact Sheet* at 4 (“Who Must Pay: Holders of . . . FM translator . . . licenses whose license was granted before October 1, 2007[.]”); 47 C.F.R. §1.1153.

Dan J. Albert, Esq.

2.

A check made payable to the maker of the original check, and drawn in the amount of \$365.00, will be sent to you at the earliest practicable time. If you have any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

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

Mark Stephens  
Chief Financial Officer

The Law Office of

**Dan J. Alpert**

2120 N. 21st Rd.  
Arlington, VA 22201  
DJA@COMMLAW.TV

(703) 243-8690

(703) 243-8692 (FAX)

November 20, 2008

Mr. Anthony Dale  
Managing Director  
Federal Communications Commission  
445 12<sup>th</sup> St. S.W..  
Washington, DC 20554

RECEIVED - FCC

NOV 21 2008

Federal Communications Commission  
Bureau / Office

**Re: 2008 Annual Regulatory Fee  
Station W293BA  
Facility No. 142989**

Dear Mr. Dale:

ADX Communications of Pensacola, by its attorney, hereby requests refund of its 2008 Annual Regulatory Fee. In support thereof, the following is stated.

In the Regulatory Fee Fact Sheet (August 2008) issued with respect to Media Services Regulatory Fees for 2007, the FCC stated that with regard to FM Translator stations:

**Who Must Pay:** Holders of LPTV, TV translator and booster licenses, and FM translator and booster licenses whose license was granted before October 1, 2007...

As reflected by the attached, the license for W293BA was not granted until October 2, 2008. Therefore, no fee was due, and the \$365.00 Regulatory Fee paid on behalf of ADX Communications of Pensacola should be refunded.

**WHEREFORE**, it respectfully is requested that this request be granted.

Very truly yours,

Dan J. Alpert

*Counsel for ADX Communications of  
Pensacola*

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554OFFICE OF  
MANAGING DIRECTOR

May 1, 2009

Aaron P. Shainis, Esq.  
Shainis & Peltzman, Chartered  
Suite 240  
1850 M St., N.W.  
Washington, D.C. 20036Re: KFRA(AM) and KV4955  
FY 2008 Regulatory Fees  
Fee Control No. RROG-09-00010870

Dear Mr. Shainis:

This letter responds to your request dated September 25, 2008 (*Request*), submitted on behalf of Castay Media, Inc. (Castay), licensee of Station KFRA(AM) and Station KV4955, Franklin, Louisiana, for a waiver of the Fiscal Year (FY) 2008 regulatory fees. Our records reflect that Castay has not paid the \$1,035.00 and \$10.00 FY 2008 regulatory fees for Stations KFRA(AM) and KV4955, respectively. For the reasons stated herein, we dismiss your request.

You recite that “[a]s a result of Hurricane Gustav . . . , the licensee’s business area suffered substantially.”<sup>1</sup> You state that “its sister station, KBZE(FM), suffered substantial damage from the hurricane.”<sup>2</sup> In support, you submit information regarding Hurricane Gustav from Wikipedia, an on-line encyclopedia, and photographs of damage to what appears to be a radio station.<sup>3</sup> You say that “[t]he financial ramifications of the damage to KBZE as well as the KFRA service area has severely impacted the ability of Castay . . . to pay its regulatory fees.”<sup>4</sup>

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

<sup>2</sup> *Id.* (“Hubcast Broadcasting, Inc., which has common ownership with Castay, is the licensee of KBZE(FM)”).

<sup>3</sup> *See id.* (Attachments A and B).

<sup>4</sup> *Id.* at 1.

The Commission may waive, reduce, or defer regulatory fees only upon a showing of good cause and a finding that the public interest will be served thereby.<sup>5</sup> The Commission will waive, reduce or defer its regulatory fees in those instances where a petitioner presents a compelling case of financial hardship.<sup>6</sup> Regulatees can establish financial hardship by submitting:

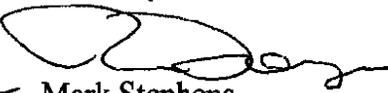
information such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.<sup>7</sup>

In determining whether a licensee has sufficient revenues to pay its regulatory fees, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits. Thus, 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 which is considered to be available to pay the regulatory fee.

In the absence of such documentation, or other relevant showing, you have failed to establish a compelling case for relief. Therefore, your request for a waiver of the FY 2008 regulatory fees for Castay is dismissed. Payment of the FY 2008 regulatory fees, totaling \$1,045.00, is now due. The regulatory fees should be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. However, in view of your allegations of financial hardship, in lieu of payment, you may refile Castay's request together with appropriate supporting documentation and a request to further defer payment of the fee, within 30 days from the date of this letter.

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

Sincerely,

  
Mark Stephens  
Chief Financial Officer

Enclosure

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<sup>5</sup> See 47 U.S.C. §159(d); 47 C.F.R. §1.1166; see also *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5344 (1994), on recon., *Memorandum Opinion and Order*, 10 FCC Rcd 12759, para. 12 (1995) (*Memorandum Opinion and Order*), (regulatory fees may be waived, deferred, or reduced on a case-by-case basis in extraordinary and compelling circumstances upon a clear showing that a waiver would override the public interest in reimbursing the Commission for its regulatory costs).

<sup>6</sup> See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd at 5346, on recon., 10 FCC Rcd 12759 (1995).

<sup>7</sup> *Memorandum Opinion and Order*, 10 FCC Rcd at 12761-12762.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 7 2009

FILE

OFFICE OF  
MANAGING DIRECTOR

Dorothy Owens-Whitehurst  
Director of Purchasing  
North Orange County Community College District  
1830 West Romneya Drive  
Anaheim, CA 92801-1819

Re: Fiscal Year 2008 Regulatory Fees  
Fee Control No. 0809129084182013

Dear Ms. Owens-Whitehurst:

This is in response to your letter dated November 18, 2008<sup>1</sup> on behalf of North Orange County Community College District (NOCCD), Anaheim, California, licensee of cable television relay service (CARS) stations WHZ-330, -331, and -332 (Stations), requesting waiver of annual regulatory fees. Our records indicate that NOCCD has paid the fiscal year (FY) 2008 regulatory fees for the Stations, which total \$615. As set forth below, we deny your request.

You assert that regulatory fees should be waived for the Stations due to NOCCD's tax exempt/not-for-profit status.<sup>2</sup> In support, you state that NOCCD is a political subdivision of the State of California, formed July 1, 1965, and operates under Sections 72000, *et seq.*, of the California Education Code.<sup>3</sup> You further state that, as such, NOCCD is a governmental (not for profit) unit described in Sections 115 and 170(c)(1) of the Internal Revenue Code, but is not an organization described in Section 501(c)(3) of such Code.<sup>4</sup> You state that, consequently, the tax-exempt status of NOCCD is determined by statute rather than through a tax-exempt ruling from the Internal Revenue Service.<sup>5</sup> On February 2, 2009, you supplemented your request with copies of two letters, dated October 7, 1993 and January 7, 2004, from the Internal Revenue Service concerning NOCCD's federal tax status.<sup>6</sup>

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<sup>1</sup> Letter from Dorothy Owens-Whitehurst to Federal Communications Commission (dated November 18, 2008) (Letter).

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

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

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

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

<sup>6</sup> Electronic mail from Dorothy Owens-Whitehurst (dated February 2, 2009 @3:07 p.m. EST).

The Commission's rules provide that no regulatory fee shall be required for a nonprofit entity.<sup>7</sup> The rules define a nonprofit entity as "an organization duly qualified as a nonprofit, tax exempt entity under section 501 of the Internal Revenue Code, 26 U.S.C. §501; or an entity with current certification as a nonprofit corporation or other nonprofit entity by state or other governmental authority."<sup>8</sup> The rules further provide that

[a]ny permittee, licensee or other entity subject to a regulatory fee and claiming an exemption from a regulatory fee based upon its status as a nonprofit entity . . . shall file with the . . . Commission . . . written documentation establishing the basis for its exemption within 60 days of its coming under the regulatory jurisdiction of the Commission or at the time its fee payment would otherwise be due, whichever is sooner, or at such other time as required by the Managing Director.<sup>9</sup>

The documentation you submitted is insufficient to demonstrate that NOCCD should be exempt from payment of annual regulatory fees on account of nonprofit status. Neither of the two letters from the Internal Revenue Service that you submitted purports to be a determination whether NOCCD is non-profit and thus exempt from federal taxes; rather, the letters set forth categories of federal tax-exempt status pursuant to the Internal Revenue Code for which NOCCD may qualify.<sup>10</sup> Nor is there any other indication in the papers you submitted that non-profit status for NOCCD has been approved by the Internal Revenue Service, a state, or other governmental authority, as our rules require. In the absence of such documentation, we deny your request for waiver on account of nonprofit status.

Finally, although you do not claim exemption on this ground, we take note of your assertion that NOCCD is a political subdivision of the State of California. Please be advised that pursuant to section 1.1162(b), you may seek an exemption from annual regulatory fees by submitting documentation showing that NOCCD is a "government entity," defined for purposes of this exemption as "any state, possession, city, county, town, village, municipal corporation, or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign

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<sup>7</sup> See 47 C.F.R. §1.1162(c).

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

<sup>9</sup> 47 C.F.R. § 1.1162(c)(1) ("Acceptable documentation may include Internal Revenue Service determination letters, state or government certifications or other documentation that non-profit status has been approved by a state or other governmental authority"); see also *Implementation of Section 9 of the Communications Act*, 12 FCC Rcd 17859, 17860 ¶¶ 4-5 (1997).

<sup>10</sup> The January 7, 2004 letter from the IRS specifically states that NOCCD "may obtain a ruling on its status [as a political subdivision of a state] by following the procedures specified in Rev. Proc. 2002-1 or its successor." (Emphasis supplied.) Thus, by its own terms the letter does not establish NOCCD's tax-exempt status and does not support NOCCD's request for regulatory fee exemption on account of its non-profit status.

direction and control over their respective communities or programs.”<sup>11</sup> In the absence of a request on this ground containing such documentation, we offer no opinion as to whether NOCCD may qualify for the section 1.1162(b) exemption for government entities.

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

Sincerely,



 Mark Stephens  
Chief Financial Officer

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<sup>11</sup> 47 C.F.R. § 1.1162(b); *see Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5338 ¶¶ 14-16, 5339-41 ¶¶ 23-28 (1994); Letter from Mark Reger, Chief Financial Officer, FCC to Jamie Doggett, Chairman, Meagher County Board of Commissioners (April 26, 2002); Letter from Mark Reger, Chief Financial Officer, FCC to Mac Chapple, Secretary St. Regis TV District (April 14, 2000); Letter from Mark Reger, Chief Financial Officer, FCC to Winnett Community TV System, c/o Lisa Solf (July 13, 1999).



NORTH ORANGE COUNTY  
COMMUNITY COLLEGE DISTRICT

0809129084182013

DOROTHY OWENS-WHITEHURST  
District Director  
Purchasing

FRED WILLIAMS  
Vice Chancellor  
Finance & Facilities

NED DOFFONEY, Ed.D.  
Chancellor

November 18, 2008

Federal Communications Commission  
Regulatory Fees  
PO Box 979084  
Saint Louis, MO 63197-9084

Reference: North Orange County Community College District (EIN: 95-2394131)  
Tax-Exempt/Not-for-Profit Status

Dear Monique:

The District receive Notice of Withholding of Action letter, requesting payment. Re: 0011086485, our records show this was paid on September 3, 2008, in the amount of \$615.00. These fees should be waived, due to our tax exempt/not-for-profit status. Please issue a refund check, and please make note on your file that are District is exempt. (Attached is a copy of the check stub)

North Orange County Community College District (which includes Fullerton College, School of Continuing Education, and Cypress College), is a political subdivision of the State of California, formed July 1, 1965, and operates under Sections 72000, et seq, of the California Education Code.

As such, it is a governmental (not for profit) unit described in Section 115 and 170(c) (1), of the Internal Revenue Code, but not an organization described in Section 501(c) (3) of such code. Consequently, the tax-exempt status of North Orange County Community College District is determined by statute rather than through a tax-exempt ruling from the Internal Revenue Service.

Attached is a copy of the letter the District received from the Internal Revenue Service related to its status as a political subdivision of the State of California.

If I can be of further assistance, please call me.

Sincerely,

Dorothy Owens-Whitehurst  
Director of Purchasing

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 7 2008

OFFICE OF  
MANAGING DIRECTOR

Mr. Ralph Di Pasquale  
55 Eichelberger Drive  
Coraopolis, Pennsylvania 15108

Re: Fee Control No. 0809169097198006  
Request for Refund of Application  
Filing Fee

Dear Mr. Di Pasquale:

This responds to your letter dated October 29, 2008,<sup>1</sup> requesting a refund of the \$60 renewal application fee associated with call sign WCY6902.<sup>2</sup> As set forth below, we deny your request.

In support of your request, you state that you originally mailed your renewal application for WCY6902 to the Commission in a timely manner on August 11, 2008, where the license was due to expire on September 11, 2008.<sup>3</sup> You also state that your renewal application subsequently was returned to you because, due to "some confusion on [your] part," you did not mail it to the appropriate location within the Commission.<sup>4</sup> In this regard, you assert that Commission instructions do not indicate the specific address to which your renewal application should have been mailed.<sup>5</sup> You also assert that Commission staff who received your originally-mailed application should have forwarded it to the correct address instead of returning it to you and that, had this been done, your renewal application would not have been determined untimely filed.<sup>6</sup>

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<sup>1</sup> Letter from Ralph Di Pasquale to Federal Communications Commission (dated October 29, 2008) ("Letter").

<sup>2</sup> As you indicate in your letter, \$100 of the \$160 that you submitted with your application, which would have covered the annual regulatory fee for WCY6902 for the ten-year term for which you sought to renew, already has been refunded to you.

<sup>3</sup> *Id.* at 1.

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

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

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



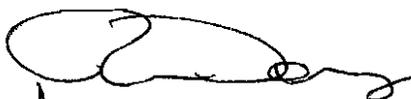
It is the responsibility of the licensee to understand its obligations under applicable FCC rules. Section 1.1108 of the Commission's rules provides that application fees "will not be refundable to the applicant irrespective of the Commission's disposition of that request. Return or refund of charges will be made only in certain limited instances as set out in [section 1.1115]."<sup>7</sup> None of the circumstances in section 1.1115 is applicable here.

On August 23, 2008, the Commission dismissed without prejudice and returned your originally-mailed application and payment because they could not be accepted at the Commission's Gettysburg location, where you mailed them, and thus were deemed unprocessable.<sup>8</sup>

As to your refund request, on September 17, 2008, the Commission reviewed your subsequently-mailed application on the merits and dismissed it without prejudice, because it was not filed within the required time period prior to the expiration of the license and thus was untimely.<sup>9</sup> As stated above, the Commission's rules provide that the part of your payment attributable to the application fee (\$60) is not refundable, except in limited situations that are not applicable here. Accordingly, we deny your request for refund of the \$60 application fee.

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

Sincerely,



Mark Stephens  
Chief Financial Officer

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<sup>7</sup> 47 C.F.R. § 1.1108.

<sup>8</sup> Notice of Immediate Dismissal to Ralph Di Pasquale (dated August 23, 2008). In this regard, please be advised that pursuant to section 0.401 of the Commission's rules, "[a]pplications and other filings not submitted in accordance with the addresses or locations set forth [in subsections (a) and (b)] will be returned to the applicant without processing." 47 C.F.R. § 401. Relevant here, section 0.401(b) of the Commission's rules states, "[a]pplications or filings requiring [statutory fees] must be delivered to the Commission's lockbox bank in St. Louis, Missouri ..." and sets forth detailed instructions for applications submitted by mail and other methods. *Id.* § 401(b)(1)-(3). Moreover, section 1.1102 of the Commission's rules instructs applicants, as to applications and other filings in the wireless telecommunications services, to "[r]emit manual filings and/or payment for these services to the: Federal Communications Commission, Wireless Bureau Applications, P.O. Box 979097, St. Louis, MO 63197-9000." In addition, contrary to your assertion, the instructions for your renewal application form also clearly state: "Paper applications requiring a fee must be mailed to Federal Commissions Commission, P.O. Box 979097, St. Louis, MO 63197-9000 or hand delivered to the U.S. Bank, Attn: FCC Government Lockbox #979097, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101." See FCC Form 605, Instructions at p. 3.

<sup>9</sup> Notice of Dismissal to Ralph Di Pasquale (dated September 17, 2008).

11202

**Ralph and Cynthia Di Pasquale**  
**55 Eichelberger Dr. Coraopolis, Pa.**  
**412-859 6593 ralphdipasquale@yahoo.com**

October 29, 2008, 2008

Federal Communication Commission  
Attn: OMD  
445 12<sup>th</sup> Street, S.W.  
Washington DC 20554

**Refund Request**

I originally sent a letter requesting that the FCC return my \$160.00 that I sent as payment for my communication license. The FCC denied my application, but kept my \$160.00 check. Stating "my application was untimely filed." Later the FCC issued a partial refund. Instead of refunding me the entire \$160.00, I received only \$100.00. On the phone I was told the FCC charged me a \$60.00 processing fee, and that a processing fee is non refundable. I do not find this acceptable.

**Enclosed**

Applicants name	Ralph Di Pasquale
FRN	0018099275
Check Number	#158, in the amount of \$160.00
File Number	0003583235
Radio Service	SA
Date Application was filed	Aug 11, 2008
Call Sign	WCY6902
Amount Requested	\$160.00

**Detailed reason for purpose of my request.**

The FCC denial letter stated that my application request was denied "The application was untimely filed". My application was definitely filed within a timely period. I originally filed on August 11, 2008. My expiration date was not until, September 11, 2008. I mailed my application to a department within the FCC this address appeared on a FCC envelope, or document. Apparently there was some confusion on my part. This was not the FCC licensure processing department. Nevertheless, I mailed it to the FCC in a timely fashion. Keep in mind your instructions are not specific on the exact address, "applications must be submitted to the FCC prior to etc., etc." Upon receipt of my original application, the "FCC Employee" should have displayed some form of intelligence and instead of repackaging my material and mailing it back to me, could just

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 7 2009

OFFICE OF  
MANAGING DIRECTOR

Mr. Russell E. Johnson  
1719 West Hazelwood  
Phoenix, Arizona 85015-3850

Re: Request for Waiver of Application  
Filing Fee, General Mobile Radio License  
Fee Control No. RROG-08-00010404

Dear Mr. Johnson:

This is in response to your inquiry dated April 11, 2008 (Inquiry), requesting waiver of the filing fee for your application for a general mobile radio services license (Application), on account of financial hardship.<sup>1</sup> Our records show that you have not paid the application filing fee of \$60, and that your underlying application was dismissed without prejudice on April 30, 2008. As set forth below, we also dismiss without prejudice your fee waiver request.

In support of your request, you assert that you are a "Disabled Veteran determined as permanent and total," and that "being on a fixed income does make it difficult to make ends meet."<sup>2</sup> You also state that waiver of the application fee would "allow [you and your wife] to stay in direct communication with each other through most 'Everyday Situations' and allowing the [application] fee to be used towards other essentials."<sup>3</sup>

Our records indicate that you filed an application for a new general mobile radio services (GMRS) license using the Commission's electronic Universal Licensing System (ULS) database on April 11, 2008, the same day you requested waiver of the application filing fee. You apparently sent your waiver request via separate e-mail to Commission staff in Washington, DC.<sup>4</sup> Moreover, you apparently indicated on your license application that you were not requesting an application fee waiver.<sup>5</sup> As a result, Commission staff responsible for the disposition of your license application, who are located in Gettysburg, Pennsylvania, had no indication that you had simultaneously requested a waiver of the application filing fee. Accordingly, the staff found your Application defective pursuant to section 1.934 of the Commission's rules for lack of payment of the appropriate filing fee and dismissed it without prejudice effective April 30, 2008.<sup>6</sup> Because of the Commission's action on your license application, we also dismiss your waiver request without prejudice.

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<sup>1</sup> Electronic mail message from Russell E. Johnson to Anthony Dale, Managing Director, FCC (dated April 11, 2008) (Inquiry).

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

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

<sup>4</sup> See Inquiry.

<sup>5</sup> See FCC 605 Main Form, Item 7 (Q: "Does this filing request a Waiver of the Commission's rules? A: 'N') (ULS File No. 0003393075).

<sup>6</sup> Notice of Dismissal from Wireless Telecommunications Bureau, Gettysburg, FCC to Russell E. Johnson (dated April 30, 2008); see 47 C.F.R. 1.934(d)(3).

Should you choose to refile your license application, 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.

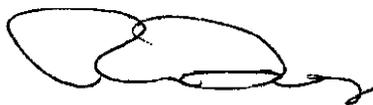
The general nature of your inquiry suggests that you may qualify for a fee waiver based on financial hardship, but provides no supporting documentation as required by section 1.1117 of the Commission's rules. Please be advised that in establishing a fee program, the Commission recognized that in certain 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."<sup>7</sup> 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.<sup>8</sup>

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.

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

Sincerely,



Mark Stephens  
Chief Financial Officer

<sup>7</sup> See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994); recon. granted, 10 FCC Rcd 12759 (1995).

<sup>8</sup> 10 FCC Rcd at 12761-62. Where the waiver applicant is an individual, rather than an entity, we would expect to review a less formal showing of financial hardship.

**Adama Jarr**

---

**From:** Regina Dorsey  
**Sent:** Tuesday, June 24, 2008 12:49 PM  
**To:** Adama Jarr  
**Subject:** FW: : Waiver of Application Fee/ (FRN) 0017653874

10404

Did we submit to OGC?

Regina W. Dorsey  
Deputy Chief Financial Officer  
Federal Communication Commission  
445 12 Street, SW  
Washington, DC 20554  
Phone: (202) 418-1993  
Fax: (202) 418-2843  
Email: regina.dorsey@fcc.gov

-----Original Message-----

**From:** Mark Stone  
**Sent:** Friday, April 11, 2008 9:05 AM  
**To:** Regina Dorsey  
**Cc:** Mark Stephens  
**Subject:** FW: : Waiver of Application Fee/ (FRN) 0017653874

Regina - can you look into this when you have a moment and let me know what you think?  
Thanks!

\*\*\* Non-Public: For Internal Use Only \*\*\* -----Original Message-----

**From:** Anthony Dale  
**Sent:** Friday, April 11, 2008 8:57 AM  
**To:** Mark Stone  
**Subject:** Fw: : Waiver of Application Fee/ (FRN) 0017653874

----- Original Message -----

**From:** Anthony Dale  
**To:** 'russjohn@cox.net' <russjohn@cox.net>  
**Cc:** Mark Stephens  
**Sent:** Fri Apr 11 07:25:26 2008  
**Subject:** Re: : Waiver of Application Fee/ (FRN) 0017653874

Adding mark stephens, our chief financial officer, to look into your request

----- Original Message -----

**From:** russjohn@cox.net <russjohn@cox.net>  
**To:** Anthony Dale  
**Sent:** Fri Apr 11 05:19:19 2008  
**Subject:** : Waiver of Application Fee/ (FRN) 0017653874

Friday, April 11, 2008

Office of the Managing Director  
Federal Communications Commission

Re: Waiver of Application Fee/ (FRN) 0017653874

Sir,  
Please consider granting this waiver for the following reasons, currently I am a Disabled

Veteran determined as permanent and total, being on a fixed income does make it difficult to make ends meet. This would, of course, allow for my Wife and me to stay in direct communication with each other through most "Everyday Situations" and allowing this fee to be used towards other essentials.

Thank you for your time on this matter,  
Russell E. Johnson  
1719 W. Hazelwood  
Phoenix, AZ  
85015-3850

Phone: 602.465.4709

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 7 2009

OFFICE OF  
MANAGING DIRECTOR

Dan J. Alpert, Esq.  
2120 N. 21<sup>st</sup> Road  
Arlington, VA 22201

Re: Sorenson-Southeast Radio, LLC  
Request for Waiver of Application Fees  
Fee Control No. 091019089894298

Dear Mr. Albert:

This is in response to your request filed January 30, 2009 (*Request*), on behalf of Sorenson-Southeast Radio, LLC (Sorenson) for a refund of the application filing fee associated with FCC Form 301, "Application for Construction Permit for Commercial Broadcast Station," for station WZGA(FM) (the application). Our records reflect that you paid the \$895.00 application fee. For the reasons stated herein, we grant your request for refund of the application fee.

You state that the application was filed electronically in the Commission's Consolidated Database System (CDBS) on December 17, 2008, and that the application filing fee payment was made on January 1, 2009. You say that the application was dismissed electronically because payment was not received within 14 calendar days.<sup>1</sup>

Our records reflect that because Sorenson filed its application on December 17, 2008, and then paid the associated filing fee more than two weeks later on January 1, 2009, the Media Bureau (Bureau) did not process Sorenson's application because timely payment was not received.<sup>2</sup> Thereafter, on March 6, 2009, Sorenson filed a new Form 301 and paid an additional \$895.00 filing fee in a timely manner (*i.e.*, within 14 calendar days). In view of the circumstances recited above, we find that a refund of the original \$895.00 application filing fee is appropriate.<sup>3</sup> We therefore grant your request for a refund of the \$895.00 filing fee paid in connection with the December 17, 2008 application.

---

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

<sup>2</sup> See *CDBS Electronic Filing System User's Guide*, [http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/cdbs\\_ug.htm](http://svartifoss2.fcc.gov/prod/cdbs/forms/prod/cdbs_ug.htm) (Payment of filing fees associated with electronically-filed applications "must be received by Mellon Bank[, the Commission's lockbox bank,] within 14 (calendar) days of the date that the application is officially received by the Media Bureau's electronic filing system . . . . This deadline applies to any payment submission method (electronic or via a paper check). If payment is not received in time, the filed application will be considered to be *not paid* and will therefore not be processed by the MB.") (Emphasis in the original.)

<sup>3</sup> See 47 C.F.R. §1.1112(a)(2).

A check, made payable to the maker of the original check, and drawn in the amount of \$895.00, will be sent to you at the earliest practicable time. 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 large, stylized initial "M" and a long, sweeping underline.

Mark Stephens  
Chief Financial Officer

11300

FO WAIVER TRACKING SYSTEM  
CONTROL # 11300

The Law Office of  
**Dan J. Alpert**

2120 N. 21st Rd.  
Arlington, VA 22201  
DJA@COMMLAW.TV

0901019089894:

(703) 243-8690

(703) 243-8692 (FAX)

January 30, 2009

Mr. Anthony Dale  
Managing Director  
Federal Communications Commission  
445 12<sup>th</sup> St. S.W.  
Washington, DC 20554

RECEIVED - FCC

JAN 30 2009

Federal Communications Commission  
Bureau / Office

Re: **REFUND REQUEST**  
**ARN-20081217AHD**

Dear Mr. Dale:

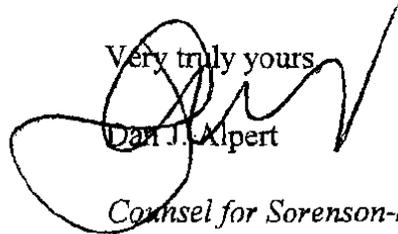
Sorenson-Southeast Radio, LLC, by its attorney, hereby requests a refund of the \$895.00 Filing Fee made on January 1, 2009, with respect to the above-referenced application. In support thereof, the following is stated.

The application (FCC Form 301) was filed electronically in CDBS on December 17, 2008. Payment thereafter was made on January 1, 2009. Attachment 1. Nevertheless, the application has been dismissed electronically and given the designation as NOT PAID. See Attachment 2. It is believed that this is because payment was not literally received within the requisite 14 calendar days.

Insofar as payment was made but it turns out that the application is not going to be processed, a refund of the \$895.00 Filing Fee hereby is requested.

**WHEREFORE**, it respectfully is requested that this request be granted.

Very truly yours



Dan J. Alpert

*Counsel for Sorenson-Southeast Radio, LLC*

*Attachment 1*

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 7 2009

OFFICE OF  
MANAGING DIRECTOR

Jack Lotsof, President  
Stereo 97, Inc.  
276 Nassau Avenue  
Buffalo, New York 14217

Re: Stereo 97, Inc.  
Request for Waiver of FY 2008 Regulatory Fees  
Fee Control No.: 0809259084248005

Request for Reconsideration of Letter Decision re:  
Waiver of FY 2007 Regulatory Fees  
Fee Control No.: RROG-07-00009642

Dear Mr. Lotsof:

This letter responds to your request dated September 25, 2008 (*Waiver Request*), on behalf of Stereo 97, Inc. (Stereo 97) for a waiver of the Fiscal Year (FY) 2008 regulatory fees for Station KAVV(FM) and booster station KAVV-FM1 on the basis of financial hardship. Our records reflect that you have paid the \$600.00 and \$365.00 FY 2008 regulatory fees for Stations KAVV(FM) and KAVV-FM1, respectively, for a total of \$965.00. For the reasons set forth below, we grant your request.

This letter also responds to your request dated July 21, 2008, on behalf of Stereo 97 that the Office of Managing Director (OMD) reconsider its decision denying your request for a waiver of the FY 2007 regulatory fees for Station KAVV(FM) and booster station KAVV-FM1 (*Reconsideration Request*).<sup>1</sup> Our records reflect that you have paid the \$575.00 and \$345.00 FY 2007 regulatory fees for Stations KAVV(FM) and KAVV-FM1, respectively, for a total of \$920.00. For the reasons set forth below, we deny your *Reconsideration Request*.

With respect to your request for waiver of the FY 2008 regulatory fees, you state that in its fiscal year ended June 30, 2008, Stereo 97, whose sole business is KAVV, lost money on a cash basis, disregarding depreciation on equipment.<sup>2</sup> You aver that KAVV has never made a profit because the station serves a small market.<sup>3</sup> You say that you are the sole owner of Stereo 97, that you are on a fixed retirement income, and that the

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<sup>1</sup> See Letter from Mark Stephens, Chief Financial Officer (CFO), Office of Managing Director (OMD), FCC, to Jack Lotsof (dated Nov. 21, 2007) (*Letter Decision*).

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

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

regulatory fees have been waived in most years, with last year being the most notable exception.<sup>4</sup> You state that only one of the licensee's three corporate officers received compensation for his work and that he is also the station's full-time general manager. You assert that the compensation should be excluded from the evaluation of Stereo 97's profitability because that officer, the station's vice president (and general manager), worked more than forty hours a week managing the station as his sole occupation.<sup>5</sup> In support of your request for waiver, you submit a financial document entitled "Stereo 97, Inc.: Statement of Revenues, Expenses and Deficit – Cash Basis" (*Financial Statement*), which reflects Stereo 97's revenues and expenses for the corporation's fiscal year ending June 30, 2008.<sup>6</sup>

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."<sup>7</sup> 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.

Our review of the record, including Stereo 97's *Financial Statement*, indicates that Stereo 97 suffered an operating loss in the year ending June 30, 2008, and that this deficit was only partially offset by the salary paid to one officer and a deduction for depreciation. Accordingly, in light of your compelling showing of financial hardship, your request for waiver of the FY 2008 regulatory fees is granted.

Applying the same waiver standard, *supra* n.7, to your *Reconsideration Request*, we reach a different result. In denying your request for waiver of the FY 2007 regulatory fees, we found that the record, including Stereo 97's 2006 Form 1120S, reflecting the corporation's income from July 1, 2006, through June 30, 2007, indicated that the financial loss that Stereo 97 suffered during this period was fully offset by a depreciation deduction and the salary paid to the corporation's vice president and general manager, which the Commission considers as funds available to pay the fees, and that the loss resulted from these items. We therefore found that Stereo 97 had money from the

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

<sup>5</sup> *Id.* at 2.

<sup>6</sup> We note that the *Financial Statement* also reflects as a separate matter Stereo 97's revenues and expenses for the corporation's fiscal year ending June 30, 2007.

<sup>7</sup> See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995).

deduction for depreciation and compensation to its corporate officer and general manager from which it could pay the regulatory fees. We explained that an entity's ability to compensate its officers and highest-paid employees reflects the entity's ability to pay its regulatory fees without affecting its "ability to serve the public"<sup>8</sup> and, accordingly, we found that Stereo 97 failed to establish that it lacked sufficient funds to pay the FY 2007 regulatory fees and we denied Stereo 97's waiver request.

In your request for reconsideration, you maintain that every broadcasting station needs a general manager and that excluding "the highest-paid employee in determining profitability will result in an erroneous finding" because invariably there is one employee whose salary is higher than that of the other employees.<sup>9</sup> You claim that eliminating the salary of the general manager from the "profitability equation" makes sense only if the station could function reasonably well without the manager's services or if the manager's compensation were greater than normal for radio station general managers.<sup>10</sup> You assert that KAVV's general manager is indispensable and that his salary is modest in comparison with his duties.<sup>11</sup> You allege that the term "principal" contains "no connotation of profligacy or extravagance" and that principals "are ordinarily to be compensated appropriately for the level of their functioning."<sup>12</sup> You aver that "[w]hether a specific salary is fair and necessary must be determined on an individual basis using rational criteria[.]"<sup>13</sup> You state that Stereo 97's "Statement of Revenues, Expenses and Deficit – Cash Basis" "is now available."<sup>14</sup>

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<sup>8</sup> *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd at 12762.

<sup>9</sup> *Reconsideration Request* at 1.

<sup>10</sup> *Id.* 1-2.

<sup>11</sup> *Id.* 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Although you do not submit Stereo 97's "Statement of Revenues, Expenses and Deficit – Cash Basis" in connection with the *Reconsideration Request*, as discussed above in paragraph 3, you submitted a financial document entitled "Stereo 97, Inc.: Statement of Revenues, Expenses and Deficit – Cash Basis" in connection with the *Waiver Request*, which we identify in that paragraph as the *Financial Statement*. As noted above in footnote 6, this financial statement reflects information regarding Stereo 97's revenues and expenses for the corporation's fiscal year ending June 30, 2007. We include in the record for purposes of the *Reconsideration Request* the *Financial Statement* as it reflects Stereo 97's revenues and expenses for the corporation's fiscal year ending June 30, 2007.

We note that in connection with the *Reconsideration Request*, you submit Stereo 97's 2007 Form 1120S, U.S. Income Tax Return for an S Corporation, reflecting the corporation's income for July 1, 2007, through June 30, 2008. The fiscal year for

Our review of the record, including Stereo 97's *Financial Statement*, indicates that the financial loss that Stereo 97 suffered from July 1, 2006, through June 30, 2007, was fully offset by a depreciation deduction and the salary paid to the corporation's vice president and general manager. With respect to your allegations regarding compensation, pursuant to established precedent we consider compensation paid to principals and officers in reviewing requests for waiver of the regulatory fees based on financial hardship.<sup>15</sup> The Commission has stated that consideration of such compensation reflects the appropriate balance between the Commission's interest in receiving from its licensees the statutorily-mandated regulatory fees that cover the costs of certain of its regulatory activities and its willingness to grant a waiver in extraordinary and compelling circumstances "only when the impact of the regulatory fee will affect a regulatee's ability to serve the public."<sup>16</sup> Consistent with this standard, applicants asserting claims of financial hardship are required to provide "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."<sup>17</sup>

Our denial of your waiver request connotes no judgment on whether the salary paid to Stereo 97's general manager and officer was necessary or fair. Issues regarding whether to compensate principals and officers and the amount of any such compensation are business decisions within the licensee's discretion. Rather, we simply found that the ability to pay salaries indicated that these funds were available from which to pay the fees. We therefore deny your request for reconsideration based on financial hardship.

You have requested confidential treatment of the materials that you submitted with your fee waiver and reconsideration requests. 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

---

purposes of the 2007 regulatory fees begins October 1, 2006, and ends September 30, 2007. We do not consider the 2007 Form 1120S for purposes of the *Reconsideration Request* because the 2007 Form 1120S reflects only three months of the fiscal year for purposes of the 2007 regulatory fee, while the *Financial Statement* (as it include Stereo 97's revenues and expenses for the corporation's fiscal year ending June 30, 2007) reflects nine months of the regulatory fee fiscal year.

<sup>15</sup> See, e.g., Letter to Howard A. Topel, Esq., *et al.* (July 30, 2007); Letter to Richard A. Helmick, Esq. (July 26, 2006); Letter to Paul H. Brown, Esq. (May 23, 2005), Letter to Robert Lewis Thompson, Esq. (Jan. 12, 2005), Letter to George A. Mattmiller, Jr. (the then-Acting President of Reading Broadcasting, Inc.) (Jan. 4, 2005), Letter to Jerry DeCiccio (Dec. 20, 2004), Letter to Robert Lewis Thompson, Esq. (Dec. 1, 2004), and Letter to Aaron P. Shainis, Esq. (Sept. 1, 2004).

<sup>16</sup> *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd at 12762.

<sup>17</sup> *Id.*

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.

In summary, we grant your request for waiver of the FY 2008 regulatory fees. A check made payable to the maker of the original check, and drawn in the amount of \$965.00, will be sent to you at the earliest practicable time. We deny your request for reconsideration of the *Letter Decision* denying your request for waiver of the FY 2007 regulatory fees. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

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

Mark Stephens  
Chief Financial Officer

**CHARLES S. LOTSOF**

Attorney at Law

11080

1188 Bishop Street - Suite 2711 - Honolulu, Hawaii 96813-3311  
(808) 521-3333 Fax 521-3332

July 21, 2008

Mr. Mark Stephens  
Chief Financial Officer  
Office of the Managing Director  
Federal Communications Commission  
Washington, D.C. 20554

Re: Stereo 97, Inc.  
Request for Waiver of FY 2007 Regulatory Fees  
Fee Control No.: RROG-07-00009642

Dear Mr. Stephens:

I represent Stereo 97, Inc., licensee of KAVV, in regard to the denial of its request for waiver of the Fiscal Year 2007 Regulatory Fees, which denial was suggested in your letter to Stereo 97, Inc., dated November 21, 2007.

Your re-evaluation of the request for waiver is respectfully requested in light of the considerations brought to your attention below.

In essence, the Commission has denied the application because it has considered one of Stereo 97, Inc.'s employees to be a "principal," so that "salary paid to the corporation's vice president and general manager" was eliminated from the company's operating expenses in determining whether the company had a profit sufficient so that it would be able to afford the regulatory fees.

Your letter reasons that an "entity's ability to compensate its officers and highest-paid employees reflects the company's ability to pay its regulatory fees without affecting its 'ability to serve the public.'"

As applied, this analysis is terribly arbitrary and capricious. Every broadcasting station needs to have a general manager. There will invariably be one employee whose salary is higher than the others, so that not counting the highest-paid employee in determining profitability will result in an erroneous finding. Only where the highest-paid employee is not genuinely performing services that warrant his salary will not counting his salary make any sense. The request for waiver conclusively explained that the general manager's salary was for necessary, essential services and did not represent over-compensation by any stretch of the imagination. Eliminating the salary of the general manager from the profitability equation would make sense only if the station could function reasonably well without his services or if the compensation he received were in an amount greater than normally seen for radio

station general managers. KAVV's general manager is indispensable. He personally runs every aspect of the station: he handles the technical aspects of maintaining the transmitter, frequently having to negotiate the road up to the mountainside transmitter site, edits and broadcasts news reports including the workings of the local government in the City of licensure, prepares on the air editorials, and produces the advertising messages. His voice is very frequently heard on the station.

The idea, implicit in your letter, that there is some reason that the salary of a "principal" should be disincluded, runs contrary to the legal meaning of "principal," which is a person who is responsible for agents or the superintendent. The term's main implication is that a principal is in a responsible managing position. There is no connotation of profligacy or extravagance. Principals are ordinarily to be compensated appropriately for the level of their functioning. Even if there were such a connotation generally, the size of KAVV's general manager's salary would refute any implication of overcompensation in this case.

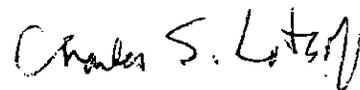
The letter denying the request for waiver is completely arbitrary and rather arrogant in its conclusory statement that the facts surrounding the modest amount of the general manager's salary compared with his duties "does not persuade us." None of the citations contained in the letter support the bureaucratic "classificationism" of not counting executive salaries regardless of whether they are essential to the station's operations in the public service.

Whether a specific salary is fair and necessary must be determined on an individual basis using rational criteria to meet the abuse of discretion standard imposed on all administrative agencies. Lopping off the highest salary or the salary of a general manager or principal is violative of an administrative agency's duty not to use "erroneous or extraneous considerations." Schwartz, *Administrative Law*, §218 at pages 611-2. There must be a "rational connection between the facts found and the choice made." *CBS v. FCC*, 3rd Circuit, July 21, 2008, at 12, 32; otherwise, the administrative action fails as arbitrary and capricious. Arbitrarily lopping off the salary paid to the most important employee obviously fails the test as it is the opposite of rational analysis.

Enclosed, as it is now available, is Stereo 97, Inc.'s FY Ended June 30, 2007 "Statement of Revenues, Expenses and Deficit - Cash Basis."

Thank you very much for your attention to this matter.

Sincerely,



Charles S. Lotsof

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 7 2009

OFFICE OF  
MANAGING DIRECTOR

Joseph M. Di Scipio, Esq.  
Patrick A. Murck, Esq.  
Fletcher, Heald & Hildreth, P.L.C.  
11<sup>th</sup> Floor  
1300 North 17<sup>th</sup> Street  
Arlington, VA 22209

Re: Wayside Temple and Christian Faith  
Broadcast, Inc.  
Fiscal Year 2008 Regulatory Fee  
Fee Control No. 0809269084985019

Dear Mr. Di Scipio and Mr. Murck:

This is in response to your request filed on November 12, 2008 (*Request*), on behalf of Wayside Temple (Wayside), the owner of Christian Faith Broadcast, Inc. (Christian Faith), the licensee of stations W33B3, WGGN(FM), WGGN-TV, WJKW, WLLA, and WLRD (the Stations), for a refund of the regulatory fees for fiscal year (FY) 2008 based upon Wayside's claimed status as a non-profit, tax-exempt entity. Our records reflect that Wayside paid the \$35,650.00 FY 2008 regulatory fee. For the reasons set forth below, we deny your request.

You state that because Wayside has 100 percent ownership and control of Christian Faith (which is a for-profit entity), Wayside's nonprofit exempt status "flows down to [Christian Faith as] the wholly-owned and operated licensee."<sup>1</sup> You assert that Wayside's nonprofit exempt status is the determining factor in establishing whether the Stations owe regulatory fees because the Commission requires all nonprofit entities claiming an exemption from regulatory fees to file a list of the names and addresses of all stations owned by the nonprofit entity, including the name on the license if other than that of the nonprofit entity.<sup>2</sup> You maintain that the Commission has consistently held that a nonprofit entity with ownership and control of a license-holding subsidiary is exempt from paying regulatory fees.<sup>3</sup>

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

<sup>2</sup> *Id.* (citing *Verification of Exemption from Regulatory Fees Based on Non-Profit Status, Public Notice*, 12 FCC Rcd 19753 (1997)).

<sup>3</sup> *Id.* (citing Letter from Mark Reger, Chief Financial Officer (CFO), Office of Managing Director (OMD), FCC, to Kenneth C. Hill (Mar. 19, 1999) (*Appalachian Corporation Letter*) and Letter from Mark Reger, CFO, OMD, FCC, to Julie A. Barrie, Esq. (Mar. 19, 1999) (*Good News Letter*)).

The Commission's rules provide that no regulatory fee shall be required for a nonprofit entity.<sup>4</sup> The rules define a nonprofit entity as "an organization duly qualified as a nonprofit, tax exempt entity under section 501 of the Internal Revenue Code, 26 U.S.C. §501; or an entity with current certification as a nonprofit corporation or other nonprofit entity by state or other governmental authority."<sup>5</sup> The rules further provide that

[a]ny permittee, licensee or other entity subject to a regulatory fee and claiming an exemption from a regulatory fee based upon its status as a nonprofit entity . . . shall file with the . . . Commission . . . written documentation establishing the basis for its exemption within 60 days of its coming under the regulatory jurisdiction of the Commission or at the time its fee payment would otherwise be due, whichever is sooner, or at such other time as required by the Managing Director.<sup>6</sup>

Thus, section 1.1162(c) specifically provides that the *entity* that qualifies as a tax-exempt, nonprofit organization under the law and submits the appropriate supporting documentation is exempt from the Commission's regulatory fees. The rules do not provide an exemption for a licensee based upon its status as an entity that is wholly-owned and operated by such a qualifying tax-exempt, nonprofit organization. In *Assessment and Collection of Regulatory Fees for Fiscal Year 2005, Report and Order and Order on Reconsideration*, 20 FCC Rcd 12259, 12266 (2005) (*2005 R&O*),<sup>7</sup> the Commission clarified (but did not otherwise change) its existing fee exemption policies under section 1.1162 by stating:

Facilities licensed directly to an exempt entity and its exempt subsidiaries are excused from the regulatory fee obligation. However, licensees that are for-profit subsidiaries of exempt entities are subject to regulatory fees regardless of the exempt status of the ultimate owner.

Examples: A University owns a commercial facility whose profits are used to support the University and/or its programs. If the facility is licensed to the

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<sup>4</sup> See 47 C.F.R. §1.1162(c).

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

<sup>6</sup> 47 C.F.R. §1.1162 (c)(1); see also *id.* ("Acceptable documentation may include Internal Revenue Service determination letters, state or government certifications or other documentation that non-profit status has been approved by a state or other governmental authority.").

<sup>7</sup> See also *2005 R&O* at para. 16. The *2005 R&O* adopted the proposed clarifications to the fee exemption policies set forth in the *2005 NPRM*.

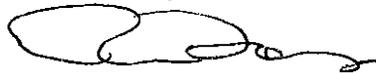
University directly, or to an exempt subsidiary of the University, it is exempt from regulatory fees. If, however, the license is held by a for-profit subsidiary, regulatory fees are owed, even though the University is an exempt entity.

A state pension fund is the majority owner of a for-profit commercial broadcasting firm. The facilities licensed to the for-profit broadcasting firm would be subject to regulatory fees, even though it is owned by an exempt agency.

We therefore find that Christian Faith's status as wholly-owned and operated for-profit subsidiary of an entity exempt from our regulatory fees (*i.e.*, Wayside) does not provide the basis for an exemption under section 1.1162 and that Christian Faith is required to pay regulatory fees for the Stations for FY 2008. We therefore deny your request for a refund of the \$35,650.00 FY 2008 regulatory fee paid by Wayside.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Stephens", with a long, sweeping underline.

Mark Stephens  
Chief Financial Officer

**COPY ORIGINAL**

FO WAIVER TRACKING SYSTEM  
CONTROL # 11186

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November 12, 2008

**RECEIVED - FCC**

NOV 12 2008

Federal Communications Commission  
Bureau / Office

\* NOT ADMITTED IN VIRGINIA

**BY HAND DELIVERY**

Anthony J. Dale, Managing Director  
Office of Managing Director  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TWB204  
Washington, D.C. 20554

RE: Request for Refund of 2008 Annual Regulatory Fees  
Wayside Temple -Licensee Christian Faith Broadcast, Inc.  
FRN - 0002-9401-95.

Dear Mr. Dale:

Wayside Temple ("Wayside"), a non-profit corporation and ultimate owner (through its wholly-owned for-profit license subsidiary Christian Faith Broadcast, Inc. ("Christian Faith")) of the stations listed in Exhibit A attached hereto (the "Stations"), by and through its attorneys, hereby submits this Request for Refund of Regulatory Fees paid for the Stations for the year 2008. As detailed below, the Stations were exempt from paying regulatory fees.

Although Christian Faith is a for-profit license subsidiary, Wayside is a non-profit entity and has 100% ownership and control of Christian Faith. The non-profit exempt status of a parent company that wholly-owns and controls a station flows down to the wholly-owned and operated licensee. Wayside Temple has thus inadvertently paid 2008 regulatory fees despite its exempt status, an exempt status that is reflected in the Commission's records.

In *Verification of Exemption of Regulatory Fees Based on Non-Profit Status*, 12 FCC Rcd 19753 (1997), (the "Non-Profit Order"), the Commission set forth the mechanism by which entities could seek an exemption from paying regulatory fees based on the entities non-profit status. The purpose of gathering information from exempt entities was:

[T]o assure more efficient administration of the fee program by developing a comprehensive data base of exempt entities. The resulting data base will help assure that regulatory fees are calculated using a more accurate assessment of the number of entities required to pay fees, and, thus, result in more equitable fees for all regulatory fee payers.

A search of this data base showed the Stations to be exempt from paying 2008 regulatory fees, albeit with a disclaimer that reliance on the data base would be done at the Stations risk (risk, amongst other things, of paying a 25% late fee if they were subsequently found non-exempt). Rather than accept this risk, Wayside timely paid 2008 regulatory fees (even though it was exempt) for the Stations and is hereby seeking a refund of this payment. Documentation detailing the payment Wayside made is attached at Exhibit B.

As the *Non-Profit Order* demonstrates, the non-profit exempt status of a parent entity that wholly-owns and controls a station is the determining factor in establishing whether fees are owed for a wholly-owned and operated license. The relevant information that exempt entities (not licensees) were required to submit included the following:

- 1) A list of the names and addresses of all stations owned by the non-profit entity,
- 2) Name on license if other than non-profit entity,
- 3) List of all corresponding call signs, community unit numbers, TV Market or other identification for each station ...

Because, the *Non-Profit Order* asks for all licenses *owned* by the non-profit entity, not merely those licensed to it, including the name on the license if other than the non-profit entity. Non-profit entities are exempt from paying regulatory fees for licenses they own. This exempt status is properly reflected in the Commission's database for 2008 regulatory fees for Christian Faith.

In addition to the *Non-Profit Order*, the Commission has consistently held that a non-profit entity with ownership and control of a license-holding subsidiary is exempt from paying regulatory fees. In *Letter to Appalachian Educational Communications Corporation* (at Exhibit C) the FCC found that stations "wholly-owned" by a non-profit entity were exempt from regulatory fees and refunded the fees that had been paid. In *Letter to Good News Radio Broadcasting, Inc.* (at Exhibit D) the FCC found that Good News Radio Broadcasting, Inc. was a non-profit licensee and also previously held Good Music, Inc., a prior licensee, and therefore refunded regulatory fees paid by both entities.

Wayside Temple has inadvertently paid 2008 regulatory fees as demonstrated in Exhibit B and hereby requests a refund in full of the amount paid, \$35,650.00.

Should there be any questions regarding this matter, please contact undersigned counsel.

Sincerely

A handwritten signature in black ink, appearing to read "J. Di Scipio", with a long horizontal flourish extending to the right.

Joseph M. Di Scipio  
Patrick A. Murck

*Counsel for Wayside Temple*