



# 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>  
<ftp.fcc.gov>

DA-09-2157

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

## PUBLIC NOTICE

Released: October 2, 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:

**Atlas Pipeline Mid-Continent LLC** - Request for refund of filing fees. **Granted** (July 22, 2009) [*See* 47 U.S.C. §158]

**Charter Communications Inc.** - Request waiver of filing fees. **Granted** (August 20, 2009) [*See* 47 C.F.R. §1.1117]

**Charter Communications Inc.** - Request waiver of application fees. **Granted** (July 31, 2009) [*See* 47 C.F.R. §1.1117]

**EchoStar Satellite Corporation** - Request for wavier and refund of application fees. **Denied** (July 22, 2009) [*See* 47 C.F.R. §1.1119]

**The Evans Broadcast Company, Inc. Station KCMY (FM)** - Request for waiver of late fee payment penalty. **Granted** (July 22, 2009) [*See* 47 U.S.C. §159(c)(1)]

**Hudson communications, Inc. Station KJLL (AM)** - Request for Waiver of FY08 regulatory fee. **Denied** (August 24, 2009) [*See* Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon. granted, 10 FCC Rcd 12759 (1995)]

**Hawaiian Telcom, Inc.** - Request for refund of application fees. **Granted** (August 21, 2009) [*See* 47 C.F.R. §1.1117]

**Hawaiian Telcom, Inc.** - Request for refund of application fees. **Granted** (August 28, 2009) [*See* 47 C.F.R. §1.1117]

**Integrity Radio of Florida, LLC. Station WFLN** - Request for Waiver of FY 07 and FY08 regulatory fees. **Denied** (July 31, 2009) [*See* Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon. granted, 10 FCC Rcd 12759 (1995)]

**Marcus Tyrone Travenia d/b/a MTC Matrixes -**  
Request for waiver of application fee. **Dismissed** (July  
21, 2009) [See 47 U.S.C. §158(g)]

**Muzak LLC** – Request for waiver of application fees.  
**Granted** (August 21, 2009) [See Establishment of a  
Fee Collection Program to Implement the Provisions  
of the Consolidated Omnibus Budget Reconciliation  
Act of 1985, 5 FCC Rcd 3558, 3572-73 (1990)]

**Station KVOS (TV)** - Request reduction of FY 08  
regulatory Fees. **Granted** (July 31 2009) [See 47  
C.F.R. §1.1153]

**Station WKYR (FM)** - Request waiver late fee  
payment penalty. **Denied** (August 20, 2009) [See 47  
C.F.R. §1.1164]

**VideoLink Fiber Optic Transmission Services, Inc.**  
**Station E060249** - Request for waiver of late payment  
penalty. **Denied** (August 24, 2009) [See 47 U.S.C.  
§159(c)(1)]

**Williams Communications Inc.** Request for waiver  
of FY 08 regulatory fee and late payment penalty.  
**Denied** (August 28, 2009) [See 47 U.S.C. §159(c)(1)]

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

FILE ✓

copy

OFFICE OF  
MANAGING DIRECTOR

July 22, 2009

Brett A. Snyder, Esq.  
Dewey & LeBoeuf, LLP  
1101 New York Avenue, N.W.  
Washington, D.C. 20005-4213

Re: Atlas Pipeline Mid-Continent LLC  
Request for Refund of Filing Fees  
Fee Control No. 0903249097889255

Dear Mr. Snyder:

This is in response to your request filed April 10, 2009 (*Request*), on behalf of Atlas Pipeline Mid-Continent LLC (Atlas Pipeline) for a waiver and refund of the filing fees in connection with a transfer of control application and a notification of consummation filed with the Commission through its Universal Licensing System (ULS).<sup>1</sup> Our records reflect that you paid the \$1,610.00 transfer of control application fee and the \$1,190.00 notification of consummation fee. For the reasons set forth below, we grant your request.

You state that on September 28, 2005, Atlas Pipeline and Enogex, Inc. (Enogex) filed a transfer of control application (*2005 Application*), which the Commission granted on October 5, 2005, and that on November 21, 2005, Atlas Pipeline timely filed a notification of consummation (*2005 Notification*), which the Commission accepted on November 22, 2005.<sup>2</sup> You assert that despite the timely filing of the *2005 Application* and *2005 Notification*, ULS never fully processed the application "and the application remained in 'consented to' status, rather than 'consummated' status."<sup>3</sup> You state that on April 7, 2008, Enogex inadvertently withdrew the *2005 Application*.<sup>4</sup> You say that after consulting with Commission staff, Atlas Pipeline and Enogex filed the *2009 Application* to replace the withdrawn *2005 Application*.<sup>5</sup>

<sup>1</sup> See Transfer of Control Application, ULS File No. 0003783808 (*2009 Application*) and Notification of Consummation, ULS File No. 0003798546 (*2009 Notification*).

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

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

<sup>4</sup> *Id.*; see also *id.*, Attachment 1, *Description of Transaction*, ("as part of a general clean-up of unconsummated transfer and assignment applications, the [2005] application was inadvertently included in this group of applications and withdrawn.").

<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>

According to our records, the Commission granted the *2005 Application* on October 5, 2005, and accepted the *2005 Notification* (which Atlas Pipeline timely filed on November 21, 2005) on November 22, 2005. Our records indicate that ULS reflected the grant of the *2005 Application* and acceptance of the *2005 Notification*, but that the *2005 Application* did not change from “consented to” to “consummated” status in ULS, a change which ordinarily would occur automatically within 24 hours of the Commission’s acceptance of a the notification of consummation, after overnight batch processing.<sup>8</sup> Our records also indicate that Enogex withdrew the *2005 Application* on April 7, 2008, and, along with Atlas Pipeline, filed the *2009 Application* on March 24, 2009, and the *2009 Notification* on April 7, 2009. You explain that Enogex inadvertently withdrew the *2005 Application* after ULS failed to change the status of the *2005 Notification* for almost two and a half years.

As you explain and our records confirm, Atlas Pipeline and Enogex filed the *2005 Application* and *2005 Notification* in a timely manner in accordance with section 1.948 of the Commission’s rules, and ULS subsequently reflected the grant of the application and the acceptance of the notification. Nevertheless, ULS failed to process fully the acceptance of the *2005 Notification* to change the status of the *2005 Application* to “consummated.” As a consequence, the *2005 Application* remained withdrawable and, as you explain, Enogex inadvertently withdrew that application two and a half years after ULS accepted the *2005 Notification*. (If ULS had changed the status of the *2005 Application* to “consummated,” Enogex would not have been able to withdraw the *2005 Application*.) In these unusual circumstances, we find it is appropriate to refund the

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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, para. 70 (1987); *Sirius Satellite Radio, Inc.*, 18 FCC Rcd 12551 (2003).

<sup>8</sup> See 47 C.F.R. §1.948. Ordinarily, after a notification of consummation of an approved transfer of control application is accepted, the status of the underlying transfer of control application is changed in ULS from “consented to” to “consummated” and, then, the licensee of record is changed in ULS from the transferor to transferee. As discussed, ULS failed to process this last step and Enogex remained the licensee of record.

Brett A. Snyder, Esq.

3.

\$1,610.00 transfer of control application fee and the \$1,190.00 notification of consummation fee, totaling \$2,800.00. Accordingly, your request is granted.

A check made payable to the maker of the original check, and drawn in the amount of \$2,800.00, will be sent to you at the earliest practicable time. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

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

Mark A. Stephens  
Chief Financial Officer

0903249097807255  
0904079097891844

Dewey & LeBoeuf LLP  
1101 New York Avenue, NW  
Washington, DC 20005-4213

# DEWEY & LEBOEUF

tel +1 202 346 8008  
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bsnyder@dl.com

11769

April 10, 2009

**BY HAND**

Anthony Dale  
Managing Director  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

RECEIVED - FCC  
APR 10 2009  
Federal Communications Commission  
Bureau / Office

c/o Natek, Inc., Inc.  
236 Massachusetts Avenue, NE, Suite 110  
Washington, DC 20002

Dear Mr. Dale:

Pursuant to § 1.1119 of the Federal Communications Commission's (the "Commission" or "FCC") regulations, 47 C.F.R. § 1.1119 (redesignated Jan. 21, 2009), Atlas Pipeline Mid-Continent LLC ("Atlas Pipeline") hereby requests a waiver and refund of the filing fees, totaling \$2,800, associated with a wireless license transfer of control application and notice of consummation filed with the Commission through its Universal Licensing System (ULS). Specifically, Atlas Pipeline requests a waiver and refund of the filing fees associated with:

1. Transfer of control application, ULS File No. 0003783808 ("Application"), in the amount of \$1,610 (*see* Attachments 1 & 2); and
2. Notice of consummation, ULS File No. 0003798546, in the amount of \$1,190 (*see* Attachments 3 & 4).

The application and notice of consummation were accompanied by the appropriate filing fees at the time of filing under Atlas Pipeline's protest and reservation of right to make this request. *See* Attachment 1, at Exh. "Description of Transaction."

The filing fees should be refunded because, through no fault of Atlas Pipeline, Atlas Pipeline was required to submit the Application to replace a previously submitted application that was improperly withdrawn. At the direction of Commission Staff, the Application

“replaced” a transfer of control application previously filed by Enogex, Inc. (“Enogex”) and Atlas Pipeline on September 28, 2005 in File No. 0002329398. The Commission consented to the 2005 application on October 5, 2005. On November 21, 2005, Atlas Pipeline timely filed a notice of consummation in File No. 0002387732, and the Commission accepted the notice on November 22, 2005. However, despite the applicants’ proper and timely actions and the FCC’s acceptance of the consummation notice, as understood by the Atlas Pipeline from the Commission’s ULS Helpdesk Staff, the processing of the notice of consummation was never fully completed by ULS and the application remained in “consented to” status, rather than “consummated” status. Several years later, on April 7, 2008, the application was inadvertently withdrawn by Enogex, Inc., the other party to the application. After consultations with Commission Staff, the Atlas Pipeline and Enogex were required to submit the Application as a “replacement” for File No. 0002329398. See Attachment 1, at Exh. “Description of Transaction.” In addition, Atlas Pipeline was required to seek waivers, and pay waiver fees, because ULS incorrectly processed the application as being a “late-filed” application. See Attachments 2 & 4.

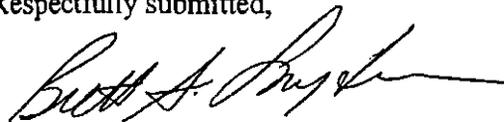
In light of the foregoing, Atlas Pipeline respectfully requests that the Commission waive and refund the filing fees for the Application and related notice because Atlas Pipeline fully complied with the Commission’s regulations with regard to the 2005 transaction, submitted the appropriate filings, and submitted all relevant fees at that time. Atlas Pipeline is not responsible for the incomplete processing of the notice of consummation or the inadvertent withdrawal of the 2005 application. Atlas Pipeline should not be subjected to an unwarranted penalty or required to pay duplicate fees. Thus, good cause exists for waiver and refund of the fees and such refund would be in the public interest. See 47 C.F.R. § 1.1119(a) (2009).

Atlas Pipeline includes the following attachments to this request:

1. Transfer of control application, ULS File No. 0003783808.
2. Form 159 for ULS File No. 0003783808.
3. Notice of consummation, ULS File No. 0003798546
4. Form 159 for ULS File No. 0003798546.

Please contact the undersigned with any questions regarding this request.

Respectfully submitted,



Brett A. Snyder  
*Attorney for Atlas Pipeline Mid-Continent LLC*

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

AUG 20 2009

OFFICE OF  
MANAGING DIRECTOR

James Ireland  
Davis Wright Tremaine LLP  
Counsel for Charter Communications, Inc.  
1919 Pennsylvania Avenue, NW, Suite 200  
Washington, DC 20006-3402

Re: Request for Waiver of Filing Fees  
Fee Control Nos. 0904149089417001,  
0904109097892485, -2495, -2508, -2515,  
-2516, -2529, -2532, -2537, -2541, -2544,  
-2547, -2548, -2554, -2559, -2562, -2563,  
-2568, -2569, -2571, -2572, -2577, -2578,  
-2581

Dear Mr. Ireland:

This responds to your Letter dated April 13, 2009 on behalf of Charter Communications, Inc., licensee of 55 CARS licenses, and its operating subsidiaries that are licensees of 118 wireless licenses (collectively, "Charter Communications"), requesting waiver of the filing fees associated with its *pro forma* applications for assignment of these licenses that were filed with the Commission on April 10, 2009, on account of financial hardship.<sup>1</sup> Our records show that the application fees at issue, totalling \$20,860.00, have been paid. As indicated below, your request is granted.

You assert in your Letter that the bankrupt status of Charter Communications warrants a waiver of the filing fees.<sup>2</sup> In support, you state that on March 27, 2009, each of the licensees filed individual petitions for bankruptcy relief in the U.S. Bankruptcy Court of the Southern District of New York, in Case. No. 09-11435.<sup>3</sup>

Section 1.1117 of the Commission's rules, 47 C.F.R. § 1.1117, provides that filing fees may be waived upon a showing of good cause and a finding that the public interest will be served thereby. *See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 5 FCC Rcd 3558, 3572-73 (1990). We find that the bankruptcy filing involving Charter Communications substantiates your claim of financial hardship and demonstrates good cause for waiver of the filing fees. *See MobileMedia Corporation*, 14 FCC Rcd 8017, 8027 (1999) (bankruptcy establishes good cause for waiver of filing fee). Moreover,

<sup>1</sup> Letter from James Ireland, Davis Wright Tremaine LLP, to Office of the Managing Director, Federal Communications Commission (dated April 13, 2009) (Letter).

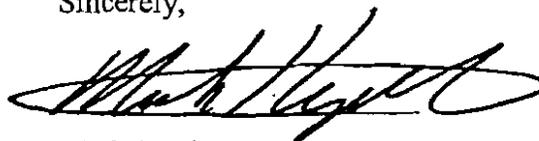
<sup>2</sup> Letter at 1-2.

<sup>3</sup> Letter at 1; *see id.* at Exhibit 2 (Notice of Bankruptcy Case Filing for Charter Communications, Inc., Case. No. 09-11435 (dated March 27, 2009)).

waiver of the filing fees will serve the public interest by protecting the interests of innocent creditors. Therefore, your request for waiver of the application filing fees in connection with Charter Communications' *pro forma* applications for assignment, is granted.

A check, made payable to the maker of the original check and drawn in the amount of \$20,860.00, will be sent to you at the earliest practicable time. 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", written in a cursive style.

Mark Stephens  
Chief Financial Officer



Suite 200  
1919 Pennsylvania Avenue NW  
Washington, DC 20006-3402

James Ireland  
202.973.4246 tel  
202.973.4446 fax

[jayireland@dwt.com](mailto:jayireland@dwt.com)

April 13, 2009

**VIA COURIER AND EMAIL**

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

Attn: Regulatory Fee Waiver/Reduction Request

**Re: Charter Communications, Inc. and Its Operating Subsidiaries Waiver and Refund of Filing Fees Pursuant to 47 C.F.R. § 1.1119(a)-(c)**

Dear Sir/Madam:

Charter Communications, Inc. ("Charter") and its operating subsidiaries ("Subsidiaries") (collectively, the "Companies"), by their attorneys and pursuant to Section 1.1119(a)-(c) of the Commission's rules, herein seek a waiver and refund of filing fees paid pursuant to Sections 1.1102, 1.1104, 1.1106, and 1.1119(e) of the Commission's rules with respect to certain *pro forma* assignment applications submitted on April 10, 2009 by the Companies. Exhibit 1 outlines the details of filing fee payments remitted to the Commission. Copies of the subject *pro forma* assignment applications, with supporting fee payment documentation, are attached as Exhibit 1.

On March 27, 2009, each of the Companies filed individual petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court of the Southern District of New York, jointly captioned In re Charter Communications, Inc., et al., Debtors (Case No. 09-11435). A copy of the Notice of Bankruptcy Case Filing and the Voluntary Petition for Charter Communications, Inc. (collectively, "Notice of Bankruptcy") are attached hereto as Exhibit 2.<sup>1</sup> All of the Companies that requested separate bankruptcy protection are listed in Schedule 1 attached to the Voluntary Petition for Charter Communications, Inc.<sup>2</sup>

<sup>1</sup> The Notice of Bankruptcy is consolidated evidence of the Companies' bankruptcy filings. Because, as noted above, each of the Companies filed their own individual bankruptcy petitions, providing each of the individual

Office of the Managing Director  
April 13, 2009  
Page 2

In connection with the Companies' bankruptcy filings, the Commission's rules require the filing of *pro forma* assignment applications covering each and every FCC license held by the Companies. In light of the financial hardship underlying the March 27, 2009 bankruptcy filings and consistent with Commission precedent,<sup>3</sup> the Companies herein seek a waiver and complete refund of the relevant filing fees associated with such *pro forma* assignment applications. Accordingly, the Companies request a filing fee refund in the total amount of \$20,860.00.

In addition, a list of all applicants covered by the above-referenced applications and their FCC Registration Numbers ("FRN") are set forth in Exhibit 1.

In the event that you have any questions regarding the foregoing, please do not hesitate to communicate directly with the undersigned.

Regards,

Davis Wright Tremaine LLP



James Ireland

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Companies' bankruptcy petitions would entail a voluminous amount of paperwork. However, all of the Companies' court filed documents for the bankruptcy case are available online at [www.kccllc.net/charter](http://www.kccllc.net/charter).

<sup>2</sup> The Schedule of Chapter 11 Debtors includes many Subsidiaries that do not hold FCC licenses.

<sup>3</sup> See, e.g., *Mobilemedia Corporation, et. al.*, Memorandum Opinion and Order, 14 FCC Rcd 8017, 8027, ¶ 40 (1999) (finding that a bankruptcy filing establishes good cause for waiver of Commission filing fees); *In the Matter of Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, FCC Rcd 24 (1995) ("Evidence of bankruptcy or receivership is sufficient to establish financial hardship.").

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUL 31 2009

OFFICE OF  
MANAGING DIRECTOR

James Ireland, Esq.  
Davis Wright Tremaine, LLP  
Suite 200  
1919 Pennsylvania Ave., N.W.  
Washington, DC 20006-3402

Re: Charter Communications, Inc., Debtor-in-Possession, *et al.*  
Fee Control Nos. 09050897897252, 0905089097897181,  
0905089097897190, 0905089097897198, 0905089097897214,  
0905089097897225, 0905089097897233, 0905089097897238,  
0905089097897244, 0905089097897248, 0905089097897249, and  
0905089097897252

Dear Mr. Ireland:

This letter responds to your request (dated May 13, 2009) submitted on behalf of Charter Communications, Inc. (Charter), Debtor-in-Possession, and its operating subsidiaries (Subsidiaries) (collectively, the Companies) for a waiver of the application fees filed on May 8 and 11, 2009, by the Companies.<sup>1</sup> Our records reflect that the \$27,285.00 in filing fees have been paid. For the reasons set forth herein, we grant your request.

In your request, you state that on March 27, 2009, each of the Companies filed individual petitions for Chapter 11 bankruptcy reorganization in the Southern District of New York, jointly captioned *In re Charter Communications, Inc., et al., Debtors* (Case No. 09-11435).<sup>2</sup> You state that the *Applications* were filed to effectuate the emergence of the Companies from bankruptcy.<sup>3</sup> You have provided us with a copy of the *Notice of Bankruptcy Case Filing* and the *Voluntary Petition for Charter Communications, Inc.*<sup>4</sup>

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<sup>1</sup> The applications include one FCC Form 327 assignment application (covering 55 CARS station licenses), 23 FCC Form 603 wireless assignment applications (covering 110 licenses), one combined domestic and international section 214 application (covering 39 domestic section 214 authorizations), and five Form 214TC international section 214 applications (covering five international section 214 authorization) (collectively, *Applications*). See *Request*, Exhibit 1.

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

<sup>3</sup> *Id.* at 2.

<sup>4</sup> See *Request*, Exhibit 2, *Notice of Bankruptcy Case Filing*, United States Bankruptcy Court, Southern District of New York, from Vito Genna, Clerk, U.S. Bankruptcy Court, to Paul M. Basta (stating that the Chapter 11 bankruptcy case concerning Charter Communications, Inc. was entered on March 27, 2009) and *Voluntary Petition*, United

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.<sup>5</sup> Section 1.1117(e) of the rules, 47 C.F.R. §1.1117(e), requires an applicant seeking a waiver of the filing fee requirement to include the applicable fee with its waiver request, and also provides that the fee will be returned if the waiver is granted.<sup>6</sup>

We find that the bankruptcy filings involving the Companies substantiate Charter's claim of financial hardship and demonstrates good cause for waiver of the filing fees.<sup>7</sup> Therefore, your request for refund of the application filing fees in connection with the Companies' applications is granted.

A check, made payable to the maker of the original check, and drawn in the amount of \$27,285.00, will be sent to you at the earliest practicable time. 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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States Bankruptcy Court, Southern District of New York, Charter Communications, Inc., Schedule 1 (*Pending Bankruptcy Cases Filed by the Debtor and Affiliates of the Debtor* (listing Charter and its affiliates that filed for Chapter 11 relief)) (March 25, 2009).

<sup>5</sup> See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 5 FCC Rcd 3558, 3572-73 (1990).

<sup>6</sup> See also *id.*

<sup>7</sup> See *MobileMedia Corporation*, 14 FCC Rcd 8017, 8027 (1999) (bankruptcy establishes good cause for waiver of filing fee).



Davis Wright  
Tremaine LLP

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Suite 200  
1919 Pennsylvania Avenue NW  
Washington, DC 20006-3402

James Ireland  
202.973.4246 tel  
202.973.4446 fax

[jayireland@dwt.com](mailto:jayireland@dwt.com)

May 13, 2009

**VIA COURIER AND EMAIL**

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

Attn: Fee Waiver/Reduction Request

09050897897<sup>252</sup>  
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0905089097897252

**Re: Charter Communications, Inc., Debtor-in-Possession *et al.* Waiver and Refund of Filing Fees Pursuant to 47 C.F.R. § 1.1119(a)-(c)**

Dear Sir/Madam:

Charter Communications, Inc. ("Charter"), Debtor-in-Possession and its operating subsidiaries ("Subsidiaries") (collectively, the "Companies"), by their attorneys and pursuant to Section 1.1119(a)-(c) of the Commission's rules, herein seek a waiver and refund of filing fees paid pursuant to Sections 1.1102, 1.1104, 1.1105, 1.1106, and 1.1119(e) of the Commission's rules with respect to certain applications submitted on May 8 and 11, 2009 by the Companies (the "Applications"). Exhibit 1 outlines the details of filing fee payments remitted to the Commission. Copies of the subject Applications, with supporting fee payment documentation, are attached as Exhibit 1.

On March 27, 2009, each of the Companies filed individual petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court of the Southern District of New York, jointly captioned In re Charter Communications, Inc., *et al.*, Debtors (Case No. 09-11435). A copy of the Notice of Bankruptcy Case Filing and the Voluntary Petition for Charter Communications, Inc. (collectively, "Notice of Bankruptcy") are attached hereto as Exhibit 2.<sup>1</sup> All of the Companies that requested separate bankruptcy protection are listed in Schedule 1 attached to the Voluntary Petition for Charter Communications, Inc.<sup>2</sup>

<sup>1</sup> The Notice of Bankruptcy is consolidated evidence of the Companies' bankruptcy filings. Because, as noted above, each of the Companies filed their own individual bankruptcy petitions, providing each of the individual

Anchorage  
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Shanghai  
Washington, D.C.

[www.dwt.com](http://www.dwt.com)

The FCC previously approved (where applicable) the *pro forma* assignment of the Companies' licenses and authorizations in conjunction with the March 27, 2009 Chapter 11 bankruptcy petitions.<sup>3</sup> The subject Applications were filed to effectuate the emergence of the Companies from Chapter 11. In light of the financial hardship underlying the March 27, 2009 bankruptcy filings and consistent with Commission precedent,<sup>4</sup> the Companies herein seek a waiver and complete refund of the relevant filing fees associated with the Applications. Accordingly, the Companies request a filing fee refund in the total amount of \$27,285.00.

In addition, a list of all applicants covered by the above-referenced Applications and their FCC Registration Numbers ("FRN") are set forth in Exhibit 1.

In the event that you have any questions regarding the foregoing, please do not hesitate to communicate directly with the undersigned.

Regards,

Davis Wright Tremaine LLP

  
James Ireland

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Companies' bankruptcy petitions would entail a voluminous amount of paperwork. However, all of the Companies' court filed documents for the bankruptcy case are available online at [www.kcclic.net/charter](http://www.kcclic.net/charter).

<sup>2</sup> The Schedule of Chapter 11 Debtors includes many Subsidiaries that do not hold FCC licenses.

<sup>3</sup> See Cable Television Relay Service (CARS) Applications re: Actions on Pending Applications, *Public Notice* No. 4139 (Apr. 22, 2009); International Bureau – Section 214 Applications (47 C.F.R. § 63.12); Section 310(b)(4) Requests, *Public Notice* No. TEL-01355 (Apr. 23, 2009); Wireless Telecommunications Bureau – Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports Action, *Public Notice* No. 4925 (May 6, 2009).

<sup>4</sup> See, e.g., *Mobilemedia Corporation, et. al.*, Memorandum Opinion and Order, 14 FCC Rcd 8017, 8027, ¶ 40 (1999) (finding that a bankruptcy filing establishes good cause for waiver of Commission filing fees); *In the Matter of Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, FCC Rcd 24 (1995) ("Evidence of bankruptcy or receivership is sufficient to establish financial hardship.").

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUL 22 2009

FILE ✓

OFFICE OF  
MANAGING DIRECTOR

David K. Moskowitz  
Senior Vice President and General Counsel  
EchoStar Satellite Corporation  
5701 South Santa Fe  
Littleton, CO 80120

David R. Goodfriend  
Director, Legal and Business Affairs  
EchoStar Satellite Corporation  
1233 20<sup>th</sup> Street, NW, Suite 701  
Washington, D.C. 20036

Pantelis Michalopoulos  
Philip L. Malet  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, NW  
Washington, D.C. 20036-1795

Re: Petition For Waiver and Refund of  
Application Fees  
Fee Control No. 0306058210032001

Dear Counsel:

This is in response to the Petition for Waiver and Refund of Application Fees dated September 22, 2003, submitted on behalf of EchoStar Satellite Corporation (EchoStar), which seeks a refund of \$31,455.00 in filing fees.<sup>1</sup> The fees were paid in connection with EchoStar's application to construct, launch and operate a Direct Broadcast Satellite ("DBS") space station at the 114.5° W.L. orbital location. The Commission had not yet placed the application on public notice when EchoStar requested dismissal of its application.<sup>2</sup> Your request for a waiver of the application fee and refund is denied.

In your petition, you argue that, pursuant to Section 1.1117<sup>3</sup> of the Commission's rules, the Commission should waive the application fee requirement for EchoStar, and pursuant to Section 1.1113(a)(5)<sup>4</sup> of the Commission's rules, the Commission should refund the application fee submitted by EchoStar. Section 1.1119(a) of the Commission's rules provides that the Commission may waive or defer its fees "in specific instances where good cause is shown and where waiver or deferral of the fee would promote the

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<sup>1</sup> See Petition For Waiver and Refund of Application Fees to the Managing Director from David K. Moskowitz, Senior Vice President and General Counsel; David R. Goodfriend, Director, Legal and Business Affairs; and Pantelis Michalopoulos and Carlos M. Nalda, Steptoe & Johnson, LLP (September 22, 2003) (Petition).

<sup>2</sup> EchoStar's Petition was filed on September 22, 2003, concurrently with its request for dismissal of its space station application.

<sup>3</sup> This rule is now numbered Section 1.1119. See Amendment of Parts 0, 1, 2, 61, 64, 73 and 80 of the Commission's Rules, *Erratum*, DA 08-2125 (OMD, 2008).

<sup>4</sup> This rule is now numbered Section 1.1115(a)(5). See *id.*

public interest.”<sup>5</sup> Section 1.1115(a)(5) provides for a refund “when a waiver is granted in accordance with this subpart.”<sup>6</sup>

Specifically, you argue that “the Commission, Congress and the courts all have concluded that FCC application fees should bear a reasonable relationship to the expenses the Commission may be expected to incur in processing an application”<sup>7</sup> and that “because no material regulatory services were provided and no administrative resources were expended by the Commission . . . a waiver of the fee requirement and refund of the \$31,445.00 application fee is warranted and would serve the public interest.”<sup>8</sup> You also argue that the policy adopted in the *Space Station Licensing Reform Order* -- under which the Commission would return the application fees for all fixed-satellite service (FSS) space station applications withdrawn prior to being placed on public notice -- should be applicable to DBS satellites as well.<sup>9</sup> You state that “[t]he *de minimis* Commission regulatory processes and services afforded DBS and FSS prior to public notice are essentially identical and, if anything, FSS space station applications are subject to *greater* processing prior to public notice than DBS applications now that the Commission’s ‘first-come, first-served’ procedures are in effect.”<sup>10</sup> Finally, you argue that “refunding FSS space station application fees prior to public notice without also refunding a DBS application fee in similar circumstances would be inconsistent with Congress’s mandate that the Commission regulate similarly situated licensees in a non-discriminatory manner.”<sup>11</sup>

We disagree with your assertion that good cause exists for a waiver in this case “because no material regulatory services were provided and no administrative resources were expended by the Commission.” Application fees are generally intended to represent the average cost of application processing services rather than individually-determined costs. *See* 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, para. 14 (1987) (“Because the Commission incurs a cost regardless of the final result to the applicant, we proposed to Congress [and Congress agreed] that these fixed processing costs should be recovered in equal amounts from each applicant through fees. We can find no justification in the statute or the legislative history for apportioning fees according to the actual work done on any particular application”). The Commission has subsequently reaffirmed this principle. *See PanAmSat Corp.*, 19 FCC Rcd 18,495, paras. 5 and 7 (2004) and *Lockheed Martin Corp.*, 16 FCC Rcd 12805, 12807, para. 5 (2001). In *PanAmSat*, the Commission reiterated “there is ‘no justification in the statute or legislative history for apportioning fees in accordance with the actual work done on any particular application’”<sup>12</sup> and further stated that “[i]nsofar as language in the cited OMD [Office of Managing Director] rulings suggests that fee relief may be based on any reduced processing burdens, we clarify that consistent with congressional intent and established agency precedent, good cause for fee waiver or deferral requires a showing of compelling

<sup>5</sup> 47 C.F.R. 1.1119(a). *See also* 47 U.S.C. § 158(d)(2).

<sup>6</sup> 47 C.F.R. 1.1115(a)(5).

<sup>7</sup> Petition at 2-3.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 3-4.

<sup>10</sup> *Id.* at 4.

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

<sup>12</sup> *PanAmSat Corp.*, *citing* *Lockheed Martin Corp.*, 16 FCC Rcd at 12807, para. 5 and 1987 Fee Order, 2 FCC Rcd at 949.

and extraordinary circumstances.”<sup>13</sup> Thus, Congress and the Commission have made clear that the existence of “compelling and extraordinary circumstances” -- not the amount of resources expended in an individual case -- should be the touchstone for determining whether a fee refund should be granted.<sup>14</sup> EchoStar has not demonstrated the existence of such compelling and extraordinary circumstances in this case.

We also disagree with your argument that not applying to DBS satellites the policy adopted in the *Space Station Licensing Reform Order* -- under which the Commission would return the application fees for all FSS space stations withdrawn prior to being placed on public notice -- would be inconsistent with Congress’s mandate that the Commission regulate similarly-situated licensees on a non-discriminatory basis. The Commission adopted the *First Space Station Licensing Reform Order* in May 2003 to put in place licensing procedures that would allow faster service to the public, while maintaining adequate safeguards against speculation.<sup>15</sup> In the *Order*, the Commission adopted two new satellite space station licensing procedures. For new non-geostationary satellite orbit (NGSO) satellite system applications, and for geostationary satellite orbit (GSO) mobile satellite service (MSS) satellite system applications (together, NGSO-like applications), the Commission adopted a modified processing round procedure. Under this approach, the Commission will announce a cut-off date for a processing round, review each application filed in the processing round to determine whether the applicant is qualified to hold a satellite license, and divide the available spectrum equally among the qualified applicants.<sup>16</sup>

For new GSO satellite applications other than MSS satellite systems (GSO-like applications), the Commission adopted a new first-come, first-served approach, in which applications are placed in a single queue and reviewed in the order in which they are filed.<sup>17</sup> The *Order* provided that parties that apply for a GSO-like license that is mutually exclusive with a previously filed application in the queue will not be able to request an application fee refund once their application is placed on public notice.<sup>18</sup> The Commission adopted a rule to allow for the return of satellite license application fees for such mutually exclusive applicants under the first-come first-served procedure if the applicant voluntarily withdraws its application before it is placed on public notice.<sup>19</sup>

<sup>13</sup> *Id.* at para. 8. OMD also rejected this argument as a basis for providing refunds for applicants who withdrew their V-band applications. See Letter to Gerald Musarra, Vice President Trade and Regulatory Affairs, Lockheed Martin Corporation, from Mark A. Reger (May 23, 2005) at 4 and Letter to Peter A. Rohrbach, Karis A. Hastings, and David L. Martin, Counsel for SES AMERICOM, Inc., from Mark A. Reger (March 10, 2005) at 9-10.

<sup>14</sup> The court and Commission decisions you cite do not undermine our finding that application fees are generally intended to represent the average cost of application processing services rather than individually-determined costs. See, e.g., Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989, *Memorandum Opinion and Order*, 5 FCC Rcd 3558, para. 36 (1990) (“We have worked with Congress to ensure that, to the best extent possible, fees reflect only the direct cost of processing the typical application or filing.”) (*emphasis added*). *Nat’l Cable Television Ass’n, Inc. v. FCC*, 554 F.2d 1094 (D.C. Cir. 1976) is not pertinent here. That case concerned whether the fees charged by the Commission pursuant to the Independent Offices Appropriations Act met the standards set by the Supreme Court for interpreting the statute, whereas the current fees are set forth in Section 8 of the Communications Act and, as explained in the text *supra*, reflect the average cost of processing.

<sup>15</sup> *Space Station Licensing Reform Order*, 18 FCC Rcd at 10865, para. 279.

<sup>16</sup> *Id.* at 10,782-86, paras. 48-55. See also Public Notice, “International Bureau Invites Applicants to Amend Pending V-Band Applications,” DA 04-234 at 2 (January 29, 2004) (January 29, 2004 PN).

<sup>17</sup> *Space Station Licensing Reform Order* at 10,792-10,822, paras. 71-159.

<sup>18</sup> *Id.* at 10,806, para. 114.

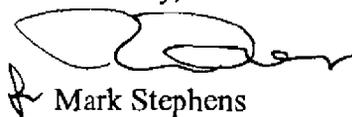
<sup>19</sup> *Id.* at 10,807, para. 116. See also 47 C.F.R. § 1.1115(d).

The Commission concluded further that the specific application fee refund provision for applicants for space stations under the first-come first-served procedure adopted in the *Order*, which provided for the return of satellite license application fees if the applicant voluntarily withdrew its application before it is placed on public notice, was not applicable to any of the pending V-band GSO-like license requests. The Commission explained that the fee refund provision adopted in the *Order* was intended to “enable an applicant in a first-come, first-served procedure to obtain a fee refund in cases where an earlier-filed application would make it impossible to grant its application,” and that none of the pending applications would be considered “pursuant to a first-come, first-served procedure.”<sup>20</sup>

Thus, in the *Space Station Licensing Reform Order*, the Commission made clear that it was applying the refund provision you cite only to applicants to whom the new first-come, first-served procedure applied in order that they would be able “to obtain a fee refund in cases where an earlier-filed application would make it impossible to grant its application.” The Commission explained the limited application of its refund provision, and why it only applied to applicants processed under the new first-come, first-served procedure. DBS applicants, including EchoStar, are not processed under a first-come, first-served procedure, and, contrary to your assertion, nothing in the legislative history of the Telecommunications Act of 1996 or otherwise requires the Commission to extend the limited refund provision in the *Space Station Licensing Reform Order* to DBS applicants.<sup>21</sup>

In sum, you have not demonstrated the existence of compelling and extraordinary circumstances necessary to justify a waiver of the application fee requirement and refund of the fee, pursuant to Sections 1.1119 and 1.1115(a)(5). Accordingly, we deny your request. 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

<sup>20</sup> *Id.* at 10866, para. 282.

<sup>21</sup> In support of your argument that the same application fee refund policy should apply to both DBS and FSS space station applicants, you state that “[t]he Telecommunications Act of 1996 seeks to prevent arbitrary discrimination among providers of similar communications services.” Petition at 4. As a preliminary matter, we note that the legislative history reports and the implementing orders that you cite concern Sections 3(n) and 332 of the Communications Act of 1934, as amended by Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 (1993 OBRA), not the Telecommunications Act of 1996. Congress passed these provisions in the 1993 OBRA to “creat[e] ... regulatory symmetry among similar mobile services,” see Implementation of Sections 3(N) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Second Report and Order*, 9 FCC Rcd 1411, 1413, para. 2 (1994), and it is unclear how these provisions are applicable here. Cf. Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Third Report and Order*, 9 FCC Rcd 7988, 8127 (1994) (Commission lacks authority to amend fee schedule to achieve fee parity between services). Regardless, the *Space Station Licensing Reform Order* does not arbitrarily discriminate among DBS and FSS space station applicants. As explained above, the *Space Station Licensing Reform Order* makes a rational distinction between cases where an earlier-filed application would make the grant of an application impossible and those where the first-come, first-served procedure is not applicable.

**STEPTOE & JOHNSON LLP**

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Pantelis Michalopoulos  
Philip L. Malet  
202.429.3000  
pmichalo@steptoel.com  
pmalet@steptoel.com

June 4, 2003

**BY HAND DELIVERY**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
International Bureau - Satellites  
P.O. Box 358210  
Pittsburgh, PA 15251-5210

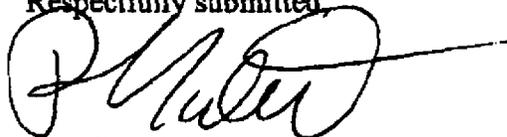
**Re: Application of EchoStar Satellite Corporation for Authority to Construct, Launch and Operate a Direct Broadcast Satellite in the 12.2-12.7 GHz and 17.3-17.8 GHz Frequency Bands at the 114.5° W.L. Orbital Location, File No. \_\_\_\_\_**

Dear Ms. Dortch:

On behalf of EchoStar Satellite Corporation ("ESC"), enclosed please find the original and nine copies of a May 30, 2003 application for authority to construct, launch and operate a Direct Broadcast Satellite ("DBS") in the 12.2-12.7 GHz and 17.3-17.8 GHz frequency bands at the 114.5° W.L. orbital location.

Earlier today, counsel to ESC was informed by FCC Financial Operations that payment for the May 30, 2003 application was not processed because "[m]ultiple checks for a single application are not accepted." Therefore, enclosed is one check in the amount of \$31,445.00 to cover the applicable "Authorization to Construct," "Construction Permit and Launch Authority" and "License to Operate" filing fees, and a completed FCC Form 159.

Respectfully submitted,



Pantelis Michalopoulos  
Philip L. Malet  
*Attorneys for EchoStar Satellite Corporation*

Enclosures

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

FILE

*copy*

OFFICE OF  
MANAGING DIRECTOR

July 22, 2009

Mr. Jerry Evans  
The Evans Broadcast Company, Inc.  
1960 Idaho Street  
Carson City, NV 89701

Re: Station KCMY(FM)  
Fiscal Year 2008 Regulatory Fee  
Fee Control No. 0902139084882151

Dear Mr. Evans:

This is in response to your request filed March 9, 2009 (*Request*), filed on behalf of Station KCMY(FM) for waiver of the penalty for late payment of the fiscal year (FY) 2008 regulatory fee. Our records reflect that you paid the \$1,275.00 FY 2008 regulatory fee, but not the \$318.75 late payment penalty. For the reasons set forth below, we grant your request.

You assert that after receiving a final demand for payment letter from the Federal Communications Commission regarding the unpaid FY 2008 regulatory fee for Station KCMY(FM) dated February 6, 2009, you contacted Commission staff and explained that on September 24, 2008, you "paid the fees for co-owned KKFT but was not sure that [you were] . . . successful with KCMY."<sup>1</sup> You state that although you left a telephone message at approximately 2:40 p.m. that you were uncertain whether you had successfully paid the regulatory fee for Station KCMY(FM), no one returned your call.<sup>2</sup> You say that on February 13, 2009, after several unsuccessful attempts to pay the fee, Commission staff helped you pay the regulatory fee for Station KCMY(FM).<sup>3</sup>

The Communications Act of 1934, as amended, requires the Commission to assess a penalty of 25 percent on any regulatory fee not paid in a timely manner.<sup>4</sup> It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year.<sup>5</sup> You paid the regulatory fee for Station KCMY(FM) on

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

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

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

<sup>4</sup> 47 U.S.C. §159(c)(1).

<sup>5</sup> See 47 C.F.R. §1.1164, and see *Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Report and Order and Further Notice of Proposed Rulemaking*, FCC

February 13, 2009, after the September 25, 2008, deadline for filing regulatory fees, and therefore failed to meet this obligation.

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.”<sup>6</sup> In this case, we find that your timely efforts to ascertain the status of your payment, combined with your repeated subsequent good faith efforts to pay the fee, present mitigating circumstances sufficient to warrant waiver of the late payment penalty. We note that the waiver granted herein is based solely on the unique circumstances of this particular case and is not intended to serve as precedent for any other request to waive late payment penalties.

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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08-182, 2008 WL 3318967, paras. 63 and 64 (released: Aug. 8, 2008); *Public Notice, Payment Methods and Procedures for Fiscal Year 2008 Regulatory Fees*, 23 FCC Rcd 12849, 12849, 12851 (Aug. 26, 2008) (reminding of filing deadline and that “[i]t is the responsibility of the licensee to pay for all regulatory fee obligations by the due date, regardless of whether or not a bill is received”), *Public Notice, Fee Filer Now Available for 2008 Regulatory Fees*, 23 FCC Rcd 12857, 12857 (Aug. 26, 2008) (reminding of filing deadline and late payment penalty); *Regulatory Fees Fact Sheet, What You Owe – Media Services Licensees for FY 2008* (Aug. 2008) (providing instructions as to which media services licensees must pay FY 2008 regulatory fees and how to calculate and pay the fee).

<sup>6</sup> See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970).

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0902139084882151

February 24, 2009

Federal Communications Commission  
Attn: Revenue and Receivables Operations Group  
445 12<sup>th</sup> St., S.W. Room 1A767  
Washington, D.C. 20554

Dear Commission;

Enclosed please find a copy of the "URGENT" notice that I received last week. As soon as I received this I called the Commission and spoke to an Evelyn. I explained to her that on 9/24/08 I had paid the fees for co-owned KKFT but was not sure that I was successful with KCMY. I called at approximately 2:40pm EST and left a message to the effect that I had paid for KKFT was not sure that I was successful with KCMY and to please call if it was not.

I never heard back from anyone.

After several unsuccessful attempts to pay the fee on 2/13/09, I called Evelyn and she attempted to go through the process of paying on-line with me. We tried 2-3 times and she finally admitted that the system did not work. She had a "Jim" call and we went through the process 2-3 times and he too admitted that the system did not work.

Eventually "Jim" helped with some sort of "bypass the system" and I was able to pay the annual fee minus the late penalty. Not only do I not agree that I should have to pay the late (fee) penalty, I would ask for consideration for the approximate 2 hours that was spent trying to make the payment.

Jeff Evans



KKFT-KCMY

Cc/file

2009 MAR -9 P 3:17

RECEIVED

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

AUG 24 2009

OFFICE OF  
MANAGING DIRECTOR

Bruce A. Eisen  
Kaye Scholer, LLP  
Counsel for Hudson Communications, Inc.  
The McPherson Building  
901 Fifteenth Street, NW  
Washington, DC 20005

Re: KJLL-AM, South Tucson, Arizona  
Request for Waiver of Regulatory Fee  
Fee Control No. RROG-09-00011503

Dear Mr. Eisen:

This responds to your Letter filed March 2, 2009, requesting waiver of the fiscal year (FY) 2008 regulatory fee on behalf of Hudson Communications, Inc. (Hudson), licensee of KJLL-AM, South Tucson, Arizona (KJLL), on account of financial hardship.<sup>1</sup> Our records show that the FY 2008 regulatory fee in the amount of \$4,156.25, including late charge penalty, has not been paid. As explained below, your request is denied.

In your Letter, you state that Hudson has been unable to pay its FY 2008 regulatory fee because of financial hardship.<sup>2</sup> In support of your request, you attach a financial report showing Hudson's expenses (apportioned to categories "Payroll Est.," "Utilities," "Supplies," "IRS," "Rent," "Insurance," and "Vendors/1099/Shows/Dues") and revenues ("Chase Bank Deposits") for calendar year 2008.<sup>3</sup> You also attach monthly bank statements covering most of calendar year 2008 showing deposits and withdrawals from Hudson's account.<sup>4</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." See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon. granted, 10 FCC Rcd 12759 (1995). Regulatees can establish financial hardship by submitting:

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<sup>1</sup> Letter from Bruce A. Eisen, Kaye Scholer LLP to Federal Communications Commission (filed March 2, 2009) (Letter).

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

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

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

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. 10 FCC Rcd at 12762.

In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, to determine 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, as well as deductions for depreciation and amortization and similar items that do not affect cash flow, are considered funds available to pay the fees.

In the absence of such documentation, or other relevant showing, you have failed to establish a compelling case for relief. Specifically, although the financial report you submitted indicates that Hudson's payouts from its bank account exceeded deposits for calendar year 2008, there is no information as to any amounts paid to principals, or deductions for depreciation and amortization and similar items that do not affect cash flow. Therefore, your request for waiver is denied.

Payment of the FY 2008 regulatory fee in the amount of \$3,325, plus a penalty of \$831.25 for late payment of the regulatory fee, is now due. The regulatory fee and the late charge penalty (*i.e.*, \$4,156.25) should be filed with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. However, insofar as you may be relying on financial hardship, in lieu of payment, you may re-file the request for relief 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 letter, please contact the Revenue and Receivable Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
Chief Financial Officer

Enclosure