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MAY 22 2009

Federal Communications Commission
Bureau / Office May 22, 2009

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11764

BY HAND

Federal Communications Commission
Office of the Managing Director
445 12th Street, S.W.
Room 1-A625
Washington, D.C. 20554
Attn: Regulatory Fee Waiver/Reduction Request

RECEIVED

MAY 26 2009

Financial Operations
Center

**Re: Request for Partial Refund of Regulatory Fees for Fiscal Year 2008
Newport Television LLC
KVOS-TV, Channel 12, Bellingham, Washington
Facility Id. No. 35862**

Dear Sir or Madam:

Newport Television LLC ("Newport"), licensee of full-power commercial television station KVOS-TV, Bellingham, Washington ("KVOS"), by its counsel and pursuant to Sections 1.1160 and 1.1166 of the Commission's rules. *See* 47 C.F.R. §§ 1.1160, 1.1166, hereby requests a partial refund of its Fiscal Year 2008 ("FY 2008") regulatory fee payment.

Throughout FY 2008, KVOS operated without a network affiliation on analog channel 12 and was assigned to the Seattle-Tacoma Designated Market Area ("DMA"), the 14th largest DMA at the time. *See* Television & Cable Factbook, Stations Vol. 2, A-2492 (2008). KVOS paid \$53,525 in regulatory fees for FY 2008, based on the fee assessed for VHF commercial television stations in markets ranked 11 through 25. *See* "What You Owe—Media Services Licensees for FY 2008," Fact Sheet (Aug. 2008) at 3.

In implementing the regulatory fee program, the Commission stated that stations that "lack network affiliation, and are located outside of the principle city's metropolitan area and do not provide a Grade B signal to a substantial portion of the market's metropolitan areas . . . will be assessed a fee based on the number of television households served, and will be charged the same fee as stations serving markets within the same number of television households." *See Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, 10 FCC Rcd 12759, 12761, paras. 21-22 (1995).

May 22, 2009

Page 2

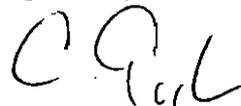
KVOS is licensed to the community of Bellingham, Washington, which is situated at the far northern edge of the Seattle-Tacoma DMA. The KVOS signal can be received over-the-air only at the far northern edge of Seattle and cannot be received over-the-air in Tacoma. Accordingly, KVOS does not provide a Grade B signal to a substantial portion of the metropolitan areas in the Seattle-Tacoma DMA. As illustrated by the attached coverage contour map, KVOS's Grade B service contour in 2008 encompassed only 392,700 television households within the Seattle-Tacoma DMA, constituting 22.8 percent of the total DMA television households. *See Attachment A hereto.*

Accordingly, KVOS meets the Commission's standards, as set forth above, for a partial refund of its regulatory fee paid for FY 2008. Because KVOS lacks network affiliation and because there were 392,700 television households within the Grade B service area of KVOS in FY 2008, the licensee effectively served a market equivalent to DMA market size number 78 based on the Nielsen TV Household Estimates Data as of January 1, 2007. *See Attachment B hereto.* In FY 2008, stations in markets ranked 51 to 100 paid a regulatory fee of \$21,025, which was \$32,500 less than the fee paid by KVOS. *See "What You Owe—Media Services Licensees for FY 2008," Fact Sheet (Aug. 2008) at 3.*

For the foregoing reasons, Newport respectfully submits that KVOS should be treated as comparable to a full-power VHF commercial television station in a market ranked 51 to 100 in FY 2008 and receive a partial refund of its FY 2008 regulatory fee payment in the amount of \$32,500.

Please direct any questions regarding this submission to the undersigned.

Respectfully submitted,



Christopher G. Tygh

Counsel for Newport Television LLC

Attachments

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
AUG 20 2009

OFFICE OF
MANAGING DIRECTOR

WKYR, Inc.
c/o Elizabeth (Libby) Mullinix
127 Baker Street
Burkesville, KY 42717

Re: Station WKYR(FM)
Fiscal Year 2006 Regulatory Fee
Fee Control No. 0711208365252001

Dear Ms. Mullinix:

This is in response to the correspondence dated November 13, 2007 (*Request*), filed on behalf of WKYR, Inc., licensee of station WKYR(FM), requesting waiver of the penalty for late payment of the fiscal year (FY) 2006 regulatory fee. Our records reflect that WKYR, Inc. paid the \$575.00 regulatory fee, but not the \$143.75 penalty. For the reasons set forth below, we deny the request.

You state that the *Bill for Collection* from the FCC dated November 11, 2007 "is the first notice I've gotten, evidently it was being sent to the wrong address."¹ You say that your "late husband was the former owner [and] I am a widow, and no longer the owner of the station."² You aver that "this is hard for me to pay."³

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.⁴ 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.⁵ Your request does not indicate or substantiate that WKYR, Inc. met this obligation.⁶ Although WKYR, Inc. may have relied upon receiving a bill

¹ *Request* at 1.

² *Id.*

³ *Id.*

⁴ 47 U.S.C. §159(c)(1).

⁵ *See* 47 C.F.R. §1.1164.

⁶ Our records reflect that the Commission received payment of the regulatory fee on November 20, 2007, more than a year after the due date for payment of the FY 2006 regulatory fee, *i.e.*, September 19, 2006. *See infra.*

from the Commission in paying the FY 2006 regulatory fee, this does not support a waiver of the late charge penalty. The Commission takes great care to inform its licensees of the due dates, amounts of the fees, and payment methods in public notices and fact sheets, which information it also posts on its web site, www.fcc.gov. For the FY 2006 regulatory fees, the Commission timely released several public notices and news releases informing licensees of the September 19, 2006, deadline for filing regulatory fees and how to determine their regulatory fee amounts, and posted these items on its web site.⁷ The Commission has repeatedly held that “[l]icensees are expected to know and comply with the Commission’s rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances.”⁸ Further, contrary to your assertion that regulatory fee notifications were mailed to the wrong address, the FRN information registered in the FCC database regarding the licensee as supplied by WKYR, Inc. was the address to which the notifications were sent. Moreover, the fact that you no longer own the station does not relieve WKYR, Inc. of the responsibility for paying the FY 2006 regulatory fee given that it held the license for WKYR on the date that the regulatory fee was due.⁹ We therefore find that WKYR, Inc. did not meet its obligation to file its FY 2006 regulatory fee to be received by the Commission in a timely manner.

Finally, with respect to your statement that you seek a waiver of the penalty “[d]ue to financial situations,” we note that even though the Commission will waive its regulatory fees in those instances where a petitioner presents a compelling case of financial hardship, you do not request a waiver of the FY 2006 regulatory fee and provide no documentation that would support such a request. See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *on recon*, 10 FCC Rcd 12759 (1995). Accordingly, we deny the request for waiver of the penalty for late payment of the fiscal year 2006 regulatory fee.

⁷ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2006, Report and Order*, 21 FCC Rcd 8092 (2006) (*2006 Report and Order*); Public Notice, *FY 2006 Regulatory Fees Due No Later Than September 19, 2006*, 2006 WL 2129092 (July 31, 2006) (announcing the September 19, 2006 filing deadline and stating that late payments will be assessed a 25 percent late payment penalty); Public Notice, *Fee Filer Now Available for 2006 Regulatory Fees*, DA 06-1661 (Aug. 21, 2006) (reminding of filing deadline); *Regulatory Fees Fact Sheet, FCC Look-Up Website Available for Media Services Licensees Owing FY 2006 Regulatory Fees* (Aug. 2006) (advising media services licensees of the FCC website listing their regulatory fee amounts, fee codes, and other pertinent information, and reminding licensees of the September 19, 2006 filing deadline).

⁸ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970).

⁹ See *2006 Report and Order* at 8106 (“responsibility for payment rests with the holder of the permit or license as of the Fee Due Date”).

KENTUCKY GENERAL ASSEMBLY

House of Representatives

MEMO

0711208365252001

Date: 11-13-2007

To: FCC

Dear Sir,

Enclosed is a check for 2006 regulatory fees for radio station W.K. Y.R. Inc - This is the first notice I've gotten, evidently it was being sent to the wrong address. I feel, since this is the first notice I've gotten, that I should not have to pay penalty - My late husband was the former owner

I am a widow and no longer the owner of the station - this

- Please reply
- For your information
- For your files

is ~~hard~~ hard for me to pay -

Sincerely
Libby (Elizabeth) Holliday

PD 06 Reg fees 11/20/07 - \$575.00
Penalty still outstanding \$143.75

AJ 11/24/08

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

AUG 24 2009

OFFICE OF
MANAGING DIRECTOR

Shirley Howarth
Accounting Coordinator
VideoLink Fiber Optic Transmission
Services, Inc.
1230 Washington Street
Newton, Massachusetts 02465

Re: Request for Waiver of FY 2008
Late Payment Penalty
Fee Control No. 0904149088064009

Dear Ms. Howarth:

This responds to your April 3, 2009 inquiry on behalf of VideoLink Fiber Optic Transmission Services Inc., Newton, Massachusetts (VideoLink), international broadcast station licensee, concerning the penalty for late payment of the fiscal year (FY) 2008 regulatory fee for earth station E060249.¹ Our records show that \$195, the amount of the FY 2008 regulatory fee for E060249, has been paid, and \$48.75, the amount of the late penalty, is outstanding. As explained below, your request for waiver is denied.

In your inquiry, you state that you believe the late penalty is unfair, given your efforts, beginning on December 17, 2008, to make the payment.²

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. 47 U.S.C. § 159(c)(1). It is the obligation of the licensee 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.³ Your request does not indicate or substantiate that you met this obligation. Nor does the statute permit the Commission to remove this obligation under circumstances such as those you recite, where you apparently did not receive a bill for earth station E060249 prior to the FY 2008 regulatory fee due date (as you apparently did for the remaining three earth stations licensed to VideoLink).⁴

¹ Electronic mail inquiry from Shirley Howarth to Stephen French (April 3, 2009 @ 2:45 p.m.).

² *Id.* Your inquiry also references "confusion" as to payment of VideoLink's regulatory fees. As background, we note that VideoLink is licensee of four earth stations. In addition to E060249, the station at issue here, VideoLink is licensee of E020132, E990265, and E050006. Although, as you note, VideoLink was assessed a late penalty for earth stations E020132 and E990265 in error, our records subsequently have been corrected to show that VideoLink made timely payment for these earth stations, and thus no late penalty is due for them.

³ See 47 C.F.R. § 1.1164; *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, 24 FCC Rcd 6389, ¶ 82 (2008) (*FY 2008 Regulatory Fee Order*).

⁴ See Inquiry.

Further, although you may not have been aware of or fully understood the Communications Act or the Commission's rules regarding regulatory fees, Commission licensees are expected to know and understand the requirements and rules governing their licenses.⁵ More specifically, as we have expressly stated as to earth station licensees and other billed entities, "It 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."⁶ Therefore, your request is denied.

Payment of \$48.75 for FY 2008 is now due. The payment should be submitted, together with a copy of the bill (copy enclosed), within 30 days of 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

⁵ Among other things, the Commission issued Public Notices announcing the due date for payment of fees. *Public Notice, Payment Methods and Procedures for FY 2008 Regulatory Fees*, DA 08-1973, August 26, 2008; *Public Notice, Fee Filer Now Available for FY 2008 Regulatory Fees*, DA 08-1974, August 26, 2008. The Commission also informs licensees of due dates and other pertinent payment information on its website. See *FY 2008 Regulatory Fee Order* at ¶¶ 60-65, 81; *Regulatory Fees Fact Sheet, What You Owe – International and Satellite Services Licensees*, August 2008.

⁶ *Public Notice, Payment Methods and Procedures for FY 2008 Regulatory Fees* at 3, DA 08-1973, August 26, 2008.

11660

Stephen French

From: Shirley Howarth [shirley.howarth@videolinktv.com]
Sent: Friday, April 03, 2009 2:45 PM
To: Stephen French
Subject: FW: Financial Operations Dept

Follow-on to
11287

Stephen

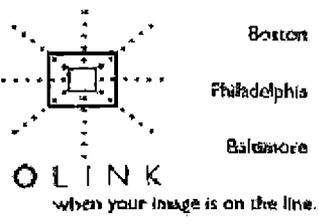
Thank you, once again, for coming back to me so quickly and for providing a copy of the missing invoice. However, I must take exception to the penalty fee for late payment.

As you will see from the messages below, I first raised this matter with the FCC on December 17th 2008 and received a partial response on January 30th 2009. In early February, I received a phone call from Tisha Littleton (202-418-1501) and we discussed the confusion over which bills had been paid. At the end of that conversation, Ms Littleton assured me that the payments would be applied to the correct invoices and that a copy of the outstanding invoice 08RE008888 would be faxed to me for payment. I never received a fax and I have called every Friday and left a message on Ms Littleton's voicemail requesting either a phone call or the promised fax.

Fast forward to this week: I gave up on calling Ms Littleton and tried the main number again. This was good - you answered the phone! Is there any way the penalty fee can be waived? I really do feel it is unfair given my efforts to resolve the situation.

Thanks again for your help.

Shirley



Shirley Howarth
Accounting Coordinator
230 Washington St.
Newton, MA 02465
(617) 340 4164 (617) 340 4101 Fax
www.videolink.tv

From: Evelyn Jordan [mailto:Evelyn.Jordan@fcc.gov]
Sent: Friday, January 30, 2009 11:58 AM
To: Shirley Howarth
Subject: RE: Financial Operations Dept

Shirley, I have forwarded your INFO to FO help desk. I did locate the two payments. The tracking # assign to your case is 11287. Please allow 3 days to have the RED Light removed from your FRN #.

Thanks.

From: Shirley Howarth [mailto:shirley.howarth@videolinktv.com]
Sent: Thursday, January 29, 2009 3:05 PM
To: Evelyn Jordan
Subject: FW: Financial Operations Dept