

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUN 18 2010

OFFICE OF  
MANAGING DIRECTOR

Dave Garey, Proprietor  
Texas Grace Communications  
Jet Fuel Broadcasting  
c/o 20 Sanlaw Dr.  
Monsey, NY 10952

Re: Texas Grace Communications, Station  
KRZB(FM)  
Jet Fuel Broadcasting, Facility ID No. 161455  
FYs 2007 and 2009 Regulatory Fees  
Fee Control Nos. 0709189365899172 and  
0709189365899169

Dear Mr. Garey:

This is in response to your request filed on September 22, 2009 (*Request*), on behalf of Jet Fuel Broadcasting (JFB) and Texas Grace Communications (TGC). With respect to JFB, you seek a refund of the fiscal year (FY) 2007 regulatory fee and a waiver of the FY 2009 regulatory fee associated with the construction permit for AM Facility ID No. 161455, Anchorage, Alaska (*Alaska Facility*). Our records reflect that JFB paid the \$400.00 FY 2007 regulatory fee, but not the \$400.00 FY 2009 regulatory fee. With respect to TGC, you seek a refund of the FY 2007 regulatory fee and a waiver of the FY 2009 regulatory fee associated with the construction permit for Station KRZB(FM). Our records reflect that TGC paid the \$575.00 FY 2007 regulatory fee, but not the \$650.00 FY 2009 regulatory fee. For the reasons set forth below, we deny your request.

You assert that the construction permit for the *Alaska Facility* is "the subject of tolling litigation . . . leaving the CP in a limbo status on the August 7, 2009 regulatory fee notification date."<sup>1</sup> You claim that the "replenishment of time/tolling was necessary . . . because [you were] . . . improperly designated a federal debtor by the FCC . . . (between February 8, 2006 and August 22, 2008)[.] . . . prohibit[ing you] . . . from conducting normal business, inclusive of preventing any access to credit, financing or partnership with . . . government entities[.]"<sup>2</sup>

Our records reflect that the construction permit for the *Alaska Facility* was granted on December 8, 2005, and expired on December 8, 2008, after JFB failed to build the station. On March 7, 2008, JFB filed a request that the construction period be tolled, which the Media Bureau denied on March 27, 2008. On April 28, 2008, JFB filed an

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

<sup>2</sup> *Id.*, see generally *Fireside Media, Order*, 23 FCC Rcd 13138 (2008), *on recon.*, *Memorandum Opinion and Order*, 2010 WL 659111 (released Feb. 24, 2010).

application for review of the denial (*Alaska Facility Application for Review*), which remains pending.

JFB held the initial construction permit for the *Alaska Facility* on October 1, 2006, and October 1, 2008, and is therefore responsible for paying the FYs 2007 and 2009 regulatory fees.<sup>3</sup> With respect to your assertion that you were unable to conduct business, obtain financing or credit, or “derive revenue,” 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>4</sup> The Commission will waive, reduce or defer its regulatory fees in those instances where a petitioner presents a compelling case of financial hardship. Regulatees can establish financial hardship 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>5</sup>

You have submitted no information to support your claim of financial hardship. In the absence of such documentation, we find that you have failed to make a compelling showing that the public interest would be served by a refund of the FY 2007 regulatory fee or waiver FY 2009 construction permit regulatory fee associated with the *Alaska Facility* on the grounds of financial hardship. Your assertions that the Commission improperly designated you as a “federal debtor” does not persuade us otherwise insofar as the Commission determined that such allegations are unfounded.<sup>6</sup> In addition, expiration of the construction permit for *Alaska Facility* on December 8, 2008, provides no basis for a refund of the FY 2009 regulatory fee.<sup>7</sup> Further, the pendency of the *Alaska Facility Application for Review* provides no grounds for relief given that JFB held the

---

<sup>3</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10313 (2009); *Assessment and Collection of Regulatory Fees for Fiscal Year 2007, Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15712, 15727 (2007).

<sup>4</sup> See 47 U.S.C. §159(d); 47 C.F.R. §1.1166; see also *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order*, 9 FCC Rcd 5333, 5344 (1994), on recon., *Memorandum Opinion and Order*, 10 FCC Rcd 12,759, para. 12 (1995) (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>5</sup> 10 FCC Rcd at 12761-12762.

<sup>6</sup> See *Fireside Media, Order*, 23 FCC Rcd 13138 (2008), on recon., *Memorandum Opinion and Order*, 25 FCC Rcd 2453, para.10 (2010).

<sup>7</sup> See 47 C.F.R. §1.1160(b) (“[n]o pro-rata refund of an annual fee will be issued”).

construction permit on October 1, 2006, and October 1, 2008. We therefore deny your request for fee relief for FYs 2007 and 2009 associated with the *Alaska Facility*.

With respect to Station KRZB, you aver that when TGC paid the FY 2007 regulatory fee, the company was “embroiled in third-party litigation challenging the validity of the FCC’s attempt to re-grant the permit in 2006[.]”<sup>8</sup> You claim that this administrative matter caused KRZB to suffer “immeasurably” because a protected rights full-term, 3-year construction permit warranted by the Commission in 2001 . . . has . . . never been issued.”<sup>9</sup> You assert that the Audio Division (Division) “never informed KRZB of any disposition of the Division’s administrative review, leaving the permit in a limbo status.”<sup>10</sup> You also state that “[n]o 2009 regulatory fee notification was sent to [you].”<sup>11</sup>

Our records reflect that the construction permit for Station KRZB was granted on October 7, 1996, and expired on May 9, 2010, after TGC failed to build the station. On January 21, 2009, TGC filed an Application for Review of two Division decisions denying TGC’s assertions that Station KRZB qualified for tolling under section 73.3698(b) of the Commission’s rules, 47 C.F.R. §73.3698(b), which remains pending (*Station KRZB Application for Review*).<sup>12</sup> With the exception of the assertion that KRZB did not receive FY 2009 regulatory fee notification, your contentions with respect to KRZB are identical to those addressed in the Media Bureau decisions that TGB has challenged in the *Station KRZB Application for Review*.

TGB held the initial construction permit for Station KRZB on October 1, 2006, and October 1, 2008, and is therefore responsible for paying the FYs 2007 and 2009 regulatory fees.<sup>13</sup> With respect to your assertion that you suffered “immeasurably” as a result of the “third-party litigation,” you have submitted no information to support your claim of financial hardship. In the absence of such documentation, we find that you have failed to make a compelling showing that the public interest would be served by a refund of the FY 2007 regulatory fee or waiver FY 2009 construction permit regulatory fees associated with Station KRZB on that basis. The matters that you raise in the pending *Station KRZB Application for Review* will be addressed by the Commission in that

---

<sup>8</sup> *Request* at 2-3.

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

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

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

<sup>12</sup> See letter from Peter Doyle, Chief, Audio Division, Media Bureau to Dave Garey, Ref. 1800B3-MJW (Dec. 19, 2008); letter from Peter Doyle, Chief, Audio Division, Media Bureau to Dave Garey, Ref. 1800B3-IB (Dec. 19, 2008).

<sup>13</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10313 (2009); *Assessment and Collection of Regulatory Fees for Fiscal Year 2007, Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15712, 15727 (2007).

context and provide no basis for regulatory fee relief for FYs 2007 and 2009. Regarding your assertion that TGB did not receive notification of the FY 2009 regulatory fee, the Commission informs 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](http://www.fcc.gov). We therefore deny your request for fee relief for FYs 2007 and 2009 associated with Station KRZB.

In summary, we deny your request for regulatory fee relief for FYs 2007 and 2009 associated with the *Alaska Facility* and Station KRZB. Payment of the \$400.00 and \$650.00 FY 2009 regulatory fees for the *Alaska Facility* and Station KRZB, respectively, 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.

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

Copy to:

Dave Garey, Proprietor  
Post Office Box 1161  
Meridian, MS 39302

ORIGINAL

12038

Texas Grace Communications/KRZB-FM  
Jet Fuel Broadcasting  
Dave Garey, Proprietor  
c/o 20 Samlaw Dr.  
Monsey, NY 10952  
228-324-9901

0709189365899172  
0709189365899169

Received & Inspected  
SEP 22 2009  
FCC Mail Room

September 22, 2009

Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St. SW  
Washington, DC 20554

Re: Office of Managing Director

Request for waiver of 2009 regulatory fees, and refund of regulatory fees paid in 2007,  
for:  
KRZB-FM Archer City, TX CP OFF AIR, Facility ID No. 79024, and  
(Non-call signed) Anchorage, AK AM CP OFF AIR, Facility ID No. 161455

Dear Managing Director,

Please find enclosed an original, two copies, and a stamp in/return copy (along with postage paid, addressed return envelope) of the instant submission, respectfully requesting exoneration/removal of any 2009 regulatory fees.

In support thereof, the following information is provided regarding these two separate services tying to the same sole proprietor ("proprietor"):

Anchorage, AK AM CP OFF AIR

The above CP expired on its face on 12/8/08, and is currently the subject of tolling litigation with the FCC for replenishment of time that has not yet been granted or ruled upon by the Commission - leaving the CP in a limbo status on the August 7, 2009 regulatory fee notification date.

The noted replenishment of time/tolling was necessary to request because the sole proprietor of Jet Fuel Broadcasting was improperly designated a federal debtor by the FCC under DA 06-252 (between February 8, 2006 and August 22, 2008) in violation of his right to due process - given the proprietor's then-pending, never-adjudicated appeal before the irreparable 2-and-a-half-year debtor status was imposed. The erroneously imposed debtor status prohibited the proprietor from conducting normal business, inclusive of preventing any access to credit, financing or partnership with such government entities as the SBA, pending elimination of the debtor status - consistent with the manner in which a federal debtor status would stifle operation of any small business.

A subsequent order under FCC 08-191 executed elimination of the debtor status after August 22, 2008. However, this order was unable to offer any remedy for the punishment of the debtor status against the proprietor having been in place over the noted 2-and-a-half-year time frame before August 22, 2008.

In addition, the FCC 08-191 order was referenced by the FCC on February 25, 2009 (in the external *Alvin Lou Media, Inc. vs. FCC* case) with explanation that the FCC now considered the proprietor an "ineligible" licensee as a tenet of the 08-191 order – effectively replacing the proprietor's federal debtor status with the equally horrific designation of "ineligible" licensee.

The proprietor, through two formal pleadings, as well as numerous informal requests to Commission staff, has respectfully asked for corrective amendment that rebukes such characterization of the proprietor as an ineligible licensee/permittee – and instead, makes clear that the proprietor is considered by the FCC to be a permittee/licensee in good stead with no further punishment resulting from the proprietor's innocent withdrawal without purchase from the FCC's 2004 FM frequency auction – the precursor issue underlying the 08-191 order. However, the FCC's last official word on the matter remains its February 25, 2009 characterization of the proprietor as an ineligible licensee – with no corrective amendment having yet been issued to remove such characterization.

Accordingly, the proprietor respectfully asked for replenishment of 34 months on the 3-year permit, as the mere two months between 12/8/05 and 2/7/06 represented the only time that the proprietor was not under either the FCC's improperly-imposed federal debtor status, or subsequent characterization as an ineligible licensee, during the permit's lifespan.

While Jet Fuel Broadcasting is hopeful of receiving replenishment of this encumbered time to allow for construction of the facility, the permit is presently expired, pending resolution of the noted litigation. The proprietor thus respectfully asks for waiver of any 2009 regulatory fee.

In addition, the proprietor respectfully reiterates its request for refund of the 2007 regulatory fee paid on this permit, in tandem with making request for waiver at that time, given the aforementioned presence of the federal debtor status improperly imposed against the proprietor by the FCC at that time.

#### KRZB Archer City, TX CP OFF AIR

No 2009 regulatory fee notification was sent to the proprietor regarding this off-air permit. However, in the interest of caution, KRZB's proprietor wishes to make formal request for exoneration/waiver of any prospective fee.

As the proprietor first informed the Managing Director in 2007, when KRZB paid a regulatory fee in tandem with asking for the fee waiver (a request which has not, to date, been answered), KRZB was enroled in third-party litigation challenging the validity of the FCC's attempt to re-

grant the permit in 2006, and the permit was subsequently made the subject of a so-called "administrative review" by the Audio Division.

KRZB obviously had no control over either the third-party litigation, or the administrative review – but has suffered immeasurably because a protected rights full-term, 3-year construction permit warranted by the Commission in 2001 (under FCC 01-317) at its then-new community of Archer City, TX, has, to date, never been issued, as enumerated in KRZB's January 17, 2009 Application for Review pending before the Commission (which seeks to have the Commission simply uphold the promised full-term permit grant).

Although the predatory third-party filer abandoned its current round of litigation against the KRZB permit on April 22, 2008, the Audio Division never informed KRZB of any disposition on the division's administrative review, leaving the permit in a limbo status.

When KRZB's proprietor sought official word from the Audio Division expressing affirmation that the administrative review had been concluded, and the result of its finding, KRZB was told by division letter dated December 19, 2008 that the division did not believe it was obligated to tell KRZB when a pronounced administrative review had been concluded, or reference any results of the review. KRZB understandably and rightfully disagreed, explaining in its pending Application for Review that such failure by the division to notify a permittee that an administrative review has been concluded, and the results of that administrative review, is a violation of the APA, and of the permittee's right to due process.

Accordingly, if October 1, 2008 is considered a litmus date in assessing the 2009 regulatory fee, KRZB had not been notified by that date that the Audio Division's administrative review (as pronounced by the division to have commenced November 17, 2006) had concluded, let alone what its findings might be with respect to the division's processing of the permit.

As relayed to the OMD in KRZB's request for waiver of the 2007 regulatory fee in light of the unresolved status of the Audio Division's "administrative review", KRZB referenced the supportive evidence of an email from division attorney-advisor Thomas Nessinger stating that the review had been undertaken by the FCC to determine the vital issue of whether the division's attempted processing of the permit in 2006 represented a "final" grant, and that, pending the review findings, the permit grant was *not* considered final.

Given the division's failure to announce the conclusion or results of its own administrative review on the validity of the subject permit's grant, as well as the division's issuance of the permit in only tiny fragmented pieces (as opposed to granting the full-term 3-year protected rights permit, as warranted by the Commission in 2001), exponentially devaluing the permit and keeping KRZB embroiled in unnecessary litigation inclusive of the pending Application for Review, KRZB respectfully seeks waiver of the 2009 regulatory fee.

### Conclusion

Along with seeking waiver of the FCC's 2009 regulatory fees for the premises enumerated, the proprietor of Jet Fuel Broadcasting and Texas Grace Communications respectfully reiterates its

request that the 2007 regulatory fees it paid for the off-air construction permits for both KRZB Archer City, TX, and the non-call signed entity at Anchorage, AK please be refunded at this time. The Managing Director's attention to these matters is most gratefully appreciated.

As proprietor, I certify that all statements made herein are true and accurate to the best of my knowledge and belief.

Respectfully submitted,



\_\_\_\_\_  
Dave Garey

Proprietor,

Texas Grace Communications-KRZB-FM/Archer City, TX

Jet Fuel Broadcasting

c/o 20 Samlaw Dr.

Monsey, NY 10952

September 22, 2009

\*Please note: due to prior service receipt problems, it is respectfully requested that FCC response please also be copied to the following address:

P.O. Box 1161

Meridian, MS 39302