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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

June 24, 2011

Aaron P. Shainis, Esq.  
Shainis & Peltzman, Chartered  
1850 M Street, N.W., Suite 240  
Washington, D.C. 20036

Re: College Creek Media, LLC  
Stations: KPHD (FM), KRPX (FM),  
KEMR (FM), and KHUN (FM)  
FY 2010 Regulatory Fees  
Fee Control No. RROG-10-00013159

Dear Mr. Shainis:

This letter responds to your request dated August 31, 2010 (*Request*),<sup>1</sup> for a waiver of the Fiscal Year (FY) 2010 regulatory fees owed by College Creek Media, LLC (College Creek) for Stations KPHD (FM), KRPX (FM), KEMR (FM), and KHUN (FM) on the grounds of financial hardship. Our records reveal that College Creek did not pay the FY 2010 regulatory fees, but your Request did petition to defer payment.

You provided College Creek's unaudited Profit and Loss Statement (*P&L*) for calendar year 2009, a Balance Sheet (*Balance Sheet*) as of December 31, 2009, and a declaration of Christopher F. Devine. You assert that College Creek suffered a net loss of \$246,520, it has no employees, and that its "poor financial condition . . . is buttressed by the fact that the stations were silent for most of the year and are currently silent."<sup>2</sup> For the reasons discussed below, we find that your *Request* does not present a compelling case of financial hardship to waive the FY 2010 regulatory fees; therefore, it is denied.

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. Such fees may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.<sup>3</sup> The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.<sup>4</sup> Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.<sup>5</sup>

<sup>1</sup> Letter from Aaron P. Shainis, Shainis & Peltzman, Chtd, 1850 M St. NW, Ste 240, Washington, DC 20036 to Office of the Managing Director, FCC (Aug. 31, 2010) (*Request*).

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

<sup>3</sup> 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 Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

<sup>4</sup> 9 FCC Rcd at 5344 ¶ 29.

<sup>5</sup> 10 FCC Rcd at 12761-62 ¶ 13.

“Mere allegations or documentation of financial loss, standing alone,” does not suffice and “it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public.”<sup>6</sup> In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee’s balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (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. It is on this information that the Commission considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.<sup>7</sup> Thus, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.

As we discuss below, the *P&L* and the *Balance Sheet* do not fully document each Station’s financial position as it pertains to the FY 2010 regulatory fees, and the information does not show compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.

For the following reasons, College Creek’s financial position is not fully documented. First, the consolidated *P&L* for the year ended December 31, 2009, and *Balance Sheet* at December 31, 2009, are insufficient to establish College Creek’s financial position for the year 2010. Because the *P&L* or the *Balance Sheet* report financial information from 2009, nothing in either record shows that payment of the FY 2010 regulatory fees for each of the four Stations will adversely impact College Creek’s ability to serve the public. Moreover, Mr. Devine’s declaration does not offer any other relevant facts to relate the 2009 financial information to the FY 2010 fees. Thus, on the ground that the financial information is not timely, we deny the *Request*.

Next, College Creek has not clearly presented a case to show its complete financial position and whether payment of the FY 2010 regulatory fees will adversely impact each station’s ability to provide service to the public. College Creek is organized as a limited liability company, and as such, unless an election is made with the Internal Revenue Service (IRS), it is classified as a partnership for federal income tax purposes.<sup>8</sup> In this case, because you did not provide evidence that College Creek elected a different classification for tax purposes, we follow the IRS default classification<sup>9</sup> that profits and losses pass through the business entity to the members. That tax treatment of profits and losses passing through to the partners makes it difficult to define a bright line between the business entity’s financial records (*e.g.*, partnership, sole proprietorship, or Subchapter S corporation) and personal financial records. Hence, our requirement that the regulatee “fully document”<sup>10</sup> its financial position extends to the limited liability company member’s gross income, assets, liabilities, and cash flows, which in this case,

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

<sup>7</sup> *Id.*

<sup>8</sup> See IRS Publication 3402, Taxation of Limited Liability Companies.

<sup>9</sup> See Treas. Reg. §§ 301.7701-1 to -3.

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

Aaron P. Shainis, Esq.

include College Creek's owners, Media Focus, LLC and Simmons Media, LLC.<sup>11</sup> Hence, on this separate ground that the financial information is not complete, we deny the *Request*.

Moreover, the *P&L* and *Balance Sheet*, which, as we mentioned, are limited because they pertain to calendar year 2009,<sup>12</sup> have no clarification of the extent to which their consolidated financial information applies specifically to the four Stations referenced in the *Request*, rather than to all ten stations licensed to College Creek. Hence, we are unable to determine which, if any, of College Creek's stations experienced financial hardship during the period reported. On this separate ground that the financial information is not specific to the Stations seeking a waiver, we deny your *Request*.

Simply, the limited financial information for 2009 does not shed light on College Creeks' ability to pay the FY 2010 regulatory fees, and it does not present compelling and extraordinary circumstances that outweigh the public interest in collecting the regulatory fees.

We note also that you did not clarify<sup>13</sup> the meaning of your assertion that the College Creek's "poor financial condition . . . is buttressed by the fact that the stations were silent for most of the year." We are aware that College Creek requested Special Temporary Authority (STA), but we have no evidence that those STA or any other request<sup>14</sup> were based on financial hardship. The Commission grants STA to permit the operation of a broadcast facility for a limited period at a specified variance from the terms of the station authorization or requirements of the FCC rules applicable to the particular class of station.<sup>15</sup> Our records show that on April 7, 2010, College Creek requested STA to permit Stations KEMR (FM) and KHUN (FM) to remain silent due to a malfunction of the stations' equipment,<sup>16</sup> and on November 9, 2010, College Creek sought STA to operate Station KPHD with temporary facilities because the licensed antenna was unserviceable.<sup>17</sup> These requests do not establish financial hardship and they do not bolster any specific station's "poor financial condition." Finally, we do not find a record that Station KRPX was silent during FY 2010. Thus, there is no support for your assertion that all "stations were silent for most of the year and are currently silent" or that College Creek requested STA based on financial hardship.

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<sup>11</sup> See FCC File No. BOA-20101206AAY, FCC 323, Ownership for Commercial Broadcasting Stations (Dec. 6, 2010) and FCC File No. 20101206ABJ, FCC 323, Ownership Report for Commercial Broadcast Stations (Dec. 6, 2010) (Media Focus, LLC is controlled by Mr. Christopher F. Devine and others).

<sup>12</sup> *Request*, Schedule II (Statement of Income For year ended December 31, 2009); Schedule III (Balance Sheet At December 31, 2009).

<sup>13</sup> A petitioner has the burden of clarifying its position before the Commission. *Bartholdi Cable Co. v. FCC*, 114 F.3d 274, 279-80 (D.C. Cir. 1997).

<sup>14</sup> We did not find any request under 47 C.F.R. §§ 73.1740(a)(4) or 73.1750 either to suspend operation or discontinue a license.

<sup>15</sup> 47 C.F.R. § 73.1635(a).

<sup>16</sup> Letter from H. Taft Snowdon, Supervisory Attorney, Audio Division, Media Bureau, FCC to Christopher F. Devine, College Creek Media, LLC, 980 N. Michigan Ave., Ste 1880, Chicago, IL 60611 (Aug. 18, 2010). FCC

<sup>17</sup> Letter from Charles N. Miller, Engineer, Audio Division, Media Bureau, FCC to Aaron P. Shainis, Esq., Shainis & Peltzman, Chtd, 1850 M St. Nw., Ste 240, Washington, DC 20036 (Nov. 9, 2010); see also Letter from Charles N. Miller, FCC to Aaron P. Shainis, Esq., Washington, DC 20036 (Nov. 24, 2009)(STA granted because loss of use of licensed site).

• Aaron P. Shainis, Esq.

Finally, we note that although College Creek sought authority to assign Stations KEMR, KHUN, KPHD, and KRPX,<sup>18</sup> it remains responsible for the payment of the FY 2010 regulatory fees.

Payment of \$3,400 for the FY 2010 regulatory fees is now due. The full amount owed should be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter.<sup>19</sup> If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
Chief Financial Officer

Enclosure

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<sup>18</sup> See FCC File numbers: BALH-20090715AAP (Station KEMR, voluntary assignment of license to Cochise Media Licenses, LLC); BALH-200715AAQ (Station KHUN voluntary assignment of license to Cochise Media Licenses, LLC), BALH-20100630BPF (Station KPHD voluntary assignment of license to Twin Peaks Radio, LLC), and BALH-20100713AAJ (Station KRPX voluntary assignment of license to Eastern Utah Broadcasting Co.).

<sup>19</sup> Under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, any amount unpaid after that date will incur a late payment penalty of 25% of the amount unpaid, plus interest, penalties and other charges of collection from the date of this letter.

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

April 18, 2011

Ms. Rachel Klein  
232 Broadway  
Brooklyn, NY 11211

Re: Dollar Phone Corp.  
FY 2010 Regulatory Fee  
Fee Control No. RROG-10-00013448

Dear Ms. Klein:

This letter responds to your request dated August 23, 2010 (*Request*), submitted on behalf of Dollar Phone Corp. (DPC) for waiver of the Fiscal Year (FY) 2010 regulatory fee on the grounds of financial hardship. Our records reflect that DPC has not paid the \$593,401.00 regulatory fee. For the reasons stated herein, we deny your request.<sup>1</sup>

In establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship."<sup>2</sup> In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.<sup>3</sup> Thus, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees. In dismissing your request for waiver of the FY 2010 regulatory fees, we found that you provided no financial documentation or relevant showing to establish a compelling case for waiver of the regulatory fees.

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<sup>1</sup> We previously dismissed a waiver request filed by DPC because it was not properly supported. See Letter from Mark Stephens, Chief Financial Officer, Office of Managing Director, FCC, to Rachel Klein. (Jan. 13, 2011) (*Letter Decision*).

<sup>2</sup> See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995) (*Memorandum Opinion and Order*).

<sup>3</sup> See *Memorandum Opinion and Order* at 12761-62.

You state that in 2009, DPC “began experiencing the deep decline in revenue as well as profits.”<sup>4</sup> You say that in mid-2009, DPC “cut the salaries” of DPC’s principals and officers so that DPC could “remain afloat.”<sup>5</sup> You submit a copy of DPC’s *U.S. Corporation Income Tax Return*, Form 1120, for 2009 (*2009 Tax Return*) and financial statements regarding the compensation paid to DPC’s principal and officers for 2009.<sup>6</sup>

The *2009 Tax Return* indicates that DPC has a net profit of \$3,284,449.00 for calendar year 2009. We therefore find that DPC had adequate revenues to pay the FY 2010 \$593,401.00 regulatory fee. We therefore deny your request for waiver of the FY 2010 regulatory fee on the grounds of financial hardship.

Payment of the FY 2010 regulatory fee is now due. The regulatory fee 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,

A handwritten signature in black ink, appearing to read 'Mark Stephens', written over a horizontal line.

Mark Stephens  
Chief Financial Officer

Enclosure

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<sup>4</sup> Email from Rachel Klein to Joanne Wall (Apr. 12, 2011) (*DPC Email*).

**Dollar Phone Corp**  
**232 Broadway**  
**Brooklyn, NY 11211**

Received & Inspected

MAR 31 2011

FCC Mail Room

March 30, 2011

RECEIVED

MAR 31 2011

Financial Operations  
Center

Re: Dollar Phone Corp.  
FY 2010 Regulatory Fee  
Fee Control No. RROG-10-00013002

Dear Mr. Mark Stephens:

At first I would like to thank you for granting an "extension to respond" to your request dated 01/13/2011 in regard to the FCC fee. It surely reflects a willingness on your end to settle this matter properly.

We have carefully reviewed the documents and information needed to further clarify the position we took originally that Dollar Phone is unfortunately going through financial hardships.

We hope that the attached information will give you a better insight of Dollar Phone and where we stand financially.

In the event that you have any questions feel free to contact me at 718-889-1121.

Thanks again for all and we hope that future success will compensate for our current shortfall.

Respectfully,



Rachel Klein  
Chief Financial Officer

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

Mr. Maurice Shackelford  
Encompass Communications, LLC  
119 W. Tyler Street, Suite 260  
Longview, TX 75606

Re: Encompass Communications, LLC  
FY 2010 Late Penalty Waiver Request  
Date Filed: Sep. 12, 2011  
Fee Control No. RROG-11-00013924  
**Amount Due as of Dec. 15, 2011: \$8,666.91**

Dear Mr. Shackelford:

This letter responds to the above-referenced *Request*<sup>1</sup> for waiver of the penalty imposed by law<sup>2</sup> on Encompass Communications, LLC (Encompass) for late payment of the FY 2010 regulatory fee. For the reasons stated herein, we must dismiss and, in the alternative, deny your *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,<sup>3</sup> and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."<sup>4</sup> Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee. . . which was not paid in a timely manner."<sup>5</sup>

Encompass did not pay the full amount of the FY 2010 regulatory fee by August 31, 2010,<sup>6</sup> thus, under the law,<sup>7</sup> the Commission was required to assess the statutory penalty equal to 25 percent of the unpaid amount,<sup>8</sup> and when it remained unpaid, to assess interest and a separate penalty required by 31 U.S.C. § 3717. Thereafter, on March 22, 2011, Encompass made a partial

<sup>1</sup> Letter from Maurice Shackelford, Encompass Communications, LLC, 119 W. Tyler Street, Longview, TX 75602 to FCC, Office of Secretary, 455 12<sup>th</sup> Street, S.W., Washington, DC 20554 (dated Sept. 7, 2011)(*Request*).

<sup>2</sup> 47 U.S.C. §159(c)(1); 47 C.F.R. § 1.1164.

<sup>3</sup> 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

<sup>4</sup> 47 U.S.C. §159(c)(1); 47 C.F.R. § 1.1164.

<sup>5</sup> 47 C.F.R. § 1.1164.

<sup>6</sup> *Public Notice, FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time (ET)*, DA 10-1451, 2010 WL 3133517 (Aug. 9, 2010).

<sup>7</sup> 4 U.S.C. § 159(c)(1).

<sup>8</sup> 47 U.S.C. § 159(c); 47 C.F.R. § 1.1164. The penalty required by section 159(c)(1) is waived "only in the most extraordinary circumstances," which are not described by your situation. McLeodUSA Telecommunications Services, Inc., *Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

payment of \$27,575.00, which was insufficient to resolve the 25% penalty of \$6,893.75, plus \$193.31 in accrued interest and \$1,159.87 in accrued penalties.<sup>9</sup> Under the Commission's rule,<sup>10</sup> Encompass's partial payment was applied first to the section 3717-penalty, then the accrued section 3717-interest, and finally to the principal. Thus, after applying that March 22, 2011, payment, Encompass still owed \$8,246.93 toward the FY 2010 regulatory fee, on which amount from that date, section 3717-interest and penalties accrued. That amount of the FY 2010 regulatory fee remains delinquent, thus under 47 C.F.R. § 1.1164(e),<sup>11</sup> we are required to dismiss the *Request*. Furthermore, under 47 C.F.R. § 1.1910(b)(2), the Commission will withhold action on any application filed or pending. Accordingly, under either rule, we dismiss the *Request*. In the alternative, if the debts had been paid, for the reasons discussed next, we deny the *Request*.

The Commission announced that August 31, 2010<sup>12</sup> was the deadline for paying regulatory fees; however, you asserted “[i]n the past[, Encompass] received a paper invoice[, and in 2010, Encompass] did not receive an invoice[, thus Encompass] did not know to go to the website to get the amount that [it] owed.”<sup>13</sup> Furthermore, “in March [2011, when Encompass learned it] had an amount due[, it made a payment; however,] recently [Encompass] learned that [it] owed \$6,893.75 as a Penalty Amount.”<sup>14</sup> Encompass requests a waiver of the penalty because it “previously filed reports and made [its] payments on a timely basis.”<sup>15</sup> Unfortunately, the statement of the steps Encompass took to make a partial payment and its payment history do not present legal grounds or clear mitigating circumstances to waive collection of the penalty. The Commission repeatedly has 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>16</sup> Moreover, the Commission provided ample prior notice that it would not be sending regulates paper copies of the annual regulatory pre-bills.

Specifically, on May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency's Fee Filer system.<sup>17</sup> The Commission explained that, “[c]onsistent with [its] proposal to require mandatory use of Fee Filer . . . , pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail.”<sup>18</sup> On July 31, 2009, the Commission released its order adopting these

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<sup>9</sup> 31 U.S.C. § 3717; 47 C.F.R. § 1.1940.

<sup>10</sup> 47 C.F.R. § 1.1940(f).

<sup>11</sup> 47 C.F.R. § 1.1164(e) provides “Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee . . . .” See also 47 C.F.R. § 1.1910(b)(2) (“Action will b withheld on applications, including on a . . . review of a fee determination . . . by any entity found to be delinquent in its debts to the Commission . . .”).

<sup>12</sup> *Public Notice, FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time (ET)*, DA 10-1451, 2010 WL 3133517 (Aug. 9, 2010).

<sup>13</sup> *Request* at 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</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); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

<sup>17</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972 ¶ 16 (2009).

<sup>18</sup> *Id.* at 5973 ¶ 20.

proposals.<sup>19</sup> In that order, the Commission advised regulatees that “because all pre-bills will be loaded into Fee Filer, once Fee Filer becomes operational, this will be the signal by which licensees can view their pre-bill information online.”<sup>20</sup> The Commission issued a public notice informing regulatees that use of Fee Filer was mandatory in FY 2009, and that “regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer.”<sup>21</sup> On September 2, 2009, the Commission released a third public notice reiterating that **“HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.”**<sup>22</sup>

Similarly, the Commission’s final order on the FY 2010 regulatory fees reaffirmed that regulatees should “check[] the Commission’s website periodically beginning in July” in order to “ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment.”<sup>23</sup> This notification was part of the Commission’s increased effort to notify licensees that hardcopy bills will no longer be mailed.<sup>24</sup>

Every licensee is obliged to make the fee payment by the announced deadline, and if payment is late, a history of timely payment of the regulatory fee does not provide sufficient grounds to support a waiver of the late payment penalty.<sup>25</sup> Although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission’s regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.<sup>26</sup> As we explained, the penalty required by 47 U.S.C. § 159(c)(1) is not limited to situations where the failure to pay was knowing or willful. If it is to be waived, it is “only in the most extraordinary circumstances,”<sup>27</sup> which are not described by your situation. Thus, even if the current delinquency had been paid, and Encompass was seeking a waiver of the penalty and a refund of the amount paid, your circumstances are not extraordinary, and we deny your *Request*.

The delinquent balance of the FY 2010 regulatory fee (\$8,246.93), plus the accrued interest (\$60.00) and penalty (\$359.98),<sup>28</sup> which totals \$8,666.91, is due and must be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. We

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<sup>19</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10307-09 ¶¶ 18-27 (2009) (*FY 2009 Regulatory Fees NPRM*).

<sup>20</sup> *Id.* at 10309 ¶ 26.

<sup>21</sup> *Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

<sup>22</sup> *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

<sup>23</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291 ¶ 37 (2010).

<sup>24</sup> *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923 ¶ 12 (2010).

<sup>25</sup> *See TWC Digital Phone, LLC* (OMD, Sept. 28, 2009); *Big River Telephone Company* (OMD, July 21, 2009).

<sup>26</sup> *See XO Communications, LLC* (OMD, Nov. 10, 2010).

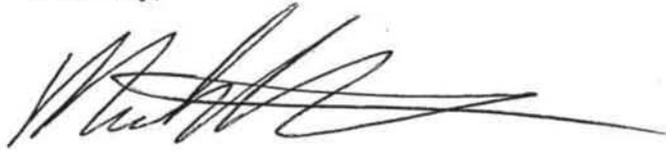
<sup>27</sup> *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

<sup>28</sup> 47 U.S.C. § 159(c); 47 C.F.R. § 1.1164. The penalty required by section 159(c)(1) is waived “only in the most extraordinary circumstances,” which are not described by your situation. *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

have calculated the payoff amount as of December 15, 2011, if you fail to pay the full amount due within 30 days of the date of this letter, additional interest and penalties will accrue from December 16, 2011, and under the law,<sup>29</sup> the Commission will initiate collection proceedings.

Because Encompass remains delinquent in paying the full amount of the FY 2010 regulatory fee plus accrued charges of collection, until the required amount is paid in full, under 47 C.F.R. § 1.1910, the Commission will withhold action on any application filed or pending, and if the debt plus accrued charges are not paid, any application filed or pending may be dismissed. Moreover, the Commission may collect amounts due by administrative offset.<sup>30</sup> If you have any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', with a long horizontal flourish extending to the right.

Mark Stephens  
Chief Financial Officer

Enclosure

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<sup>29</sup> See 47 C.F.R. § 1.1901, *et seq.*

<sup>30</sup> 47 C.F.R. § 1.1912.

Received & Inspected

SEP 12 2011

FCC Mail Room



September 7, 2011

*Tylo waiver Required*

Marlene H. Dortch, Secretary  
Federal Communications Commissions  
Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20054

RE: FRN 0013159397 account, FCC Form 159-W

Dear Ms. Dortch,

In the past we received a paper invoice that we paid. Last year, we did not receive an invoice and unfortunately we did not know to go to the website to get the amount that we owed.

We found out in March from the USAC, that we had an amount due to the FCC. As soon as we determined what we owed the FCC, we paid that last March. We now have an electronic calendar reminder set up so that we do not ever again allow this to go past due.

We have recently learned that we owe \$6,893.75 as a Penalty Amount due to the aforementioned oversight. Due to the fact that we have previously filed reports and made our payments on a timely basis, we humbly ask that you waive this late fee.

Your understanding and help with this matter would be greatly appreciated.

Please let me know if you have any questions.

Thank you.

A handwritten signature in black ink that reads "Maurice Shackelford". The signature is written in a cursive, flowing style.

Maurice Shackelford  
Encompass Communications, LLC  
Accounting Assistant  
903-247-4884  
903-323-4565 fax

**Encompass Communications, L.L.C.**  
119 W. Tyler St., Suite 260, Longview, TX 75601  
P.O. Box 3529, Longview, TX 75606  
903/323 4500 903/323 4550 fax 800/530 4897  
www.encompasscommunications.com

Jim L -

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

JUL 26 2011

OFFICE OF  
MANAGING DIRECTOR

Jeremy Lansman, President  
Fireweed Communications Corp.  
3700 Woodland Drive, #800  
Anchorage, Alaska 99517

Re: Fireweed Communications, LLC  
Stations KYES-TV, K120W, K06MF, KYEX-LP,  
K22HN-D and K09XO  
FY 2010 Regulatory Fees  
Fee Control No. RROG-10-00013054  
Request for Extension of Time

Dear Mr. Lansman:

This is in response to your Request for an Extension of Time to Respond to a Fee Waiver Decision, submitted July 6, 2011 (Request for Extension),<sup>1</sup> which was filed in response to our letter dated June 9, 2011.<sup>2</sup> You seek an extension of time to petition for reconsideration on the grounds that you must prepare certain financial information and to research whether “the Commission may compel a non-licensee to furnish financial information or to require individuals to dip into . . . private income to maintain service to the public.” For each of the reasons discussed below, we deny your Request for Extension.

First, the time to petition for reconsideration has expired. Section 405 of the Communications Act of 1934, as amended,<sup>3</sup> and our implementing rule at 47 C.F.R. §1.106, require a petition for reconsideration to be filed within 30 days of the date from which public notice of the action is given, and that it must be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554.<sup>4</sup> In this particular case, public notice occurred on April 13, 2011, when the request for waiver was denied.<sup>5</sup> Therefore, a petition for reconsideration of the Managing Director’s decision denying your request to waive the FY 2010 regulatory fee had to be filed with the Commission by May 13, 2011, in order to be considered timely.

<sup>1</sup> In the Matter of Waiver of Regulatory Fee for FY 2010 Fireweed Communications Corporation Fireweed Communications LLC Anchorage, Alaska Translators and auxiliary stations to Managing Director, Office of Managing Director (Aug. 23, 2010) (*Request*).

<sup>2</sup> Letter from Mark Stephens, Chief Financial Officer, Office of Managing Director, FCC, to Jeremy Lansman (Apr. 13, 2011).

<sup>3</sup> 47 U.S.C. § 405.

<sup>4</sup> 47 C.F.R. § 1.106(i).

<sup>5</sup> Under 47 C.F.R. § 1.4(b)(2) the date of public notice of a non-rulemaking documents is the date of its release.

Additionally, even if the time had not yet expired, because the time period for filing petitions for reconsideration is prescribed by statute, the Commission may not, with one narrow exception, waive or extend the filing period. The narrow exception to the statutory filing period allows the Commission to extend or waive the 30-day filing period only in “extraordinary circumstances,” such as where the late-filing is due to the Commission’s failure to give a party timely notice of the action for which reconsideration is sought.<sup>6</sup> Indeed, the Commission has held consistently that it does not have authority to waive or extend, even by as little as one day, the statutory 30-day filing period for petitions for reconsideration, absent extraordinary circumstances, which are not present here.<sup>7</sup> You would have to demonstrate that the delay in filing is attributable to Commission error in giving notice and that you acted promptly upon discovering the adoption of the Commission’s decision. Those facts are not present in your situation.<sup>8</sup> Instead, you request additional time based upon matters entirely within your control. Thus, for this additional reason we cannot extend the statutory filing period.

Finally, because Fireweed LLC is delinquent in paying its financial obligations, we will withhold action on any application it files. Our records show that Fireweed LLC has not paid the amount owed for the FY 2010 regulatory fees and the statutory penalties and that it is delinquent in paying regulatory fees for prior years.<sup>9</sup> Thus, under 31 U.S.C. § 3717 and our implementing rules at 47 C.F.R. §§ 1.1901, *et seq.*, we are required to access interest, penalties and the administrative cost of collection, and we will withhold action on applications, including a petition for reconsideration until the delinquent debt obligation is satisfied.<sup>10</sup> For this additional reason, we deny your request.

We remind you that our June 9, 2011 letter clarified and affirmed our decision on April 13, 2011. We explained that our records showed that Fireweed LLC owes \$8,816.00 for the FY 2010 regulatory fees, and \$2,153.75 in statutory penalties. We also explained that under the law, the request for waiver was dismissed on two separate grounds: (a) Fireweed LLC did not pay the FY 2010 regulatory fees and did not petition for deferral from payment,<sup>11</sup> and (b) Fireweed LLC is delinquent in paying prior year fees.<sup>12</sup> We also provided you with our guidance for any future request to waive regulatory fees as we explained the reasons why Fireweed LLC’s financial information did not fully document each station’s financial position, and why the information did not show compelling and extraordinary circumstances to waive the fees. That guidance did of course state that the reasons were additional separate grounds for denying your request. In summary, we explained that Fireweed LLC’s financial information did not fully

<sup>6</sup> See *Gardner v. FCC*, 530 F.2d 1086 (D.C. Cir. 1976).

<sup>7</sup> See e.g., *Virgin Islands Telephone Corp. v. FCC*, 989 F.2d 1231 (D.C. Cir. 1993).

<sup>8</sup> See e.g., *Richardson Independent School District*, 5 FCC Rcd 3135, 3136 (1990).

<sup>9</sup> Our records indicate that the regulatory fees for FY 2009 and earlier years are delinquent for Stations KYES-TV, K09XO, KC24192, WMG299, WPYP270, K12OW, K06MF, KYEX-LP, KOAN-LP, WMG298, WMG300, and WPJA560. If you believe this information to be incorrect, and you have evidence that the fees were waived or paid in a timely manner, please provide it to us.

<sup>10</sup> 47 C.F.R. § 1.1910.

<sup>11</sup> 47 C.F.R. § 1.1166(c) (“Waiver request that do not include the required fees . . . will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.”).

<sup>12</sup> 47 U.S.C. § 159(c)(2); 47 C.F.R. § 1.1164(e) (“Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.”).

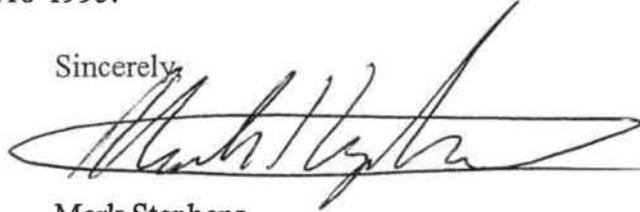
Jeremy Lansman, President

3.

document each station's financial position, but it did show that Fireweed LLC reported sufficient funds available to pay the FY 2010 regulatory fees from \$164,339.37 in retained earnings and \$99,950.72 disbursed as draws by or on behalf of Jeremy Lansman and Carol Schatz.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Stephens", written over a horizontal line.

Mark Stephens  
Chief Financial Officer

Federal Communications Commission  
Regulatory Fee Waiver  
Request for Extension of Time

Before the Office of Managing Director

In the matter of:

Request for Waiver of Regulatory and Filing Fees  
FY 2010  
KYESTV, K12OW, K06MF,  
KYES-LP, K22HN, K09XO  
Fee Control No. RROG-10-0013054  
and Fee Control No. RROG-10-0012445

Herewith, Fireweed Communications, LLC (Fireweed) is filing a request for extension of time to respond to a fee waiver decision by the office of Managing Director (OMD).

August 23, of 2010, Fireweed Communications requested waiver of the regulatory fee for FY 2010. This is a response to a letter dated June 9, 2011, under the signature of Mr. Mark Stephens, Chief Financial Officer for the Commission. In the above captioned decision, OMD states that Fireweed and its LLC members fully document its members... "gross income, assets, liabilities, and cash flows".

As well, the letter states, "you did not fully document each station's financial capability to pay the regulatory fee and maintain service to the public." This is an apparent reference to the several Fireweed repeater stations (known as translators) which call signs are captioned above. All Fireweed stations, save one, broadcast synchronously. The analog repeaters being limited to one audio video program, broadcast only channel 5.1 from the digital stream. Except for KNIK-LP, no station has independent income. They are synchronous. KNIK-LP has operates under an LMA, earning Firweed \$1,000 monthly, which income is included in the previously reported income statement. Thus, aside from KNIK-LP no station has separate income. On the other hand, it is possible to break out separate expenses for each transmitter. Fireweed has no need to look at space and rental power for each transmitter. It will take additional time to prepare an expense record for each transmitter. Especially problematical is allocation of space and power for K22HN, which is located at the residence of the station owners. Electrical power can be estimated, and in recent months detailed records of power usage have been recorded<sup>1</sup>. Establishing value for space and power for K22HN will take additional time.

Most concerning are requests for personal financial reports for Fireweed's only members, Mr. Jeremy Lansman (Jeremy) and Carol Schatz (Carol)<sup>2</sup>. At this time neither have compiled financial records, thus nothing compiled can be submitted to the Commission<sup>3</sup>. Both have submitted their raw financial

<sup>1</sup> We have installed a TED device which meters broadcast power and household power. Since at times it has failed to function, extrapolation of the data will be required. Establishing a fair market rental value for space and power will take considerable time, as comparable residential rentals are rare.

<sup>2</sup> See Ownership Report File No. BOA-20100708REH

<sup>3</sup> We are surprised at this request, and wonder if delving into personal financial records is really what the Commission

information to Mr. Chris Swalling, CPA<sup>4</sup>. Jeremy and Carol are married, and file jointly. Jeremy and Carol are married, and file jointly. They have requested and have been granted an extension by the IRS<sup>5</sup>. Fireweed LLC is the licensee here, subject to regulatory fees to the extent now under dispute. Neither Jeremy or Carol has any direct ownership in any medium of mass communication, including radio or television. In the above captioned decision we do not find citation to authority that the Commission may compel a non-licensee to furnish financial information or to require individuals to dip into non-broadcast private income in order to maintain service to the public. This question seems novel, and will require significant time to research<sup>6</sup>.

Regardless of any other points that might be raised in a petition for reconsideration of the above captioned decision, neither Jeremy or Carol are able to submit the financial information requested by OMD until it has been compiled by Mr. Swalling, thus giving rise to a good cause for extension of time in which to petition.

Finally, although we are not in any way unwilling to turn over personal financial information to the Commission, we reserve the right contend the Commission has no authority to peer at LLC members personal, non broadcast related finances when judging fee waiver requests.

Therefore, as Carol and Jeremy have no compiled financial records<sup>7</sup> and Fireweed respectfully request an extension of time in which to file a petition for reconsideration, such time to extend concurrently with IRS extensions.

Signed

Jeremy Lansman  
Member  
Fireweed Communications LLC  
7200 Alatna Av.  
Anchorage AK 99516  
2011-07-06

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intends. However, both of us, along with our Petition for Reconsideration, are willing but not yet able to submit information to any level of detail that might satisfy the Commission. If the Commission actually wants to go over copies of bank records, receipts, and check stubs, then this information can be submitted promptly.

4 Swalling & Associates, P.C., 3201 C Street, Suite 405, Anchorage, Alaska 99503

5 See IRS form 4868 attached, SSN redacted. SSN is available on the FCC Ownership database.

6 Time taken for Pro Se responses such as this have to be worked around other station keeping responsibilities.

7 OMD did not request it, but we assume the Commission would not want raw check book and credit card, and other records supplied to Mr. Swalling. However, if such records would be acceptable, then Commission staff should contact a Fireweed member promptly. Additionally, it should be noted that Fireweed has previously offered to send the Commission raw Quicbooks files containing all Fireweed LLC and Fireweed Corporate records. The offer is hereby renewed, and a request to this offer is requested.

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

April 14, 2011

Jack N. Goodman, Esq.  
Wilmer Cutler Pickering  
Hale and Dorr LLP  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006

Re: Freedom Broadcasting of Tennessee Licensee, L.L.C.,  
Freedom Broadcasting of New York Licensee, L.L.C.,  
Freedom Broadcasting of Michigan Licensee, L.L.C.,  
Freedom Broadcasting of Florida Licensee, L.L.C.,  
Freedom Broadcasting of Texas Licensee, L.L.C., and  
Freedom Broadcasting of Oregon Licensee, L.L.C.  
FY 2010 Regulatory Fee Waiver Request  
Filed 8-23-10  
Fee Control No. RROG-10-000-13060  
Regulatory Fee Amount: \$ 168,980.00

Dear Mr. Goodman:

This letter responds to the above-referenced request for waiver of regulatory fees filed on the grounds of financial hardship ("Regulatory Fees"). Our records reflect that the Regulatory Fees at issue have been paid. For the reasons stated herein, your waiver request is denied.

The Commission has determined that it will waive regulatory fees for licensees who are bankrupt or are in receivership at the time the fees are due.<sup>1</sup> Based on the evidence in the record that the listed licensees were not in bankruptcy or in receivership on the date the Regulatory Fees were due, we hereby deny the requested waiver.

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>1</sup> See *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, 12762 (1995).

WILMERHALE

Jack N. Goodman

+1 202 663 6287(t)

+1 202 663 6363(f)

jack.goodman@wilmerhale.com

August 23, 2010

**VIA HAND DELIVERY**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW,  
Room TW-A325  
Washington, DC 20554

FILED/ACCEPTED

AUG 23 2010

Federal Communications Commission  
Office of the Secretary

Attn: Regulatory Fee Waiver/Reduction Request

**Re: Consolidated Petition for Waiver of Fiscal Year 2010 Regulatory Fees**

Dear Ms. Dortch:

Enclosed please find a Consolidated Petition for Waiver of Fiscal Year 2010 Regulatory Fees, being filed on behalf of certain television broadcast station licensees held by the Freedom Communications Broadcast Trust. If you have any questions regarding this submission, please contact the undersigned.

Respectfully submitted,

  
Jack N. Goodman

*W: 2-683 2042*

*cell - 202 251 7507*

*email jackngoodman.com*

Enclosures

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

FILED/ACCEPTED

AUG 23 2010

Federal Communications Commission  
Office of the Secretary

In the Matter of

Fiscal Year 2010 Regulatory Fees

Freedom Broadcasting of New York Licensee, L.L.C.,

Freedom Broadcasting of Michigan Licensee, L.L.C.,

Freedom Broadcasting of Florida Licensee, L.L.C.,

~~Freedom Broadcasting of Tennessee Licensee, L.L.C.,~~

Freedom Broadcasting of Texas Licensee, L.L.C.,

and  
Freedom Broadcasting of Oregon Licensee, L.L.C.

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To: The Commission, Office of the Secretary

Attn: Office of the Managing Director  
Regulatory Fee Waiver Request

**CONSOLIDATED PETITION FOR WAIVER OF FISCAL YEAR 2010  
REGULATORY FEES**

Pursuant to Section 1.1166 of the Commission's Rules, the above-referenced television broadcast licensees ("Petitioners") request that the Commission waive the Fiscal Year ("FY") 2010 annual regulatory fees, in the amount of \$168,980, that otherwise would be due for these stations.<sup>1</sup> Under established Commission precedent, waiver of regulatory fees in these circumstances would serve the public interest.

<sup>1</sup> The required regulatory fees and the appropriate FCC Forms 159 will be submitted by the August 31, 2010 deadline. Pursuant to the Commission's Rules, Petitioners request that such fees be returned if this waiver is granted. 47 CFR § 1.1166(c)

Petitioners are the licensees of television broadcast stations WCWN(TV) (Facility ID No. 73264), Schenectady, New York; WRGB(TV) (Facility ID No. 73942), Schenectady, New York; ~~WTVG(TV) (Facility ID No. 22590), Chattanooga, Tennessee~~ WLAJ(TV) (Facility ID No. 36533), Lansing, Michigan; WWMT(TV) (Facility ID No. 74195), Kalamazoo, Michigan; KFDM(TV) (Facility ID No. 22589), Beaumont, Texas; KTVL(TV) (Facility ID No. 22570), Medford, Oregon; and WPEC(TV) (Facility ID No. 52527), West Palm Beach, Florida. Control of each of the licensee entities is held by the Freedom Communications Broadcast Trust.

In September 2009, Freedom Communications Holdings, Inc. ("FCHI"), Petitioners, and various other entities controlled by FCHI, filed voluntary petitions for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. Thus, the Freedom stations were in bankruptcy as of October 1, 2009, the beginning of the 2010 federal fiscal year. On March 9, 2010, the U.S. Bankruptcy Court issued an order approving a reorganization plan for FCHI. A copy of the Bankruptcy Court's Order is attached as Exhibit A. Under that Order, control of the licensees of the Freedom stations was transferred to the Freedom Communications Broadcast Trust until such time as the Commission approves long-form applications seeking consent to transfer of control to FCHI as reorganized in the bankruptcy proceedings. The Order provides that the "Reorganized Broadcast Licensee Companies shall continue to be subject to the jurisdiction of the Court. . ." Appendix A ¶ 17. The Commission consented to the transfer of control of the licensee entities to the Freedom Communications Broadcast Trust subject to the continuing jurisdiction of the bankruptcy court on April 12, 2010. *See, e.g.*, FCC File No. BTCCDT-20100312ABI. FCHI and the Petitioners emerged from ~~bankruptcy on April 30, 2010~~ subject to such continuing bankruptcy court jurisdiction in the case of the Petitioners.

Petitioners' regulatory fees for FY 2010 total \$168,980. Documentation listing the authorizations held by each licensee entity and the corresponding regulatory fees is attached as Appendix B.

The Communications Act of 1934<sup>2</sup> and the Commission's regulations authorize the Commission to waive regulatory fee obligations for organizations that have established that they are under a financial hardship.<sup>3</sup> The Commission has accepted evidence of bankruptcy as "sufficient to establish financial hardship for purposes of waiver of regulatory fees."<sup>4</sup> Thus, the Commission will grant a waiver for a bankrupt organization whose regulatory fees do not exceed the \$500,000 cap on fee waivers.<sup>5</sup>

The Petitioners entered bankruptcy in September 2009 and remain under supervision of the Bankruptcy Court. Thus, payment of the regulatory fees would place a substantial financial hardship on Petitioners. Granting this request for a waiver of the FY 2010 regulatory fees would promote the public interest consistent with the requirements of the Communications Act and the Commission's rules.<sup>6</sup> Petitioners will be able to replenish their financial resources and maintain their current level and quality of broadcasting service to the public. Further, the aggregate of Petitioner's regulatory fees is below the \$500,000 cap for fee waivers.

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<sup>2</sup> 47 USC § 159(d).

<sup>3</sup> 47 CFR § 1.1166(c).

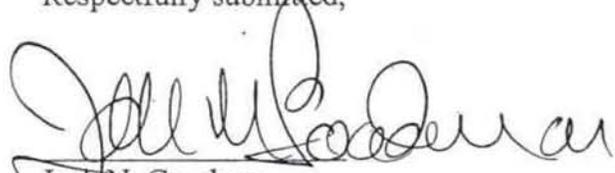
<sup>4</sup> *MobileMedia Corp. et al.*, Memorandum and Opinion Order, 14 FCC Rcd 8017, 8027 (1999). See also *Implementation of Section 9 of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, Memorandum and Opinion Order, 10 FCC Rcd 12759, 12762 (1995) (finding that "evidence of bankruptcy . . . is sufficient to establish financial hardship").

<sup>5</sup> 47 CFR § 1.1166(e).

<sup>6</sup> See 47 USC § 159(d) ("The Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest."), see also 47 CFR § 1.1166.

For these reasons, the Commission should grant Petitioners' request to waive the FY  
2010 regulatory fees.

Respectfully submitted,



Jack N. Goodman

Wilmer Cutler Pickering Hale and Dorr LLP  
1875 Pennsylvania Avenue N.W.  
Washington, D.C. 20006

*Counsel for the Freedom Communications  
Broadcast Trust*

August 23, 2010

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554  
June 14, 2011

Joanne

OFFICE OF  
MANAGING DIRECTOR

Howard A. Topel, Esq.  
John D. Poutasse, Esq.  
F. Scott Pippin, Esq.  
Lerman Senter PLLC  
2000 K Street, NW, Suite 600  
Washington, DC 20006-1809

Re: Station KHIZ  
KAZN-TV Licensee, LLC.  
Request for Waiver of FY 2010 Regulatory Fees  
Fee Control No.: RROG-10-00013175

Dear Counsel:

This letter responds to your request dated August 31, 2010 (*Request*), on behalf of KAZN-TV Licensee, LLC (Licensee) for a waiver of the Fiscal Year (FY) 2010 regulatory fees for Station KHIZ on the basis of financial hardship. Our records reflect that you have not paid the \$32,275.00 regulatory fee. For the reasons set forth below, we grant your request.

You claim that the Licensee has experienced severe economic hardship over the past two years, and expects to continue to do so over the next twelve months.<sup>1</sup> In support of your request for waiver, you submit a financial document entitled "TVPlus, LLC and Subsidiary Consolidated Statements of Operations and Accumulated Deficit Years Ended December 31, 2009 and 2008" (*Financial Statement*), which reflects TVPlus, LLC's (TVPlus's), Sunbelt Television, Inc.'s (Sunbelt's), and the Licensee's revenues and expenses for calendar years 2009 and 2008.<sup>2</sup> You state that the Licensee is wholly-owned by Sunbelt, which is wholly-owned by TVPlus, and that "[a]ll of the station operating business for KHIZ is conducted by Sunbelt[.]"<sup>3</sup> You say that TVPlus, Sunbelt, and the Licensee do not own or operate any other television station or conduct any business other than the operation of KHIZ.<sup>4</sup> You therefore assert that the *Financial Statement*, which reflects consolidated revenues and expenses, "reflects 100 percent of the operating status and financial condition of Station KHIZ only."<sup>5</sup> You also submit two documents entitled "KAZN Licensee LLC Corporate Officers and Compensation" and "KAZN Licensee LLC Highest Paid Employees" reflecting the compensation paid to the Licensee's three officers and two highest paid employees, respectively, in 2008, 2009, and 2010.<sup>6</sup>

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

<sup>2</sup> See Email from Howard A. Topel to Joanne Wall at 1 (May 24, 2011) (*May 2011 Email*), Attachments (cover sheet to *Financial Statement* entitled "Consolidated Financial Statement for KAZN Licensee, LLC, and its parent Sunbelt Television, Inc., and its parent TVPlus, LLC" and *Financial Statement*).

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

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

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

<sup>6</sup> See *Request*, Attachment C and D.

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 stated that it would grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship."<sup>7</sup> In determining whether a licensee has made a sufficient showing of financial hardship, the Commission reviews a licensee's cash flow, as opposed to the entity's profits, and considers whether the licensee lacks sufficient funds to pay the regulatory fee and maintain service to the public.<sup>8</sup> Thus, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.<sup>9</sup>

Our review of the record, including the *Financial Statement*, indicates that the Licensee suffered an operating loss in the 2009 calendar year, and that this deficit was only partially offset by the salaries paid to KHIZ's highest paid employees and a deduction for depreciation and amortization. Accordingly, in light of your compelling showing of financial hardship, your request for waiver of the FY 2010 regulatory fees is granted.<sup>10</sup>

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

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

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

<sup>8</sup> See *Memorandum Opinion and Order* at 12762.

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

<sup>10</sup> Because we grant your request for waiver of the regulatory fees on the grounds of financial hardship, we do not address your alternative request for a reduction of the regulatory fee on the grounds that Station KHIZ is licensed to a community outside the metropolitan area of Los Angeles and does not provide a usable signal to the major metropolitan areas within the Los Angeles Designated Market Area (*i.e.*, the DMA to which the station is assigned). By this letter, we also grant your request for a deferral of payment while the waiver request was pending.

ORIGINAL



WASHINGTON, DC

F. SCOTT PIPPIN  
202.429.8970  
202.293.7783 FAX  
SPIPPIN@LERMANSENTER.COM

August 31, 2010

FILED/ACCEPTED

FOR INTERNAL USE ONLY  
NON-PUBLIC

AUG 31 2010

Federal Communications Commission  
Office of the Secretary

**VIA HAND DELIVERY**

Ms. Marlené H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Attn: Office of the Managing Director

**Re: Petition for Deferment and Waiver of Fiscal Year 2010  
Regulatory Fee, and Request for Waiver or Reduction of  
2010 Regulatory Fee  
Television Station KHIZ, Barstow, California  
Facility ID No. 63865**

Dear Ms. Dortch:

Enclosed please find an unredacted original and four redacted copies of a Petition for Deferment and Waiver of Fiscal Year 2010 Regulatory Fee, and Request for Waiver or Reduction of 2010 Regulatory Fee, for television station KHIZ, Barstow, California.

Pursuant to Section 0.459 of the Commission's rules, confidential treatment is sought for these documents.

If the Commission should desire additional unredacted copies of the original, please contact the undersigned directly.

Respectfully submitted,

FOR INTERNAL USE ONLY  
NON-PUBLIC

F. Scott Pippin  
Counsel for KAZN-TV Licensee, LLC



WASHINGTON, DC

ORIGINAL

FILED/ACCEPTED

AUG 31 2010

Federal Communications Commission  
Office of the Secretary

HOWARD A. TOPEL  
202.429.8970  
202.293.7783 FAX  
HTOPEL@LERMANCENTER.COM

August 31, 2010

CONFIDENTIALITY REQUEST PURSUANT TO 47 C.F.R. § 0.459

VIA HAND DELIVERY

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

FOR INTERNAL USE ONLY  
NON-PUBLIC

Attn: Regulatory Fee Waiver/Reduction Request

**Re: Request for Confidential Treatment of  
Petition for Deferment and Waiver of Fiscal Year 2010 Regulatory  
Fee, and Request for Waiver or Reduction of 2010 Regulatory Fee  
Television Station KHIZ, Barstow, California  
Facility ID No. 63865**

Dear Sir or Madam:

KAZN-TV Licensee LLC ("Licensee"), licensee of television station KHIZ, Barstow, California (Facility ID No. 63865), by its counsel, hereby requests that the attached, un-redacted Petition for Deferment and Waiver of Fiscal Year 2010 Regulatory Fee ("Petition"), and Request for Waiver or Reduction of 2010 Regulatory Fee ("Request"), be held in confidence and not be made available for public inspection pursuant to Section 0.459 of the Commission's rules. The financial data and credit arrangements set forth in these documents constitute the kinds of private financial information for which the safeguard of confidential treatment is routinely granted. Accordingly, Licensee respectfully requests confidential treatment of these materials.

Confidential treatment of the Petition and the Request is appropriate and fully consistent with the Commission's rules and the Freedom of Information Act. The Petition and Request contain sensitive proprietary financial information detailing Licensee's internal financial projections and the terms and conditions of its credit arrangements with its lenders. Release of the information contained in these documents could substantially harm Licensee if divulged to the public generally, including Licensee's competitors. See 5 U.S.C. § 552(b)(4) (providing for non-disclosure of information which constitutes "trade secrets and commercial or financial information"); 47 C.F.R. § 0.457(d) (Commission authorized to withhold materials which would

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NON-PUBLIC



not customarily be released to the public, including trade secrets and commercial or financial information).

Accordingly, Licensee respectfully requests that the Petition and the Request be kept ~~confidential indefinitely, withheld permanently from public inspection, and destroyed or returned to Licensee once final action has been taken on the Petition and Request.~~

If any additional information is desired, please contact the undersigned counsel.

Respectfully submitted,

A handwritten signature in cursive script that reads "Howard A. Topel".

Howard A. Topel  
*Counsel for KAZN-TV Licensee, LLC*