FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

May 26, 2011

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

Re: KM Television of Flagstaff, LLC
Station KCFG(TV)
FY 2010 Regulatory Fee
Fee Control No. RROG-10-00013462

Dear Mr. Shainis:

This letter responds to your request filed April 20, 2011 (*Request*), on behalf of KM Television of Flagstaff, LLC (KM Television), licensee of Station KCFG(TV), for waiver of the $30,075.00 fiscal year (FY) 2010 regulatory fee.[1] Our records reflect that KM Television has not paid the regulatory fee. For the reasons stated herein, we grant your request.

You state that KM Television suffered a net loss in 2009, is unable to pay the FY 2010 regulatory fee, and has had no employees.[2] You submit a document entitled "KM Television of Flagstaff, LLC, Profit & Loss, January through December 2009" (*Financial Statement*).[3]

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."[4] In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Thus, even if a station loses money, any funds paid to principals and deductions for depreciation and amortization are considered funds available to pay the fees.

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[1] The Office of Managing Director (OMD) dismissed KM Television's initial request for waiver of the FY 2010 regulatory fee dated August 31, 2010 (*August 2010 Letter*) on the grounds of financial hardship for failure to provide any "of the information necessary for the Commission to make this determination." *See* letter from Mark Stevens, Chief Financial Officer, OMD, FCC, to Aaron P. Shainis, Esq.) (Mar. 22, 2011) (also denying the waiver request on the grounds that the station was silent when the regulatory fee was due) (*March 2011 Decision*).

[2] *See August 2010 Letter* at 1-2.

[3] *See Request,* Attachment.

[4] *See Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995).

Our review of the record, including KM Television's *Financial Statement,* indicates that in calendar year 2009, KM Television had no employees, and suffered a $251,984.48 financial loss that was only partially offset by a deduction for depreciation and funds payable to principals (assuming that all the otherwise unidentified payroll expenses were funds payable to principals), which are amounts that the Commission considers as funds available to pay the regulatory fee. Given that KM Television suffered a financial loss in calendar year 2009, we grant your request for a waiver of the $30,075.00 regulatory fee for FY 2010.[5]

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

Sincerely,

Mark Stephens
Chief Financial Officer

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[5] By this letter, we also grant your request for a deferral of payment while the waiver request was pending.

Shainis & Peltzman, Chartered

Counselors at Law

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April 20, 2011

RECEIVED
APR 25 2011
Financial Operations Center

FILED/ACCEPTED
APR 20 2011
Federal Communications Commission
Office of the Secretary

Office of the Secretary
Attn: Mark Stephens
Office of the Managing Director
Federal Communications Commission
445 12th Street SW, Room 1-A625
Washington, DC 20554
Attn: Regulatory Fee Waiver/Reduction Request

Re: KM Television of Flagstaff, LLC
Station KCFG(TV)
FY 2010 Regulatory Fee Waiver Request
File 8-31-10
Fee Control No. RROG-10-0013164
Regulatory Fee Amount: $30,075.00

Dear Mr. Stephens:

KM Television of Flagstaff, LLC ("KM"), licensee of KCFG(TV), Flagstaff, Arizona, Facility ID No. 35104 (the "Station"), by its counsel and pursuant to the Commission's March 22, 2011 letter (Attachment A), submits the following:

On August 31, 2010, KM requested a waiver of the 2010 regulatory fees (Attachment B). In that submission, KM referenced that it was attaching a Profit and Loss Statement for 2009 and that KM had suffered a net loss. Inadvertently, KM omitted the Profit and Loss Statement from its submission. Attached to the instant submission is the KM balance sheet and KM Profit and Loss Statement. These documents demonstrate that KM suffered a loss of $251,984.48 in 2009 (Attachment C).

Accordingly, it is submitted that a waiver of the 2010 regulatory fees is warranted.

Respectfully submitted,

Aaron P. Shainis

Aaron P. Shainis
Counsel for
KM Television of Flagstaff, LLC

cc: Mark Stephens

Ann M

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

April 5, 2011

Robert J. Rini, Esq.
Jonathan E. Allen, Esq.
Rini Coran, PC
1140 19th Street, N.W., Suite 600
Washington, D.C. 20036

Re: Louisville TV Licenses, LLC
Request for Waiver of Application Fees
Fee Control No. RROG-10-00013065

Dear Counsel:

This is in response to your request filed August 31, 2010 (*Request*), on behalf of Louisville TV Licenses, LLC (Louisville TV or licensee), licensee of Stations WBKI-TV, WBKI-CA, and WBKI-LD (the stations) for a waiver of the fiscal year (FY) 2010 regulatory fees. Our records reflect that Louisville TV did not pay the $19,315.00 regulatory fees. For the reasons stated herein, we deny your request.

You assert that the stations were recently acquired by Louisville TV and that severe financial constraints have limited station revenues in this start-up phase.[1] You aver that Louisville is in active negotiations to procure additional financing.[2] You submit a financial document entitled "Louisville TV Group, LLC: Profit & Loss YTD Comparison July 2010" (*Financial Statement*), which reflects the licensee's revenues and expenses from January 2010 through July 2010.

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

[1] *Request* at 1-2.

[2] *Id.* at 2.

financial hardship."[3] 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.[4] Thus, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.

Our review of the record, including the licensee's *Financial Statement*, indicates that the licensee suffered an operating loss from January 2010 through July 2010 that was fully offset by depreciation and amortization deductions. Thus, Louisville TV had money from depreciation and amortization deductions from which it could pay the regulatory fees. We therefore we deny your waiver request on the grounds of financial hardship.

You have also requested confidential treatment of the financial data that you submitted with your request for fee relief. 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.[5]

Payment of Louisville TV's FY 2010 regulatory fees is now due. The $19,315.00 regulatory fees should be submitted, together with a Form 159 (copy enclosed), within 30 days of the day of this letter. 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

Enclosure

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[3] *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*).

[4] *See Memorandum Opinion and Order* at 12761-62.

[5] By this letter, we also grant your request for a deferral of payment while the waiver request was pending.

Adams

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

DEC 16 2011

OFFICE OF
MANAGING DIRECTOR

Lawrence M. Miller, Esq.
Malcolm G. Stevenson, Esq.
Schwartz, Woods, and Miller
1233 20th Street, NW
Washington, DC 20036-7322

Re: Gary L. Rainsdon, Trustee
Stations KIPA-AM, KHBC-FM,
KHWI-FM, and WMF420
FY 2010 Regulatory Fee Waiver Request
Filed 8/31/2011
Fee Control No. RROG 10-00013781
Regulatory Fee Amount: $3,860.00

Dear Counsel:

This letter responds to the above-referenced request for waiver of regulatory fee filed on the grounds of financial hardship ("Regulatory Fee"). Our records reflect that the Regulatory Fee at issue has not been paid. For the reasons stated herein, your waiver request is granted.

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.[1] 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.[2] 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.[3] "Mere allegations or documentation of financial loss, standing alone," do 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."[4]

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[1] 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).
[2] 9 FCC Rcd at 5344 ¶ 29.
[3] 10 FCC Rcd at 12761-62 ¶ 13.
[4] *Id.*

Where relevant, the fact that the licensee is in bankruptcy or related receivership[5] may be evidence of financial hardship; however, that fact will not relieve the petitioner of meeting its standard. Thus, we review each request, including those in which bankruptcy or receivership is asserted, on a case-by-case basis to determine whether the public interest warrants a waiver of the fee, and we may decline such a request.[6] Under all the circumstances of this case, including our review of the materials you submitted and the facts, we find that waiver of the fee is appropriate.

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

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[5] We require evidence that the licensee is in bankruptcy or receivership based upon appropriate financial purposes, *e.g.*, to protect, preserve, and potentially enhance the value of the assets and maintain operations.
[6] In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

STAMP AND RETURN

LAW OFFICES
SCHWARTZ, WOODS & MILLER
SUITE 610, THE LION BUILDING
1233 20TH STREET, N.W.
WASHINGTON, D.C. 20036-7322

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LAWRENCE M. MILLER
STEVEN C. SCHAFFER
MALCOLM G. STEVENSON

ROBERT A. WOODS
(Retired)
TAX COUNSEL
MARK B. WEINBERG
LOUIS SCHWARTZ
(1918 - 2004)

August 16, 2011

RECEIVED - FCC
AUG 16 2011
Federal Communications Commission
Bureau / Office

FILED/ACCEPTED
AUG 16 2011
Federal Communications Commission
Office of the Secretary

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

Attn: Petition to Defer Regulatory Fee Payment
Regulatory Fee Waiver Request

Re: Petition for Deferral and Waiver of 2011 Regulatory Fees
Station KIPA(AM), FIN 33324, Hilo, Hawaii
Station KHBC(FM), FIN 70379, Hilo, Hawaii
Station KHWI(FM), FIN 164211, Holualoa, Hawaii
Station WMF420 (KHBC auxiliary broadcast station)

To the Managing Director:

Gary L. Rainsdon, Trustee-in-Bankruptcy (the "Trustee") for Parrott Broadcasting Limited Partnership ("Parrott"), through his attorneys, hereby petitions for deferral and requests permanent waiver of the Fiscal Year 2011 Annual Regulatory Fees ("FY 2011 Fees") in connection with the above-referenced stations based on financial hardship, pursuant to Section 1.1166 of the Commission's Rules. The total amount of FY 2011 Fees is $4,010.00. The fees are due by September 14, 2011.

The Chapter 7 Bankruptcy Case. On April 19, 2011, the Trustee filed an application with the Commission for consent to involuntary assignment of the Parrott licenses pursuant to approval by the Bankruptcy Court for the District of Idaho of conversion of the case from a Chapter 11 to a Chapter 7 proceeding (Case No. 10-40017-JDP). The application was granted on June 15, 2011, and a Notice of Consummation was filed that day.

The Stations' Operational Status. The stations have been silent since October 5, 2010. The Trustee is working to return the stations to the air and to sell them to a private party. In any event, however, the stations will still be in bankruptcy at the time the FY 2011 Fees are due.

Fee Waiver and Deferral Rules and Standards. Congress has authorized the Commission to "waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest."[1] Accordingly, Section 1.1166(a) of the Rules permits waiver of regulatory fees "where good cause is shown and where waiver, reduction, or deferral of the fee would promote the public interest." In its regulatory fee rulemaking proceedings, the Commission has repeatedly stated that evidence of bankruptcy is itself a sufficient demonstration of financial hardship justifying waiver of regulatory fees under the case-by-case review described in Section 1.1166.[2] The Commission has stated: "[e]vidence of bankruptcy or receivership is sufficient to establish financial hardship" and that it "will waive the regulatory fees for licensees whose stations are bankrupt, undergoing Chapter 11 reorganizations, or in receivership."[3] As the Commission has further observed, these "bright line tests . . . can be administered predictably."[4] In short, the Commission has determined that Chapter 7 bankruptcy is a compelling financial hardship and that evidence of bankruptcy or receivership at the time the fees are due justifies waiver of regulatory fees.[5]

Under these circumstances, grant of the requested relief from the obligation to pay FY 2011 regulatory fees would be consistent with FCC rules and policies and well serve the public interest.

Please address any questions concerning this matter to this office.

Very truly yours,

SCHWARTZ, WOODS & MILLER

By: Lawrence M. Miller

Lawrence M. Miller

LMM/nmc

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[1] 47 U.S.C. §159(d) (2005).

[2] See, e.g., "Assessment and Collection of Regulatory Fees for Fiscal Year 2009," Report and Order, FCC 09-62, para. 30 (released July 31, 2009)

[3] Id.

[4] 2009 Report and Order, para. 30.

[5] See, also, Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order, 10 FCC Rcd 12759, para. 14 (1995). See also, e.g., Letter to Elisabeth M. Washburn, Esq., regarding Tribune Company, November 5, 2009, p. 2.

Adama

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

DEC 16 2011

OFFICE OF
MANAGING DIRECTOR

/

Lawrence M. Miller, Esq.
Malcolm G. Stevenson, Esq.
Schwartz, Woods, and Miller
1233 20th Street, NW
Washington, DC 20036-7322

Re: Gary L. Rainsdon, Trustee
Stations KIPA-AM, KHBC-FM,
KHWI-FM, and WMF420
FY 2011 Regulatory Fee Waiver Request
Filed 8/16/2011
Fee Control No. RROG 11-00013648
Regulatory Fee Amount: $ 4,010.00

Dear Counsel:

This letter responds to the above-referenced request for waiver of regulatory fee filed on the grounds of financial hardship ("Regulatory Fee"). Our records reflect that the Regulatory Fee at issue has not been paid. For the reasons stated herein, your waiver request is granted.

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.[1] 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.[2] 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.[3] "Mere allegations or documentation of financial loss, standing alone," do 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."[4]

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[1] 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).
[2] 9 FCC Rcd at 5344 ¶ 29.
[3] 10 FCC Rcd at 12761-62 ¶ 13.
[4] *Id.*

Where relevant, the fact that the licensee is in bankruptcy or related receivership[5] may be evidence of financial hardship; however, that fact will not relieve the petitioner of meeting its standard. Thus, we review each request, including those in which bankruptcy or receivership is asserted, on a case-by-case basis to determine whether the public interest warrants a waiver of the fee, and we may decline such a request.[6] Under all the circumstances of this case, including our review of the materials you submitted and the facts, we find that waiver of the fee is appropriate.

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

[5] We require evidence that the licensee is in bankruptcy or receivership based upon appropriate financial purposes, *e.g.*, to protect, preserve, and potentially enhance the value of the assets and maintain operations.
[6] In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

Adams

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

NOV 30 2011

OFFICE OF
MANAGING DIRECTOR

Bruce C. Maduri, President
Genesis Communications I, Inc.
4300 W.Cypress Street
Tampa, FL 33607

Re: Genesis Communications I, Inc. and Genesis Communications of Tampa Bay, Inc.
Stations w/Facility ID #: WHOO (54573), WAMT (15877), WIXC (54505), WMGG (67135), WHBO (41383), WWBA (51971), WHQ239 (54573)
FY 2010 Regulatory Fee Waiver Request
Filed: August 18, 2010
Fee Control No.: RROG-10-00012981
Regulatory Fee Amount: $ 21,210.00

Dear Mr. Maduri:

This letter responds to your request dated August 4, 2010 (*Request*),[1] on behalf of Genesis Communications I, Inc. and Genesis Communications of Tampa Bay, Inc. (collectively, *Genesis*) for a waiver of the Fiscal Year (FY) 2010 regulatory fees for the seven above-listed Stations[2] on the basis of financial hardship. The Commission's records indicate that *Genesis's* regulatory fees have not been paid and that *Genesis* did not petition for deferral of payment. Accordingly, as provided for in the Commission's rule [3] and for the reasons discussed below, we dismiss and, because you furnished some financial information, in the alternative, deny your *Request*, and require that *Genesis* pay the regulatory fees.

Genesis asserts it is a small family owned broadcast company serving central Florida. Further, *Genesis* asserts that a waiver is in the public interest "due to the fact that [*Genesis*] employ[s] local talk show hosts and local news anchors[, and p]aying the regulatory fees at this time may require the dismissal of additional employees."[4] *Genesis* has "cut staff from . . .70 in

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[1] Letter from Bruce C. Maduri, president, Genesis Communications, Inc., 4300 W. Cypress St., Tampa, FL 33607 to FCC Audio Bureau, FCC (Aug 5, 2010)(*Request*).

[2] The Request, which listed six stations, did not specifically identify WHQ239.

[3] 47 C.F.R. § 1.1166(c) Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.

[4] *Request*.

2008 to 35."[5] It is "maintaining expenses but [is] near default on one of [its] Senior Loans[, and p]ayment of the regulatory fees at this time would bring unmanageable stress on the company."[6] *Genesis* attached to its *Request* two financial documents entitled "Genesis Communications, Inc. 09-10 Income Statement with 2 Year Comparison For the Six Months Ending June 30, 2010" (*Income Statement*) and Starter Enterprises, Inc., d/b/a Genesis Communications 2009 U.S. Income Tax Return for an S Corporation (*Starter 1120S*).

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.[7] 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.[8] 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.[9] "Mere allegations or documentation of financial loss, standing alone," do 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."[10] 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 on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.[11] Thus, for example, 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.

This *Request*, seeks a waiver of the fees due for seven stations, thus for each licensee, *Genesis* has the burden of demonstrating that a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the Commission's regulatory action.[12] To carry that burden, *Genesis* must present compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs. For the following reasons, we find that *Genesis* did not meet its obligation.

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[5] *Id.*
[6] *Id.*
[7] 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).
[8] 9 FCC Rcd at 5344 ¶ 29.
[9] 10 FCC Rcd at 12761-62 ¶ 13.
[10] *Id.*
[11] *Id.*
[12] *Id.*

First, *Genesis* did not establish a connection between the furnished financial information and the two licensees.[13] For example, Genesis Communications, Inc., the corporation named on the *Income Statement*, is separate from Starter Enterprises, Inc., d/b/a/ Genesis Communications, the corporation reported on the *Starter 1120S*, and both are different named corporations from the two separate named corporate licensees. *Genesis* failed first to establish a connection between the financial records and the licensees. Rather it left to the Commission the tasks of first speculating what, if any, relationship exists, second apportioning the financial information to the two licensees and their seven Stations, and third, scrutinizing the records for financial specificity. Finally, where *Genesis* asserted a reduction in staff size and that it was near default on one "Senior Loan," it failed to provide any supporting information connecting the assertions to the financial information furnished and explaining how the outcome will adversely impact each licensee's ability to serve the public.[14]

Rather than two unrelated documents, *Genesis* should have delivered relevant information specific to the licensees, *e.g.*, a balance sheet, cash flow projection for the next twelve months (with an explanation of how calculated), a list of the entity's highest paid employees, other than officers, and the amount of their compensation, and similar information. Even though we examined the *Income Statement*, we found that it shows only the information that Genesis Communication, Inc. offered as to its profitability during two specific six-month periods. *Genesis* did not provide information about the six-month period from July through December in 2009, and it failed to present evidence that the six-month financial information it did furnish may be doubled to approximate the entire year's income and expenses. Thus, the *Income Statement*, even if associated with the two *Genesis* licenses, does not illuminate whether payment of all or some of the regulatory fees will impose an undue financial hardship on either or both licensees that will adversely impact their service to the public. Moreover, *Genesis* gets no help from the *Starter 1120 S*, which is incomplete without the referenced explanatory Statements, and which is intended only to show business income and loss for tax purposes. It provides no clear evidence from which to determine whether one or both of the licensee's ability to serve the public will be adversely changed upon payment of some or all of the regulatory fees. Separately, neither document provides any information about the staffing reduction of the "near default on one of [its] Senior Loans."[15] And together, the value of the information on both the *Income Statement* and the *Starter 1120S* is diminished by apparent inconsistencies in certain reported data. For example, there is a $612,950-difference between amounts reported as salaries on the *Income Statement* (which in this instance we doubled to project the annual expenses in that category) and the amounts in the same category deducted on *Starter 1120S*. Specifically, *Starter 1120 S* reports two deductions totaling $1,539,784 for salaries and officers' compensation, but the *Income Statement* for 2009 reports in the same category a six-month total of $463,416.65.

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[13] We note that Georgia Secretary of State records show that Genesis Communications I, Inc. is under "administrative dissolution/Revocation" and that Starter Enterprises, Inc was "involuntarily or administratively dissolved or its certificate of authority revoked" on Aug. 26, 2011. The Florida Department of State, Division of Corporations lists Genesis Communication I, Inc., Genesis Communications II, Inc., and Genesis Communications of Tampa Bay, Inc. *Genesis* did not explain the connection between the licensees and Starter Enterprises, and failed to explain whether Starter Enterprises conducts other business activities.

[14] *Request*.

[15] *Id*.

Payment of $21,210.00 for the FY 2010 regulatory fees is now due. The regulatory fees for each station must be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. If the licensees fail to pay the full amount due by that date, the statutory penalty of 25% of the unpaid fee,[16] and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter, and under the law,[17] the Commission will initiate collection proceedings. 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

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
AUG 1 8 2011

OFFICE OF
MANAGING DIRECTOR

Mr. Gary L. Graham
Gary Graham Broadcast Engineering
Post Office Box 2527
Weatherford, TX 76086

Re: Great Northern Broadcasting System, Inc. and
Roy E. Henderson
FYs 2008-2010 Regulatory Fee Waiver Request
Filed August 31, 2010
Fee Control No. RROG-10-00013069
FY 2010 Regulatory Fees Amount: $ 6,812.50

Dear Mr. Graham:

This letter responds to your request that we received August 31, 2010 (*Request*),[1] on behalf of Great Northern Broadcasting System, Inc. (Great Northern) for a waiver of the Fiscal Year (FY) 2008, 2009, and 2010 regulatory fees due for station WLDR-FM. In addition to Great Northern, you refer to Mr. Roy E. Henderson (Mr. Henderson) as the President of Great Northern, and the licensee of stations WBNZ-FM, WOUF-FM and WARD-FM, but without any explanation. As a result, your *Request* is ambiguous as to the included stations. Specifically, you prominently identify Great Northern's station WLDR-FM, as being the subject of the *Request* by placing it immediately under the subheading, "Request for Waiver of Regulatory Fees." In contrast, you only briefly mention the other stations in the context of the "financial hardship issues facing Great Northern . . . WBNZ, WOUF, and WARD." A petitioner has the burden of clarifying its position and stating with clarity its arguments.[2] Thus, we would dismiss so much of the request as it pertains to WBNZ-FM, WOUF-FM and WARD-FM, but in this instance, because our disposition of your *Request* is applicable to both Great Northern and the three stations licensed to Mr. Henderson, we will include all of the stations in our discussion and disposition. Your *Request* is dismissed and, in the alternative, denied.

In your *Request*, you state that Mr. Henderson has experienced financial hardship, which is supported by several exhibits: Fort Bend Media Broadcasting Profit & Loss (January through December 2008) (*P&L 2008*); Great Northern's Profit & Loss (January through December 2009) (*P&L 2009*); Great Northern's Profit & Loss (January through July 2010) (*P&L 2010*) (collectively, *Profit and Loss statements*); Great Northern's Account Quick Report as of December 2009 (*Deposit Summary 2009*); and Great Northern's Account Quick Report as of July 2010 (*Deposit Summary 2010*) (collectively, *Deposit Summaries*).

[1] Letter from Gary Graham Broadcast Engineering, P.O. Box 2527, Weatherford, TX 76086 to FCC, Office of Managing Director, 445 12th St. S.W., Rm 1-A625, Washington, DC (Attn: Regulatory Fee Waiver/Reduction Request) (undated) (received Aug. 31, 2010) (*Request*).

[2] 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).

Mr. Gary L. Graham

Our records show that both Great Northern and Mr. Henderson are delinquent in paying regulatory fees due for previous years[3] and that neither Great Northern nor Mr. Henderson paid any of the FY 2010 regulatory fees due for any of the stations referred to in your *Request*, and your *Request* did not Petition to defer payment. Indeed, Great Northern is restricted from doing business with the FCC.[4] Thus, we dismiss the *Request* because both licensees are delinquent in paying prior year fees. But even if the regulatory fees had been paid for FY 2008 and 2009, we would dismiss the *Request* on the additional grounds that neither of the licensees paid the FY 2010 regulatory fees and neither requested deferral of payment of those fees.[5] In the alternative, if there are no delinquencies, and the licensees had requested deferral, for the separate reasons stated below, we deny your *Request*.

In response to this letter, the licensees are required to pay the FY 2010 regulatory fees for each license as well as the unpaid regulatory fees for prior years, and all accrued penalties and interest.[6] We will send the licensees separate invoices for the delinquent regulatory fees for the years prior to FY 2010.

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.[7] 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.[8] 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.[9] "Mere allegations or documentation of financial loss, standing alone," do 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."[10] 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

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[3] Our records indicate that Great Northern is delinquent in paying the FY 2009 regulatory fees and accrued penalties, interest and charges of collection, and that Mr. Henderson is delinquent in paying FY 2008 and FY 2009 regulatory fees due on stations WCUZ, KJAZ, KHTZ, KROY, and KEMA. If you (or the licensees) believe this information to be incorrect, and there is evidence that the fees were waived or paid in a timely manner, please provide it to us.

[4] The FCC's Red Light Display System shows Great Northern is delinquent in paying $3,212.50 due on "09RE003852." Under our rule at 47 C.F.R. § 1.1910, we withhold any action on an application filed by a delinquent debtor, and if the delinquent debt is not paid or other satisfactory arrangements are not made with the Commission, we dismiss the action. Because our rules require that we dismiss the *Request* on other grounds, we need not discuss this alternative.

[5] 47 C.F.R. § 1.1166(c)(Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.); 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.").

[6] 47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164.

[7] 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).

[8] 9 FCC Rcd at 5344 ¶ 29.

[9] 10 FCC Rcd at 12761-62 ¶ 13.

[10] *Id.*

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 on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.[11] Thus, for example, 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 *Profit and Loss statements* do not fully document the stations' financial positions and they do not demonstrate that the stations lack sufficient funds to pay their regulatory fee and to maintain its service to the public. Simply, the information does not show compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.

First, the *Profit and Loss statements* and *Deposit Summaries* do not present the range of information usually included within other documents, *e.g.*, a balance sheet, cash flow projection, and reports of compensation. Indeed, the *Deposit Summaries* are not helpful without explanation and supplemental information to establish a connection to the licensees' ability to pay the regulatory fees and maintain service to the public. Moreover, as we discuss below, the *Profit and Loss statements* are both unclear and insufficient to provide necessary relevant facts and information showing how payment of the FY 2008, 2009 and 2010 regulatory fees for each of the stations did or will impact adversely the licensee's ability to serve the public.

Second, the financial information does not present a compelling case that the licensees' service to the public will suffer upon payment of the required regulatory fees. You asserted in general that "Great Northern [spent in excess of one half million dollars to] purchase[] new Broadcast electronics Equipment and IBOC licensing in early 2008," and an "additional $200,00 [sic] was spent in promotional radios for the public, new studio's [sic] and other promotional materials."[12] The financial information, however, does not support those assertions. Rather the information raises several unanswered questions related to the accuracy of the total income and expenses for such matters as professional fees, property taxes, utilities, and payroll. Specifically, total income of $1,793,708.67 in 2008 far exceeds reported income in 2009 and 2010, but with no explanation for the great reduction other than a brief assertion that the "stations income went from weak to poor."[13] You state that in early 2008, Great Northern expended more than $500,000 for new equipment and $20,000 for promotional items. But there is no support for those assertions in the *P&L 2008*; rather it shows Fort Bend Media Broadcasting expended only $4,433.74 for "Total Equipment" and only $182.75 for "Promotions." The *Profit and Loss statements* present unexplained fluctuations in several reported expenses. For example, professional fees were reported as $810,766.98 in 2008, but then reduced to $100,066.37 in 2009 and $30,113.57 in 2010. The reported expense for taxes on property that appears otherwise to have remained unchanged nonetheless fluctuated from $2,762.04 in 2008 to $118,666.37 in 2009 and $55,583.42 in 2010. Expenses for utilities fluctuated from $12,556.25 in 2008 to $98,387.14 in 2009 and $56,523.63 in 2010. Moreover, you offered no explanation why payroll expenses

[11] *Id.*
[12] *Request* at 1.
[13] *Id.*

fluctuated from $486,530.06 in 2008,[14] to $112,255.82 in 2009, and $62,485.56 in 2010 or why Great Northern increased its expenditures for telephone service from $6,638.63 in 2008 to $15,387.80 in 2009, and then reduced it to $8,657.97 in 2010. Finally, there is no explanation for the $1,085,500.00 "Capital Transfer" in 2008. Rather than demonstrating financial hardship, this "Capital Transfer" shows that in 2008 Great Northern had sufficient funds available both to pay the FY 2008 regulatory fees and then to set aside amounts for future years to fund the recurring annual obligation. Thus, the financial information as a whole does not present a compelling case to waive the fees.

Accordingly, as we stated at the onset, we dismiss your *Request* on two grounds: the licensees are delinquent in paying past due regulatory fees, and the request did not include the FY 2010 regulatory fees or a petition for deferral supported by evidence of financial hardship. In the alternative, if the *Request* had not been dismissed, for the separate reasons noted, we deny it. Accordingly, because neither Great Northern nor Mr. Henderson paid the FY 2010 regulatory fees, we are required to assess a penalty of twenty-five percent (25%) of the amount of the fees that were not paid in a timely manner. Payment of the outstanding regulatory fees and the penalties are now due.

As to the four stations mentioned in your *Request*, WLDR-FM, WBNZ-FM, WOUF-FM, and WARD-AM, we have calculated the total FY 2010 regulatory fee to be $5,450, plus the total 25% penalty of $1,362.50, for a total of $6,812.50. Those regulatory fees must be filed together with a Form FCC 159 (copies enclosed) within 30 days from the date of this letter. If the licensees fail to pay the full amount due by that date, interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter, and under the law,[15] the Commission will initiate collection proceedings We will provide the licensees with separate invoices for the delinquent FY 2008 and FY 2009 regulatory fees.

Because the licensees are delinquent in paying debts owed the United States, under 47 C.F.R. § 1.1910, the Commission will withhold action on any application filed or pending, and if the debts are not paid, or other satisfactory arrangements are not made, any application filed or pending may be dismissed. Moreover, the Commission may collect amounts due by administrative offset.[16]

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

Sincerely,

Mark Stephens
Chief Financial Officer

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[14] You did not explain in detail how the total payroll expenses reported in the *P&L 2008*, which include an unexplained expenditure of $3,384.25 for "Texas Unemployment tax," relate to stations that are located in Michigan.

[15] *See* 47 C.F.R. § 1.1901, *et seq.*

[16] 47 C.F.R. § 1.1912.

RROG_10-00013069

Received & Inspected
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FCC Mail Room

GARY GRAHAM BROADCAST ENGINEERING
P.O. BOX 2527
WEATHERFORD, TX. 76086
979-255-3615
ggbcste@aol.com

PETITION
WAIVER REQUEST OF REGULATORY FEES

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

RECEIVED
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On Behalf of:
Great Northern Broadcasting System, Inc.
WLDR - FM FID # 24974
Roy E. Henderson
WBNZ - FM FID# 57414
WOUF - FM FID# 14646
WARD - AM FID# 79338

I, Gary Graham, have been asked by **Great Northern Broadcasting System, Inc** and, **Roy E. Henderson** to prepare this Petition Request for Waiver. I am not an Attorney and have drafted this Petition to the best of my knowledge following the Commission's rules and procedures.

Request for Waiver of Regulatory Fees
WLDR- FM FID # 24974 FY08, FY09, FY10

Radio Station WLDR is licensed to Traverse City, Michigan.
Great Northern purchased new Broadcast electronics Equipment and IBOC licensing in early 2008. The total expenditure was in excess of one half million dollars. The installation of the equipment was in December 2008. WLDR was the first station in Northern Michigan to broadcast in HD-1, HD-2, and HD-3. In addition to the equipment purchase, and additional $200,00 was spent in promotional radios for the public, new studio's, and other promotional materials.
All this planned expansion and addition of HD Broadcasting to WLDR was prior to the really bad downturn in the economy. Michigan was hit very hard due to the auto industry and the overall job loss and economic conditions.

The stations income went from weak to poor. The owner and management of Great Northern had hoped that the addition of HD Broadcasting would be a boost in station revenue. This did not prove to be the case. Staff reductions and resource adjustments

still resulted in negative cash flow from the latter months of 2008 to present. Because of this situation, Mr. Roy Henderson, President of Great Northern Broadcasting System, Inc., felt it necessary to inject funds from other non broadcast company income.
WARD - AM is a full time simulcast of WLDR. No income is generated by this station. WARD - AM is licensed to Petoskey, Michigan
WBNZ - FM is licensed to Buelah, Michigan and the transmitter site is co-located with WOUF - FM, which is licensed to Frankfort, Michigan. Just following the addition of HD at WLDR, Mr. Henderson constructed (BPH-20090713AAH) WOUF with a new transmitter and antenna. Also, WBNZ - FM was constructed (BPH-20090713AAG) at the same time. Mr. Henderson expected the "out of pocket" expense involved in the upgrades of these station would return over a period of time with the income of the stations. As stated, these stations along with WLDR and WARD have been in negative cash flow for the period of 2007 to present.

Mr. Henderson is a committed Broadcaster with over 40 years in Broadcast ownership. He, personally, is the Licensee of WBNZ, WOUF, and WARD and the principal in Great Northern Broadcasting System, Inc. Attached is a record of the monies that Mr. Henderson has put into Great Northern, WLDR, WBNZ, WOUF and WARD in order to pay his staff and the operating expense shortfalls. Also as part of the Exhibit, a Profit and Loss statement is also made available to the Managing Director for consideration. No funds have been received by Mr. Henderson from Great Northern, nor from any of the other stations subject to Request for Waiver. No funds have been received or paid to Mr. Henderson from Great Northern, WLDR, WBNZ, WOUF, or WARD.

The record shows that Mr. Henderson is totally committed to the growth, and is confident that the financial well being of the stations will return. The financial hardship to Mr. Henderson and his family is very real as he had placed monies from tower and property rental into all these stations.

We request consideration by the Managing Director of these facts and financial hardship issues facing Great Northern Broadcasting System, Inc., WBNZ, WOUF, and WARD. It is our opinion that these factors go beyond the scope placing a financial burden and added hardship on this Licensee to pay the Commissions Regulatory Fees related to all these stations. In consideration of all the factors in showing a financial hardship, the public interest will be served in granting a this Waiver Request to Great Northern Broadcasting System, Inc. and Roy E. Henderson.

PAGE THREE - WLDR, WBNZ, WOUF, WARD

Attachment: Exhibit A - P&L Statement
The Attachment is titled "Fort Bend Broadcasting" which is the wholly owned Corporation of Roy E. Henderson. All the Licenses now in "Roy E. Henderson" were previously in "Fort Bend Broadcasting" * transfer applications a matter of record before the Commission

Exhibit A - Great Northern Income/ Expense
Owner Contributions from outside the company
Profit and Loss - Fort Bend Broadcasting

*Note: Fort Bend Broadcasting is the Prior Licensee which was and is wholly owned by Mr. Henderson.

The statements made are true and correct to the best of my knowledge.

For: Roy E. Henderson
13999 SW Bayshore Drive
Traverse City, MI. 49685

/s/ Gary L. Graham

Adama

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

NOV 3 0 2011

OFFICE OF
MANAGING DIRECTOR

X

Barry Friedman, Esquire
Michelle Cohen, Esquire
Thompson Hine LLP
1920 N. Street, N.W., Suite 800
Washington, D.C. 20036

Re: Metropolitan Area Networks, Inc.
Petition for Waiver of Applicant Fees
Fee Control No.: RROG-09-00011849

Dear Counsel:

This letter responds to your request dated July 17, 2009 (*Request*),[1] on behalf of Metropolitan Area Networks, Inc. (MAN) for a waiver of the application fees associated with 401 concurrently-filed requests for waiver of section 101.63 of the Commission's rules and extension of construction deadlines for fixed microwave services licenses (*Extensions*).[2] For the reasons discussed below, we dismiss your *Request* as moot.

You assert that the required fees for the 401 *Extensions* will total $77,350.00, the payment of which will be burdensome because it will require MAN to divert its working capital.[3] Furthermore, you assert that the public interest would be served by accepting a single fee of $175.00 because, in part, the Commission's resources used to analyze and process one *Extension* will not be increased by applying the resulting decision to other identical *Extensions*. Moreover, paying the required application fees "would contravene the public interest . . . when those funds can be used toward service deployment."[4] Finally, Commission precedent treating individual applications as a blanket application supports granting a fee waiver, particularly when the applicant is a privately held start-up venture filing identical applications.[5] You assert that "MAN has submitted the entire $77,350.00 amount but requests the Commission waive these fees paid and return them to MAN."[6] Contrary to that assertion, we have no record of any payment.

[1] In the Matter of Metropolitan Area Networks, Inc., Petition for Waiver of Application Fees Pursuant to Section 1.1119 of the Commission's Rules, *Petition for Waiver of Application Fees* (Jul. 17, 2009)(*Request*).

[2] In the Matter of Metropolitan Area Networks, Inc., *Request for Waiver and Extension of Construction Deadlines for Part 101 Fixed Microwave Services Licenses* (Jul. 17, 2009) (*Extension*). A *Request* and an *Extension* were appended to the specific FCC Form 601, FCC Application for Radio Service Authorization: Wireless Telecommunications Bureau Public Safety and Homeland Security Bureau (Request for Extension of Time) (Jul 17, 2009).

[3] *Request* at 3.

[4] *Id.* at 7.

[5] *Id.*

[6] *Id.* at 9.

Because no payment was received, under 47 C.F.R. § 1.1118(a) (2009 ed.)[7], all of MAN's *Extensions* were dismissed,[8] which renders the *Request* moot.

The Commission construes its waiver authority under Section 8 of the Communications Act[9] narrowly and it will grant fee waivers or deferrals on a case-by-case basis upon a showing of "extraordinary and compelling circumstances."[10] In this instance we need not consider whether MAN met the standard,[11] because it neither paid the fees[12] nor requested deferral of payment of such fees supported by evidence that such payment represents a substantial financial burden under the present circumstances. However, we note that even if MAN had requested deferral of payment of the fees supported by the required evidence,[13] its broad assertion of the perceived resulting consequences[14] fails to demonstrate that payment will impair its ability to serve the public interest.[15] Thus, under 47 C.F.R. § 1.1118(a), if the *Request* had not already been rendered moot by the dismissal of the underlying filings, we would dismiss.[16]

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[7] 47 C.F.R. § 1.1118(a) provides "(a) Filings subject to fees and accompanied by defective fee submissions will be dismissed . . . where the defect is discovered by the Commission's staff within 30 calendar days from the receipt of the application or filing by the Commission."

[8] *See* Letter from FCC to William Chastain, Metropolitan Area Networks, Inc., 8275 S. Eastern, Suite 200, Las Vegas, NV 89123, *Notice of Dismissal* (Aug. 5, 2009). The Notice referred to File No. 0003904507, call sign WQID664.

[9] 47 U.S.C. §158(d)(2).

[10] *See* Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, *Report and Order*, 2 FCC Rcd 947, 958, ¶ 70, 961, ¶¶ 87-89 (1987) ("those requesting a waiver or deferral will have the burden of demonstrating that, for each request, a waiver or deferral would override the public interest, as determined by Congress, that he government should be reimbursed for that specific regulatory action of the FCC. As we stated . . . we believe that, in most instances, the general public interest in reimbursing the government for services provided would far outweigh the private interest in waiving or deferring the small, incremental cost represented by these fees.").

[11] MAN asserts that the "Commission's Rule and the Act allow for parties to request a waiver of application fees" based on a "circumstance [that] the filing fees may not reasonably approximate the costs involved in processing a particular application, or may not serve the public interest." *Request* at 5. That is not correct. The fees are set by statute (47 U.S.C. § 158), and our authority to waive a fee or defer its payment is exercised applying the standard set forth in note 10, above. Furthermore, the Commission did not intend to "make individualized determinations of the 'appropriate fee.' Rather, except in unusual cases in which the public interest requires otherwise, [the Commission] will levy the fee as determined by Congress." Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, *Memorandum Opinion and Order*, 3 FCC Rcd 5987, ¶ 5 (1988).

[12] We note that MAN acknowledged it had "been informed by Commission staff that strict application of the Commission's Rules would impose a $175.00 per call sign fee for processing the Waiver Request." Further, MAN asserted it had "submitted a $175.00 per license waiver fee with its Waiver Request . . .." *Request* at 3-4. We find no record of those payments.

[13] 47 C.F.R. § 1.1119 (e)-(f) (2009 ed.).

[14] *See Request* at 3. (MAN does not meet its burden with a general unsupported assertion that "payment of the [total fees] would require a diversion of MAN's working capital . . . thereby setting back its efforts to complete the construction of the authorized facilities.").

[15] *See* Accipiter Communications, Inc. Request for Refund of Filing Fee, *Memorandum Opinion and Order*, 16 FCC Rcd 18239 18241, ¶ 8 (2001).

[16] Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989, *Memorandum Opinion and Order*, 5 FCC Rcd 3558, 3572-73, ¶ 32 (1990) ("we are amending the rules to require payment of the underlying fee with any fee waiver request. [fn. deleted] Fee waiver requests received without the correct fee will be returned without consideration and the underlying filing will be dismissed.").

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

Dated July 17 2009

John

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

~~RROG-09-00011841~~
RROG-09-00011841

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In the Matter of	)
METROPOLITAN AREA NETWORKS, INC.	)
Petition for Waiver of Application Fees Pursuant to Section 1.1119 of the Commission's Rules	)

CF
Communication Point to Fixed Point microwave

To: The Secretary
For: **Office of the Managing Director**

PETITION FOR WAIVER OF APPLICATION FEES

Metropolitan Area Networks, Inc. ("MAN"), by its attorneys, respectfully requests that, pursuant to Sections 1.3 and 1.1119 of the Commission's Rules,[1] and the Communications Act of 1934, as amended (the "Act"),[2] the Commission determine that only a single fee payment is required or, in the alternative, that it waive application fees ("Fee Waiver") for each call sign associated with its concurrently filed "Request for Waiver and Extension of Construction Deadline for Part 101 Fixed Microwave Service Licenses"[3] in which MAN requests that the Commission waive the 18- month construction deadline on certain of its Part 101 fixed point-to-point microwave licenses and extend those deadlines collectively to February 1, 2011. The Waiver

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1 47 C.F.R. §§ 1.3 and 1.1119.

2 47 U.S.C. § 158(d)(2).

3 *See* File No. __________ (filed July __ 2009) ("Waiver Request"). For reference purposes, this Petition is being attached as an Attachment to the Waiver Request, and simultaneously being submitted to the Managing Director pursuant to 47 C.F.R. § 1.1119.

Request covers MAN's point to point microwave licenses with construction deadlines in July 2009 (*i.e.*, 401 licenses) and the same factual and legal bases apply to each and every one of the requested license extensions. In other words, the Commission is not required to make individualized factual based reviews and analyses of each of the requested license extensions. Rather, Commission staff can review the Waiver Request essentially as one request, thus eliminating the need for a review of hundreds of applications and providing the rationale upon which MAN is making payment for each of these 401 licenses but submitting this Fee Waiver. Such a waiver request is consistent with Commission precedent in cases where the strict imposition of the fees would "override the public interest in reimbursing the Commission for its regulatory costs."[4] In support thereof, MAN states as follows.

The Commission's rules and the Act specifically provide that its fees may be waived where good cause is shown and the public interest would be served.[5] As set forth herein, good cause exists for, and the public interest would be served by, a determination that only a single fee payment is necessary or that a waiver of fees in this case is warranted because the waiver of application fees that may otherwise be payable would not be commensurate with the Commission's actual costs of processing MAN's Waiver Request and would represent a significant regulatory and financial impediment to MAN's proposed provision of a unique backhaul service. MAN has submitted with its Waiver Request the applicable waiver application fees of $175.00 per each covered license.

I. BACKGROUND

MAN's Waiver Request asks the Commission to extend the construction deadlines for 401 of its Part 101 fixed, point-to-point microwave licenses. The Waiver Request is not site or license

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4 *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5344, ¶ 29 (1994).

5 47 C.F.R. § 1.1119; 47 U.S.C. § 158(d)(2).

specific, but rather the Waiver Request applies to all of the licenses with construction deadlines in July 2009 and is based on the line of precedent involving "regulatory uncertainty" – *i.e.*, where the licensee requesting an extension of a construction deadline seeks an extension because a build-out simply to preserve the licenses is not in the public interest when the Commission is still implementing rules applicable to the licensee and/or its intended customers. In reaching a decision in response to the Waiver Request, the Commission will not have to examine any specific elements of the licenses. A decision will be based on the arguments contained in the Waiver Request and the application of Commission precedent thereto. Thus, the exact same time and Commission resources would be utilized whether the Commission staff were to review the Waiver Request for one license or the 401 licenses with July 2009 construction deadlines.

MAN has been informed by Commission staff that strict application of the Commission's Rules would impose a $175.00 per call sign fee for processing the Waiver Request. Thus, the total fees for these licenses amounts to $77,350.00 – a significant and highly burdensome payment for MAN, particularly in the current economic climate and the regulatory uncertainty previously described.[6] More importantly, payment of such a sum would require a diversion of MAN's working capital from its financial commitments to its equipment providers and other vendors who are providing equipment and professional service to the project, thereby setting back its efforts to complete the construction of the authorized facilities.[7]

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6 In total, MAN must pay $110,250.00, the additional amount to cover those licenses with build-out dates prior to the date of this filing. Although MAN submitted a Petition for Waiver of Fees and Request for Waiver and Extension of Construction Deadlines, Commission staff informed MAN of the dismissal of those requests only shortly before the deadlines.

7 The Commission has previously recognized that waivers of fees may be granted where such payment would "affect a regulatee's ability to serve the public." *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd at 12761-62.

The processing of MAN's Waiver Request involves an identical analysis for each of the 401 licenses covered by the Waiver Request. The Commission's staff is not required to review each of the 401 licenses to make a determination on MAN's Waiver Request. MAN's Waiver Request focuses on its overall "network" that it intends to launch to offer a wireless "last-mile" connection rather than a particular call sign or site. Essentially, Commission staff is reviewing one waiver request because MAN's Waiver Request broadly applies to all of the 401 licenses. Thus, MAN has submitted a $175.00 per license waiver fee with its Waiver Request in accordance with the Commission's Rules and respectfully requests that the Commission determine that only one $175.00 fee payment is required as the correct fee or, alternatively, waive the fee in its entirety.

II. THE PUBLIC INTEREST WOULD BE SERVED BY, AND GOOD CAUSE EXISTS FOR, ACCEPTANCE OF A SINGLE FEE OR WAIVER OF THE WAIVER FEE AS APPLICABLE TO EACH SEPARATE CALL SIGN

The Commission has the authority – and has in the past waived application fees – where, as in the instant case, good cause is shown and the public interest would be served.[8] The required fees for each license ($77,350.00) would be prohibitively high for MAN, would deny an innovative, patent pending technology to MAN's intended "white spaces" customer base, and is *not* commensurate with compensating the Commission for the expenditures of its processing resources.

[8] *See WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd.*, 459 F.2d 1203 (D.C. Cir. 1972), *cert denied*, 409 U.S. 1027 (1972); *see also* Letter from Mark Stephens, Chief Financial Officer, FCC to Pantelis Michalopoulos, Esq., counsel to EchoStar Corporation, dated October 23, 2008 (granting application fee waiver as in the public interest where fees would have applied to one million separate applications that were technically identical); Letter from Mark A. Reger, Chief Financial Officer, FCC to Gary M. Epstein, Esq., counsel to DIRECTV Enterprises, LLC, dated June 14, 2004 (granting waiver of application fees for receive-only earth stations where "technically identical small antenna earth station facilities" were involved and "Commission staff will expend fewer resources and will be able to more efficiently process DIRECTV's application because the multiple earth stations are technically identical.")

A. FCC Application Fees Apply to Recover the Costs of Standard Application Processing

Commission application fees are intended to reimburse the government for the work involved in providing certain regulatory services associated with processing applications. The Commission has specifically noted that "the charges represent a rough approximation of the Commission's actual cost of providing the regulatory actions listed" and that "the very core of this effort is to reimburse the government – and the general public – for the regulatory services provided to certain members of the public."[9] Recognizing that in some circumstances the filing fees may not reasonably approximate the costs involved in processing a particular application, or may not serve the public interest, the Commission's Rules and the Act allow for parties to request a waiver of application fees.

MAN's fee waiver request herein is warranted because strict application of the $175.00 per call sign waiver fee substantially overcompensates the Commission for processing MAN's Waiver Request. As discussed herein and in MAN's Waiver Request, MAN's request for a waiver of the construction deadlines on its network of licenses covered by its Waiver Request is based on the delays in the "White Spaces" proceedings and the associated regulatory uncertainty. This is a legal/regulatory basis rather than a fact, site, or license-specific review. The Waiver Request views the licenses as part of one backhaul "network" rather than on an individual basis. As such, Commission staff is not required to make any site or license-specific analyses or findings. Thus, requiring a payment of over $77,000.00 to process the Waiver Request (just to cover licenses with a July 2009 construction deadline) goes far beyond compensating the government for its resources.

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9 *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, Report and Order, 2 FCC Rcd 947, 948 (1987).

In this regard, MAN wishes to note that the same analysis and involvement of Commission staff resources would be required of the Commission whether MAN was seeking to extend one of the 401 licenses covered by the Waiver Request or all of its 2,457 of its point to point microwave licenses. The Commission has granted fee waivers in similar circumstances, for instance, in a fee waiver involving OrionNet. There, the Commission acknowledged that "Commission staff will expend less resources and will be able to more efficiently process OrionNet's application because the multiple earth stations will be technically identical."[10] Thus, the Commission waived the fees and did not require OrionNet to pay for 3,000 separate license requests when those requests were, like MAN's request in this matter, identical in nature. As such, MAN submits that the Commission should conclude that where there is a common set of factual and legal questions that do not vary in any way among multiple applications, that only a single waiver fee is required. Alternatively, MAN believes that any reasonable processing of the Waiver Petition would in no respect require the Commission to expend approximately $77,350.00 in reaching its decision and, accordingly, a waiver of the substantial application fee is justified.

B. The Fee Waiver Request is in the Public Interest

Equally important, waiver of the $175.00 per license application fee would serve the public interest. MAN's resources – particularly in these unprecedented economic times – are best allocated to continuing to build-out its network so that it can be in a position to offer its competitive, innovative backhaul services once White Spaces services become viable and it can determine from its customers how their needs are to be met. MAN has substantial commitments to

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10 *See* Letter from Mark Reger, Chief Financial Officer, FCC, to Stephen R. Bell, Esq. (dated Sept. 28, 2001) (finding that the public interest was served by permitting OrionNet, Inc., a blanket application for 3,000 receive-only earth stations and waiving the application fees that would have been required to accompany 3,000 separate license requests and accepting the submitted application fee).

its equipment vendors, antenna lessors, and other third parties. Requiring such an enormous payment simply to process MAN's Waiver Request would contravene the public interest by having MAN pay the Commission enormous sums to process a straightforward Waiver Request when those funds can be used toward service deployment.

C. Commission Precedent Supports the Grant of a Fee Waiver Here

The Commission has waived a per license/per call sign fee in other circumstances when multiple, identical applications were involved.[11] For example, in a recent decision[12] of the Managing Director, the Commission had to decide whether the applicant was subject to a $170.00 filing fee or a $170,000,000.00 filing fee. It concluded that the $170.00 fee was appropriate in that the applications should be treated as a blanket application owing to the identical nature of the 1,000,000 applications being submitted. Likewise, the Commission recognized that a hardship would be imposed, even on a publicly-held company, such as EchoStar Corporation with millions of customers and a multi-billion dollar market capitalization, by demanding separate fees for multiple, identical applications. Clearly, if the hardship was great for EchoStar, it is far greater for MAN, a privately-held start-up venture that is seeking to enter a new and unknown area of telecommunications service. Just as the public interest was served in waiving the fees that would have been applicable to EchoStar, the public interest is served by requiring of a far smaller entity, MAN, that it, too, have only to pay a single fee for multiple, identical applications.

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[11] *See supra* note 7; Letter from Mark Reger, Chief Financial Officer, FCC to Patricia J. Paoletta, Esq. (dated June 24, 2002) (waiving the fees for Digital Broadcasting Applications, Corp. that would have been required in connection with a consolidated application for authority to operate one million transmit and receive earth stations and treating individual application fees as an amount equivalent to a VSAT per system fee).

[12] Letter from Mark Stephens, Chief Financial Officer, FCC, to Pantelis Michalopoulos, Esq. (dated October 23, 2008).

III. CONCLUSION

MAN has presented a meritorious claim that requests the extension of construction deadlines of its fixed, point to point microwave licenses. While there are 401 licenses, MAN's Waiver Request focuses on one central theme and line of precedent – that MAN and its intended White Spaces customer base face regulatory uncertainty due to the delays in the White Spaces proceedings and subsequent Commission reconsideration and court review. MAN's Waiver Request does not require an analysis of each license, call sign, or technical parameters. The Commission can decide MAN's Waiver Request based upon MAN's arguments and the applicable precedent. To require MAN to pay over $77,000.00 to process its Waiver Request (and, by that application, $430,000.00 to request extensions for all of its point to point microwave licenses) cannot be what Congress or the Commission intended when adopting the fee guidelines. This is an astronomical fee that will only divert MAN's limited resources from continuing to build-out its network and offer innovative services once the intended users are in a position to launch their White Spaces operations. Payment of a per call sign fee for a Commission determination that by no stretch of the imagination requires the expenditure of such an amount of Commission resources would not serve the public interest.

The financial hardship that the application fees would impose on MAN is prohibitive and will act as a barrier to MAN's launch of an innovative, competitive backhaul network. MAN's Waiver Request presents an identical set of facts and law – no site by site, or call sign or license specific review is necessary. As such, imposing the $175.00 per call sign application fee on MAN would contravene the public interest, goes far beyond reimbursing the government for its resources in processing the Waiver Request, and is consistent with Commission decisions that have issued in similar situations for many years.

For the foregoing reasons, MAN respectfully requests that the Commission grant the requested fee waiver and accept one $175.00 payment as payment in full for the processing of the Waiver Request. As stated above, MAN has submitted the entire $77,350.00 amount but requests the Commission waive these fees paid and return them to MAN.

Respectfully submitted,

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cc: Mr. Steven VanRoekel, Managing Director, Office of the Managing Director (by hand delivery)