FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
JUN 1 0 2011

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OFFICE OF
MANAGING DIRECTOR

Richard D. Stone
President/General Manager
Stone Communications, Inc.
2175 Click Road
Petoskey, MI 49770

Re: Stone Communications, Inc.
Stations: WJML (AM), WJNJ (AM)
FY 2010 Regulatory Fees
Fee Control No. RROG-10-00013074

Dear Mr. Stone:

This letter responds to your request dated August 25, 2010 (*Request*),[1] for a waiver of the Fiscal Year (FY) 2010 regulatory fees owed by Stone Communications, Inc. (Stone) for Stations WJML (AM), Petoskey, MI and WJNJ (AM), Kingsley, MI on the grounds of financial hardship.

In your Request, you assert "WJML and WJNJ are . . . stand-alone AM stations that are struggling financially [with] operating losses in excess of $30,000 for both years 2008 and 2009."[2] You state that "no salaries or wages were paid to [you] or any member of [your] family in the past three years," and that there is "no cash or credit line available to the company to pay the $2,900.00 in regulatory fees."[3] Finally, as evidence of severe financial stress, you note that "the company was charged $414.00 in overdraft fees" during July, 2010.[4] As evidence of the Stations' financial situation, you provided Internal Revenue Service (IRS) Form 1120S, U.S. Income Tax Return for an S Corporation, Tax Year 2008 (Form 1020S, 2008); IRS Form 4562, Depreciation and Amortization, Tax Year 2008 (Form 4562, 2008); IRS Form 1120S, Tax Year 2009 (Form 1120S, 2009); IRS Form 4562, Tax Year 2009 (Form 4562, 2009); and three pages of printed information labeled "First Community Bank-Petoskey MI, Stone Communications, Inc. July 2010 Bank account statement" (2010 Bank Statement).[5]

Our records reflect that you did not pay Stone's $2,900 FY 2010 regulatory fees, but you did include in your Request a petition to defer payment. However, our records also show that Stone is delinquent in paying $343.75, which is the penalty[6] incurred because Stone's payment of the FY 2001 regulatory fees for Stations WJML (AM) and WWKK (AM) was received after the due date. Because of the unpaid penalty on a fee

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[1] Letter from Richard D. Stone, President/General Manager, Stone Communications, Inc., 2175 Click Road, Petoskey, MI 49770 to FCC (Aug. 25, 2010) (*Request*).
[2] *Request* at 1, ¶ 2.
[3] *Id.* at ¶¶ 3-4.
[4] *Id.* at ¶ 5.
[5] *Request*, Attachments.
[6] 47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164 ("Any 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 of installment payment which was not paid in a timely manner.").

WWKK (AM) was received after the due date. Because of the unpaid penalty on a fee from FY 2001, we are required to dismiss your Request.[7] In the alternative, and for the separate reasons discussed below, we deny your Request. Hence, you are required to pay the FY 2010 regulatory fees and the accrued penalty from FY 2001.

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.[8] 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.[9] 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.[10] "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."[11] 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.[12] 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.

Your submission does not fully document for each Station the information sufficient to show that because of Stone's financial position, it lacks sufficient funds to pay the regulatory fees on the Stations and maintain service to the public. As we discuss below, the tax records for 2008 and 2009 do not fully document each Station's financial position as it pertains to the FY 2010 regulatory fees and they do not show compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.

First, you did not establish that Stone suffered financial hardship in calendar year 2010. Although you assert that "[g]reater losses are being experienced for 2010,"[13] you

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[7] 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.").

[8] 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).

[9] 9 FCC Rcd at 5344 ¶ 29.

[10] 10 FCC Rcd at 12761-62 ¶ 13.

[11] *Id.*

[12] *Id.*

[13] *Request* at ¶ 2.

did not provide any relevant financial information for the period from January to August when you filed the *Request*. Instead, you provided a purported extract of a bank statement for only the month of July[14] as support for the statement that Stone was charged overdraft fees.[15] Bank imposed overdraft fees does not establish financial hardship. Hence, we have no evidence that Stone or either of the two Stations will experience financial loss or hardship in calendar year 2010. Indeed, if the 2008 and 2009 tax returns represent any trend, it is one of economic improvement based upon increased gross receipts and reduced business losses.[16] That trend portends available funds to pay the FY 2010 regulatory fees.

Next, the tax information you furnished is consolidated, and you did not attribute income and deductions or the financial positions to each of the two Stations.[17] Moreover, the tax information is insufficient because it does not provide necessary specific financial information often available from a balance sheet, profit and loss statement, and cash flow projection that may demonstrate each Station's financial position. Instead, you provided the tax information summary of deductions reported in 2008 and 2009, *e.g.*, salaries, deprecation, advertising, non-specific office expenses, promotion expenses, and sales expenses. Although these deductions may result in a business loss in 2008 and 2009, such a loss does not demonstrate that in 2010 Stone lacks sufficient funds to both pay the fee and maintain service to the public for either or both Stations. Even assuming you showed that the financial information in the 2008 and 2009 income tax returns is relevant to estimate station expenses in 2010, that information does not present compelling and extraordinary circumstances to waive the fees. In our analysis, when we apply that prior year information to estimate the future expenses, we conclude expenditures for sales expense,[18] advertising, and promotion expense[19] are available to pay the FY 2010 regulatory fees. Indeed, from 2008 to 2009, Stone increased its promotion expense, advertising, and sales expense.[20] There is no evidence that service to the public would diminish, if in 2010 Stone reduced the total expenditures in those categories by the amount necessary to pay the regulatory fees. Indeed, it appears in hindsight that Stone's financial position in calendar years 2008 and 2009 did not hinder its ability to both pay the regulatory fees and maintain service to the public. Hence, even assuming Stone's financial position in calendar year 2010 continues as it did in 2008 and 2009, it should have funds available to pay the regulatory fees for both Stations.

Finally, because Stone is operated as a Subchapter S corporation, the corporation's income and losses, and its tax liabilities flow through the corporation to

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[14] 2010 Bank Statement.

[15] *Request* at ¶ 4.

[16] In 2008, Stone reported $381,716 in gross receipts and a business income loss of $32,553. In 2009, Stone's gross receipts increased to $465,739, and its ordinary business loss was reduced to $30,569.

[17] You did not provide any information to explain whether Stone has any business activity included in the tax return other than from the operations of Stations WJML and WJNL.

[18] In Tax year 2008, Stone deducted $46,759 for salaries and $60,863 for sales expense. In 2009, salaries increased to $109,397 and sales expense increased to $78,762. It is not clear whether these categories of deduction are for similar activities.

[19] In tax year 2008, Stone deducted $59,737 for advertising and $31,152 for promotion expense. In 2009, advertising increased to $108,016, while promotion expenses decreased to $11,061.

[20] In 2008, Stone expended approximately 40% of its reported gross receipts for promotion, sales and advertising, which increased 2009 to 42%.

you, the sole shareholder. As such, it is difficult to define a bright line between the business financial records of a Subchapter S corporation, a limited partnership, or a sole proprietorship and personal financial records such as yours. Hence, our requirement that the regulatee "fully document"[21] its financial position extends to the shareholder's gross income, assets, liabilities, and cash flows. Because you did not provide those financial records, you did not fully document each Station's financial position. Consequently, the information furnished does not show compelling and extraordinary circumstances that outweigh the public interest in collecting the regulatory fees; therefore, we deny your Request.

Payment of $2,900 for the FY 2010 regulatory fees and $343.75 for the penalty on the late paid FY 2001 regulatory fees are 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. 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

[21] *Memorandum Opinion and Order*, 10 FCC Rcd at 12762.

RROG-10-00013074

Stone Communications, Inc.
2175 Click Road
Petoskey, Michigan 49770

Received & Inspected
AUG 31 2010
FCC Mail Room

August 25, 2010

Re: Regulatory Fee Waiver Request
WJML (AM) - Petoskey, Michigan
WJNL (AM) - Kingsley, Michigan

Dear Sir/Madam:

This is a request for waiver of the regulatory fee for WJML (AM) Petoskey, Michigan and WJNL (AM) Kingsley, Michigan due to severe financial hardship.

This waiver is requested for the following reasons:

1. WJML and WJNL are both small market stand-alone AM stations that are struggling financially. Both are daytime Class D stations with limited hours of operation.

2. The stations had operating losses in excess of $30,000 for both years 2008 and 2009. Greater losses are being experienced for 2010. Documentation of these losses are provided with the corporation's tax forms 1120S for 2008 and 2009.

3. In regard to line items on the 1120S, I certify that no salaries or wages were paid to myself or any member of my family in the past three years. (I am the 100% owner of the stations.). The amount of salaries on line 8 of the 1120S was entirely paid to employees unrelated to me or my family. There was also no interest or operating expenses paid to me or my family.

4. There is presently no cash or credit line available to the company to pay the $2,900.00 in regulatory fees. An indicator of the severe financial stress is the fact that the company was charged $414.00 in overdraft fees in the month of July, 2010 by its bank, First Community Bank, as our overdraft protection line of credit has reached its limit. A print-out of the bank statement for July 2010 is enclosed.

If this request for waiver is denied, I ask that this be treated as a request to defer payment and I will pay the full fee within thirty days from notification that the waiver was denied.

For the above reasons, I respectfully request a waiver of the 2010 regulatory fees for WJML (AM) and WJNL (AM). I certify that the foregoing is true and correct to the best of my knowledge, information, and belief.

Sincerely,

Richard D. Stone

Richard D. Stone
President/General Manager
Stone Communications, Inc.

Attachments: IRS Form 1120S for 2008 & 2009
First Community Bank checking statement July 2010.

Adams

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

DEC 22 2011

OFFICE OF
MANAGING DIRECTOR

Dave Garey, Proprietor
Texas Grace Communications
Jet Fuel Broadcasting
c/o 20 Samlaw Drive
Monsey, NY 10952

Re: Texas Grace Communications, Station KRZB(FM),
Facility ID No. 79024
Jet Fuel Broadcasting, Facility ID No. 161455
FYs 2007 and 2009 Regulatory Fees
Fee Control No. RROG-09-00012884

Dear Mr. Garey:

This is in response to your request filed on July 19, 2010 (*Reconsideration Request*), on behalf of Jet Fuel Broadcasting (JFB) and Texas Grace Communications (TGC)[1] that the Office of Managing Director (OMD) reconsider its decision denying your request for refund of fiscal year (FY) 2007 regulatory fees and waiver of FY 2009 regulatory fees.[2] Specifically, you request a refund of the FY 2007 regulatory fees and a waiver of the FY 2009 regulatory fees associated with the construction permit for AM Facility ID No. 161455, Anchorage, Alaska (*Alaska Facility*) and the construction permit for Station KRZB(FM) (Facility ID No. 79024).

Our records reflect that JFB paid the $400.00 FY 2007 regulatory fee for the *Alaska Facility*, but not the $400.00 FY 2009 regulatory fee or the associated $100.00 penalty for late payment of the FY 2009 regulatory fee. Our records reflect that TGC paid the $575.00 FY 2007 regulatory fee for Station KRZB(FM), but not the $650.00 FY 2009 regulatory fee or the associated $162.50 penalty for late payment of the FY 2009 regulatory fee.

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[1] Because Dave Garey is the sole proprietor of JFB and TGC, for purposes of this decision we will refer to JFB, TGC, and Mr. Garey as the Petitioners.

[2] *See* letter from Mark Stephens, Chief Financial Officer (CFO), OMD, FCC, to Dave Garey (June 18, 2010) (*2010 Letter*). Although you entitle your *Reconsideration Request* as an application for review, you state that if "OMD does not consider . . . [your] prior filing to have constituted a Petition for Reconsideration, the OMD may, at its discretion, treat the instant pleading as a [petition for reconsideration.]" *Reconsideration Request* at 1. The "prior filing" was the initial request for refund and waiver of the regulatory fees at issue and as such was not a petition for reconsideration. We consider the instant pleading as a petition for reconsideration and not as an application for review.

Under our rule at section 1.1167(b), a petition for reconsideration or an application for review of a fee determination will not relieve a licensee from the requirement to submit "full and proper payment of underlying fee."[3] Failure to pay the regulatory fees and any late penalty will subject the licensee to sanctions, including the Commission's red light rule[4] and sanctions provided for under the Debt Collection Improvement Act of 1996 (DCIA).[5] For example, our rules provide that we will withhold action on any applications or requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and we will ultimately dismiss those applications or other requests, if payment of the underlying delinquent debt or other satisfactory arrangement for payment is not made.[6] Because JFB and TGC both are delinquent in paying regulatory fees and the associated late payment penalties, we dismiss this *Reconsideration Request*. Furthermore, and on separate grounds for the reasons set forth below, we deny your request.

In the *2010 Letter*, OMD found that JFB held the initial construction permit for the *Alaska Facility* on October 1, 2006, and October 1, 2008, and is therefore responsible for paying the FYs 2007 and 2009 regulatory fees.[7] OMD also found that you had submitted no information to support your claim of financial hardship and therefore had failed to make a compelling showing that the public interest would be served by a refund of the FY 2007 regulatory fee or waiver of the FY 2009 construction permit regulatory fee associated with the *Alaska Facility* on the grounds of financial hardship.[8] OMD determined that your assertions that the Commission improperly designated you as a "federal debtor" were unpersuasive given that the Commission had determined that such allegations were unfounded.[9] OMD therefore denied your request for fee relief for FYs 2007 and 2009 associated with the *Alaska Facility*.

In the petition for reconsideration, you assert that the construction permit for the *Alaska Facility* was "encumbered" during the entire permit period due to a "federal debtor status" that the Commission "wrongly imposed[.]"[10] You state that on January 3, 2005, the Petitioners appealed the Commission's assessment of a bid withdrawal payment in connection with their withdrawal from Auction Number 37 and that the Commission failed "to adjudicate that appeal prior to

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[3] 47 C.F.R. § 1.1167(b); *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order*, 9 FCC Rcd 5333, 5346 (1994) (*Regulatory Fees Order*), *on recon., Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761 (1995) (*Regulatory Fees MO&O*)).

[4] *See* 47 C.F.R. § 1.1910.

[5] Public Law 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

[6] *See* 47 C.F.R. §§ 1.1161(c), 1.1164(f)(5), 1.1910.

[7] *See 2010 Letter* at para. 4.

[8] *Id.* at paras. 4-5 (*citing* 47 U.S.C. §159(d); 47 C.F.R. §1.1166; and *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order*, 9 FCC Rcd 5333, 5346 (1994) (*Regulatory Fees Order*), *on recon., Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761 (1995) (*Regulatory Fees MO&O*)).

[9] *Id.* at para. 5 *(citing Fireside Media, Order,* 23 FCC Rcd 13138 (2008), *on recon., Memorandum Opinion and Order,* 25 FCC Rcd 2453, 2457-58 (2010) (*Fireside Reconsideration Order*)).

[10] *See Reconsideration Request* at 2.

imposing . . . federal debtor status against" the Petitioners in violation of their right to due process.[11] You claim that the Commission, in its brief in *Alvin Lou Media, Inc. v. FCC*, 571 F.3d 1 (D.C. Cir. 2009), *rehearing en banc denied* (Aug. 27, 2009) (*Alvin Lou Media)*, "smear[ed]" the Petitioners as "unqualified and ineligible" to be Commission licensees.[12] You maintain that by characterizing the Petitioners as federal debtors and as unqualified and ineligible to be licensees, the Commission effectively "voided" the construction permit from February 8, 2006, through August 27, 2009, preventing the Petitioners from building the *Alaska Facility* or deriving income from the station as an operating entity.[13]

Our records reflect that the construction permit for the *Alaska Facility* was granted on December 8, 2005, and expired on December 8, 2008, after JFB failed to build the station. On March 7, 2008, JFB filed a request that the construction period be tolled, which the Media Bureau denied on March 27, 2008.[14] On April 28, 2008, JFB filed an application for review of the denial, which the Commission dismissed on September 2, 2010.[15]

JFB held the initial construction permit for the *Alaska Facility* on October 1, 2006, and October 1, 2008, and is therefore responsible for paying the FYs 2007 and 2009 regulatory fees.[16] With respect to your assertion that you could not build the *Alaska Facility* or derive income from the station as an operating entity, the Commission may waive, reduce, or defer regulatory fees only upon a showing of good cause and a finding that the public interest will be served thereby.[17] The Commission will waive, reduce or defer its regulatory fees in those instances where a petitioner presents a compelling case of financial hardship. Regulatees can establish financial hardship by submitting:

> information such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.[18]

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[11] *Id. at 2 (citing Public Notice,* 20 FCC Rcd 1021 (Dec. 1, 2004) and *Public Notice,* 21 FCC Rcd 1071 *(Feb. 8, 2006)); see also id.* at 3 (asserting that the Commission adjudicated Petitioner's appeal in the *Fireside Order*, three and a half years after the filing of the appeal and two and a half years after "the irreparable debtor status punishment had already been imposed").
[12] *Id.* at 3.
[13] *Id.* at 5.
[14] *Dave Garey, Jet Fuel Broadcasting*, Letter, Ref. No. 1800B3-IB (Media Bureau Mar. 27, 2008).
[15] *Jet Fuel Broadcasting, Memorandum Opinion and Order*, 25 FCC Rcd 12935, 12940 (2010) (*Jet Fuel Broadcasting Order*).
[16] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order,* 24 FCC Rcd 10301, 10313 (2009); *Assessment and Collection of Regulatory Fees for Fiscal Year 2007, Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15712, 15727 (2007).
[17] *See* 47 U.S.C. §159(d); 47 C.F.R. §1.1166; *see also Regulatory Fees Order* at 5344 and 5346, *on recon., Regulatory Fees MO&O* at 12761-62 (regulatory fees may be waived, deferred, or reduced on a case-by-case basis in extraordinary and compelling circumstances upon a clear showing that a waiver would override the public interest in reimbursing the Commission for its regulatory costs).
[18] *Regulatory Fees MO&O* at 12762.

You have submitted no information to support your claim of financial hardship. This is a fatal omission,[19] and lacking such documentation, we find that you have failed to make a compelling showing that the public interest would be served by a refund of the FY 2007 regulatory fee or waiver of the FY 2009 construction permit regulatory fee associated with the *Alaska Facility* on the grounds of financial hardship. Your argument that the Commission's assessment of a bid withdrawal payment constituted an illegal imposition of federal debtor status on the Petitioners and an unconstitutional due process violation does not compel a different result. The Commission has considered and denied this argument previously.[20] The Commission has also previously denied your claim that it "labeled" Petitioners ineligible and unqualified to be licensees.[21] For the reasons stated in these prior Commissions decisions, we deny these arguments herein. Because you have not submitted any information to support your claim of financial hardship, we deny your request for fee relief for FYs 2007 and 2009 fees for the *Alaska Facility*.

With respect to Station KRZB, in the *2010 Letter*, OMD found that TGC held the initial construction permit for the station on October 1, 2006, and October 1, 2008, and is therefore responsible for paying the FYs 2007 and 2009 regulatory fees.[22] OMD also found that you had submitted no information to support your claim of financial hardship and that in the absence of such documentation, you had failed to make a compelling showing that the public interest would be served by a refund of the FY 2007 regulatory fee or waiver of the FY 2009 construction permit regulatory fees associated with Station KRZB on that basis.[23] OMD therefore denied your request for fee relief for FYs 2007 and 2009 associated with Station KRZB.

In your petition for reconsideration, you contend that the Commission's assessment of the bid withdrawal payment on the Petitioners in connection with Auction Number 37 constituted an illegal imposition of debtor status on the Petitioners and an unconstitutional due process violation that, along with the Commission's identification of the Petitioners as unqualified and ineligible to be a licensee in its brief in *Alvin Lou Media,* "voided" the construction permit for Station KRZB.[24] You claim that the *2010 Letter* erroneously portrayed the construction permit for the station as "being in a protected rights, final issuance status" through May of 2010, because the Commission allowed challenges to the construction permit "to sit" at the Commission for years, impeding the Petitioners' ability to develop or sell the permit.[25] You aver that the Commission's reissuance of the construction permit for Station KRZB in January of

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[19] 47 C.F.R. § 1.1166(c) ("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.").

[20] *See Fireside Media, Memorandum Opinion and Order*, 25 FCC Rcd 7754, 7757 (2010) *(Fireside Media MO&O); Fireside Reconsideration Order* at 2457-58; *Jet Fuel Broadcasting Order* at 12938-39.

[21] *See Fireside Media MO&O* at n.26.

[22] *See* 2010 Letter at 8 (*citing Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order,* 24 FCC Rcd 10301, 10313 (2009); *Assessment and Collection of Regulatory Fees for Fiscal Year 2007, Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15712, 15727 (2007)); see also 47 C.F.R. §1.1166(c).

[23] *See 2010 Letter* at 8.

[24] *See Reconsideration Request* at 6.

[25] *Id.* at 6-7.

2006, was invalid because when the Commission canceled the permit on October 26, 2004, "the FAA automatically cancelled its corresponding tower construction rights . . . . [and t]he FAA's restoration of tower rights wasn't made until June 5, 2006," at which time a challenge to the permit was pending.[26] You say that when the Commission ruled against the challenger, an appeal was immediately filed, rendering the January 2006 permit reissuance "moot," a status which you assert was confirmed by a September 14, 2007, email from Commission staff stating that the reinstatement of the permit was not final.[27] You assert that in a letter dated August 22, 2008, Commission staff stated that the challenge to the permit was withdrawn, but failed to indicate the "legality of processing its permit reinstatement" and whether and when the construction permit was reinstated.[28] You assert that on December 19, 2008, the Commission issued its first ruling "stating that the administrative review undertaken in 2006 has been concluded[.]"[29]

Our records reflect that the construction permit for Station KRZB was granted on October 7, 1996, and expired on April 9, 2010, after TGC failed to build the station. On January 21, 2009, TGC filed an Application for Review of two Division decisions denying TGC's assertions that Station KRZB qualified for tolling under section 73.3698(b) of the Commission's rules, 47 C.F.R. §73.3698(b), which remains pending.[30]

TGC held the initial construction permit for Station KRZB on October 1, 2006, and October 1, 2008, and is therefore responsible for paying the FYs 2007 and 2009 regulatory fees.[31] With respect to your assertion that the Petitioners were unable to "develop" the station, you have submitted no documentation to support your claim of financial hardship. We therefore find that you have failed to make a compelling showing that the public interest would be served by a refund of the FY 2007 regulatory fee or waiver of the FY 2009 construction permit regulatory fees associated with Station KRZB. For the same reasons discussed previously, we also the arguments with respect to Station KRZB that the Commission's assessment of a bid withdrawal payment on the Petitioners constitutes an illegal imposition of the debtor status on the Petitioners and a due process violation, and that the Commission characterized the Petitioners as ineligible and unqualified to be a licensee. We therefore deny your request for fee relief for FYs 2007 and 2009 associated with Station KRZB.

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[26] *Id.* at 7.

[27] *Id.* at 8.

[28] *Id.*; *see also id.* at 9 (stating that Commission staff advised you on December 19, 2008, that you should have known that the administrative review was concluded and that the permit was automatically reinstated when the challenge to the grant of the permit was withdrawn).

[29] *Id.* at 9.

[30] *See* letter from Peter Doyle, Chief, Audio Division, Media Bureau to Dave Garey, Ref. 1800B3-MJW (Dec. 19, 2008); letter from Peter Doyle, Chief, Audio Division, Media Bureau to Dave Garey, Ref. 1800B3-IB (Dec. 19, 2008).

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

The Communications Act of 1934, as amended, requires the Commission to assess a penalty of 25 percent on any regulatory fee not paid in a timely manner.[32] The Petitioners failed to pay the FY 2009 regulatory fees within 30 days of the *2010 Letter* and are therefore subject to a 25 percent penalty for late payment of the outstanding regulatory fees,[33] plus accrued interest and penalties under the DCIA[34] from the date of that letter. In addition, you are delinquent in paying the $400.00 FY 2009 regulatory fee and the $100.00 associated late payment penalty for the *Alaska Facility* and the $650.00 FY 2009 regulatory fee and the $162.75 associated late payment penalty for Station KRZB(FM). Interest and penalties under the DCIA on those amounts accrued from the date of the *2010 Letter*. The total of the fees and late payment charges ($1,312.75), interest ($21.53) and penalties ($129.17) as of December 31, 2011, is $1,463.45. That amount should be submitted with the enclosed Form 159. If we do not receive your payment, interest and penalties will continue to accrue on the delinquent amount, and we will exercise all other available remedies to collect the delinquent debts.[35]

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

Sincerely,

Mark Stephens
Chief Financial Officer

Enclosure

Copy to:
Dave Garey
Post Office Box 1161
Meridian, MS 39302

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[32] 47 U.S.C. §159(c)(1).

[33] *See Implementation of Section 9 of the Communications Act*, 9 FCC Rcd at 5346 (the Commission has determined that the filing of a petition for reconsideration of a decision denying a request for waiver of the regulatory fees on the grounds of financial hardship will not toll the requirement that the petitioner pay the regulatory fee within 30 days of the decision denying the underlying waiver request).

[34] 31 U.S.C. § 3717.

[35] *See* 31 U.S.C. §§3711, 3717; 47 C.F.R. §§1.1161(c), 1.1164(e)-(f), 1.1910.

FO WAIVER TRACKING SYSTEM
CONTROL # 12884
FILED/ACCEPTED
RROG-09-00012884
JUL 19 2010
Federal Communications Commission
Office of the Secretary

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re:	Regulatory fee for KRZB-FM Archer City, TX construction permit of Texas Grace Communications	) Facility ID No. 79024) Control # 0709189365899172
	Regulatory fee for AM 1540 kHz Anchorage, AK construction permit of Jet Fuel Broadcasting	) Facility ID No. 161455) Control # 0709189365899169

To: Office of the Secretary
Attn: The Chairman and FCC Commissioners

APPLICATION FOR REVIEW[1] SEEKING REVERSAL OF JUNE 18, 2010 RULING BY THE OFFICE OF MANAGING DIRECTOR TO NOT REFUND THE 2007 REGULATORY FEES – AND TO IMPOSE 2009 REGULATORY FEES – ON THE NON-REINSTATED AND/OR ENCUMBERED CONSTRUCTION PERMITS FOR KRZB-FM ARCHER CITY, TX AND AM 1540 KHZ SERVICE AT ANCHORAGE, AK

Texas Grace Communications ("Grace") and Jet Fuel Broadcasting ("JFB"), (combined as "Appellant"), joint proprietors of the cancelled (though under pending appeal for reinstatement) construction permits for KRZB-FM Archer City, TX and the non-call signed AM 1540 kHz facility at Anchorage, AK, respectfully make this filing in appeal of the Office of Managing Director's ("OMD") June 18, 2010 denial ("denial") of the Appellant's September 22, 2009 letter request seeking refund of the 2007 FCC regulatory fees already paid, and waiver of the 2009 regulatory fees[2], on the subject permits.

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[1] The OMD has referenced its June 18, 2010 response as a denial of the Appellant's "request" for regulatory fees waiver/refund – so the Appellant was unclear whether its September 22, 2009 request was considered a Petition for Reconsideration or not. In the interest of caution, the Appellant is thus titling this submission an "Application for Review". However, in the event the OMD does not consider Appellant's prior filing to have constituted a Petition for Reconsideration, the OMD may, at is discretion, treat the instant pleading as such a Petition and deal directly with the Appellant in seeking resolution.

[2] FCC records indicate that Grace and JFB paid $575 and $400 regulatory fees respectfully for the two radio service permits in 2007 – even though both were encumbered at the time, and, in the case of the Archer City, TX permit, not even reinstated by the Bureau as a final action at the time.

In support thereof, the Appellant states as follows:

Anchorage, Alaska AM 1540 kHz facility permit regulatory fees

As JFB correctly informed the OMD in its prior request, the permit was encumbered during nearly the entirety of its lifespan due to a federal debtor status that was indeed wrongly imposed by the FCC effective February 8, 2006, irrespective of any so-called "finding" by the Commission in February 2010 that illegally covered up the existence of an appeal the Appellant had filed January 3, 2005 – and the FCC's failure to adjudicate that appeal prior to imposing an irreparable, over 2 and a half year federal debtor status against the Appellant in violation of this Appellant's constitutional right to due process.

No case law allows a federal agency to make an alleged "finding" on the basis of covering up material facts, or the timeline of events. That timeline remains relevant to, and constitutes concrete evidence in, the instant case:

On **January 3, 2005**, the Appellant timely appealed DA 04-3694, specifically appealing a pending punishment (for the Appellant's innocent withdrawal from FM spectrum Auction 37) in which the Appellant would be tied to the results of the subsequent auction whether it participated or not, and then penalized based on the pricing level difference between the two auctions, and thus upon actions of other parties and forces over which Appellant had no control.

On **December 8, 2005**, the FCC issues JFB a 3-year construction permit for the AM 1540 kHz Anchorage, AK radio facility.

On **February 8, 2006**, DA 06-252 is released, tying the Appellant to the pricing level results of the subsequent auction in which the Appellant never participated – as if the Appellant's Jan 3, 2005 appeal never existed. This auction was scheduled shortly after Hurricane Katrina, and therefore marked by far fewer participants and substantially lower pricing levels due to the natural disaster's impact on the economy. Based on the post-Katrina auction's low pricing levels, the FCC now imposed upon the Appellant the irreparable, encumbering punishment of being listed a federal debtor in arrears for over $108,000. Since FM's appeal against such punishment

remained pending and non-adjudicated, the FCC's due process violation occurs right here. The timeline shows that JFB had only a 2-month period for construction of the Anchorage facility before the crippling debtor status was imposed by the FCC beyond the permittee's control.

On **August 22, 2008**, the Commission issues FCC 08-191, saying it will "compromise" the added debt culled from tying the Appellant to the post-Katrina auction results, and that no "corresponding debtor status" exists on said date. This marks the FCC's adjudication of Appellant's pending January 3, 2005 appeal more than 3 and a half years AFTER its filing – and more than 2 and a half years AFTER the irreparable debtor status punishment had already been imposed upon the Appellant. However, the ruling improperly covers up the existence of the debtor status punishment already sustained by the Appellant over the prior 2 and a half years per DA 06-252, as noted – and the fact the FCC imposed this punishment in violation of the Appellant's right to due process, i.e., to have its appeal adjudicated before such an irreparable punishment could legally be imposed.

On **February 25, 2009**, acting FCC General Counsel Michele Ellison transmits a filing to the U.S. Court of Appeals in the separate *Alvin Lou Media, Inc. vs. FCC* case to smear the Appellant as an unqualified licensee, citing the August 22, 2008 08-191 ruling as having this expanded definition. Although the Court ultimately rejected such FCC characterization of the Appellant, the Court's opinion was not issued as a final order until August 27, 2009 – more than a year after the 08-191 ruling. Hence, the FCC by its own statement in federal pleading considered the Appellant ineligible to hold a radio license between August 22, 2008 and at least August 27, 2009 – although the FCC ignored multiple requests (made informally and via pleading) from the Appellant to rescind the unqualified licensee characterization. As the Appellant correctly pointed out in prior filings to the FCC, it was a clear contradiction and horrific encumbrance upon the Appellant for the FCC, as radio licensing authority, to reference in federal pleading that it considered the Appellant unqualified and ineligible to hold a radio license at the same time it

expected a permit to be prosecuted – thus rendering any existing permit at the time effectively void, pending removal of the unqualified licensee status.

Pertinent here is that the Anchorage permit and this Appellant were disabled by the aforementioned FCC actions, rendering the permit impossible for the permittee to develop while under the FCC-imposed federal debtor status between February 8, 2006 and August 22, 2008, and the FCC's subsequent characterization of the Appellant as an unqualified licensee between August 22, 2008 and at least August 27, 2009. If the OMD assesses its 2007 and 2009 regulatory fees either based on circumstances within the denoted calendar years themselves, during the preceding 12-month periods, or on October 1, 2006 and October 1, 2008 respectfully, the Anchorage permit was a legally and economically encumbered entity, under encumbrances about which the Appellant had plainly notified the FCC and sought appeal relief. While the encumbering statuses may ultimately have been removed, this did not occur until after the unfair cancellation of the permit on December 8, 2008 (as under pending appeal).

The OMD does not refute that the debtor status imposed against the Appellant by the FCC was an encumbrance to "conducting normal business, inclusive of preventing any access to credit, financing or partnership with such government entities as the SBA, pending elimination of the debtor status – consistent with the manner in which a federal debtor status would stifle operation of any small business." However, in making its rejection, the OMD suggests that the Appellant was supposed to have simply cited "financial hardship" as qualifying criteria for fee refund or waiver, as opposed to the FCC's imposition of the encumbering federal debtor and ineligible licensee statuses (both of which, as shown by the timeline, were imposed without due process).

However, these encumbering statuses plainly caused – and are synonymous with – "financial hardship", necessitating resolution before the Appellant could build the radio station, and rendering the construction permit moot until such time. As the OMD as financial authority of the FCC is aware, absolutely no lender or financial partner – be it private sector or

government-associated – will extend credit to an entity with a pending federal debtor status. The question of whether one has an outstanding debtor status – whether rightly or wrongly imposed – is considered a lien on a business, and thus a red flag by any financial institution or government-lending partner. The unqualified licensee characterization was a similar red flag to doing business, as no prospective financial partner would deal with a company embroiled in pending litigation – let alone with a would-be radio licensee fighting to have the federal licensing authority's designation of the party as an unqualified licensee removed.

Hence, the Appellant could neither build the Anchorage radio station nor derive any income from the station as an operating entity, until the encumbrances were eliminated. Moreover, since the subject permit is the sole holding of JFB, there was clearly no revenue coming into the business, as only an operating radio station could generate such income. There was thus a zero cash flow projection, and absolutely no compensation for any officer or employee of the company. The fact that said station has never operated, and thus could not have possibly derived any revenue, is a matter of FCC record. Thus, this business has, to date (emanating with JFB's February 2004 filing for the frequency rights at Anchorage), operated at a total loss. The financial hardship was only compounded by the lengthy presence of the federal debtor and unqualified licensee statuses during all but 2 months of the permit's lifespan – for which tolling has been sought. It would seem a gross contradiction for the OMD to now doubly penalize the Appellant with regulatory fees, over the same time the agency itself had, as a matter of record, imposed encumbrances impeding any station construction.

A final point in support waiving the Anchorage permit's 2009 regulatory fee in particular is the litmus date of October 1, 2008, which the OMD cites as the criteria examination date for the 2009 fee. At that time, the Appellant had had barely a month free and clear of the over 2 and a half year federal debtor status (with subsequent characterization by the FCC as an ineligible licensee), and barely 2 months remaining before expiration and subsequent cancellation of the permit. Given the miniscule window of time, the referenced encumbrances and resultant

the FCC for years, thereby keeping the KRZB permit embroiled in unnecessary litigation and FCC administrative review, impeding the Appellant's ability to develop or sell the permit, and concurrently helping the interests of his friend Lipp and the Wiley Rein firm (which represents the most recent efforts to wrest the spectrum from the Appellant) – who will clearly benefit from the Appellant's loss of the spectrum at Archer City, to effectuate a Dallas-Fort Worth station expansion valued at over $60 million in 2007.

As the Appellant has previously informed the FCC in numerous filings, and as a matter of FCC record, the entity known as LKCM Radio Group, L.P. first sought a short-spaced drop-in interfering with KRZB's facility rights in 2005, and then challenged the FCC's reissuance of the KRZB permit in January 2006. That permit reissuance turned out to be invalid irrespective of the LKCM challenge, because when the FCC's audio division canceled the permit on October 26, 2004 (having never issued the permit as a full-term, 3-year protected rights entity on October 26, 2001 as stipulated by FCC order 01-317), the FAA automatically cancelled its corresponding tower construction rights necessary for the permit to be valid. The FAA's restoration of tower rights wasn't made until June 5, 2006 – but, at the time, the LKCM challenge and concurrent FCC administrative review had not yet been resolved. When the FCC ultimately ruled that LKCM's drop-in channel (requiring obliteration of KRZB's permit rights) was short-spaced, and that KRZB was entitled to reissuance of a clean permit, Wiley Rein (which had now taken over the case in tandem with Lipp's joining the firm) immediately filed an appeal – dated November 17, 2006 – claiming that the FCC had violated the Administrative Procedure Act in reissuing the KRZB permit on June 5, 2006. The FCC's June 5, 2006 reinstatement of the permit was thus under challenge, prompting the FCC to undertake what it referred to as its own "administrative review" – and immediately rendering any such permit reissuance as moot pending conclusion of, and the release of the findings of, the FCC's review.

In fact, when the Appellant sought the help of FCC staff attorney Thomas Nessinger to discern the status of the permit nearly a year later, Nessinger wrote back to the Appellant, in an

FCC email stamped "9/14/07 4:10:13 PM Eastern Daylight Time", incorporated by reference, that "the reinstatement of your permit" was still considered by the FCC to be "not final". With the FCC itself undertaking administrative review of the KRZB permit processing, and deeming its efforts to reinstate the permit in 2006 to still be "not final" in September 2007, the Appellant clearly did not hold a valid reinstated permit, or a permit free and clear of pending FCC review, on the litmus date of October 1, 2006, warranting refund of the 2007 regulatory fee.

Amazingly, that same FCC administrative review remained unexplainably in place and non-concluded, with no findings of said review ever presented to the Appellant as of the litmus date of October 1, 2008 for the 2009 regulatory fee.

On August 22, 2008, the FCC audio division noted that the obstructive Lipp/Wiley Rein/LKCM filing was withdrawn by the filers themselves – after accomplishing their goal of tying the permit up in unnecessary litigation, igniting administrative review, and thereby devaluing the permit by impeding the Appellant's ability to develop or sell the radio facility for the prolonged period. However, the division letter failed to pronounce any disposition of the FCC's own administrative review, or notification to Appellant of the findings of that review. Specifically, the FCC never noticed the Appellant with necessary information regarding whether the KRZB permit was now reinstated, as of what date this occurred, and the findings yielded by the FCC's own review with respect to the legality of processing its permit reinstatement – the precise question the administrative review was supposed to answer. After the Appellant understandably asked the FCC for the official disposition of the FCC's pending administrative review, the Appellant received an FCC response on December 19, 2008 claiming that the Appellant should have known that the FCC's administrative review was concluded – and the permit was automatically reinstated – when Wiley Rein withdrew its challenge.

Any such claim is absurd, because it would constitute admission by the FCC audio division that it had never really undertaken any administrative review whatsoever, but rather, allowed the obstructive filers to dictate the time parameter and terms of a phantom "review". A

review by a federal agency of its permit processing must be a separate entity from third-party litigation, not dictated by the whim of obstructive litigators. Moreover, once the division chief pronounced that an administrative review of the FCC's own processing and issuance of the KRZB construction permit in 2006 was legally necessary – to the extent that the permit issuance was not considered final in 2006, or at any time through the conclusion of the FCC review – both the Appellant and the public trust required specific notification that a) the administrative review had concluded, b) the date upon which the review concluded, c) the findings of the review, and d) the date upon which the permit would now be reissued as a protected rights entity free and clear of any challenge. As proven by the FCC's own record, absolutely no FCC ruling stating that the administrative review undertaken in 2006 had been concluded, or that any permit reinstatement had occurred, was made until December 19, 2008 – well past the October 1, 2008 litmus date for assessing a 2009 regulatory fee. In the interest of justice, it is therefore requested that the 2009 regulatory fee accordingly be waived.

The Appellant welcomes the opportunity to conference directly with the OMD to resolve this matter, and indeed, has placed calls seeking discussion with the Managing Director to address this issue. However, to preserve Appellant's rights, the instant appeal is hereby submitted.

The Managing Director's attention to this issue, along with that of the Chairman and Commissioners – should such review be necessary – is gratefully appreciated. Should this case evolve to a Commission action, the Appellant respectfully asks that it be allowed to speak with and make oral arguments before the Chairman and Commissioners prior to the rendering of any vote, and considers such conferencing access essential to obtaining justice given the extraordinary circumstances of this case.

As Grace and JFB proprietor. I certify that the statements contained herein are true and correct to the best of my knowledge and belief.

Respectfully Submitted,

Dave Garey

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

July 19, 2010

Due to prior service receipt problems, it is respectfully requested that FCC or other party correspondence regarding this submission please be copied and sent to:

Dave Garey
P.O. Box 1161
Meridian, MS 39302

J. n L.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

July 18, 2011

Mr. LaTrelle Palhof
Greene Publishing, Inc.
Post Office Box 427
Madison, FL 32341

Re: T. H. Greene, Jr. and M. E. Greene
FY 2010 Regulatory Fee Penalty Waiver Request
Filed 5-31-11
Fee Control No. RROG-10-0013482 WT
Regulatory Fee Amount: $ 415.00
Late Penalty Amount: $ 103.75
Date Regulatory Fee Paid: Not Paid
Date Late Penalty Paid: Not Paid

Dear Mr. Palhof:

This letter responds to the above-referenced request for waiver of the penalty for late payment of FY 2010 regulatory fees that was filed with the Commission on May 31, 2011. For the reasons stated we discuss below, your request for waiver is denied.

Section 9 of the Communications Act, codified at 47 U.S.C. § 159, requires the Commission to "assess and collect regulatory fees" to recover the costs of its regulatory activities,[1] and if the fee is not paid when due, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."[2] Under 47 C.F.R. §1.1164, "[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."[3] For FY 2010, the deadline for paying regulatory fees was August 31, 2010.[4]

In your request for waiver, you assert that no amount was reported in FCC's Fee Filer website on March 31, 2011 (well after the fee was due), and that you were unable to determine the amount owed for Station W03A0 until May 27, 2011. That explanation, however, does not present a ground for waiver. On July 9, 2010, the Commission

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[1] 47 U.S.C. §159(a)(1).
[2] 47 U.S.C. §159(c)(1).
[3] 47 C.F.R. §1.1164.
[4] *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).

published the Fiscal Year (FY) 2010 Regulatory Fee Report and Order.[5] Moreover, on August 9, 2010, the Commission published the Public Notice announcing August 31, 2010 as the deadline for paying the FY 2010 fees.[6] Consequently, your argument that you accessed the FCC's Fee Filer website, but were unable to determine a fee and thus unable to comply with the rule is without merit. Licensee's must stay apprised of the FCC's filing requirements and other rules, and your failure to do so here is not a sufficient reason to excuse you from making timely payment of the FY 2010 Regulatory Fee.[7] Ignorance of the rule is not an acceptable excuse.[8]

Similarly, in matters involving forfeiture for failure to comply with the Commission's rules, the Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."[9] The Commission routinely has held that administrative errors and licensee misfortune are insufficient, e.g.:

- Allegations that the FCC's records contain an incorrect mailing address. The FCC Registration Number (FRN) information (including the entity's address) in the FCC database regarding a licensee is supplied by the licensee. The Commission requires entities to keep FRN information current either by updating the information on-line at the CORES link at www.fcc.gov or by filing FCC Form 161.[10]
- Assertions that a licensee had staff turnover or a death of a staff member, mailed its fee check to the wrong place, forgot or lost its password to the Fee Filer system, or had an employee who failed to follow directions/made an administrative error.

Your circumstances do not support waiver of the Section 9(c)(1) penalty, which is waived "only in the most extraordinary circumstances."[11] Accordingly, your request for waiver and/or reduction of the penalty for late payment of the FY 2010 regulatory fee is denied.

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[5] *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291 ¶ 37 (July 9, 2010). The Report and Order listed the FY 2010 regulatory fee applicable to your station.

[6] *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).

[7] *See, e.g.*, WLOS Licensee, Inc., *Order on Reconsideration*, 15 FCC Rcd 11047, 11048 ¶ 4 (WTB PSPWD 2000) (rejecting argument that applicant had insufficient notice of change in fee, because change was announced by public notice and other publicly available information) (citing Supercom, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 4604, 4607 ¶ 8 (2000); Empire Broadcasting Corp., *Memorandum Opinion and Order*, 25 FCC 2d 68, 69 ¶ 4 (1970)) (mere oversight or failure to be aware of the Commission's requirements will not excuse licensee from its obligation to operate in compliance with the Commission's Rules).

[8] *Supercom, Inc., supra* (ignorance of the Commission's rules is no excuse for noncompliance).

[9] *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); *1stel, Inc.* (OMD, Apr. 22, 2010).

[10] *See* 47 C.F.R. §1.8002(b)(2); *see also Amendment of Parts 1, 21, 61, 73, 74 and 76 of the Commission's Rules, Adoption of a Mandatory FCC Registration Number, Report and Order*, 16 FCC Rcd 16138 (2001).

[11] *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

If you have not yet paid FY 2010 regulatory fee and late penalties in full, such payment is now due. The payments should be submitted, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. If you have any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

Mark Stephens
Chief Financial Officer

Enclosure

Stephen French

From: Tommy Greene [Tommygreene@greenepublishing.com]
Sent: Tuesday, May 31, 2011 9:58 AM
To: Cores
Subject: Regulatory fee - Fee Filer

Re: FRN 0010309128

I have previously logged onto Fee Filer numerous times to pay the regulatory fees for this FRN. However, Friday 5/27/11 is the first time I have found the amount to pay and it includes a Penalty of $103.75 along with the amount of $415.00 for a total of $518.75 for 2010. There was not any amount to pay even when I logged on 3/31/11.

My last notation was made on 3/31/11 when I last attempted to get the amount and pay the fee. There was nothing showing I owed anything. I phoned the number of your Help Desk and was told there was nothing owing, and the bills would not be out until July or August; keep checking until that time and the bills will be forthcoming.

Because there was no amount or bill for me to pay, I don't think I should have to pay a penalty. If there is a secret of getting the amount on time, I would certainly appreciate knowing it as I dislike paying extra dollars when it is not necessary; they are not that easy to acquire.

Thank you for your assistance with this matter.

LaTrelle Palhof
For Tommy Greene

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
DEC 16 2011

OFFICE OF
MANAGING DIRECTOR

Gregory J. Vogt, Esq.
Law OfficeS of Gregory J. Vogt, PLLC
2121 Eisenhower Avenue, Suite 200
Alexandria, VA 22314

Re: Trillion Partners, Inc.
Request to Waive Application Fees
Filed 8-26-11
Fee Control No. RROG-11-00013702
Regulatory Fee Amount: $ 37,445.00

Dear Mr. Vogt:

This letter responds to the request listed above, filed on behalf of Trillion Partners, Inc ("Licensees") for waiver of the specified application fees ("Application Fees") on the grounds of financial hardship. Our records reflect that the Application Fees have not been paid. For the reasons stated herein, we grant your request.

In establishing a licensing fee program, the Commission recognized that in certain instances, payment of a licensing 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 baed 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).

Law Offices of Gregory J. Vogt, PLLC

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Gregory J. Vogt
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August 26, 2011

FILED/ACCEPTED

AUG 26 2011

Federal Communications Commission
Office of the Secretary

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Petition for Waiver and Deferral of Application Fees for Wireless Notification of Involuntary Assignment of Control of Trillion Partners, Inc.

Dear Ms. Dortch:

Please find attached a Petition for Waiver and Deferral of Application Fees filed on behalf of Trillion Partners, Inc., associated with an application for the involuntary assignment of wireless licenses due to the appointment of a receiver by the United States District Court for the District of Colorado. Please let me know if you have any questions.

Sincerely,

Gregory J. Vogt
Counsel for Trillion Partners, Inc.

cc: Managing Director

ORIGINAL

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

FILED/ACCEPTED

AUG 26 2011

Federal Communications Commission
Office of the Secretary

In the Matter of	)	
	)	
Trillion Partners, Inc.	)	FRN No. 0009170929
	)	
Request for Waiver and Deferral of Application Processing Fees	)	

PETITION FOR WAIVER AND DEFERRAL OF APPLICATION PROCESSING FEES

Pursuant to Section 1.1166 of the Rules, 47 C.F.R. § 1.1166, Trillion Partners, Inc., ("Trillion"), hereby requests that the FCC grant a waiver of application processing fees in the amount of $ 37,445.00, which were assessed when Trillion filed an involuntary assignment application of various wireless licenses contained in the Universal Licensing System ("ULS") on August 26, 2011, due to the court appointment of a receiver. Furthermore, pursuant to Section 1.1166((b) of the Commission's Rules, 47 C.F.R. § 1.1166(b), Trillion requests that the Commission defer the payment for these fees until the FCC acts on the instant fee waiver request.

On August 26, 2011, Trillion electronically filed in ULS a notice of the involuntary assignment of 494 wireless licenses, including both common carrier and private point-to-point microwave licenses. These notices were filed because on July 27, 2011, the United Stated District Court for the District of Colorado entered an order appointing a receiver to supervise the management and operations of Trillion to preserve Trillion's assets and to maximize the value of Trillion for the benefit of its creditors and stakeholders. *See* Appendix A. The court's order grants to the receiver the unrestricted right to direct the operations and management of the

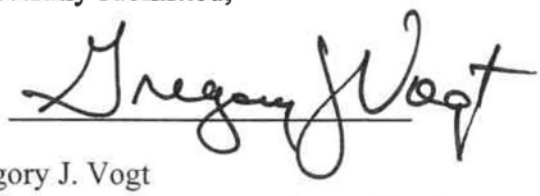
licensee, and thus constitutes *de facto* control of the licensee, in addition to the *de facto* control exercised by current management and the *de jure* control of current stockholders previously authorized by the Commission.

The order of receivership was entered based on a complaint that was filed in that same court by Tatonka Capital Corporation ("Tatonka"), which lent a substantial amount of money to, and is the largest creditor of, Trillion. *See* Appendix B. The complaint alleged that Trillion was in default on the repayment of its loans and is currently suffering financial hardship that makes it unable to continue to make payments pursuant to the loan agreements between Tatonka and Trillion, as well as to make payments to other Trillion creditors. Trillion has not contested the establishment of the receivership. The FCC has previously announced that it will grant fee waivers and deferrals based on, among other things, a licensee being under receivership. *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, ¶ 14 (1995). Therefore, based on the above-stated facts and precedent, the FCC should grant the instant waiver request.

Given the need for the receivership and consequent financial hardship suffered by Trillion, and based on the documentation provided with this petition, it also requests that the FCC defer requiring Trillion to pay these application fees while this waiver request is pending. Trillion respectfully requests that the FCC expedite the processing of this waiver and fee deferral

request given that the deferral request only continues for six months pursuant to Section 1.1166(b) of the rules.

Respectfully submitted,

By: 

Gregory J. Vogt
Law Offices of Gregory J. Vogt, PLLC
2121 Eisenhower Ave.
Suite 200
Alexandria, VA 22314
(703) 838-0115

Counsel for Trillion Partners, Inc.

August 26, 2011