

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JAN 9 2011

Adena ✓

OFFICE OF
MANAGING DIRECTOR

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

Re: Roy E. Henderson
FYs 2007-2010 Regulatory Fee Waiver Request
Filed August 31, 2010
Fee Control No. RROG-10-00013681
FY 2010 Regulatory Fees Amount Due: \$2,725.00
FY 2010 Regulatory Fee Penalty Due: \$681.25

Dear Mr. Graham:

This letter rescinds our letter dated May 26, 2011,¹ which was in error, and it provides our further response to your August 31, 2010, request (*Request*)² on behalf of Roy E. Henderson, Licensee KHTZ-FM FID # 27619 for a waiver of the Fiscal Year (FY) 2007, 2008, 2009, and 2010 regulatory fees due for station KHTZ. For the reasons discussed below, your *Request* is dismissed and, in the alternative, it is denied.

You state that KHTZ is licensed to operate in Ganado, Texas, and that “[a]t times, the station [operated] under the authority of an STA allowing it to be on the air with a very small output power level . . . and the antenna at a height [of] 40 feet.”³ You assert that the station operates with limited power, thus it does not sell advertising. Further, you assert that “the licensee receives no income from this station.”⁴ You listed the numbers for applications for Special Temporary Authority (STA) and provided a copy of an unsigned and undated Settlement Agreement and a copy of the Fort Bend Media Broadcasting Profit & Loss (January through December 2008) (*P&L 2008*).

¹ Letter from Mark Stephens, Chief Financial Officer, FCC to Mr. Gary Graham, Broadcast Engineer, P.O. Box 2527, Weatherford, TX 76086 (May 26, 2011) (*May 26, 2011 Letter*).

² 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), Petition Waiver Request of Regulatory Fees, (undated) (received Aug. 31, 2010) (*Request*).

³ *Id.* at 1.

⁴ *Id.*

Our records show that Mr. Henderson is delinquent in paying regulatory fees due for previous years⁵ and that Mr. Henderson did not pay the FY 2010 regulatory fee or Petition to defer payment. Because Mr. Henderson is a delinquent debtor, under 47 C.F.R. § 1.1910, he is restricted from doing business with the FCC,⁶ and we should have withheld action on your *Request* until full payment or arrangements to pay the delinquent amounts had been made. That ministerial action was not accomplished, and the *May 26, 2011 Letter* was issued erroneously. We now correct that error by rescinding⁷ the *Letter*, and because the licensee is delinquent in paying prior year fees, we dismiss the *Request*. But even if the delinquent regulatory fees had been paid, we would dismiss the *Request* on the additional ground that the licensee did not pay the FY 2010 regulatory fee or request deferral of payment of that fee.⁸ In the alternative, if there were no delinquencies, and the licensee had requested deferral, for the separate reasons stated below, we deny your *Request*.

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.⁹ 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.¹⁰ 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.¹¹ "Mere allegations or

⁵ Our records indicate that Mr. Henderson was late paying the FY 2006 regulatory fees for stations WCUZ, KJAZ, KROY, and KEMA, thus he incurred statutory penalties. In addition, Mr. Henderson did not pay the FY 2008 regulatory fees and statutory penalties for WCUZ, KJAZ, KROY, and KEMA, and the statutory penalty for KHTZ. Also, Mr. Henderson did not pay the FY 2009 regulatory fees and penalties for WCUZ, KJAZ, KHTZ, KROY, and KEMA. Our records show that Mr. Henderson owes approximately \$18,450, not including accrued interest, penalties and the administrative charges of collection, for amounts due from FY 2006 through FY 2010, and that we have referred several of the delinquent debts to Treasury. We have not reviewed the payment records for other stations licensed to Mr. Henderson. If you (or the licensees) believe this information to be incorrect and you (or the licensees) have evidence establishing the fees were waived or paid in a timely manner, please provide it to us.

⁶ Under 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.

⁷ 47 C.F.R. § 1.1910(b)(2) ("any Commission action taken prior to the payment of delinquent non-tax debt owed the Commission is contingent and subject to rescission."); *American Trucking Ass'n v. Frisco Transp. Co.*, 358 U.S. 133, 145 (1958) ("The presence of authority in administrative officers and tribunals to correct [inadvertent ministerial] errors has long been recognized."); *Mobile UHF, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 22945, 22946 (2001) ("The Commission, upon learning of an inadvertent ministerial processing error, may correct its error, even beyond the reconsideration period.").

⁸ 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.").

⁹ 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).

¹⁰ 9 FCC Rcd at 5344 ¶ 29.

¹¹ 10 FCC Rcd at 12761-62 ¶ 13.

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.”¹² 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.¹³ 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.

In this instance, the submitted information does not show compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission’s regulatory costs. Specifically, the *P&L 2008* does not present the range of information usually included within other documents necessary to establish the station’s financial position, *e.g.*, a balance sheet, cash flow projection, and reports of compensation. Moreover, it does not cover the period of the requested waiver. Thus, it does not demonstrate that the station lacks sufficient funds to pay its regulatory fee and to maintain its service to the public.

You did not present a compelling case that the licensee’s service to the public will suffer upon payment of the required regulatory fees. You assert that KHTZ operates with “a very small output power level” with an antenna at a height of 40 feet above ground.¹⁴ You also provided a copy of an incomplete Settlement Agreement. But, you did not relate that information to the financial information, and you did not establish how service to the public will suffer upon payment of the fees. Moreover, the financial information raises unanswered questions related to the accuracy of total income and expenses. For example, you failed to explain the \$1,085,500.00 “Capital Transfer” in 2008. Thus, rather than demonstrating financial hardship, the amount reported as a “Capital Transfer” is indicative of funds sufficient to pay the regulatory fees for several years.

Accordingly, as we stated at the onset, we dismiss your *Request* because the licensee is 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, we deny it. Accordingly, because Mr. Henderson did not pay the \$2,725.00 FY 2010 regulatory fee, we are required to assess a \$681.25 penalty, which is twenty-five percent (25%) of the amount of the fee that was not paid in a timely manner. Payment of the outstanding regulatory fee and the penalty are now due. That regulatory fee must be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. If the licensee fails 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

¹² *Id.*

¹³ *Id.*

¹⁴ *Request* at 1.

letter, and under the law,¹⁵ the Commission will initiate collection proceedings. We will provide the licensee with separate invoices for the delinquent regulatory fees, statutory penalties, and the accrued interest, penalties, and costs of collection.¹⁶

Because the licensee is 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.¹⁷

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

Sincerely,

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

Mark Stephens
Chief Financial Officer

Enclosure

¹⁵ See 47 C.F.R. § 1.1901, *et seq.*

¹⁶ 47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164.

¹⁷ 47 C.F.R. § 1.1912.