



PUBLIC NOTICE

Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

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DA-12-810

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

PUBLIC NOTICE

Released: May 23, 2012

FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC

The Managing Director is responsible for fee decisions in response to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. A public notice of these fee decisions is published in the FCC record.

The decisions are placed in General Docket 86-285 and are available for public inspection. A copy of the decision is also placed in the appropriate docket, if one exists.

The following Managing Director fee decisions are released for public information:

Azteca Communications of Alabama, Inc. Station WCOC (AM) - Request for wavier of FY 2011 regulatory fee. **Denied** (March 16, 2012) [*See* 47 C.F.R. §1.1166]

Azteca Communications of Alabama, Inc. Station WGTA (AM) - Request for wavier of FY 2011 regulatory fee. **Denied** (March 16, 2012) [*See* 47 C.F.R. §1.1166]

Arqiva, Inc. Request for wavier of the late payment of the FY 2011 regulatory fees. **Denied** (February 3, 2012) [*See* 47 C.F.R. §1.1164]

EchoStar 77 Corporation - Request for waiver application fees. **Granted** (March 29, 2012) [*See* 47 U.S.C. §158(d) (2)]

Georgia-Carolina Radiocasting Company, LLC Station W234BF - Request for wavier of FY 2011 regulatory fee. **Denied** (March 30, 2012) [*See* 47 C.F.R. §1.1166]

Georgia-Carolina Radiocasting Company, LLC Station WRGC - Request for wavier of FY 2011 regulatory fee. **Denied** (March 30, 2012) [*See* 47 C.F.R. §1.1166]

Grupo Hispanavision, LLC Stations KWYT-LP, K04OI, K23FU, K29FF, K43GY, K49GF, K13WP AND K08LU - Request for wavier of the late payment of the FY 2011 regulatory fees. **Denied** (February 2, 2012) [*See* 47 C.F.R. §1.1164]

Hatfield McCoy Communications, Inc. Station WHJC (AM) - Request for wavier of FY 2011 regulatory fee. **Denied** (March 22, 2012) [*See* 47 C.F.R. §1.1166]

James Wilson, III Station WJJN-LP Request for wavier of FY 2011 regulatory fee. **Denied** (March 22, 2012) [*See* 47 C.F.R. §1.1166]

Media One Communications, Inc Station W295AP
Request for wavier of FY 2011 regulatory fee. **Denied**
(March 29, 2012) [*See* 47 C.F.R. §1.1166]

**KM Television of Flagstaff, LLC Station KCFG
(TV)** - Request for wavier of FY 2011 regulatory fee.
Denied (February 2, 2012) [*See* 47 C.F.R. §1.1166]

**Pappas Telecasting of the Gulf Coast, L.P. Station
KVVV-LP** - Request for wavier of FY 2011
regulatory fee. **Denied** (March 28, 2012) [*See* 47
C.F.R. §1.1166]

**Pappas Telecasting of Opelika, L.P. Station
WLGA-TV** - Request for wavier of FY 2011
regulatory fee. **Denied** (March 28, 2012) [*See* 47
C.F.R. §1.1166]

Pocatello Channel 15, LLC Station KPIF -TV
Request for wavier of FY 2011 regulatory fee. **Denied**
(February 2, 2012) 47 C.F.R. §1.1166]

**Rehoboth Beach Communications, Inc. Station
WGPS-LP** - Request for wavier of FY 2011
regulatory fee. **Denied** (March 30, 2012) 47 C.F.R.
§1.1166]

Tugart Properties, LLC Station W249CC
Request for wavier of FY 2011 regulatory fee. **Denied**
(March 16, 2012) [*See* 47 C.F.R. §1.1166]

**Tugart Properties, LLC Station W228CA
(Formerly W225BH)** - Request for wavier of FY
2011 regulatory fee. **Denied** (March 16, 2012) [*See* 47
C.F.R. §1.1166]

Tugart Properties, LLC Station W299BK
Request for wavier of FY 2011 regulatory fee. **Denied**
(March 16, 2012) [*See* 47 C.F.R. §1.1166]

Tugart Properties, LLC Station WLET
Request for wavier of FY 2011 regulatory fee. **Denied**
(March 16, 2012) [*See* 47 C.F.R. §1.1166]

Tugart Properties, LLC Station WNGA
Request for wavier of FY 2011 regulatory fee. **Denied**
(March 16, 2012) [*See* 47 C.F.R. §1.1166]

**WatchTV, Inc. Stations KABH-CA, KKEI-
CA, KORS-CD, KORK-CA, KORY-CA,
KOXI-CA, and KOXO-CA** - Request for
wavier of FY 2011 regulatory fee. **Denied**
(March 16, 2012) [*See* 47 C.F.R. §1.1166]

Wendolynn Tellez Station KSAG - Request
for wavier of FY 2011 regulatory fee. **Denied**
(March 30, 2012) [*See* 47 C.F.R. §1.1166]

**Williams Broadcasting Group Station
KBGN 1060 AM** - Request for wavier of the
penalty for late payment of FY 2011 regulatory
fee. **Denied** (February 2, 2012) 47 C.F.R.
§1.1164]

**Wilson Broadcasting Co., Inc Station
WAGF** - Request for wavier and a refund of
FY 2011 regulatory fee. **Denied** (March 22,
2012) [*See* 47 C.F.R. §1.1166]

Adama /

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
MAR 16 2012

OFFICE OF
MANAGING DIRECTOR

Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 N. 21st Road
Arlington, VA 22201

Re: Azteca Communications of Alabama, Inc.
Station: WCOC (AM)
FY 2011 Regulatory Fee Waiver Request
Filed: 11-18-11
Fee Control No.: RROG-11-00014047
Regulatory Fee Amount: \$ 1,500.00

Dear Mr. Alpert:

This letter responds to Azteca Communications of Alabama, Inc. (Azteca's or licensee's) *Request*,¹ for waiver and refund of \$1,500.00 previously paid for the required fiscal year (FY) 2011 regulatory fee. Relevant to this matter, we note that on September 4, 2010, the State of Georgia administratively dissolved and revoked Azteca's certificate of authority² for failure to file its annual registration, which raises issues as to Azteca's status to conduct business. Although we address the instant *Request*, we recommend that Azteca clarify the apparent discrepancy in its status and take appropriate measures to ensure its records at the Commission are accurate.³ For the reasons stated herein, we deny licensee's *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 case-by-case showing of good cause and a finding that the public interest will be served thereby.⁴ 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.⁵ Fee relief may be granted based on asserted financial hardship, but only upon a documented

¹ Letter from Dan J. Alpert, Esq., 2120 N. 21st Road, Arlington, VA 22201, to FCC, Office of Managing Director, 445 12th Street, SW, Washington, DC 20554 (received Nov. 18, 2011)(*Request*).

² GA ST § 14-2-1421 ("A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business affairs under Code Section 14-2-1405.").

³ See 47 C.F.R. §§ 1.17, 1.65.

⁴ 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).

⁵ 9 FCC Rcd at 5344 ¶ 29.

showing that payment of the fee will adversely impact the licensee's ability to serve the public.⁶ "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."⁷ 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.⁸ 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. And pertinent to stations that file "[p]etitions to go dark," as is set forth at 47 C.F.R. § 73.1740(a)(4), the Commission opined that such petitions "are generally based on financial hardship."⁹ And "[u]nder th[ose] circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship."¹⁰ Licensee did not establish that those circumstances are present and applicable.

Licensee refers to the Commission's above-referenced discussion concerning a dark station, and it asserts only that "[t]he station currently is dark. ... Accordingly, a waiver and refund of [the fee] that has been paid is appropriate." Licensee attached a copy of the Commission's information summary to licensee's application for "Remain Silent Authority," which indicates the "silent reason" was "financial."¹¹ However, licensee did not include verified records of the application materials or provide any verified financial documentation. Moreover, licensee did not explain how it met the Commission's standard at 47 C.F.R. § 1.1166 at the time it paid the regulatory fee.

A waiver of the Commission's rules is appropriate only if special circumstances warrant deviation from the general rule, and such deviation will serve the public interest.¹² In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹³ In this case, however, licensee did not carry its burden as set forth at 47 C.F.R. § 1.1166 to demonstrate that on "a case-by-case" it has shown "good cause" and that the "waiver [of the required fee] would promote the public interest."¹⁴ Instead, licensee asserts only that its station was silent, but it did not present any evidence to establish whether or not its application to go silent was supported by a fully documented financial position that shows at the time the FY 2011 regulatory fee was paid, it lacked funds sufficient to pay the regulatory fee and to maintain its

⁶ 10 FCC Rcd at 12761-62 ¶ 13.

⁷ *Id.*

⁸ *Id.*

⁹ 10 FCC Rcd at 12762 ¶ 15.

¹⁰ *Id.*

¹¹ Request at 1, Application Search Details, File Number: BLSTA-20111117AYE.

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹³ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹⁴ 47 C.F.R. § 1.1166.

service to the public.¹⁵ It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.¹⁶ Inherent in the Commission's statement that "it is unnecessary to require a licensee to make a *further showing of financial hardship* (emphasis added),"¹⁷ is the understanding that the applicant's petition to go dark was (a) filed because of financial hardship and (b) supported by full documentation of its financial position that met the Commission's relevant standards. Plainly, in order for it to be unnecessary to require a *further* showing, the applicant must have made a valid *prior* showing of the requisite financial information. Moreover, because each waiver is considered on a case-by-case basis, the financial information must be relevant to the current request for a waiver of the fee and it must be sufficient to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹⁸

In asserting only that the "station currently is dark,"¹⁹ licensee failed to clarify its position before the Commission.²⁰ Rather than the unsupported conclusion offered, licensee should have provided evidence whether its application to go dark was based on financial hardship that was "fully document[ed]"²¹ and accepted by the Commission as such evidence, and if not (apparently as is the case here), licensee should have provided sufficient documentation to meet the standard set forth at 47 C.F.R. § 1.1166.²² We will not assume the existence or sufficiency of information not part of the request. Accordingly, without sufficient evidence of financial hardship,²³ we deny licensee's *Request* for a waiver of the required regulatory fee and a refund of the amount paid.

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

¹⁵ 10 FCC Rcd at 12761-62 ¶ 13.

¹⁶ The FCC Form to request silent status includes in the section, "Reason for going silent" five categories, *i.e.*, Technical, Financing, Staffing, Program Source, and Other. The applicant also may provide the reason for the request.

¹⁷ 10 FCC Rcd at 12762 ¶ 15.

¹⁸ 9 FCC Rcd at 5344 ¶ 29.

¹⁹ *Request* at 1. A review of FCC File No. BLSTA-20111117AYE shows licensee stated only "THE STATION IS SUFFERING FINANCIAL DIFFICULTIES." Licensee did not furnish any financial information, which would have been necessary to reach a determination whether or not financial hardship existed for purposes of a waiver of the regulatory fee.

²⁰ *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).

²¹ 10 FCC Rcd at 12762 ¶ 13 ("It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.")

²² 47 C.F.R. § 1.1166 ("The fee . . . may be waived . . . in specific instances, on a case-by-case basis, where good cause is shown and where waiver . . . of the fee would promote the public interest."). *See also* 10 FCC Rcd at 12761-62 ¶ 13.

²³ *Id.*

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
MAR 16 2012

Adama ✓

OFFICE OF
MANAGING DIRECTOR

Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 N. 21st Road
Arlington, VA 22201

Re: Azteca Communications of Alabama, Inc.
Station: WGTA (AM)
FY 2011 Regulatory Fee Waiver Request
Filed: 9-13-11
Fee Control No.: RROG-11-00013815
Regulatory Fee Amount: \$ 1,500.00

Dear Mr. Alpert:

This letter responds to Azteca Communications of Alabama, Inc. (Azteca's or licensee's) *Request*,¹ for waiver and refund of \$1,500.00 previously paid for the required fiscal year (FY) 2011 regulatory fee. Relevant to this matter, we note that on September 4, 2010, the State of Georgia administratively dissolved and revoked Azteca's certificate of authority² for failure to file its annual registration, which raises issues as to Azteca's status to conduct business. Although we address the instant *Request*, we recommend that Azteca clarify the apparent discrepancy in its status and take appropriate measures to ensure its records at the Commission are accurate.³ For the reasons stated herein, we deny licensee's *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 case-by-case showing of good cause and a finding that the public interest will be served thereby.⁴ 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.⁵ Fee relief may be granted based on asserted financial hardship, but only upon a documented

¹ Letter from Dan J. Alpert, Esq., 2120 N. 21st Road, Arlington, VA 22201, to FCC, Office of Managing Director, 445 12th Street, SW, Washington, DC 20554 (received Sep. 13, 2011)(*Request*).

² GA ST § 14-2-1421 ("A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business affairs under Code Section 14-2-1405.")

³ See 47 C.F.R. §§ 1.17, 1.65.

⁴ 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).

⁵ 9 FCC Rcd at 5344 ¶ 29.

showing that payment of the fee will adversely impact the licensee's ability to serve the public.⁶ "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."⁷ 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.⁸ 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. And pertinent to stations that file "[p]etitions to go dark," as is set forth at 47 C.F.R. § 73.1740(a)(4), the Commission opined that such petitions "are generally based on financial hardship."⁹ And "[u]nder th[ose] circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship."¹⁰ Licensee did not establish that those circumstances are present and applicable.

Licensee refers to the Commission's above-referenced discussion concerning a dark station, and it asserts only that "[t]he station currently is dark. ... Accordingly, a waiver and refund of [the fee] that has been paid is appropriate." Licensee attached a copy of the Commission's decision granting licensee's application for Special Temporary Authority to permit the station to remain silent for "technical reasons."¹¹ However, licensee did not include verified records of the application materials or provide any verified financial documentation. Moreover, licensee did not explain how it met the Commission's standard at 47 C.F.R. § 1.1166 at the time it paid the regulatory fee.

A waiver of the Commission's rules is appropriate only if special circumstances warrant deviation from the general rule, and such deviation will serve the public interest.¹² In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹³ In this case, however, licensee did not carry its burden as set forth at 47 C.F.R. § 1.1166 to demonstrate that on "a case-by-case" it has shown "good cause" and that the "waiver [of the required fee] would promote the public interest."¹⁴ Instead, licensee asserts only that its station was silent, but it did not present any evidence to establish whether or not its application to go silent was supported by a fully documented financial position that shows at the time the FY 2011 regulatory fee was paid, it lacked funds sufficient to pay the regulatory fee and to maintain its

⁶ 10 FCC Rcd at 12761-62 ¶ 13.

⁷ *Id.*

⁸ *Id.*

⁹ 10 FCC Rcd at 12762 ¶ 15.

¹⁰ *Id.*

¹¹ Letter from H. Taft Snowdon, Media Bureau, FCC to Javier Macias, Azteca Communications, Inc., 6320 Sunbriar Dr., Cumming, GA 30040 (Jul. 27, 2011).

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹³ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹⁴ 47 C.F.R. § 1.1166.

service to the public.¹⁵ It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.¹⁶ Inherent in the Commission's statement that "it is unnecessary to require a licensee to make a *further showing of financial hardship* (emphasis added),"¹⁷ is the understanding that the applicant's petition to go dark was (a) filed because of financial hardship and (b) supported by full documentation of its financial position that met the Commission's relevant standards. Plainly, in order for it to be unnecessary to require a *further* showing, the applicant must have made a valid *prior* showing of the requisite financial information. Moreover, because each waiver is considered on a case-by-case basis, the financial information must be relevant to the current request for a waiver of the fee and it must be sufficient to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹⁸

In asserting only that the "station currently is dark,"¹⁹ licensee failed to clarify its position before the Commission.²⁰ Rather than the unsupported conclusion offered, licensee should have provided evidence whether its application to go dark was based on financial hardship that was "fully document[ed]"²¹ and accepted by the Commission as such evidence, and if not (apparently as is the case here), licensee should have provided sufficient documentation to meet the standard set forth at 47 C.F.R. § 1.1166.²² In this case, licensee's justification for its request to go dark was not for financial reasons, but rather for an unspecified "air conditioning problem at [the] transmitter site." That is not evidence of financial hardship. We will not assume the existence or sufficiency of information not part of the request. Accordingly, without sufficient evidence of financial hardship,²³ we deny licensee's *Request* for a waiver of the required regulatory fee and a refund of the amount paid.

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

¹⁵ 10 FCC Rcd at 12761-62 ¶ 13.

¹⁶ The FCC Form to request silent status includes in the section, "Reason for going silent" five categories, *i.e.*, Technical, Financing, Staffing, Program Source, and Other. The applicant also may provide the reason for the request.

¹⁷ 10 FCC Rcd at 12762 ¶ 15.

¹⁸ 9 FCC Rcd at 5344 ¶ 29.

¹⁹ *Request* at 1. A review of FCC File No. BLSTA-20110718ABI shows licensee stated the reason was "technical" because of an "AIR CONDITIONING PROBLEM AT TRANSMITTER SITE."

²⁰ *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).

²¹ 10 FCC Rcd at 12762 ¶ 13 ("It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.").

²² 47 C.F.R. § 1.1166 ("The fee . . . may be waived . . . in specific instances, on a case-by-case basis, where good cause is shown and where waiver . . . of the fee would promote the public interest."). *See also* 10 FCC Rcd at 12761-62 ¶ 13.

²³ *Id.*

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

Adama ✓

OFFICE OF
MANAGING DIRECTOR

February 3, 2012

Mr. Jon Kirchner
Arqiva, Inc.
2025 M Street, NW
Washington, DC 20036

Re: Arqiva, Inc.
FY 2011 Late Penalty Waiver Request
Dated 9-21-11, Received 9-26-11
Fee Control No. RROG-11-00013905
Regulatory Fee Amount: \$3,436.00
Late Penalty Amount: \$ 859.00
Date Regulatory Fee Paid: 10-3-11
Date Late Penalty Paid: 10-3-11

Dear Mr. Kirchner:

This letter responds to the above-referenced *Request*¹ for waiver of the penalty for late payment of FY 2011 regulatory fee. For the reasons stated herein, we must deny your *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,² and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."³ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee . . . which was not paid in a timely manner."⁴

¹ Letter from Jon Kirchner, Arqiva, Inc, 2025 M Street, NW, Washington, DC 20036 to FCC, Office of Secretary, 455 12th Street, S.W., Washington, DC 20554 (dated Sept 21,2011, received Sept 26, 2011) (*Request*).

² 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

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

⁴ 47 C.F.R. § 1.1164.

“[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.”⁷ The absence of a reminder notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.

For example, on May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency’s Fee Filer system.⁸ The Commission explained that, “[c]onsistent with [its] proposal to require mandatory use of Fee Filer . . . , pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail.”⁹ On July 31, 2009, the Commission released its order adopting these proposals,¹⁰ and notifying regulatees that “because all pre-bills will be loaded into Fee Filer, once Fee Filer becomes operational, this will be the signal by which licensees can view their pre-bill information online.”¹¹ Thereafter, the Commission issued a public notice informing regulatees that use of Fee Filer was mandatory in FY 2009 and that “regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer.”¹² Finally, on September 2, 2009, the Commission released a third public notice that **“HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.”**¹³

Similarly, in 2010, the Commission’s final order on the FY 2010 regulatory fees reaffirmed that regulatees should “check[] the Commission’s website periodically beginning in July” in order to “ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment.”¹⁴ This notification was part of the Commission’s increased effort to notify licensees that hardcopy bills will no longer be mailed.¹⁵

Every licensee is obliged to make the fee payment by the deadline. In such cases, neither the statute nor the Commission’s regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.¹⁶ Further, although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission’s regulations contemplates a waiver of or reduction in the late payment penalty based on the

⁷ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

⁸ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972 ¶ 16 (2009).

⁹ *Id.* at 5973 ¶ 20.

¹⁰ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10307-09 ¶¶ 18-27 (2009) (*FY 2009 Regulatory Fees NPRM*).

¹¹ *Id.* at 10309 ¶ 26.

¹² *Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

¹³ *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

¹⁴ *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291 ¶ 37 (2010).

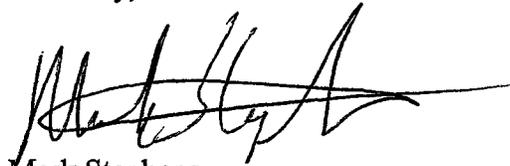
¹⁵ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923 ¶ 12 (2010).

¹⁶ See *XO Communications, LLC* (OMD, Nov. 10, 2010).

amount of time after the deadline within which the regulatee made payment. As we explained, the penalty required by 47 U.S.C. § 159(c)(1) is not limited to situations where the failure to pay was knowing or willful. If it is to be waived, it is "only in the most extraordinary circumstances,"¹⁷ which are not described by your situation. Thus, under the law, we must deny your Request, and we cannot refund the penalty amount paid.

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

Sincerely,

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

Mark Stephens
Chief Financial Officer

¹⁷ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

Adama ✓

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
MAR 29 2012

OFFICE OF
MANAGING DIRECTOR

Pantelis Michalopoulos, Esq.
Stephanie A. Roy, Esq.
L. Lisa Sandoval, Esq.
Steptoe & Johnson LLP
1330 Connecticut Ave., N.W.
Washington, D.C. 20036-1795

Re: Petition for Waiver of Application Fees
Applicant/Petitioner: EchoStar 77 Corporation (EchoStar
77)
Date Filed: July 7, 2011
Fee Amount: \$180.00/application
Fee Control Number: RROG-10-00013517

Dear Counsel:

This is in response to Applicant's above described petition for waiver of application fees (*Petition*)¹ in connection with an application to modify Applicant's existing blanket earth station authorization (E050196) to operate one million receive-only earth stations to receive Direct Broadcast Satellite (DBS) programming from the QuetzSat-1 satellite operating as a Mexican satellite.² Applicant requests that the Commission find that no fee is required, *i.e.*, waive all fees or, in the alternative, find that the Fixed Satellite Very Small Aperture Terminal (VSAT) modification application fee of \$180.00, which was paid upon filing, is "appropriate."³ As discussed herein, we grant that portion of the *Petition* which seeks approval to accept a single application fee of \$180.00 and otherwise waive the individual fees for each of 1,000,000 receive-only earth stations.

Applicant requests consent to modify its authorization for one million technically identical receive-only earth station antennas "in order to supplement its provision of multichannel video services to consumers in the United States from the nominal 77° W.L. orbital location."⁴ Applicant states that in the absence of any provision under the Commission's rules specifying a charge for this type of application in the DBS service, the application could be

¹ Letter from Stephanie A. Roy, Steptoe & Johnson LLP, 1330 Connecticut Ave., NW, Washington, D.C. 20036-1795 to Marlene H. Dortch, Secretary, FCC, Washington, D.C. 20554 (Jul. 7, 2011) (*Request*); EchoStar 77 Corporation, Petition for Waiver of Application Fees Pursuant to Section 1.1117 of the Commission's Rules, Call Sign E050196, File No. SES-MFS-20110707-00793 (*Petition*).

² *Petition* at 1 (citing FCC Application for Space and Earth Station: Mod or Amd-Main Form, FCC 312, File No. SES-MFS-20110707-00793, *Modification of Blanket Earth Station License E050196 to add Mexican-Licensed QuetzSat-1 at 77W.L. as a Point of Communication* (filed Jul 7, 2011) (*Application*)).

³ *Petition* at 2.

⁴ *Id.*

subject to the following charges in the fee schedule for similar applications: either the \$180.00 application fee to assign a fixed satellite VSAT system under section 1.1107(6)(c) of the rules, 47 C.F.R. §1.1107(6)(c) (which it asserts is appropriate) or a \$180.00 fee for each of the additional 999,999 stations under section 1.1107(5)(c) of the rules, 47 C.F.R. §1.1107(5)(c), for a total fee of \$180,000,000.00 (for which it requests waiver).⁵ Citing *Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, 11 FCC Rcd 21581, 21592 (1996), Applicant asserts that its system is consistent with the Commission's definition of "VSAT networks which are networks of technically identical small antennas that generally communicate with a larger hub station and operate in the 12/14 GHz frequency bands."⁶ Furthermore, "many of the processing activities required to modify individual earth station licenses . . . are simply not required in reviewing EchoStar's Application to modify its blanket earth station license to add QuetzSat-1 as an additional point of communication. Indeed, when EchoStar 77 originally applied for the blanket earth station license [now being modified], the Commission ruled that the VSAT initial application fee was [acceptable]."⁷ Also, Applicant asserts that the Commission has accepted application fees for VSAT networks in similar contexts.⁸

The Commission has discretion to waive filing fees "in any specific instance for good cause shown, where such action would promote the public interest."⁹ We construe this waiver authority narrowly, and limit its application to only those situations where the applicant has made the requisite showing of good cause and demonstrated that the action would promote the public interest.

The Commission previously has noted the special circumstances among earth station licenses to receive satellite transmissions, including the processing extended to large numbers of "technically identical small antenna earth station facilities."¹⁰ Based on the circumstances of this application, we find that EchoStar's plan comports with the Commission's expressed intent in the *DISCO II* decision.¹¹ As in that situation, Commission staff will expend fewer resources and will be able to process an application more efficiently because the multiple earth stations are technically identical. Consequently, we find that Applicant has shown that the public interest is

⁵ *Id.* at 2-3.

⁶ *Id.* at 3.

⁷ *Id.* at 4-5.

⁸ *Id.* at 4 (see text at note 11).

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, ¶¶ 245-248 (1987).

¹¹ See *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, Report and Order*, 12 FCC Rcd 24094, ¶¶ 201-204 (1997) (*DISCO II*) (e.g., "To impose the least burdensome requirements possible while fulfilling our regulatory responsibilities, we will permit applicants to request 'blanket' licenses for large numbers of technically identical receive-only antennas, such as home 'dishes.' Blanket applications may be filed by the space station operator, the service supplier, the equipment manufacturer, or the electronics retailer. Further in cases where we have previously granted a particular satellite access to the United States to provide DTH/DBS or other receive-only services, we will allow the earth station applicant to include an exhibit citing to the previous Commission grant of access for that satellite and stating that it intends to use the satellite to provide the same services as those previously authorized.").

Pantelis Michalopoulos, Esq., Stephanie A. Roy, Esq., and L. Lisa Sandoval, Esq.

served in permitting a blanket application and waiving the fees that would have been required to accompany each separate license request.¹²

Applicant's request is granted to the extent stated herein and the Commission accepts payment of \$180.00. If you have any questions concerning this letter, please call 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

¹² See *DIRECTV Letter Decision*; see also Letter from Mark Reger, CFO, OMD, FCC, to Patricia J. Paoletta, Esq., Todd M. Stansbury, Esq., and Jennifer D. Hindin, Esq. (dated June 24, 2002) (finding that the public interest is served in 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 with FSS and DBS satellites for an integrated two-way broadband video data service, and finding that individual application fees for each component are appropriate, *i.e.*, a fee amount equivalent to a VSAT initial application (per system), as well as fee amounts for a fixed satellite transmits/receive earth station application, and a lead application for a fixed satellite transmits/receive earth station. DBAC proposed to offer service using Ku-band capacity on an ALSAT FSS satellite and DBS capacity on Canadian licensed satellites).

Adana ✓

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
MAR 30 2012

OFFICE OF
MANAGING DIRECTOR

Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 N. 21st Road
Arlington, VA 22201

Re: Waiver Request (Dark Station)
Licensee/Applicant: Georgia-Carolina Radiocasting
Company, LLC
Station: W234BF
Fee: FY 2011 Regulatory Fee
Date Request Filed: Sept. 13, 2011
Date Regulatory Fee Paid: Sept. 12, 2011
Fee Control No.: RROG-11-00013859
Regulatory Fee Amount: \$ 395.00

Dear Mr. Alpert:

This letter responds to Licensee's *Request*¹ for waiver and refund of \$395.00 previously paid for the required fiscal year (FY) 2011 regulatory fee. For the reasons stated herein, we deny the *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 case-by-case showing of good cause and a finding that the public interest will be served thereby.² 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.³ 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.⁴ "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

¹ Letter from Dan J. Alpert, 2120 N. 21st Rd., Arlington, VA 22201 to Managing Director, FCC, 445 12th St. S.W., Washington, DC 20554 (received Sep. 13, 2011) (*Request*).

² 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).

³ 9 FCC Rcd at 5344 ¶ 29.

⁴ 10 FCC Rcd at 12761-62 ¶ 13.

sufficient funds to pay the regulatory fee and to maintain its service to the public.”⁵ 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.⁶ 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. And pertinent to stations that file “[p]etitions to go dark,” as is set forth at 47 C.F.R. § 73.1740(a)(4), the Commission opined that such petitions “are generally based on financial hardship. Under these circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship.”⁷ Licensee did not establish that those circumstances are present and applicable.

Licensee refers to the Commission’s above-referenced discussion concerning a dark station, and it asserts only that “[t]he station currently is dark.”⁸ Licensee provided a copy of the Application Search Details,⁹ but no additional information to support its *Request*, e.g., verified financial documentation.

A waiver of the Commission’s rules is appropriate only if special circumstances warrant deviation from the general rule, and such deviation will serve the public interest.¹⁰ In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹¹ In this case, however, Licensee did not carry its burden as set forth at 47 C.F.R. § 1.1166 to demonstrate that on “a case-by-case” it has shown “good cause” and that the “waiver [of the required fee] would promote the public interest.”¹² Instead, Licensee asserts only that its station was silent. It did not present any evidence to establish whether or not its application to go silent was supported by a fully documented financial position that shows at the time the FY 2011 regulatory fee was due, it lacked funds sufficient to pay the regulatory fee and to maintain its service to the public.¹³ It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.¹⁴ Inherent in the Commission’s statement that “it is unnecessary to require a licensee to make a *further showing of financial hardship* (emphasis added),”¹⁵ is the understanding that the applicant’s petition to go dark was (a) filed because of financial hardship and (b) supported by full documentation of its

⁵ *Id.*

⁶ *Id.*

⁷ 10 FCC Rcd at 12762 ¶ 15.

⁸ *Request* at 1.

⁹ Application Search Details, BLSTA-20110810AAR.

¹⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹¹ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹² 47 C.F.R. § 1.1166.

¹³ 10 FCC Rcd at 12761-62 ¶ 13.

¹⁴ The FCC Form to request silent status includes in the section, “Reason for going silent” five categories, *i.e.*, Technical, Financing, Staffing, Program Source, and Other. The applicant also may provide the reason for the request.

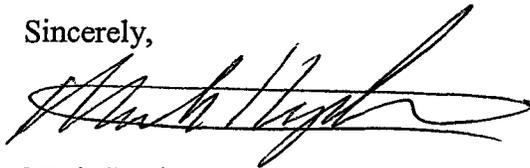
¹⁵ 10 FCC Rcd at 12762 ¶ 15.

financial position that met the Commission's relevant standards. Plainly, in order for it to be unnecessary to require a *further* showing, the applicant must have made a valid *prior* showing of the requisite financial information. Moreover, because each waiver is considered on a case-by-case basis, the financial information must be relevant to the current request for a waiver of the fee and it must be sufficient to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹⁶

In asserting only that the "station is dark,"¹⁷ Licensee failed to clarify its position before the Commission.¹⁸ Rather than the unsupported conclusion offered, Licensee should have provided evidence whether its application to go dark was based on financial hardship that was "fully document[ed]"¹⁹ and accepted by the Commission as such evidence, and if not (apparently as is the case here), licensee should have provided sufficient documentation to meet the standard set forth at 47 C.F.R. § 1.1166.²⁰ In this case, Licensee's justification for its request to go dark was for "other," *i.e.*, "THIS TRANSLATOR'S PRIMARY STATION, WNGA(FM) HAS GONE SILENT AND REQUESTED A STA. THEREFORE, W234BF MUST ALSO GO SILENT."²¹ That is not evidence of financial hardship. We will not assume the existence or sufficiency of information that is not part of the *Request*. Accordingly, without sufficient evidence of financial hardship, we deny licensee's *Request* for a waiver of the required regulatory fee and a refund of the amount paid.

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

¹⁶ 9 FCC Rcd at 5344 ¶ 29.

¹⁷ *Request* at 1.

¹⁸ *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).

¹⁹ 10 FCC Rcd at 12762 ¶ 13 ("It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.").

²⁰ 47 C.F.R. § 1.1166 ("The fee . . . may be waived . . . in specific instances, on a case-by-case basis, where good cause is shown and where waiver . . . of the fee would promote the public interest."). *See also* 10 FCC Rcd at 12761-62 ¶ 13.

²¹ Notification of Suspension of Operations/Request for Silent STA, BLSTA-20110810AAR, Exhibit 1, Description.

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
MAR 30 2012

OFFICE OF
MANAGING DIRECTOR

Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 N. 21st Road
Arlington, VA 22201

Re: Waiver Request (Dark Station)
Licensee/Applicant: Georgia-Carolina Radiocasting
Company, LLC
Station: WRGC
Fee: FY 2011 Regulatory Fee
Date Request Filed: Sept. 13, 2011
Date Regulatory Fee Paid: Sept. 12, 2011
Fee Control No.: RROG-11-00013854
Regulatory Fee Amount: \$1,150.00

Dear Mr. Alpert:

This letter responds to Licensee's *Request*¹ for waiver and refund of \$1,150.00 previously paid for the required fiscal year (FY) 2011 regulatory fee. For the reasons stated herein, we deny the *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 case-by-case showing of good cause and a finding that the public interest will be served thereby.² 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.³ 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.⁴

¹ Letter from Dan J. Alpert, 2120 N. 21st Rd., Arlington, VA 22201 to Managing Director, FCC, 445 12th St. S.W., Washington, DC 20554 (received Sep. 13, 2011) (*Request*).

² 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).

³ 9 FCC Rcd at 5344 ¶ 29.

⁴ 10 FCC Rcd at 12761-62 ¶ 13.

“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.”⁵ 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.⁶ 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. And pertinent to stations that file “[p]etitions to go dark,” as is set forth at 47 C.F.R. § 73.1740(a)(4), the Commission opined that such petitions “are generally based on financial hardship. Under these circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship.”⁷ Licensee did not establish that those circumstances are present and applicable.

Licensee refers to the Commission’s above-referenced discussion concerning a dark station, and it asserts only that “[t]he station currently is dark.”⁸ Licensee provided a copy of the Application Search Details,⁹ but no additional information to support its *Request*, e.g., verified financial documentation.

A waiver of the Commission’s rules is appropriate only if special circumstances warrant deviation from the general rule, and such deviation will serve the public interest.¹⁰ In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹¹ In this case, however, Licensee did not carry its burden as set forth at 47 C.F.R. § 1.1166 to demonstrate that on “a case-by-case” it has shown “good cause” and that the “waiver [of the required fee] would promote the public interest.”¹² Instead, Licensee asserts only that its station was silent. It did not present any evidence to establish whether or not its application to go silent was supported by a fully documented financial position that shows at the time the FY 2011 regulatory fee was due, it lacked funds sufficient to pay the regulatory fee and to maintain its service to the public.¹³ It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.¹⁴ Inherent in the Commission’s statement that “it is unnecessary to require a licensee to make a *further showing of*

⁵ *Id.*

⁶ *Id.*

⁷ 10 FCC Rcd at 12762 ¶ 15.

⁸ *Request* at 1.

⁹ Application Search Details, BLSTA-20110901ABQ.

¹⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹¹ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹² 47 C.F.R. § 1.1166.

¹³ 10 FCC Rcd at 12761-62 ¶ 13.

¹⁴ The FCC Form to request silent status includes in the section, “Reason for going silent” five categories, *i.e.*, Technical, Financing, Staffing, Program Source, and Other. The applicant also may provide the reason for the request.

financial hardship (emphasis added),”¹⁵ is the understanding that the applicant’s petition to go dark was (a) filed because of financial hardship and (b) supported by full documentation of its financial position that met the Commission’s relevant standards. Plainly, in order for it to be unnecessary to require a *further* showing, the applicant must have made a valid *prior* showing of the requisite financial information. Moreover, because each waiver is considered on a case-by-case basis, the financial information must be relevant to the current request for a waiver of the fee and it must be sufficient to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.¹⁶

In asserting only that the “station is dark,”¹⁷ Licensee failed to clarify its position before the Commission.¹⁸ Rather than the unsupported conclusion offered, Licensee should have provided evidence whether its application to go dark was based on financial hardship that was “fully document[ed]”¹⁹ and accepted by the Commission as such evidence, and if not (apparently as is the case here), licensee should have provided sufficient documentation to meet the standard set forth at 47 C.F.R. § 1.1166.²⁰ In this case, Licensee’s justification for its request to go dark was for “other,” *i.e.*, “APPLICANT REQUESTS SPECIAL TEMPORARY AUTHORITY (STA) TO TEMPORARILY SUSPEND THE BROADCAST OPERATIONS OF WRGC(AM) ... OWING TO THE LICENSEE’S FINANCIAL CONCERNS. ... AN STA OF 180 DAYS IS REQUESTED, BY WHICH TIME APPLICANT ANTICIPATES BEING ABLE TO RESUME WRGC’S OPERATIONS.”²¹ That is not evidence of financial hardship. We will not assume the existence or sufficiency of information that is not part of the *Request*. Accordingly, without sufficient evidence of financial hardship, we deny licensee’s *Request* for a waiver of the required regulatory fee and a refund of the amount paid.

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

¹⁵ 10 FCC Rcd at 12762 ¶ 15.

¹⁶ 9 FCC Rcd at 5344 ¶ 29.

¹⁷ *Request* at 1.

¹⁸ *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).

¹⁹ 10 FCC Rcd at 12762 ¶ 13 (“It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.”).

²⁰ 47 C.F.R. § 1.1166 (“The fee . . . may be waived . . . in specific instances, on a case-by-case basis, where good cause is shown and where waiver . . . of the fee would promote the public interest.”). *See also* 10 FCC Rcd at 12761-62 ¶ 13.

²¹ Notification of Suspension of Operations/Request for Silent STA, BLSTA-20110901ABQ, Exhibit 1, Description. *See also* Notification of Suspension of Operations/Request for Silent STA, BLSTA-20111223ABR, Exhibit 1, Description, “WRGC WENT SILENT ON DECEMBER 10, 2011 ... THE STATION IS IN THE PROCESS OF MOVING FROM 680 KHZ TO 540 KHZ”

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

Adona

OFFICE OF
MANAGING DIRECTOR

February 2, 2012

Mr. Ron Bevins
Grupo Hispanavision, LLC
715 W. Yakima Avenue
Yakima, WA 98902-3046

Re: Grupo Hispanavision, LLC
Stations: KWYT-LP; K04OI; K13WP; K23FU; K29FF;
K43GY; K49GF; K08LU
FY 2011 Late Penalties Waiver Request
Dated: 11-15-11
Fee Control No.: RROG-11-00014048
Regulatory Fees Amount: \$3,160.00
Late Penalties Amount: \$790.00
Date Regulatory Fees Paid: 11-4-11
Date Late Penalties Paid: 11-4-11

Dear Mr. Bevins:

This letter responds to the above-referenced *Request*¹ for waiver of the penalties for late payment of the Fiscal Year (FY) 2011 regulatory fees. For the reasons stated herein, we deny your *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,² and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."³ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee . . . which was not paid in a timely manner."⁴

¹ Letter from Ron Bevins, Grupo Hispanavision, 715 W. Yakima Avenue, Yakima, WA 98902 to FCC, Office of Secretary, 455 12th Street, S.W., Washington, DC 20554 (dated Nov.15, 2011)(*Request*).

² 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

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

⁴ 47 C.F.R. § 1.1164.

The deadline for paying the FY 2011 regulatory fees was September 16, 2011,⁵ which you missed. As a result, as required by 47 U.S.C. § 159(c)(1), we assessed a penalty equal to twenty five percent (25%) of each fee that was not paid in a timely manner. On November 4, 2011, you paid the required regulatory fees and penalties. Thereafter, on November 15, 2011, you asserted “that [you] recently discovered that the FCC was no longer providing port card reminders to pay [y]our annual regulatory fees. [You] depended on th[e] reminder to avoid the draconian penalty fee that [you] incur[ed] when [you] paid [y]our regulatory fees . . . on November 4th.”⁶ These points, however, do not present legal grounds or clear mitigating circumstances to waive collection of the penalty. 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.”⁷ The absence of a reminder notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample prior notice that it would not be sending paper pre-bills to regulatees.

For example, on May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency’s Fee Filer system.⁸ The Commission explained that, “[c]onsistent with [its] proposal to require mandatory use of Fee Filer . . . , pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail.”⁹ On July 31, 2009, the Commission released its order adopting these proposals.¹⁰ In that order, the Commission advised regulatees that “because all pre-bills will be loaded into Fee Filer, once Fee Filer becomes operational, this will be the signal by which licensees can view their pre-bill information online.”¹¹ The Commission issued a public notice informing regulatees that use of Fee Filer was mandatory in FY 2009 and that “regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer.”¹² On September 2, 2009, the Commission released a third public notice reiterating that **“HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.”**¹³

⁵ See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time (ET), *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline is Extended to 11:59 PM, ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

⁶ *Id.*

⁷ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

⁸ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972 ¶ 16 (2009).

⁹ *Id.* at 5973 ¶ 20.

¹⁰ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10307-09 ¶¶ 18-27 (2009) (*FY 2009 Regulatory Fees NPRM*).

¹¹ *Id.* at 10309 ¶ 26.

¹² *Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

¹³ *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

Similarly, in 2010, the Commission's final order on the FY 2010 regulatory fees reaffirmed that regulatees should "check[] the Commission's website periodically beginning in July" in order to "ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment."¹⁴ This notification was part of the Commission's increased effort to notify licensees that hardcopy bills will no longer be mailed.¹⁵

Every licensee is obliged to make the fee payment by the deadline. In such cases, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.¹⁶ Further, although the Commission has waived late fees on a showing of good cause on a case-by-case basis, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations. As we explained, the penalty required by 47 U.S.C. § 159(c)(1) is not limited to situations where the failure to pay was knowing or willful. If it is to be waived, it is "only in the most extraordinary circumstances,"¹⁷ which are not present in your situation. Thus, we must deny your *Request*, and we cannot refund the penalty amount paid.

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

¹⁴ *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291 ¶ 37 (2010).

¹⁵ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923 ¶ 12 (2010).

¹⁶ *See XO Communications, LLC* (OMD, Nov. 10, 2010).

¹⁷ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

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FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 22 2012

OFFICE OF
MANAGING DIRECTOR



Lee J. Peltzman, Esq.
1850 M Street, NW, Suite 240
Washington, DC 20036

Re: Hatfield McCoy Communications, Inc.
Station: WHJC (AM)
FY 2011 Regulatory Fee Waiver Request
Filed: 9-13-11
Fee Control No.: RROG-11-00013929
Regulatory Fee Amount: \$ 600.00
Date Regulatory Fee Paid: Not Paid

Dear Mr. Peltzman:

This letter responds to Hatfield McCoy Communications, Inc. (Hatfield McCoy's or licensee's) *Request*,¹ for waiver and deferment of the required Fiscal Year (FY) 2011 regulatory fee due for Station WHJC (AM). Our records reflect that this fee has not been paid. For the reasons stated herein, we deny licensee's *Request*. Accordingly, the \$600.00 fee is due, and to avoid accrual of additional charges, payment must be received within 30 days of the date of this letter.

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 case-by-case showing of good cause and a finding that the public interest will be served thereby.² 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.³ 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.⁴ "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."⁵ In reviewing

¹ Letter from Lee J. Peltzman, Esq., 1850M Street, NW, Suite 240, Washington, DC 20036, to FCC, Office of the Managing Director, 445 12th St., SW, Washington, DC 20554 (received Sept. 13, 2011) (*Request*).

² 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).

³ 9 FCC Rcd at 5344 ¶ 29.

⁴ 10 FCC Rcd at 12761-62 ¶ 13.

⁵ *Id.*

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.⁶ 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. And pertinent to stations that file "[p]etitions to go dark," as is set forth at 47 C.F.R. § 73.1740(a)(4), the Commission opined that such petitions "are generally based on financial hardship."⁷ And "[u]nder th[ose] circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship."⁸ Licensee did not establish that those circumstances are present and applicable.

Licensee refers to the Commission's above-referenced discussion concerning a dark station, and it asserts only that "Station WHJC went silent on June 3, 2011 and filed a request for silent special temporary authority on June 3, 2011 The station is expected to remain silent on the fee payment due date. ... Since ... WHJC(AM) was not operating on the date that the regulatory fees were due, the Commission should grant [the] request"⁹ However, licensee did not include verified records of the application materials or provide any verified financial documentation. Moreover, licensee did not explain how it met the Commission's standard at 47 C.F.R. § 1.1166.

A waiver of the Commission's rules is appropriate only if special circumstances warrant deviation from the general rule, and such deviation will serve the public interest.¹⁰ In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹¹ In this case, however, licensee did not carry its burden as set forth at 47 C.F.R. § 1.1166 to demonstrate that on "a case-by-case" it has shown "good cause" and that the "waiver [of the required fee] would promote the public interest."¹² Instead, licensee asserts only that its station was silent, but it did not present any evidence to establish whether or not its application to go silent was supported by a fully documented financial position that shows at the time the FY 2011 regulatory fee was due it lacked funds sufficient to pay the regulatory fee and to maintain its service to the public.¹³ It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.¹⁴ Inherent in the Commission's statement that "it is unnecessary to require a licensee to make a *further showing of*

⁶ *Id.*

⁷ 10 FCC Rcd at 12762 ¶ 15.

⁸ *Id.*

⁹ *Request* at 1-2.

¹⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹¹ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹² 47 C.F.R. § 1.1166.

¹³ 10 FCC Rcd at 12761-62 ¶ 13.

¹⁴ The FCC Form to request silent status includes in the section, "Reason for going silent" five categories, i.e., Technical, Financing, Staffing, Program Source, and Other. The applicant also may provide the reason for the request.

financial hardship (emphasis added),”¹⁵ is the understanding that the applicant’s petition to go dark was (a) filed because of financial hardship and (b) supported by full documentation of its financial position that met the Commission’s relevant standards. Plainly, in order for it to be unnecessary to require a *further* showing, the applicant must have made a valid *prior* showing of the requisite financial information. Moreover, because each waiver is considered on a case-by-case basis, the financial information must be relevant to the current request for a waiver of the fee and it must be sufficient to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.¹⁶

In asserting only that the station currently is dark,¹⁷ licensee failed to clarify its position before the Commission.¹⁸ Rather than the unsupported conclusion offered, licensee should have provided evidence whether its application to go dark was based on financial hardship that was “fully document[ed]”¹⁹ and accepted by the Commission as such evidence, and if not (apparently as is the case here), licensee should have provided sufficient documentation to meet the standard set forth at 47 C.F.R. § 1.1166.²⁰ In this case, licensee’s justification for its request to go dark was not for financial reasons, rather because “the station transmitter is in need of repair[, and t]he station is actively seeking to obtain the necessary parts to repair the transmitter.” That is not evidence of financial hardship.²¹ We will not assume the existence or sufficiency of information not part of the request. Indeed, the applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application.²² Accordingly, without sufficient evidence of financial hardship,²³ we deny licensee’s *Request* for a waiver of the required regulatory fee.

Payment of Hatfield McCoy’s FY 2011 regulatory fee is now due. The \$600.00 regulatory fee must be received, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. If licensee fails to pay the full amount due by that date, the debt is delinquent,

¹⁵ 10 FCC Rcd at 12762 ¶ 15.

¹⁶ 9 FCC Rcd at 5344 ¶ 29.

¹⁷ *Request* at 1. As noted below, we determined that on Sep. 27, 2011, licensee amended the content of its application for renewal of its broadcast station license, which in turn resulted in the Media Bureau dismissing the request for STA. Even so, we reviewed FCC File No. BLSTA-201100603ABP that shows licensee stated the reason was “technical” because of “THE STATION TRANSMITTER IS IN NEED OF REPAIR. THE STATION IS ACTIVELY SEEKING TO OBTAIN THE NECESSARY PARTS TO REPAIR THE TRANSMITTER.”

¹⁸ *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).

¹⁹ 10 FCC Rcd at 12762 ¶ 13 (“It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.”).

²⁰ 47 C.F.R. § 1.1166 (“The fee . . . may be waived . . . in specific instances, on a case-by-case basis, where good cause is shown and where waiver . . . of the fee would promote the public interest.”). *See also* 10 FCC Rcd at 12761-62 ¶ 13.

²¹ *See* FCC 303-S, Application for Renewal of Broadcast Station License, FCC File No. BR-20110525ADO, Exhibit 1, “Reason For Amendment, September 27, 2011: . . . WHJC went back on the air on September 26, 2011. . . the transmitter has been repaired and the station is now operating.” Thus, there is no evidence in either the Application for STA or the amendment that licensee verified the existence of financial hardship that would support its request to waive the fee.

²² 47 C.F.R. § 1.65.

²³ *Id.*

and the statutory penalty of 25% of the unpaid fee,²⁴ and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter. Under the law,²⁵ the Commission will initiate collection proceedings. 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', is written over a solid horizontal line.

Mark Stephens
Chief Financial Officer

²⁴ 47 U.S.C. § 159(c)(1). See 9 FCC Rcd at 5346, ¶ 35 (“the petitioner will have 30 days to [pay the fee] in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.”).

²⁵ See 47 C.F.R. § 1.1901, *et seq.*