Adama

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 2 2 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: James Wilson, III
Station: WJJN-LP
Fee: FY 2011 Regulatory Fee
Date Request Filed: 9-13-11
Date Regulatory Fee Paid: 8-28-11
Fee Control No.: RROG-10-00013829
Regulatory Fee Amount: $395.00

Dear Mr. Alpert:

This letter responds to Licensee's *Request,*[1] for a waiver and refund of the above referenced fee. 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.[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

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[1] Letter from Dan J. Alpert, Esq., 2120 N. 21st Road, Arlington, VA 22201, to Managing Director, FCC, 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. 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. ... Accordingly, a waiver and refund of [the fee] that has been paid is appropriate."[8] Licensee provided information that its application for silent status was submitted for "technical" reasons.[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 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.[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 paid, 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*

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[6] *Id.*
[7] 10 FCC Rcd at 12762 ¶ 15.
[8] *Request* at 1.
[9] *See* FCC CDBS Public Access, Application Search Details BLSTA-20110105AAZ.
[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 for "technical" reasons, *i.e.*, a "lightning strike."[21] 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,[22] 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

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[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, FCC File No. BLSTA-20110105AAZ, Exhibit 1, Description (*i.e.*, "LIGHTNING STRIKE").
[22] *Id.*

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

Adama

OFFICE OF
MANAGING DIRECTOR

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

Re: Waiver Request (Dark Station)
Licensee/Applicant: Media One Communications, Inc
Station: W295AP
Fee: FY 2011 Regulatory Fee
Date Request Filed: Sep. 13, 2011
Date Regulatory Fee Paid: (Not paid)
Fee Control No.: RROG-11-00013816

Regulatory Fee Amount:	$ 395.00
25% Penalty:	$ 98.75
Collection Fee:	$ 50.00
Interest:	$ 24.69
Penalties:	$ 148.13

Dear Mr. Alpert:

This letter responds to Licensee's *Request*[1] for a waiver of the above-referenced fee. Although Licensee asserts in the *Request* that "the $395.00 Annual Regulatory Fee ... has been paid," our records do not confirm the claim, rather they show Licensee is delinquent in paying the Fiscal Year (FY) 2011 fee for W295AP. Furthermore, the *Request* does not include a petition to defer payment accompanied by appropriate supporting documentation. Accordingly, as required by the law,[2] we dismiss the *Request* and assess a penalty equal to 25% of the amount of the regulatory fee unpaid.[3] Furthermore, because the unpaid fee is a delinquent debt, we are required to assess the administrative costs of collection, accrued interest, and accrued penalties.[4] Finally, under section 1.1910 of our rules,[5] until this debt is paid or other satisfactory arrangements are made for payment, we are required to withhold action on any application filed by Licensee.

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[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 C.F.R. § 1.1166(c) provides: "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."
[3] 47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164(c).
[4] 31 U.S.C. § 3717(e); 31 C.F.R. § 901.9; 47 C.F.R. § 1.1940.
[5] 47 C.F.R. § 1.1910.

We have dismissed the *Request*; however, had Licensee petitioned to defer payment (or paid the fee and requested a refund), we would nonetheless deny the *Request*. Licensee's mere assertion that the station is silent does not establish financial hardship.

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.[6] 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.[7] 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.[8] "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."[9] 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.[10] 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."[11] 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."[12] Licensee provided a copy of the Application Search Details,[13] but no additional information to support its *Request*, *e.g.*, verified financial documentation.

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[6] 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).
[7] 9 FCC Rcd at 5344 ¶ 29.
[8] 10 FCC Rcd at 12761-62 ¶ 13.
[9] *Id.*
[10] *Id.*
[11] 10 FCC Rcd at 12762 ¶ 15.
[12] *Request* at 1.
[13] Application Search Details, BLSTA-20110909ACX.

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.[14] In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.[15] 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."[16] 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.[17] It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.[18] Inherent in the Commission's statement that "it is unnecessary to require a licensee to make a *further showing of financial hardship* (emphasis added),"[19] 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.[20]

In asserting only that the "station is dark,"[21] Licensee failed to clarify its position before the Commission.[22] 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]"[23] 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.[24] In this case, Licensee's justification for its request to go dark was for "other," *i.e.*, "MOVING TO NEW SITE TO EFFECTUATE BPFT-20110502AES."[25] That is not evidence of financial hardship. We will not assume the existence or sufficiency of

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[14] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.
[15] *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).
[16] 47 C.F.R. § 1.1166.
[17] 10 FCC Rcd at 12761-62 ¶ 13.
[18] 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.
[19] 10 FCC Rcd at 12762 ¶ 15.
[20] 9 FCC Rcd at 5344 ¶ 29.
[21] *Request* at 1.
[22] *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).
[23] 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.").
[24] 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.
[25] Notification of Suspension of Operations/Request for Silent STA, BLSTA-20110909ACX, Exhibit 1, Description. *See also* Section I, Item 7 (Licensee asserted it had gone silent on 8/21/2011.).

information that is not part of the *Request*. Accordingly, in addition to the grounds stated above for dismissal, we deny Licensee's *Request* for a waiver of the required regulatory fee.

Payment of Licensee's FY 2011 regulatory fee plus the penalty and all accrued charges is now due, which, as of the date of this letter, is $ 716.57. That amount must be received, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. Thereafter, additional charges will accrue. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

Mark Stephens
Chief Financial Officer

Enclosure

Adams

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

February 2, 2012

Aaron P. Shainis, Esq.
Shainis & Peltzman, Chartered
1850 M Street, NW, Suite 240
Washington, DC 20036

Re: KM Television of Flagstaff, LLC
Station: KCFG (TV)
FY 2011 Regulatory Fee Waiver Request
Filed: 9-14-11
Fee Control No.: RROG-11-00013908
Regulatory Fee Amount: $ 32,950.00

Dear Mr. Shainis:

This letter responds to KM Television of Flagstaff, LLC (Licensee's) *Request* [1] for waiver of the Fiscal Year (FY) 2011 regulatory fees and deferral of payment. Licensee included an "unaudited Profit and Loss Statement (*P&L*) for calendar year 2010," and offered to "submit [a balance sheet] as a supplement."[2] Furthermore, it asserted its "poor financial condition . . . reflects that that station was silent for most of the year and only recently resumed broadcast operations."[3] 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 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 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

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[1] Letter from Aaron P. Shainis, Esq., Shainis & Peltzman, Chartered, 1850 M Street, NW, Washington, DC 20036 to FCC, Office of Secretary, 455 12th Street, NW, Washington, DC (dated Sept. 14, 2011)(*Request*).
[2] *Id.* at 2.
[3] *Id.*
[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.
[6] 10 FCC Rcd at 12761-62 ¶ 13.

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.

Licensee has the burden of demonstrating that a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the Commission's regulatory action.[9] To carry its burden, Licensee must present compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.[10] For the following reasons, we find that Licensee did not meet its obligation.

First, the *P&L* does not present the range of information usually included within other documents, *e.g.*, a balance sheet, cash flow projection, and reports of compensation. A profit and loss statement does not fully document an entity's financial position and it does not demonstrate whether that entity lacks sufficient funds to pay its regulatory fee and to maintain its service to the public. Second, the financial information that was submitted does not present a compelling case that Licensee's service to the public will suffer upon payment of the required regulatory fees. Simply, the information furnished does not show compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.

Rather than only the prior year's *P&L*, Licensee should have delivered with its *Request* complete relevant information, *e.g.*, a balance sheet, cash flow projection for the next twelve months (with an explanation of how calculated), a list of Licensee's highest paid employees, other than officers, and the amount of their compensation, and similar information. The *P&L* shows that during calendar year 2010, Licensee reported no income and $49,327.50 in expenses,[11] which was also amount of its net loss. It did not provide any financial information relevant to 2011. Furthermore, Licensee asserted "the station was silent for most of the year," but it failed to provide the details of the request.[12] In that case, we will not speculate on the content of the request or its supporting evidence. Thus, the brevity of the submitted financial

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[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *See Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner . . . has the 'burden of clarifying its position' before the agency."). *See also* 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).
[11] Licensee asserted it has "no full-time employees," instead relying on "contract workers," but it intends to "hire employees" (*Request* at 2). Further, it paid $38,262.50 as a consulting fee (*Request*, Schedule 2). This information raises general questions as to the amount of Licensee's assets and/or capitalization from its parent entity, KM Communications.
[12] *See e.g.*, 47 C.F.R. § 73.1740. This section regulates the minimum operating schedules for broadcast radio and television stations. Under our rules, a licensee may request "dark status" for reasons other than financial hardship, *e.g.*, technical, staffing, program source, other.

information fails to provide clear evidence from which to determine whether Licensee's ability to serve the public will be adversely changed upon payment of some or all of the regulatory fees. Moreover, Licensee failed to provide relevant information concerning KM Communications, Inc., the parent entity that owns and operates this station as part of its "more than 40 television and radio stations across the United States and Guam."[13] Because *Request* was submitted without sufficient supporting evidence, it is denied.

Payment of $32,950.00 for the FY 2011 regulatory fee is now due. The regulatory fee must be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. If Licensee fails to pay the full amount due by that date, the debt is delinquent, and the statutory penalty of 25% of the unpaid fee,[14] and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter. Under the law,[15] the Commission will initiate collection proceedings. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

Mark Stephens
Chief Financial Officer

Enclosure

[13] *See e.g.*, http://kmcommunications.com/.
[14] 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.").
[15] *See* 47 C.F.R. § 1.1901, *et seq.*

Adama J.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
MAR 28 2012

OFFICE OF
MANAGING DIRECTOR

Steven E. Alfieris, Esq.
Pappas Telecasting Companies
823 West Center Avenue
Visalia, CA 93291

Re: Waiver Request (Dark Station)
Licensee: Pappas Telecasting of the Gulf Coast, L.P.
Station: KVVV-LP
Fee: FY 2011 Regulatory Fee
Date Request Filed: 9-13-11
Date Regulatory Fee Paid: (Not paid)
Fee Control No. RROG-11-0013951

Regulatory Fee Amount:	$ 395.00
25% Penalty:	$ 98.75
Collection Fee:	$ 50.00
Interest:	$ 2.22
Penalties:	$ 14.82

Dear Mr. Alfieris:

This letter responds to Licensee's *Request*[1] for a waiver of the above-referenced fee. The *Request* does not include a petition to defer payment accompanied by appropriate supporting documentation, and our records reflect that Licensee did not pay the fee. Accordingly, as required by the law,[2] we dismiss the *Request* and assess a penalty equal to 25% of the amount of the regulatory fee unpaid.[3] Furthermore, because the unpaid fee is a delinquent debt, we are required to assess the administrative costs of collection, accrued interest, and accrued penalties.[4] Finally, under section 1.1910 of our rules,[5] until the debt is paid or other satisfactory arrangements are made for payment, we are required to withhold action on any application filed by Licensee.

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[1] Letter from Steven E. Alfieris, Esq., Pappas Telecasting Companies, 823 West Center Avenue, Visalia, CA 93291 to Marlene H. Dortch, Secretary, FCC, 445 12th St. S.W, Washington, DC 20554 (received Sept. 13, 2011) (*Request*).

[2] 47 C.F.R. § 1.1166(c) provides: "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."

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

[4] 31 U.S.C. § 3717(e); 31 C.F.R. § 901.9; 47 C.F.R. § 1.1940.

[5] 47 C.F.R. § 1.1910.

We have dismissed the *Request*; however, had Licensee petitioned to defer payment (or paid the fee and requested a refund), we would nonetheless deny the *Request*. Licensee's mere assertion that the station is silent does not establish financial hardship.

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.[6] 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.[7] 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.[8] "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."[9] 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.[10] 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."[11] 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 "the station is silent. ... The station remains off the air and will not return to the air before the fees are due."[12] Licensee provided no additional information to support the *Request*, *e.g.*, verified records of the application materials or verified financial documentation.

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[6] 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).
[7] 9 FCC Rcd at 5344 ¶ 29.
[8] 10 FCC Rcd at 12761-62 ¶ 13.
[9] *Id.*
[10] *Id.*
[11] 10 FCC Rcd at 12762 ¶ 15.
[12] *Request* at 1.

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.[13] In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.[14] 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."[15] 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.[16] It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.[17] Inherent in the Commission's statement that "it is unnecessary to require a licensee to make a *further showing of financial hardship* (emphasis added),"[18] 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.[19]

In asserting only that the "station is silent,"[20] Licensee failed to clarify its position before the Commission.[21] 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]"[22] 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.[23] In this case, Licensee's justification for its request to go dark was for "financing," *i.e.*, "THE GENERAL PARTNER OF THE LICENSEE IS IN BANKRUPTCY. AS A RESULT, SUFFICIENT FUNDS DO NOT EXIST FOR THE CONTINUED OPERATION OF THE STATION."[24] That is not evidence of financial hardship.

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[13] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.
[14] *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).
[15] 47 C.F.R. § 1.1166.
[16] 10 FCC Rcd at 12761-62 ¶ 13.
[17] 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.
[18] 10 FCC Rcd at 12762 ¶ 15.
[19] 9 FCC Rcd at 5344 ¶ 29.
[20] *Request* at 1.
[21] *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).
[22] 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.").
[23] 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.
[24] Notification of Suspension of Operations/Request for Silent STA, FCC File No. BLSTA-20110119AAK, Exhibit 1, Description.

We will not assume the existence or sufficiency of information not part of the *Request*.[25] Accordingly, in addition to the grounds stated above for dismissal, we deny Licensee's *Request* for a waiver of the required regulatory fee.

Payment of Licensee's FY 2011 regulatory fee plus the penalty and all accrued charges is now due, which, as of the date of this letter, is $560.79. That amount must be received, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. Thereafter, additional charges will accrue. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

Mark Stephens
Chief Financial Officer

Enclosure

[25] Licensee failed to provide any evidence of a bankruptcy proceeding involving the limited partnership. We understand that Licensee is registered under the laws of the State of Delaware as a limited partnership. Under Del. Code § 17-402, a person ceases to be a general partner upon the filing of a voluntary petition in bankruptcy. Under the circumstances, License should have clarified both its status and that of the person who is referred to as the general partner.

Adona J.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
MAR 28 2012

OFFICE OF
MANAGING DIRECTOR

Steven E. Alfieris, Esq.
Pappas Telecasting Companies
823 West Center Avenue
Visalia, CA 93291

Re: Waiver Request (Dark Station)
Licensee: Pappas Telecasting of Opelika, L.P.
Station: WLGA-TV
Fee: FY 2011 Regulatory Fee
Date Request Filed: 9-13-11
Date Regulatory Fee Paid: (Not paid)
Fee Control No. RROG-11-0013948

Regulatory Fee Amount:	$ 3,285.00
25% Penalty:	$ 821.25
Collection Fee:	$ 50.00
Interest:	$ 20.45
Penalties:	$ 123.19

Dear Mr. Alfieris:

This letter responds to Licensee's *Request*[1] for a waiver of the above-referenced fee. The *Request* does not include a petition to defer payment accompanied by appropriate supporting documentation, and our records reflect that Licensee did not pay the fee. Accordingly, as required by the law,[2] we dismiss the *Request* and assess a penalty equal to 25% of the amount of the regulatory fee unpaid.[3] Furthermore, because the unpaid fee is a delinquent debt, we are required to assess the administrative costs of collection, accrued interest, and accrued penalties.[4] Finally, under section 1.1910 of our rules,[5] until the debt is paid or other satisfactory arrangements are made for payment, we are required to withhold action on any application filed by Licensee.

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[1] Letter from Steven E. Alfieris, Esq., Pappas Telecasting Companies, 823 West Center Avenue, Visalia, CA 93291 to Marlene H. Dortch, Secretary, FCC, 445 12th St. S.W, Washington, DC 20554 (received Sept. 13, 2011) (*Request*).

[2] 47 C.F.R. § 1.1166(c) provides: "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."

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

[4] 31 U.S.C. § 3717(e); 31 C.F.R. § 901.9; 47 C.F.R. § 1.1940.

[5] 47 C.F.R. § 1.1910.

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.[13] In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.[14] 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."[15] 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.[16] It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.[17] Inherent in the Commission's statement that "it is unnecessary to require a licensee to make a *further showing of financial hardship* (emphasis added),"[18] 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.[19]

In asserting only that the "station is silent,"[20] Licensee failed to clarify its position before the Commission.[21] 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]"[22] 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.[23] In this case, Licensee's justification for its request to go dark was for "financing," *i.e.*, "DUE TO THE BANKRUPTCY OF THE GENERAL PARTNER OF THE LICENSEE, AND THE SCARCITY OF FUNDS GENERALLY, THE STATION HAS BEEN TAKEN DOWN WHILE THE LICENSEE CONTINUES TO CONSIDER

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[13] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.
[14] *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).
[15] 47 C.F.R. § 1.1166.
[16] 10 FCC Rcd at 12761-62 ¶ 13.
[17] 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.
[18] 10 FCC Rcd at 12762 ¶ 15.
[19] 9 FCC Rcd at 5344 ¶ 29.
[20] *Request* at 1.
[21] *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).
[22] 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.").
[23] 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.

PROGRAMMING CHANGES AND OTHER OPERATING DECISIONS."[24] That is not evidence of financial hardship. We will not assume the existence or sufficiency of information not part of the *Request*.[25] Accordingly, in addition to the grounds stated above for dismissal, we deny Licensee's *Request* for a waiver of the required regulatory fee.

Payment of Licensee's FY 2011 regulatory fee plus the penalty and all accrued charges is now due, which, as of the date of this letter, is $4,299.89. That amount must be received, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. Thereafter, additional charges will accrue. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

Mark Stephens
Chief Financial Officer

Enclosure

[24] Notification of Suspension of Operations/Request for Silent STA, FCC File No. BLSTA-20110623ADL, Exhibit 1, Description.

[25] Licensee failed to provide any evidence of a bankruptcy proceeding involving the limited partnership. We understand that Licensee is registered under the laws of the State of Delaware as a limited partnership. Under Del. Code § 17-402, a person ceases to be a general partner upon the filing of a voluntary petition in bankruptcy. Under the circumstances, License should have clarified both its status and that of the person who is referred to as the general partner.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

Adam a

OFFICE OF
MANAGING DIRECTOR

February 2, 2012

Aaron P. Shainis, Esq.
Shainis & Peltzman, Chartered
1850 M Street, NW, Suite 240
Washington, DC 20036

Re: Pocatello Channel 15, LLC
Station: KPIF-TV
FY 2011 Regulatory Fee Waiver Request
Filed: 9-14-11
Fee Control No.: RROG-11-00013917
Regulatory Fee Amount: $ 3,275.00

Dear Mr. Shainis:

This letter responds to Pocatello Channel 15, LLC (Licensee's) *Request* [1] for waiver of the Fiscal Year (FY) 2011 regulatory fees. Licensee included an "unaudited Profit and Loss Statement (*P&L*) for calendar year 2010," and offered to "submit [a balance sheet] as a supplement."[2] 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 showing of good cause and a finding that the public interest will be served thereby.[3] 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.[4] 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.[5] "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."[6] In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if

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[1] Letter from Aaron P. Shainis, Esq., Shainis & Peltzman, Chartered, 1850 M Street, NW, Washington, DC 20036 to FCC, Office of Secretary, 455 12th Street, NW, Washington, DC (dated Sept. 14, 2011)(*Request*).
[2] *Id.* at 2.
[3] 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).
[4] 9 FCC Rcd at 5344 ¶ 29.
[5] 10 FCC Rcd at 12761-62 ¶ 13.
[6] *Id.*

available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.[7] 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.

Licensee has the burden of demonstrating that a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the Commission's regulatory action.[8] To carry its burden, Licensee must present compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.[9] For the following reasons, we find that Licensee did not meet its obligation.

First, the *P&L* does not present the range of information usually included within other documents, *e.g.*, a balance sheet, cash flow projection, and reports of compensation. A profit and loss statement does not fully document an entity's financial position and it does not demonstrate whether that entity lacks sufficient funds to pay its regulatory fee and to maintain its service to the public. Second, the financial information that was submitted does not present a compelling case that Licensee's service to the public will suffer upon payment of the required regulatory fees. Simply, the information furnished does not show compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.

Rather than only the prior year's *P&L*, Licensee should have delivered with its *Request* complete relevant information, *e.g.*, a balance sheet, cash flow projection for the next twelve months (with an explanation of how calculated), a list of Licensee's highest paid employees, other than officers, and the amount of their compensation, and similar information. The *P&L* shows only that during calendar year 2010, Licensee had a net loss of $754.90, but nothing relevant to 2011. Thus, in its brevity, the submitted financial information fails to provide clear evidence from which to determine whether Licensee's ability to serve the public will be adversely changed upon payment of some or all of the regulatory fees. Moreover, Licensee failed to provide relevant information concerning KM Communications, Inc., the parent entity that owns and operates this station as part of its "more than 40 television and radio stations across the United States and Guam."[10] Because *Request* was submitted without sufficient supporting evidence, it is denied.

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[7] *Id.*
[8] *Id.*
[9] *See Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner . . . has the 'burden of clarifying its position' before the agency."). *See also* 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).
[10] See e.g., http://kmcommunications.com/.

Payment of $3,275.00 for the FY 2011 regulatory fee is now due. The regulatory fee must be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. If Licensee fails to pay the full amount due by that date, the debt is delinquent, and the statutory penalty of 25% of the unpaid fee,[11] and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter. Under the law,[12] the Commission will initiate collection proceedings. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

Mark Stephens
Chief Financial Officer

Enclosure

[11] 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.").
[12] *See* 47 C.F.R. § 1.1901, *et seq.*

Adams

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: Rehoboth Beach Communications, Inc.
Station: WGPS-LP
Fee: FY 2011 Regulatory Fee
Date Request Filed: Sept. 13, 2011
Date Regulatory Fee Paid: Sept. 6, 2011
Fee Control No.: RROG-11-00013855
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 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.[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

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[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

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[5] *Id.*
[6] *Id.*
[7] 10 FCC Rcd at 12762 ¶ 15.
[8] *Request* at 1.
[9] Application Search Details, BLSTA-20110817ACC.
[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.*, "TOWER LANDLORD PROBLEMS, AND PREPARATIONS FOR THE EVENTUAL ASSIGNMENT OF THE STATION LICENSE."[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

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[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-20110817ACC, Exhibit 1, Description.

Adam a

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

February 2, 2012

Mr. Nelson M. Wilson
KBGN 1060 AM
3303 E. Chicago St.
Caldwell, ID 83605

Re: Station KBGN 1060AM
FY 2011 Late Penalty Waiver Request
Dated: 10-10-11, Received: 10-17-11
Fee Control No.: RROG-11-00013975
Regulatory Fee Amount: $1,810.00
Late Penalty Amount: $452.50
Date Regulatory Fee Paid: 10-4-11
Date Late Penalty Paid: 10-4-11

Dear Mr. Wilson:

This letter responds to the above-referenced *Request*[1] for waiver of the penalty for late payment of the Fiscal Year (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]

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[1] Letter from Nelson M. Wilson, KBGM 1060 AM, 3303 E. Chicago St., Caldwell, ID 83605 to FCC, Office of Managing Director, 455 12th Street, S.W., Washington, DC 20554 (Attn: Regulatory Fee Waiver/Reduction Request) (dated Oct. 10, 2011, received Oct. 17, 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] however, you did not make payment. As a result, as required by 47 U.S.C. § 159(c)(1), we assessed a penalty equal to twenty five percent (25%) of the fee that was not paid in a timely manner. On October 4, 2011, you paid the required regulatory fee and penalty. Thereafter, on October 10, 2011, you asserted that "[n]ot until October 3 did [you] realize that [you] were not yet informed of the FY 2011 Regulatory Fee structure and due date."[6] You immediately searched your archived files and discovered you had missed the relevant Public Notices. Then you made an electronic payment. 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]

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[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).

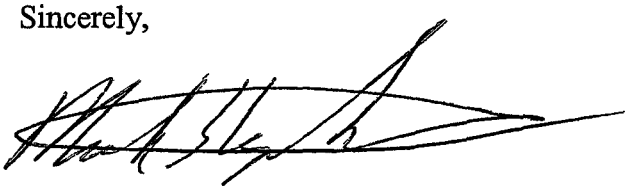
[13] *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, Public Notice,* 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

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] Although on a case-by-case basis, the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations. 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

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[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).