

Adama

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
JUL 09 2012

OFFICE OF
MANAGING DIRECTOR

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

Re: FY 2011 Regulatory Fee Waiver Request
(Financial Hardship; 47 CFR 1.1166(c))
Licensee/Applicant: Keyhole Broadcasting, LLC
Station: KGCC (FM)
Date Filed: Sep. 13, 2011
Fee Control No.: RROG 11-00013933
Fee and Late Payment Penalties and Charges Due:
Regulatory Fee Amount (total): \$1,500.00
Penalty (total): \$375.00
Collection Fees (total): \$50.00
Interest: \$14.63
Penalties: \$87.75
Total Fee, Penalties and
Charges (as of Jun. 28, 2012) \$2,027.38

Dear Counsel:

This responds to Licensee's *Request*¹ for waiver of the Fiscal Year (FY) 2011 regulatory fee due for Station KGCC (FM) on the grounds of financial hardship. Our records reveal that Licensee did not pay the \$1,500.00 FY 2011 regulatory fee, and although Licensee petitioned to defer payment, that petition was not supported.² Accordingly, as required by the law,³ we dismiss the *Request* and assess a penalty equal to 25% of the amount of the unpaid regulatory fee.⁴ Furthermore, because the unpaid fee is a delinquent debt, we are required to assess the administrative costs of collection, accrued interest, and accrued penalties.⁵ Finally, under section 1.1910 of our rules,⁶

¹ Letter from Lee J. Peltzman, Esq., Shainis & Peltzman, Chartered, 1850 M Street, N.W., Washington, DC 20036 to Marlene H. Dortch, FCC, Attn: Office of the Managing Director, 455 12th Street, N.W., Washington, DC 20554 (dated Sept. 13, 2011)(*Request*).

² 47 C.F.R. § 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship."); Assessment and Collection of Regulatory Fee for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011) ("A regulatee's mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed.")

³ *Id.*

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

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

⁶ 47 C.F.R. § 1.1910.

until all debts are paid or other satisfactory arrangements are made for payment, we are required to withhold action on any application filed by Licensee.

We have dismissed the *Request*; however, because Licensee's mere assertion that the station is silent does not establish financial hardship, we would nonetheless deny it even if Licensee paid the fee and requested a refund.

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.⁷ The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.⁸ Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.⁹ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."¹⁰ In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.¹¹ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees. Moreover, 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."¹² 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 "went silent" and that "is expected to remain silent on the fee payment due date."¹³ Licensee referred to the file number of its submitted notification of

⁷ 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

⁸ 9 FCC Rcd at 5344 ¶ 29.

⁹ 10 FCC Rcd at 12761-62 ¶ 13.

¹⁰ *Id.*

¹¹ *Id.*

¹² 10 FCC Rcd at 12762 ¶ 15.

¹³ *Request* at 1.

suspension of operations/request for silent special temporary authority (STA);¹⁴ however, it did not provide any documentation 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.¹⁵ In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹⁶ 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."¹⁷ Instead, Licensee asserts only that its station was silent. It did not present any evidence to establish whether 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.¹⁸ It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.¹⁹ Inherent in the Commission's statement that "it is unnecessary to require a licensee to make a *further showing of financial hardship* (emphasis added),"²⁰ 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.²¹

In asserting only that the station is "expected to remain silent on the fee payment due date,"²² Licensee failed to clarify its position before the Commission.²³ Rather than the unsupported conclusion offered, Licensee should have provided evidence whether it ever filed an application to go dark based on financial hardship that was "fully document[ed]"²⁴ 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. § 1.1166.²⁵ In

¹⁴ *Id.*, referring to Notification of Suspension of Operations/Request for Silent STA, FCC File Number: BLSTA-20110627ACG.

¹⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹⁶ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹⁷ 47 C.F.R. § 1.1166.

¹⁸ 10 FCC Rcd at 12761-62 ¶ 13.

¹⁹ 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.

²⁰ 10 FCC Rcd at 12762 ¶ 15.

²¹ 9 FCC Rcd at 5344 ¶ 29.

²² *Request* at 1.

²³ *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).

²⁴ 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.").

²⁵ 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.

this case; Licensee stated in its request to go silent "STATION KGCC TEMPORARILY DISCONTINUED BROADCASTING AS A RESULT OF FINANCIAL CONSTRAINTS."²⁶ Mere mention of the undefined term, financial constraints, is not evidence of Licensee's fully documented 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.

Payment of \$2,027.38, which is Licensee's FY 2011 regulatory fee plus the 25% penalty, accrued interest and penalty, and administrative charges of collection, must be received, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. Moreover, as noted above, because Licensee is delinquent in paying the fee, until the full amount due is paid, we are required to withhold action on any application filed or pending by Licensee.²⁷ If full payment of that amount is not received by that date, additional interest, penalties, and charges required by 31 U.S.C. § 3717(e) will continue to accrue from the date of this letter. Furthermore, under the law,²⁸ the Commission will initiate collection proceedings against Licensee. 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

²⁶ BLSTA-20110627ACG., *supra*.

²⁷ 47 C.F.R. § 1.1910.

²⁸ See 47 C.F.R. § 1.1901, *et seq.*

Shainis & Heltzman, Chartered

Counselors at Law

Aaron H. Shainis
aaron@s-plaw.com
Lee J. Heltzman
lee@s-plaw.com

Suite 240
1850 M Street, N.W.
Washington, D.C. 20036
(202) 293-0011
Fax (202) 293-0810
e-mail: shainis@heltzman.com

Special Counsel
Stephen C. Teckar
steve@s-plaw.com

Of Counsel
William H. Burkoss, III
bill@s-plaw.com
Robert J. Keller
bob@s-plaw.com

September 13, 2011

FILED/ACCEPTED

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
Attn: Office of the Managing Director,
Regulatory Fee Waiver/Reduction Request
445 12th Street, S.W.
Washington, D.C. 20554

SEP 13 2011

Federal Communications Commission
Office of the Secretary

Re: Request for Regulatory Fee Waiver/Deferment
Keyhole Broadcasting, LLC

Dear Ms. Dortch:

On behalf of Keyhole Broadcasting, LLC ("Keyhole"), licensee of Station KGCC(FM), Gillette, Wyoming, pursuant to the Commission August 2011 "Waivers, Reductions and Deferments of Regulatory Fees" Fact Sheet, this will respectfully request a waiver of the annual regulatory fees to be paid by Keyhole for KGCC(FM) for the fiscal year 2011, as well as a deferment of the deadline for payment of the regulatory fee. The Fact Sheet states that the Commission may waive payment of a fee 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.

Station KGCC went silent on June 24, 2011 and filed a request for silent special temporary authority on June 27, 2011 (BLSTA-20110627ACG). The station is expected to still be silent on the fee payment due date.

The Commission has determined previously that the imposition of a regulatory fee could be an impediment to the restoration of service by dark stations and that the Commission, therefore, would waive the fee requirement for stations which have ceased operation¹. Since the Commission's records will reflect that Station KGCC was not operating on the date that the

¹ *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees*, 10 FCC Rcd. 12759, 12562 (1995). The Commission noted therein that it would "grant petitions for waivers of the regulatory fees on grounds of financial hardship from licensees of broadcast stations which are dark (not operating). When a station is dark, it generally is either without or with greatly reduced revenues... 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." (emphasis added).

ORIGINAL

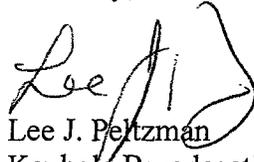
Shainis & Peltzman, Chartered

Marlene H. Dortch
September 12, 2011
Page 2 of 2

regulatory fees were due, the Commission should grant this request for a waiver of the 2011 regulatory fees.

Please contact undersigned counsel in the event the Commission has any questions with respect to this request for a Waiver.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee J. Peltzman". The signature is stylized and written over the printed name.

Lee J. Peltzman
Keyhole Broadcasting, LLC

Adama

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
JUN 15 2012

OFFICE OF
MANAGING DIRECTOR

Nancy L. Isserlis, Esq.
Winston & Cashatt
601 W. Riverside, Suite 1900
Spokane, WA 99201-0695

Re: Waiver Request (Financial Hardship; 47 C.F.R.
§ 1.1166)
Licensee/Applicant: Nancy L. Isserlis, Receiver for
KAZZ
Stations: KAZZ (FM), KAZZ-FM1
Fee: FY 2011 Regulatory Fees
Date Request Filed: Aug. 26, 2011
Fee Control No.: RROG 11-00013708
Fee and Late Payment Penalties and Charges Due:
KAZZ(FM) \$1,350.00
KAZZ-KM1 (Expired) 0
\$1,350.00 x 25% (due 9-17-2011) \$337.50
Interest (1%) from 9-17-2011 \$12.66
Penalty (6%) from 9-17-2011 \$75.94
Administrative charge for collection \$50.00
Total Due as of June 15, 2012 \$1,826.10

Dear Counsel:

This responds to Licensee's *Request*¹ for a waiver of the required Fiscal Year (FY) 2011 regulatory fees on the ground that a Receiver holds the licenses. Because Licensee did not petition to defer payment, and our records reflect that the FY 2011 fee for Station KAZZ (FM) has not been paid on the date due, under 47 C.F.R. § 1.1166(c),² we dismiss the *Request* and assess a 25%-penalty.³ Furthermore, from September 17, 2011, the date on which the unpaid fee and statutory penalty became delinquent,⁴ interest, penalties, and the administrative charge for

¹ Letter from Nancy L. Iselin, Receiver for KAZZ, Winston & Cashatt, Lawyers, 601 W. Riverside, Suite 1900, Spokane, WA 99201-0695 to Marlene H. Dortch, Secretary, FCC, 445 12th St. S.W., Rm 1-A625, Washington, DC (Aug. 26, 2011) (*Request*).

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

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

⁴ See 47 C.F.R. §§ 1.1164, 1.1901, *et seq.*

Nancy L. Isserlis, Esq.

collection accrued.⁵ In the alternative, even if Licensee submitted a petition to defer payment, we would dismiss that portion of the *Request* pertaining to Station KAZZ-FM1 as moot, and deny that portion of the *Request* pertaining to Station KAZZ (FM).

Licensee asserts she acquired the Stations after they were “placed in receivership by order of the Spokane County Superior Court in the state of Washington on May 8, 2009.”⁶ An application to assign “Station KAZZ to Joseph Nappi . . . is pending[; however,] the assignment will not be consummated prior to [the date the fees are due].”⁷ Licensee did not provide information that established the grounds for receivership, documented the Station’s financial condition, explained the Station’s broadcasting status, or illuminated its application to assign Station KAZZ (FM).⁸ We first turn to Station KAZZ-FM1.

Our records show that FM Booster Station KAZZ-FM1 had been silent since June 4, 2008, and it had failed to transmit broadcast signals for any consecutive 12-month period, thus under 47 U.S.C. § 312(g) and 47 C.F.R. § 73.1740(c), the station license expired as a matter of law on June 5, 2009. On July 28, 2011, the Commission modified its databases to indicate that expiration.⁹ We have no record of Licensee seeking reconsideration of the expiration notice or providing relevant information to modify the Commission’s notice; consequently, that portion of the *Request* seeking a waiver of the FY 2011 regulatory fee for Station KAZZ-FM1 is moot and is dismissed.¹⁰ We now turn to that portion of the *Request* pertaining to Station KAZZ (FM).

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.¹¹ 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.¹² 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.¹³ “Mere allegations or documentation of financial loss, standing alone,” do not suffice

⁵ 31 U.S.C. § 3717, 47 C.F.R. § 1.1940.

⁶ *Request* at 1.

⁷ *Id.* at 2.

⁸ FCC 314 Application for Consent to Assignment of Broadcast Station Construction Permit or License BALH-20110721AKQ (*Assignment Application*).

⁹ Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, FCC to Gerald D. Clifton, Proactive Communications, Inc., 7829 East Highland Ave., Scottsdale, AZ 85251 (Jul. 28, 2011). Our records pertaining to Station KAZZ-FM1 do not show that Licensee filed a Change in Official Mailing Address for Broadcast Station.

¹⁰ Licensee did not clarify whether the Receivership Order, which does not identify KAZZ-FM1 as an asset, extended the appointment to that station. *See* FCC 316 Application for Consent to Assign Broadcast Station Construction Permit or License or to Transfer Control of Entity Holding Broadcast Station Construction Permit or License BALH-20090511BAU, Attachment 6, Receivership Order (Receivership Order) (“The Court hereby appoints NANCY L. ISSERLIS, as the General Receiver . . . of the assets of KAZZ-FM . . .”).

¹¹ 47 U.S.C. § 159(d); 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* 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).

¹² 9 FCC Rcd at 5344 ¶ 29.

¹³ 10 FCC Rcd at 12761-62 ¶ 13.

Nancy L. Isserlis, Esq.

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.”¹⁴ 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.¹⁵ 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.

Where relevant, the fact that the licensee is in bankruptcy or receivership¹⁶ is evidence of financial hardship; however, that fact will not relieve the petitioner of meeting its standard. Thus, we review each request, including those in which the licensee asserts bankruptcy, on a case-by-case basis to determine whether the public interest warrants a waiver of the fee.¹⁷ In this instance, Licensee is not in bankruptcy and she is not a Receiver appointed to liquidate the assets of an insolvent business entity; rather Licensee is the “General Receiver ... of the assets of KAZZ-FM ... to keep, preserve, and protect KAZZ-FM and its assets, including re-commencement of broadcasting by KAZZ-FM.”¹⁸

Licensee has the burden of demonstrating compelling and extraordinary circumstances to override the public interest, as determined by Congress, that the government should be reimbursed for the Commission’s regulatory action.¹⁹ In this instance, Licensee limited the content of her *Request* to the brief assertion that she is a court-appointed Receiver, but she failed to provide evidence pertaining to the appointment, *e.g.*, whether she was appointed to liquidate assets or whether a separate bankruptcy proceeding has been filed. We note, although not included with the *Request*, records filed with the Commission include a copy of the appointment.²⁰

We require that a regulatee’s request to waive regulatory fees to be filed properly with required documentation, and on such a submission, we consider each request on a case-by-case basis.²¹ In this instance, Licensee failed to provide such documentation,²² rather she only asserted

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 10 FCC Rcd at 12762 ¶ 14.

¹⁷ In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11 (“although evidence of bankruptcy or receivership is generally sufficient to establish financial hardship, case-by-case review of fee waiver requests is necessary to determine whether a waiver would be in the public interest, even in bankruptcy cases.”), 13, 14 (2003).

¹⁸ Receivership Order at 2.

¹⁹ 10 FCC Rcd at 12761-62 ¶ 13, 9 FCC Rcd at 5344.

²⁰ Receivership Order.

²¹ 47 C.F.R. § 1.1166(c); Assessment and Collection of Regulatory Fee for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011)(“A regulatee’s mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by

Nancy L. Isserlis, Esq.

that since May 8, 2009, she has been the court-appointed Receiver and that a pending application for assignment “will not be consummated prior to the September 14, 2011 payment deadline.”²³ Such bare statements are insufficient because that do not provide information establishing the existence of financial hardship that rises to the level of compelling and extraordinary circumstances and that such was the basis for Receivership. Licensee failed to clarify her position before the Commission,²⁴ *i.e.*, she should have included such matters as which of the 40 grounds set forth in Washington state statute RCW 7.60.025 is the basis for her appointment, and she should have provided detailed financial information. As a result, we looked to Licensee’s application for assignment of license (BALH-20090511BAU) and the Receivership Order. That information, although not providing a full case history, nonetheless indicates the court granted the emergency motion to appoint a Receiver for reasons related to a court ordered judgment in favor of Mr. Kazmark. For example, the context of the Receivership Order suggests that the court “determined [Mr. Kazmark] to have a probable right to or interest in [the license]” and/or the court found it necessary to appoint a Receiver “in order to give effect to [a] judgment.”²⁵ Those are more likely the grounds, especially because Licensee did not present evidence showing the court based its order on insolvency or other matters related to financial hardship. Next, we looked to the Receiver’s grant of authority to determine the nature of the appointment. Rather than to liquidate promptly the Station’s assets, Licensee was authorized to employ “agents, accountants, attorney, employees ... compensate such persons ... to hire [Petitioner/Judgment-Creditor Earle T.] Kazmark,” to pay “expenses of the Receiver ... incur[ed] in the operation and sale of KAZZ-FM,” to “[a]ccount to [the] Court for the Receiver’s receipts and disbursements,” and to “[b]orrow funds ... for the purposes of funding operations and costs of the receivership.”²⁶ Those functions relate to an on-going business. Moreover, because Licensee has not requested the Commission’s permission to go silent, we assume Licensee has been broadcasting since May of 2009, the date of Receivership. As such, Licensee has or should have relevant financial documentation, including, for example, records required by the terms of the Receivership Order, and records that would establish whether financial hardship exists. None of this information, however, was included with the *Request*. Finally, Licensee did not explain the relevance of asserting the pending assignment of the licensee to the request for a waiver of the fee. Accordingly, we deny the *Request*.

documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed.”).

²² *Id.*

²³ *Request* at 1-2.

²⁴ *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).

²⁵ RCW 7.60.025 (effective until July 1, 2012) provides in relevant part,

- (1) A receiver may be appointed by the superior court of this state in the following instances ...
 - (a) On application of any party, when the party is determined to have a probable right to or interest in property that is a subject of the action and in the possession of an adverse party, or when the property or its revenue-producing potential is in danger of being lost or materially injured or impaired. * * *
 - (c) After judgment, in order to give effect to the judgment;
 - (d) To dispose of property according to provisions of a judgment dealing with its disposition;

²⁶ BALH-20090511BAU, Receivership Order at 2-4.

Nancy L. Isserlis, Esq.

Payment of \$1,826.10, Licensee's FY 2011 regulatory fee and accrued penalties, interest and charges of collection calculated to June 15, 2012, is now due. Because Licensee is delinquent in paying the fee, we are required to withhold action on any application filed or pending by Licensee.²⁷ If full payment of that amount is not received by that date, additional interest, penalties, and charges required by 31 U.S.C. § 3717(e) will accrue from the date of this letter. Furthermore, under the law,²⁸ the Commission will initiate collection proceedings against Licensee. That amount must be received, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

Enclosure

²⁷ 47 C.F.R. § 1.1910.

²⁸ See 47 C.F.R. § 1.1901, *et seq.*

Spokane Office
Bank of America Financial Center
601 W. Riverside, Suite 1900
Spokane, Washington 99201-0695

Phone: (509) 838-6131
Fax: (509) 838-1416
website: www.winstoncashatt.com

Winston & Cashatt

L A W Y E R S

A Professional Service Corporation

*Winston & Cashatt has offices in Spokane, Washington
and Coeur d'Alene, Idaho*

FILED/ACCEPTED

AUG 29 2011

August 26, 2011

Federal Communications Commission
Office of the Secretary

HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

PLEASE STAMP
AND RETURN
THIS COPY TO M4M
FLETCHER, HEALD & HILDRETH

Re: Request for Waiver of FY 2011 Regulatory Fees
Nancy L. Isserlis, Receiver for KAZZ
FRN: 0018773556

Attn: Office of the Managing Director

Dear Ms. Dortch:

Nancy L. Isserlis, the court-appointed Receiver for Station KAZZ, herein requests a waiver of the 2011 Federal Communications Commission pay Regulatory Fees with respect to the following facilities:

KAZZ (FM), Spokane, WA, Facility Id. No. 3922
KAZZ-FM1, Spokane, WA, Facility Id. No. 161590.

This waiver request is submitted pursuant to the Commission's determination, in *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, 12762 (1995), that it "will waive the regulatory fees for licensees whose stations are bankrupt, undergoing Chapter 11 reorganizations or in receivership." The above-referenced stations were placed in receivership by order of the Spokane County Superior Court in the state of Washington on May 8, 2009. The involuntary assignment to Ms. Isserlis as Receiver was granted and consummated

C. Matthew Andersen *as*
Beverly L. Anderson
Kevin H. Breck *as*
Patrick J. Cronin *as*
Kevin J. Curtis *as*
Greg M. Devlin *as*
David P. Gardner *as*
Donald J. Gary, Jr. *as*
Erika B. Grubbs *as*
Jeffrey A. Herbster *as*

Michael T. Howard *as*
Carl E. Hueber *as*
Nancy L. Isserlis *as*
Collette C. Leland
Casey L. Lund
Brian T. McGinn *as*
Kammi Mencke Smith *as*
Sean F. O'Quinn
Lynden O. Rasmussen
James E. Reed

Richard W. Relyea
Elizabeth A. Tellessen *as*
Lawrence H. Vance, Jr. *as*
Meriwether D. Williams *as*
Ryan D. Yahne *as*

Of Counsel
Courtney R. Beaudoin *as*
Robert P. Beschel
Richard L. Cease

Stephen L. Farnell
Tim M. Higgins
Fred C. Pflanz
Lucinda S. Whaley

Retired
James P. Connelly
Leo J. Driscoll
Leo N. Cashatt 1916-1997
Joseph J. Rekojke 1921-1997
Patrick H. Winston 1964-1996

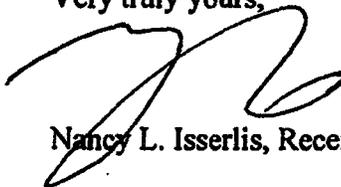
on May 15, 2009. See FCC File No. BALH-20090511BAU.

An application for assignment of Station KAZZ to Joseph Nappi, Jr. as the Personal Representative of the Estate of Earle T. Kazmark (BALH-20110721AKQ) is pending. But even if the application is granted in the very near future, the assignment will not be consummated prior to the September 14, 2011 payment deadline for this year's Regulatory Fees.

In light of the foregoing, waiver of FY 2011 Regulatory Fees due for the above-referenced stations is respectfully requested.

Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,



Nancy L. Isserlis, Receiver for KAZZ

cc (date-stamped copy via email): Roland Helvajian (roland.helvajian@fcc.gov)
Office of the Managing Director, FCC

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
AUG 07 2012

OFFICE OF
MANAGING DIRECTOR

Chris Edwards
Chief Financial Officer
Open Range Communications, Inc.
6430 S. Fiddlers Green Circle, Suite 500
Greenwood Village, CO 80111

Re: Waiver Request (Bankruptcy; 47 C.F.R. §§1.1119(c) &
(f), 1.1166(e))
Licensee/Applicant: Open Range Communications Inc.;
Open Range Communications, Inc., Debtor-in-Possession
Stations: Multiple
Application Fees
Fee Control No. RROG-11-00014108

Dear Mr. Edwards:

This responds to Applicant's *Request*¹ for a waiver of fees associated with the *pro forma*, involuntary transfer of control from Open Range Communications Inc. (Licensee) to Open Range Communications Inc., Debtor-in-Possession (DIP) (Applicant).

Applicant asserts that on October 6, 2011, Licensee voluntarily petitioned the United States Bankruptcy Court, District of Delaware, for relief under Chapter 11 of the Bankruptcy Code.² Applicant provided a copy of Licensee's bankruptcy petition and asserted that the filing effectuated an involuntary transfer of control from Licensee to Applicant, and that as set forth in 47 C.F.R. § 1.948(c)(2), Licensee was notifying the Commission of the transfer. Furthermore, Applicant requests waiver of the application fees because of financial hardship as set forth under 47 C.F.R. § 1.1166(e), and as supported by the bankruptcy petition. However, neither Licensee nor Applicant notified³ the Commission that on February 24, 2012, the federal bankruptcy judge in Delaware had approved Licensee's request to convert the bankruptcy proceeding from Chapter 11 to Chapter 7.

¹ Open Range Communications, Inc., Debtor-In-Possession, Application for Involuntary, *Pro Forma* Transfer of Control Arising from Bankruptcy, Motion for Waiver of Application Fees, File No. 0004934073 (Dated Nov. 7, 2011; Rec'd Jan. 19, 2012) (*Request*).

² Title 11, United States Code.

³ See 47 C.F.R. § 1.65. Each applicant is responsible for the continuing accuracy of information furnished in a pending applicant.

Our records show that Licensee paid the \$23,195.00 in application fees to transfer 386 call signs; however, on February 17, 2012, the Commission granted Licensee's applications to cancel all call signs.⁴ Accordingly, because the call signs have been cancelled, and there are no pending applications for transfer of control, the Request is moot, and hereby dismissed. We need not discuss the effect of the conversion of the bankruptcy proceeding from Chapter 11 to Chapter 7 on the Request. The payer of record may request a refund of the \$23,195.00 paid with application 0004934073.

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', with a long horizontal flourish extending to the right.

Mark Stephens
Chief Financial Officer

⁴ Wireless Telecommunications Bureau Site-By-Site Action, Report No. 7549, *Public Notice*, (Feb. 22, 2012).

RECEIVED
2012 JUN 19 P 12:14

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

In-the Matter of)
)
OPEN RANGE COMMUNICATIONS INC.)
DEBTOR-IN-POSSESSION)
)
Application for Involuntary, *Pro Forma*)
Transfer of Control Arising from Bankruptcy)

FRN: 0015246895
Application File No.: 0004934073

To: Marlene H. Dortch, Secretary
Attention: The Office of Managing Director

MOTION FOR WAIVER OF APPLICATION FEES

Pursuant to Section 1.1109(c) of the Commission’s Rules, Open Range Communications Inc., Debtor-in-Possession (“Open Range DIP”) respectfully requests a waiver of the application fees associated with the application for the *pro forma*, involuntary transfer of control from Open Range Communications Inc. (“Open Range”) to Open Range DIP.

On October 6, 2011, Open Range Communications Inc. (“Open Range”) filed for relief pursuant to Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court in the District of Delaware. *See Open Range Communications Inc.*, Case No. 11-13188-KJC (Bankr. Del. Oct. 6, 2011). A copy of Open Range’s bankruptcy petition is attached hereto as Exhibit 1. As a result of this filing, Open Range’s FCC licenses were effectively involuntarily transferred from Open Range to Open Range DIP. Section 1.948(c)(2) of the Commission’s Rules requires that, in the event of an involuntary transfer of control, the transferee must notify the Commission within 30 days. Accordingly, Open Range is submitting an application for the *pro forma*, involuntary transfer of control to notify the Commission that this involuntary transfer took place on October 6, 2011.

Section 1.1109(a) of the Commission's Rules provides that application fees may be waived in specific instances where good cause is shown and where waiver would promote the public interest. Further, Sections 1.1109(c) and (f) of the Commission's rules make plain that financial hardship is a valid basis for a waiver, subject to Section 1.1166(e) of the rules which, in turn, provides that petitions for waiver of a fee based on financial hardship, including bankruptcy, will not be granted to the extent that the total fees for which waiver is sought exceeds \$500,000 in any fiscal year. The fees for which Open Range seeks a waiver are \$23,195, which is considerably less than this cap. Further, the Commission has found that bankruptcy establishes good cause for a waiver of fees on the grounds of financial hardship, and that grant of such a waiver may serve the public interest by preserving assets that will accrue to creditors. *See MobileMedia Corp.*, Memorandum Opinion and Order, 14 FCC Rcd 8017, ¶ 40 (1999). Because Open Range DIP is in bankruptcy, grant of this waiver request would serve the public interest. Finally, the U.S. Department of Agriculture is one of Open Range's secured creditors, so assets preserved by a fee waiver may ultimately accrue to the United States Treasury in any event.

Based on the foregoing, Open Range DIP respectfully requests waiver of the application fees for the *pro forma*, involuntary transfer of control from Open Range Communications Inc. ("Open Range") to Open Range DIP.

Respectfully Submitted,

**Open Range Communications Inc.,
debtor-in-possession**

by: /s/ Chris Edwards

Chris Edwards
Chief Financial Officer
Open Range Communications Inc.
6430 S. Fiddlers Green Circle
Suite 500
Greenwood Village, CO 80111
Phone: (303) 376-2117
chris.edwards@openrange.us

November 7, 2011

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUN 15 2012

OFFICE OF
MANAGING DIRECTORLori Withrow
Southern, Allen & Withrow
Attorneys at Law
Post Office Box 17248
Little Rock, AR 72222Re: Waiver Request (Financial Hardship;
47C.F.R. § 1.1166(c))
Licensee/Applicant: Riverside Media, LLC
Station: KPBI
Fee: FY 2011 Regulatory Fee
Date Request Filed: September 13, 2011.
Fee Control No.: RROG 11-00013799
Regulatory Fee Amount: \$12,325.00

Dear Counsel:

This responds to Licensee's *Request*¹ for a waiver of the Fiscal Year (FY) 2011 regulatory fee due for Station KPBI on the grounds of financial hardship. Our records reveal that Licensee did not pay the \$12,325.00 FY 2011 regulatory fee, and although Licensee petitioned to defer payment, that petition was not supported.² Thus, for the reasons discussed below, we deny the *Request*.

Licensee provided its Profit & Loss Statements for the period August 15, 2010, through December 31, 2010 (*P&L 2010*), and "January through July 2011" (*P&L 2011*), Profit & Loss Statements of Pinnacle Media, LLC (*Pinnacle*) for the period November 3, 2009, through December 31, 2009 (*Pinnacle P&L 2009*), and January 1, 2010, through August 15, 2010 (*Pinnacle P&L 2010*) (collectively, *P&L Statements*),³ and a Declaration from Gregory W. Fess, Member of Riverside Media, LLC (*Fess Declaration*).⁴ Licensee asserts that the Station "was licensed to a bankrupt entity on October 1, 2009, was purchased by Pinnacle ... from the bankrupt estate [Equity Media Holdings Corporation, Fort Smith 46, Inc. and TV 34, Inc.], and

¹ Email from Lori Withrow [LWithrow@southernallen.com] to ARINQUIRIES, FCC (Sep. 13, 2011) transmitting Letter from Lori Withrow, Southern, Allen & Withrow, 12410 Cantrell, Suite 100, Little Rock, AR 72223 to Federal Communications Commission, Office of the Managing Director (Sept. 13, 2011) (*Request*).

² 47 C.F.R. § 1.1166(c); Assessment and Collection of Regulatory Fee for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011) ("A regulatee's mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed.")

³ *Request*, Exhibit B.

⁴ *Id.*, Exhibit B.

Lori Withrow, Esq.

has had a negative cash flow since being purchased.”⁵ Further, Licensee asserts that the “Commission has repeatedly allowed that bankruptcy is sufficient to establish financial hardship and that it will waive the regulatory fees for a bankrupt entity.” Licensee “is not engaged in any other business that generates revenues or expenses not reflected in the attached financial statements, ... all payments to members, officers or directors, [and] interest due on notes for loans made by members” are excluded from the expenses, and the projected cash flow “for all of 2011 will be negative.”⁶ Licensee noted, “expenses included in Other Expenses [on the *P&L Statements*] are excluded for purposes of [the] waiver request. In Expense 68300, Interest Expenses paid to [certain] members of [Licensee] and [certain members of *Pinnacle* have been excluded from the Net Loss for purposes of [the] waiver request.”⁷ Finally, Licensee “does not have revenue to pay its regulatory fees and maintain the operation of the Stations and continue service to the public.”⁸ Licensee’s assertions and its incomplete financial information do not present compelling circumstances of financial hardship to waive collection of the FY 2011 regulatory fee.

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 a fee may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.⁹ The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.¹⁰ Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee’s ability to serve the public.¹¹ “Mere allegations or documentation of financial loss, standing alone,” do not suffice and “it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public.”¹² In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee’s balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.¹³ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.

⁵ Request at 1.

⁶ Fess Declaration.

⁷ *Id.* at 2.

⁸ *Id.* at 2.

⁹ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, Report and Order, 9 FCC Rcd 5333, 5344 (1994), recon. denied, 10 FCC Rcd 12759 (1995).

¹⁰ 9 FCC Rcd at 5344 ¶ 29.

¹¹ 10 FCC Rcd at 12761-62 ¶ 13.

¹² *Id.*

¹³ *Id.*

Lori Withrow, Esq.

Where relevant, the fact that the licensee is in bankruptcy is evidence of financial hardship; however, that fact will not relieve the petitioner of meeting its standard. Thus, we review each request, including those in which bankruptcy is asserted, on a case-by-case basis to determine whether the public interest warrants a waiver of the fee, and we may decline such a request.¹⁴ We note in this instance, Licensee is not in bankruptcy.

Licensee does not present compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs. First, the *P&L Statements* do not provide the range of financial information required to fully document its financial position and show how payment of the FY 2011 regulatory fees will adversely affect Licensee's ability to serve the public. Instead of only the *P&L Statements*, Licensee should have provided additional relevant information for 2010, 2011, and later, to include a balance sheet, cash flow projection for the next twelve months (with an explanation of how calculated), a list of the partners and/or corporate officers and their individual compensation, together with a list of the entity's highest paid employees, other than officers, and the amount of their compensation, and similar information.¹⁵ Second, not only was the financial information insufficient, but the details of the sale of Station assets from *Pinnacle* to Licensee and several of the expense entries on the *P&L Statements* raise matters that mandate Licensee provide a full explanation of the furnished financial information.

For example, the ownership history of the Station illustrates that on August 5, 2009, *Pinnacle* agreed to purchase the Station and 17 others for \$400,000,¹⁶ and to "operate[the several stations] under a local marketing agreement until closing."¹⁷ The costs associated with operating the Station and 17 others after the closing date and until the Station and seven others were assigned to Licensee is reported on *Pinnacle's P&L 2009* and *P&L 2010*. Worthy of note, on November 3, 2009, the date on which *Pinnacle* consummated its assignment with the previous licensees,¹⁸ it entered into an agreement with Licensee to sell the Station and seven other stations for \$200,000. *Pinnacle* continued to operate the several stations until August 16, 2010, when the parties consummated the assignment to Licensee. During the time *Pinnacle* was operating the Station plus 17 others, it reported average daily expenses of \$890.81¹⁹ and \$807.83.²⁰ Later, beginning August 16, 2010, Licensee's average daily expenses for the Station and seven others²¹ increased substantially over *Pinnacle's* costs, and the expenses fluctuated between \$1,062.90²² and \$936.29.²³ Thus, a comparison of *Pinnacle's* expenses to those of the

¹⁴ In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Red 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

¹⁵ We will not speculate as to *Riverside's* business activities, the content of its balance sheet, and the content of its cash flow.

¹⁶ FCC 314 Application for Consent to Assignment of Broadcast Station Construction Permit or License BALCDT-20090814AAH, Attachment 5 (*Pinnacle* agreed to pay \$400,000 in cash and to assume seller's liabilities. The identified stations included KPBI, KWFT-LP, KLRA-LP, KFDF-CA, K33HE, KFFS-CA, KRAH-CA, KEGW-LP, KUFS-LP, KWNL-CA, K48FI, KSJF-CA, KCAF-CA, KHMF-CA, KXUN-LP, KFDF-LD, KRAH-LD, and KWNL.).

¹⁷ *Request* at 2.

¹⁸ Consummation Notice, File Numbers BALCDT-20090814AAH, BALTTL-20090814AAI.

¹⁹ *Pinnacle P&L 2009*.

²⁰ *Pinnacle P&L 2010*.

²¹ FCC 316, Application for Consent to Assign Broadcast Station Construction Permit or License or to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, BALCDT-20100713AAK.

²² *P&L 2010*.

²³ *P&L 2011*.

Lori Withrow, Esq.

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

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

Sincerely,

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

Mark Stephens
Chief Financial Officer

Enclosure

ALLEN & WITHROW

Attorneys at Law

12410 Cantrell, Suite 100
Little Rock, Arkansas 72223

www.southernallen.com
email lwithrow@southernallen.com
Toll Free 800-796-7940

Mailing Address
Post Office Box 17248
Little Rock, AR 72222
(501) 227-2000
Fax (501) 707-1214

Byron S. Southern
Henry A. "Gus" Allen
Lori E. Withrow
Kathryn Bridges
Ronnie L. Jordan
Teaven Stamatis
Robert Montgomery

September 12, 2011

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

Attn: Regulatory Fee Waiver/Reduction Request

Re: Petition for Deferral and Waiver of FY 2011 Regulatory Fees

To the Managing Director:

Riverside Media, LLC ("Riverside") hereby requests deferral and permanent waiver of the Fiscal Year 2011 Annual Regulatory Fees ("FY 2011 Fees"). The Federal Communications Commission ("Commission") may grant waivers and deferrals in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.¹ Riverside submits this request for the station as specified in the attached Exhibit A (the "Station"). The FY 2011 Fees for Riverside's Station total Three Thousand Two Hundred and Seventy Five Dollars (\$3,275.00).

The instant request seeks relief in the form of waiver and deferral of the entire amount of FY 2011 Fees, because the Station was licensed to a bankrupt entity on October 1, 2009, was purchased by Pinnacle Media, LLC from the bankrupt estate, and has had a negative cash flow since being purchased. Pinnacle Media, LLC filed a short form transfer of control to Riverside BALCDT - 20100713AAK, which was consummated August 16, 2010. Riverside has continued to have a negative cash flow for the Station. Consistent with Section 1.116(c) of the Rules, Riverside has not submitted payment for the FY 2011 Fees, but instead requests deferral while the Commission considers this request.

Station Bought in Bankruptcy. On December 8, 2008, Equity Media Holdings Corporation, Fort Smith 46, Inc. and TV 34, Inc., the previous licensees of Station, filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Court for the District of Arkansas (the "Chapter 11 Case"). As a result of the bankruptcy, the Station was put up for sale via auction.

Pinnacle Media, LLC purchased the Station out of bankruptcy and closed on the sale on November 3, 2009.

Financial Hardship. In *Implementation of Section 9 of the Communications Act*, 0 FCC Rcd 5333, 5346 (1994), *recon. granted* 10 FCC Rcd 12759 (1995), the Commission determined that waivers of regulatory fees may be granted in instances of financial hardship. The Commission has repeatedly allowed that bankruptcy is sufficient to establish financial hardship and that it will waive the regulatory fees for a bankrupt entity. Additional evidence of financial hardship is negative cash flow without regard to payment to principals or non-cash expenses such as depreciation and amortization. As demonstrated in the attached Exhibit B and Exhibit C, the Declaration of Gregory W. Fess, Riverside's Member, Pinnacle had a negative cash flow from November 3, 2009 until August 15, 2010 and Riverside has had a negative cash flow since taking over the Station on August 16, 2011. Therefore Riverside does not have revenue to pay its regulatory fees and maintain the operation of the Station and continue the service to the public. Cash flow has been negative after taking into account any payments to principals, non-cash items and interest on notes payable to shareholders.

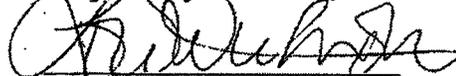
Exhibit B are a Profit & Loss Statements for the Station from November 3, 2009 through July 2011. Pinnacle did not close on the purchase of the Station until November 2009 and operated the Station under a local marketing agreement until closing. The expenses included in Other Expenses are excluded for the purposes of this waiver request. In Expense 68300, Interest Expenses paid to Byron Southern, Gregory Fess and/or Larry Morton, all members of Riverside and Fess and Southern, member of Pinnacle, have been excluded from the Net Loss for purposes of this waiver request. In addition, all fees/salaries to owners have been excluded from the expenses.

Request for Confidentiality. Riverside requests that all information marked "confidential" be withheld from public disclosure. The information is entitled to protection pursuant to 47 C.F.R. § 0.459(b)(3-7) of the Commission's Rules as it relates to the financial performance of Riverside. Disclosure could result in financial harm to Riverside as it would give competitors access to information not otherwise available. Riverside acknowledges that the Commission will not rule on a request for confidentiality until a request is made for inspection of the documents.

Conclusion. Based on bankruptcy prior to November 3, 2009 and negative cash flow thereafter, Riverside requests that the Commission consider this request and the showing made herein under the case-by-case standard and waive the FY 2011 Fees.

Please direct any questions to the undersigned.

Respectfully submitted,



Lori Withrow

Attorney for Riverside Media, LLC

Adama

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

August 22, 2012

Melodie A. Virtue, Esq.
Garvey Schubert Barer
1000 Potomac Street, NW
Fifth Floor, The Flour Mill Building
Washington, D.C. 20007

Re: Waiver and Refund of Regulatory Fee (Bankruptcy)
(47 C.F.R. §§ 1.1160(a)(3), 1.1166(e))
Licensee/Applicant: Joli A. Lofstedt, Chapter 11 Trustee
for Tracy Broadcasting Corp.
Station: KOLT-FM
FY 2010 Regulatory Fees
Fee Control No. RROG 11-00014090
Regulatory Fee Amount: \$1,490.00
Fee Paid: Aug. 31, 2010

Dear Counsel:

This responds to Licensee's *Request*¹ for a waiver and refund of the fiscal year (FY) 2010 regulatory fees that it paid on August 31, 2010. For the reasons set forth below, we deny the *Request*.

Licensee asserts it is entitled to a refund of the FY 2010 fee because on August 19, 2009, its predecessor, Tracy Broadcasting Corporation, filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code.² Thus, applying Licensee's reasoning, under 47 C.F.R. §1.1166, had Licensee timely petitioned for a waiver for the fee, the Commission would have granted it. Although Licensee provided copies of the bankruptcy petition filing form, Form B1, the List of Creditors Holding 20 Largest Unsecured Claims, and the order appointing a Chapter 11 Trustee,³ Licensee failed to include copies of the court required schedules and other documents, *e.g.*, schedules of assets and liabilities, schedule of current income and expenditures, a schedule of executory contracts and unexpired leases, and a statement of financial affairs,⁴ court orders concerning the trustee's payment of administrative expenses, or any financial information relevant to Licensee.

¹ In re Matter of Joli A. Lofstedt, Chapter 11 Trustee for Tracy Broadcasting Corp. (FRN 0019671932), Radio Station KOLT-FM, Warren AFB, WY, Petition for Waiver and Refund of FY 2010 Annual Regulatory Fee Payment (Jan. 3, 2012) (*Request*).

² Title 11, United States Code. *See Request* at 1-2 and Exhibit 2, U.S. Bankruptcy Court, District of Colorado, Voluntary Petition, Tracy Broadcasting Corporation, Case No. 09-27059-ABC with List of Creditors Holding 20 Largest Unsecured Claims (Aug. 19, 2009); In re: Tracy Broadcasting Corporation, U.S. Bankruptcy Court (D. Col. Case No. 09-27059-ABC), Order for the Appointment of a Chapter 11 Trustee (Feb. 3, 2010); In re: Tracy Broadcasting Corporation, U.S. Bankruptcy Court (D. Col. Case No. 09-27059-ABC), Order Approving United States Trustee's Appointment of Chapter 11 Trustee for Commercial Capital, Inc. (sic) (Fe. 16, 2010).

³ *Id.*

⁴ Fed. R. Bankruptcy P. 1007.

In our analysis, we first consider whether there is a basis for the requested refund. Licensee failed to assert a basis, rather leaving us to assume the requested relief would follow from our rule that provides “[r]egulatory fees will be refunded upon request, only ... (3) When a waiver is granted in accordance with § 1.1166.”⁵ Satisfied that a basis exists, we turn now to whether Licensee’s *Request* establishes a proper ground for a waiver and, thereafter, meets our standards.

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, and it may be waived, reduced, or deferred upon a 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 extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.⁷ Fee relief may be granted based on a “sufficient showing of financial hardship.”⁸ In such matters, however, “[m]ere 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 Thus, in order to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, *e.g.*, 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. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show 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.

We consider a licensee’s bankruptcy to be a relevant fact;¹¹ however, “in some circumstances a significant question may exist as to whether bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions.”¹² The primacy of the standard remains, the applicant must present “extraordinary and compelling circumstances showing that a waiver ... would override the public interest” in collecting the

⁵ 47 C.F.R. § 1.1160(a)(3).

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 the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

⁷ 9 FCC Rcd at 5344 ¶ 29; In *The Matter of Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, Memorandum Opinion and Order*, 18 FCC Rcd. 26464, 26446, ¶¶ 5-6 (2003) (“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. . . . [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission’s recouping the costs of its regulatory activities.”).

⁸ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (*FY 1994 MO&O*).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See Id.* at 12762, ¶ 14 (“[W]here a bankruptcy trustee, receiver, or debtor in possession is negotiating a possible transfer of a license, the regulatory fee could act as an impediment to the negotiations and the transfer of the station to a new licensee.”).

¹² Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice of Proposed Rulemaking*, 18 FCC Rcd 6085, 6090, ¶ 11 (2003).

fee.¹³ Thus, even in petitions where a bankruptcy proceeding is asserted as the basis for relief, we analyze the facts of each case to determine whether the applicant has presented both extraordinary¹⁴ and compelling circumstances¹⁵ showing waiver is justified, and if not, we will deny the request.¹⁶

Licensee asserts financial hardship based on a bankruptcy proceeding as its basis for relief. The *Request*, however, does not meet our standards. Rather than furnishing the details we require, it includes only limited information of the predecessor's bankruptcy petition (with a list of some creditors). Thus, Licensee did not present anything to establish as of August 31, 2010, "the impact of the regulatory fee [on the Licensee's] ability to serve the public."¹⁷ Specifically, Licensee failed to present evidence of bankruptcy that "fully document[ed] its financial position and show[ed] that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public."¹⁸ Licensee failed to provide any evidence to establish that this case presents extraordinary and compelling circumstances to warrant a waiver.

Licensee paid the fee. We assume from that fact that the bankruptcy court at an earlier time provided Licensee with appropriate guidance consistent with 11 U.S.C. § 503 on the payment of administrative expenses, so that when made, payment was permitted and without adverse impact on the station's operation.¹⁹ Moreover, Licensee failed to provide any relevant information²⁰ concerning the bankruptcy proceedings after February 16, 2010. Consequently, we have no basis to consider whether Licensee's payment of the FY 2010 regulatory fee was or may be an impediment to negotiations and transfer of the station to a new licensee.²¹ Licensee failed in its duty to clarify its position with the Commission²² and to maintain the accuracy and completeness of its application.²³ Finally, we note that Licensee made no showing how, in light of the current financial climate, the public interest will be served by refunding a fee already paid. Accordingly, we deny Licensee's *Request*.

¹³ *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12.

¹⁴ Black's Law Dictionary (9th ed. 2009)(extraordinary—"a highly unusual set of facts that are not commonly associated with a particular thing or event").

¹⁵ *Id.* (compelling—"something so great that irreparable harm or injustice would result if not met").

¹⁶ In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

¹⁷ *FY 1994 MO&O*, 10 FCC Rcd at 12762, ¶ 13.

¹⁸ *Id.*

¹⁹ In re Accipiter Communications, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 18239, 18241, ¶ 8 ("[Applicant] has made no showing that payment of the fee will impair its ability to serve the public.").

²⁰ See e.g., *In re Tracy Broadcasting Corp.*, 469 B.R. 55 (D. Colo. 2011)(Creditor's security interest in operator's general intangibles did not extend to proceeds from future transfer of license.).

²¹ *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 14.

²² *Bartholdi Cable Co. Inc. v FCC*, 114 F.3d 274, 280 (DC Cir. 1997)(The Commission "'need not sift pleadings and documents' to identify arguments that are not 'stated with clarity' by a petitioner. It is the petitioner that has the burden of clarifying its petition before the agency.").

²³ 47 C.F.R. § 1.65 ("Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished ... is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of the application so as to furnish such additional or corrected information as may be appropriate.).

Melodie A. Virtue, Esq.

4.

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

Sincerely,

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

Mark Stephens
Chief Financial Officer

Lori Withrow, Esq.

Licensee show average daily expenses increased approximately \$161.00 to operate fewer than half of the number of stations. Moreover, Licensee's reported average daily labor costs, a component expense within that consolidated cost for operations, increased from *Pinnacle's* expenses and fluctuated during the Licensee's two reported periods between \$396.75²⁴ and \$545.64.²⁵ Relevant to the requested waiver of Station KPBI's fee is the Station's actual revenue and expenses, which Licensee did not identify separately from the consolidated amounts for eight stations reported on *P&L 2010* and *P&L 2011*. Thus, Licensee presented unexplained expense increases from those *Pinnacle* reported and significant fluctuations in payments. Furthermore, there is no specific evidence of Station KPBI's revenue and expenses. In addition, Licensee did not explain other expense items that relate to funds available to pay the regulatory fee, e.g., the rent expense for transmission tower apparently owned by Licensee and the bad debt expenses that passed from *Pinnacle* to Licensee. Finally, Licensee should have included²⁶ the details of its then-pending application to assign Station KPBI to Local TV Arkansas, LLC and others (Local TV).²⁷ Our records show that on August 23, 2011, Local TV agreed to pay Licensee \$784,000 for Station KPBI.²⁸ That assignment was reported consummation on January 5, 2012, thus Licensee has funds available to pay the fee.²⁹

Licensee failed to document fully its financial situation and to demonstrate that under these circumstances,³⁰ the public interest will be served in waiving the required regulatory fees. Thus, the *Request* is denied.

Licensee also requests, "all information marked 'confidential' be withheld from public disclosure."³¹ However, we are unable to find the notation, confidential, on any portion of the *Request* or accompanying Exhibits. Accordingly, we take no action on that portion of the *Request*. Furthermore, under 47 C.F.R. §0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records. If we receive a request for access to the information submitted in conjunction with Licensee's *Request*, at that time, we will notify Licensee and provide it the opportunity to respond.

Payment of \$12,325.00, Licensee's FY 2011 regulatory fees, is now due, and that amount must be received, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. If Licensee's full payment of that amount is not received by that date, any unpaid portion of the debt will be delinquent,³² and on such amount, we will assess the statutory penalty of 25% of the unpaid fee,³³ and assess interest and applicable additional penalties and charges required by 31 U.S.C. § 3717(e) that will accrue from the date of this letter. Furthermore, under the law,³⁴ the Commission will initiate

²⁴ *P&L 2010*.

²⁵ *P&L 2011*.

²⁶ 47 C.F.R. § 1.65.

²⁷ FCC 314 Application for Consent to Assignment of Broadcast Station Construction Permit or License BALCDT-20110901AAD.

²⁸ BALCDT-20110901AAD, *supra*, Attachment 5. Licensee received \$784,000 for the Station and assets.

²⁹ Consummation Notice to BALCDT-20110901AAD.

³⁰ A year after Licensee paid \$200,000 for KPBI and seven other broadcast licenses, it sold KPBI for \$784,000.

³¹ *Request* at 2.

³² If delinquent in paying any portion of the fee, Licensee will be subject to the provisions of 47 C.F.R. § 1.1910.

³³ 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.").

³⁴ See 47 C.F.R. § 1.1901, *et seq.*