



PUBLIC NOTICE

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

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DA-12-1234

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

PUBLIC NOTICE

Released: August 1, 2012

FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC

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

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

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

Atlantic Digital, Inc. - Request for waiver of the late payment penalty of the FY 2010 and 2011 regulatory fees. **Denied** (April 4, 2012) [*See* 47 C.F.R. §1.1164]

Cricket Licensee (Reauction), LLC - Request for waiver of rules and refund of Filing fees. **Denied** (May 15, 2012) [*See* 47 C.F.R. §1.1113]

DAIJ Media, LLC, Station KRCM
Request for waiver of FY 2011 regulatory fee (Dark Station) **Denied** (April 4, 2012) [*See* 47 C.F.R. §1.1166]

Geos Communications Stations WGMF (AM), WZMF (FM), WZKN (FM) WZKN (FM), WZKN (FM2), WNKZ (FM), W2999BM (FM) W297BG (FM), W283BJ (FM), W282BJ (FM), W282BK, W230AP and Auxiliaries WLP640, KB96793, WPOQ515, KQ7934, WBX276, WQA976, and KQ686 - Request for deferment of FY 2011 regulatory fees. **Granted** (May 4, 2012) [*See* 47 C.F.R. §1.1166(a) – (b)]

Itasca Broadcasting, Inc. Stations KOZY (AM) and KMFY (FM) - Request for waiver of the late payment of the FY 2011 regulatory fees. **Denied** (May 29, 3, 2012) [*See* 47 C.F.R. §1.1164]

KM Television of El Dorado, LLC, Station KEJB (TV) - Request for waiver of FY 2011 regulatory fee. **Denied** (April 30, 2012) [*See* 47 C.F.R. §1.1166(c)]

KM Television of Iowa, LLC, Station KWKB (TV) - Request for waiver of FY 2011 regulatory fee. **Denied** (April 30, 2012) [*See* 47 C.F.R. §1.1166(c)]

KLZ Radio, Inc, Station KLVZ - Request for waiver of FY 2011 regulatory fee. **Denied (Dark Station)** (April 6, 2012) [*See* 47 C.F.R. §1.1166]

Matadors, LLC Station, WQMS (AM) - Request for wavier of FY 2011 regulatory fee. **Denied** (May 29, 2012) [See 47 C.F.R. §1.1166(c)]

Martime Communications/Land Mobile, LLC Request for wavier and deferment of FY 2011 regulatory fees. **Granted** (April 16, 2012) [See 47 C.F.R. §1.1166(e)]

Martime Communications/Land Mobile, LLC Request for wavier and deferment of application fees. **Granted** (April 16, 2012) [See 47 C.F.R. §§1.1119(c) &(f), 1.1166(e)]

Mt. Rushmore Broadcasting, Inc. Stations KZMX(AM), KZMX(FM), KAWK(FM), KFCR(AM), KRAL(AM), KIQZ(FM), KMLD(FM), KVOC(AM), KHOC(FM) - Request for wavier and deferment of FY 2011 regulatory fees. **Denied** (April 6, 2012) [See 47 C.F.R. §1.1166 (c)]

North Pacific International Television, Inc, Stations, KFFV and WPOT863 - Request for wavier of FY 2011 regulatory fees. **Granted** (May 4, 2012) [See 47 C.F.R. §1.1166(e)]

Pacific Radio Group, Inc Station KPVS (FM1) Request for wavier and refund of FY 2011 regulatory fees **Granted** (April 06, 2012) [See 47 C.F.R. §1.1160 (a)(1)]

WWAZ – TV Licensee, LLC, - Request for wavier of FY 2011 regulatory fees **Dismissed and Denied** (April 10, 2012) [See 47 C.F.R. §1.1166] (c)

Pappas Telecasting of the Treasure Coast LLC, Station WMMF– LP - Request for wavier of FY 2011 regulatory fees **Dismissed and Denied** (April 12, 2012) [See 47 C.F.R. §1.1166(c)]

TV Americas De Omaha, LLC, Stations KAZO– LP, KAZS-LP and KAZJ – LP - Request for wavier of FY 2011 regulatory fees. **Dismissed and Denied** (April 12, 2012) [See 47 C.F.R. §1.1166(c)]

Pikes Peak Television - Request for wavier of the late payment of the FY 2010 regulatory fee. **Dismissed and Denied** (April 30, 2012) [See 47 C.F.R. §§1.1164, 1.1167, 1.1910]

Pinebrook Corporation, Station WINW (AM) - Request for wavier of FY 2011 regulatory fee. **Denied** (May 14, 2012) [See 47 C.F.R. §1.1166 (c)]

Radio Stations WPAY/WPFB Inc, Station WPAY (AM) - Request for wavier of FY 2011 regulatory fee. **Denied** (March 29, 2012) [See 47 C.F.R. §1.1166]

Reiser Broadcasting Company, Inc. Stations KBOZ, KOBZ (FM), KOB, KOB (FM) KOZB, K240CO, K265AS, K288ES and Auxiliaries KB97406, KQB693, WGZ540, WHN278 and WMGG482 Request for wavier and deferment of FY 2011 regulatory fees. **Denied** (May 04, 2012) [See 47 C.F.R. §1.1166(c)]

Splice Communications, Inc. - Request for wavier of the late payment of the FY 2010 and 2011 regulatory fees. **Dismissed and Denied** (May 9, 2012) [See 47 C.F.R. §§1.1164, 1.1167, 1.1910]

Tune In Broadcasting, LLC, Station KRUY (AM) - Request for wavier of FY 2011 regulatory fee **Denied** (April 4, 2012) [See 47 C.F.R. §1.1166(c)]

Telecom Management, Inc. - Request for wavier of the late payment of the FY 2011 regulatory fees. **Denied** (April 4, 2012) [See 47 C.F.R. §1.1164]

Named Subsidiaries of Tribune Company, Debtor-in-Possession - Request for wavier of FY 2011 regulatory fees. **Partial Waiver Granted** (April 16, 2012) [See 47 C.F.R. §1.1166(e);]

Adama

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
APR 04 2012

OFFICE OF
MANAGING DIRECTOR

Indira Rabindranathan
Controller
Atlantic Digital, Inc.
1241 South Maple
Ann Arbor, MI 48103

Re: Waiver Request (Late Payment Penalty)
Licensee/Applicant: Atlantic Digital, Inc.
Station: N/A
Fee: FY 2010 and FY 2011 Regulatory Fee Late
Fees
Date Request Filed: Oct. 27, 2011
Date Regulatory Fee Paid: Oct. 27, 2011
Fee Control No.: RROG-11-00014001
Regulatory Fee (FY 2011): \$1,202.00
Penalty: \$ 300.50
Regulatory Fee (FY2010): \$1,250.00
Penalty: \$ 312.50

Dear Ms. Rabindranathan:

This responds to Licensee's *Request*¹ for waiver of the penalties for late payment of FY 2011 and FY 2010 regulatory fees. For the reasons stated herein, we must deny the *Request*.

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

¹ Email from Indira Rabindranathan (indirar@AmeriNet.com) to ARINQUIRIES (ARINQUIRIES@fcc.gov) (dated Oct. 27, 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

For FY 2011, the deadline for paying regulatory fees was September 16, 2011,⁵ and for FY 2010, payment was due no later than August 31, 2010.⁶ Licensee's payments were not received and credited until October 27, 2011, thus Licensee failed to meet its obligations. Licensee's assertions that it "did not get the bills ... [it was] not aware ... the FCC stopped sending bills [or that Licensee] did not get any delinquent notices"⁷ are not 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."⁸ The absence of a reminder notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.

For example, on May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency's Fee Filer system.⁹ 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."¹⁰ On July 31, 2009, the Commission released its order adopting these proposals,¹¹ and notifying regulatees that "because all pre-bills will be loaded into Fee Filer, once Fee Filer becomes operational, this will be the signal by which licensees can view their pre-bill information online."¹² Thereafter, the Commission issued a public notice informing regulatees that use of Fee Filer was mandatory in FY 2009 and that "regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer."¹³ Finally, on September 2, 2009, the Commission released a third public notice that "**HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.**"¹⁴

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,

⁵ See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *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 See FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time, *Public Notice*, DA 10-1451 (Aug. 9, 2010).

⁷ *Request*.

⁸ 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).

⁹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972 ¶ 16 (2009).

¹⁰ *Id.* at 5973 ¶ 20.

¹¹ *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*).

¹² *Id.* at 10309 ¶ 26.

¹³ *Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

¹⁴ *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

view their bill, and make a fee payment.”¹⁵ This notification was part of the Commission’s increased effort to notify licensees that hardcopy bills will no longer be mailed.¹⁶

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.¹⁷ Further, although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission’s regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee made payment. As we explained, the penalty required by 47 U.S.C. § 159(c)(1) is not limited to situations where the failure to pay was knowing or willful. If it is to be waived, it is “only in the most extraordinary circumstances,”¹⁸ which are not described in Licensee’s situation. Thus, under the law, we must deny Licensee’s Request, and we cannot refund the penalty amount paid.

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

Sincerely,



Mark Stephens
Chief Financial Officer

¹⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291 ¶ 37 (2010).

¹⁶ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923 ¶ 12 (2010).

¹⁷ *See XO Communications, LLC* (OMD, Nov. 10, 2010).

¹⁸ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

Stephen French

From: Indira Rabindranathan [indirar@AmeriNet.com]
Sent: Thursday, October 27, 2011 4:15 PM
To: ARINQUIRIES
Subject: RE: Regulatory fees - FRN 0003-7463-10
Follow Up Flag: Follow up
Flag Status: Red

Hello:

Thank you very much for your immediate attention to this matter. I paid the 2011 balance immediately as soon as I found out that I will not get a bill. Since I was not familiar with online filing, I noticed that it included penalty after the balance is paid. I am respectfully requesting you to credit this penalty to be applied to our 2012 fees.

Indira Rabindranathan
 Controller
 Atlantic Digital, Inc
 1241 South Maple
 Ann Arbor, MI 48103
 734-995-8989
 734-995-0190 fax
 indirar@amerinet.com

From: ARINQUIRIES [mailto:ARINQUIRIES@fcc.gov]
Sent: Thursday, October 27, 2011 3:55 PM
To: Indira Rabindranathan
Subject: RE: Regulatory fees - FRN 0003-7463-10

I see that you paid the 2011 fees including the penalty. We are still trying to determine why the 2010 bill is not currently displayed in the system. We will let you know when this issue has been resolved.

Details of Remittance ID 2028117

REMITTANCE PAYER

Payer FRN	Payer Name	Lockbox	Total Amount	Date Paid
0003746310	Atlantic Digital, Inc.	979084	\$1,502.50	10/27/2011

REMITTANCE APPLICANT

Matches 1 (of 1).

Applicant FRN	Applicant Name	PTC	Call Sign	FCC Ccode 1	FCC Ccode 2	Quantity	Fee Due
0003746310	Atlantic Digital, Inc.	1172	819248	320638.00	0.00		\$1,502.50

Stephen M. French
 VMD Systems Integrators
 OMD-Financial Operations
 Office: 2-A629
 Direct Line: 202-418-1878

10/28/2011

Fax: 202-418-7869

From: Indira Rabindranathan [mailto:indirar@AmeriNet.com]
Sent: Thursday, October 27, 2011 2:19 PM
To: ARINQUIRIES
Subject: Regulatory fees - FRN 0003-7463-10

Dear Sir/Madam:

Usually we get a bill for the annual regulatory fees. We have been waiting for the bill to pay the fees since we paid the fees in 2009. Since we did not get a bill, or a delinquent notice for not paying the fees, I called the FCC yesterday and they indicated that the FCC stopped sending the bills in 2010 and asked me to log in to the FCC site and pay on line. They helped me with the account and pass word. But, I could not find the bill for 2010. I called FCC regarding this and they could not figure out why it is not on line. They researched and called me back. They said they did not know why it was not there and asked me to send the payment using form 159.

Since we were late on paying the fees, FCC has assessed late payment penalty on us. As I indicated above, we did not pay the bills since we did not get the bills. We were not aware of the fact that the FCC stopped sending the bills. We also did not get any delinquent notices. If we had received one for 2010, we could have at least paid the 2011 fee on time. As you can see from above, there were problems also with our account in the FCC's website, the bill was not there.

Based on the above facts, I respectfully request the FCC to waive the penalties, imposed on us for 2010 and 2011 (\$312.50 for 2010 and \$300.50 for 2011) just for this time. We will make sure this won't happen again. I am very confident that you will credit our account for these penalties. Atlantic Digital is a small company and this penalty will create a tremendous financial burden on us.

Please let me know if you need any additional information.

Sincerely,

Indira Rabindranathan
Controller
Atlantic Digital, Inc.
1241 South Maple
Ann Arbor, MI 48103
734-995-1233
734-995-0190 fax
indirar@amerinet.com

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10/28/2011

Adana

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

OFFICE OF
MANAGING DIRECTOR

James H. Barker, Esq.
Elizabeth R. Park, Esq.
Jarrett S. Taubman, Esq.
Latham & Watkins, LLP
555 11th Street, N.W., Suite 1000
Washington, D.C. 20004-1304

Re: Request for Refund of Filing Fees (47 C.F.R. § 1.1113)
Licensee/Applicant: Cricket Licensee (Reaction), LLC
Fee Control Nos.: 0903059097573003, 0904209097433001
and RROG-09-00011926
Total of Fees Paid: \$10,375.00

Dear Counsel:

This is in response to your request filed July 29, 2009 (*Request*), on behalf of Cricket Licensee (Reaction) LLC (Cricket LLC) for a waiver of the Commission's rules and refund of the filing fees in connection with the conversion of Cricket Licensee (Reaction) Corporation (Cricket Corp.) to Cricket LLC. Our records reflect that you paid \$6,125.00 in assignment application fees and \$4,250.00 in waiver fees, for a total of \$10,375.00.¹ For the reasons set forth below, we deny your request.

You allege that on December 31, 2008, Cricket Corp. was converted from a corporation to a limited liability company (Cricket LLC) using procedures specified under Delaware state law that "result[ed] in the continuing existence of the original entity . . . and thus, there is no *pro forma* assignment of licenses[.]"² You assert that the conversion is merely a name change reportable to the Commission as an "Administrative Update" on *FCC 601, Main Form, FCC Application for Radio Service Authorization: Wireless Telecommunications Bureau Public Safety and Homeland Bureau* (Form 601) and requires neither prior Commission approval nor filing fees.³ You say that the Universal Licensing System (ULS) would not allow Cricket LLC to notify the Commission of the conversion as an Administrative Update using Form 601.⁴ The Wireless Telecommunications Bureau (Bureau) staff advised Cricket LLC to file an *FCC 603, Main Form, FCC Application for Assignments of Authorization and Transfers of Control: Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau* (Form 603) to notify the Commission of the conversion as *pro forma* assignment of authorizations from Cricket Corp. to Cricket LLC (*Notification of Pro Forma Assignment*), which Cricket LLC did on January 30, 2009.⁵

¹ For each of the 25 private operational fixed microwave licenses at issue, Cricket paid a \$245.00 assignment application fee and a \$170.00 waiver fee. See 47 C.F.R. §§ 1.1102(5)(j) and (r) (2008).

² *Request* at 1 (citing 6 Del. Code § 18-214).

³ *Id.* at 1-2.

⁴ *Id.* at 2.

⁵ *Id.* (citing ULS File No. 0003722547).

Because the *Notification of Pro Forma Assignment* included business radio licenses that are not subject to the forbearance procedures specified in section 1.948(c)(1) of the Commission's rules,⁶ Cricket LLC, on March 3, 2009, filed an application for the *pro forma* assignment of the business radio licenses (*Pro Forma Assignment Application*), along with a \$245.00 filing fee for each of the 25 call signs, for a total of \$6,125.00.⁷ On April 16, 2009, pursuant to Bureau staff instructions, Cricket LLC filed a notice specifying December 31, 2008, as the date on which the *pro forma* assignment had been consummated (*Notice of Consummation*).⁸ You say that because the *Notice of Consummation* was filed more than 30 days after December 31, 2008, ULS would not process the *Notice of Consummation* unless Cricket LLC requested a waiver of section 1.948(d) of the rules, 47 C.F.R. § 1.948(d), along with the associated filing fees.⁹ On April 16, 2009, Cricket LLC filed a request for waiver of section 1.948(d) of the rules, along with filing fees totaling \$4,250.00 (\$170.00 for each of the 25 business radio licenses) (*Request for Waiver of Section 1.948(d)*).¹⁰

You claim that the conversion from a corporation to a limited liability company was a mere name change requiring no filing fees and that Cricket LLC submitted the *Pro Forma Assignment Application* and the *Notice of Consummation* because technical limitations inherent in ULS prevented Cricket LLC from filing an Administrative Update.¹¹ You contend that applications filed for the purpose of modifying an existing authorization to comply with new or additional requirements are exempt from fees under section 1.1116(a) of the rules, 47 C.F.R. § 1.1116(a),¹² and that requiring the filing of an assignment application for the conversion of a Delaware corporation to a limited liability company is effectively a new or additional requirement. You maintain that there is "clear" Commission precedent establishing that name changes are not assignments requiring prior consent and that any change in this policy requires a rulemaking.¹³

Filing fees accompanying requests for the Commission's regulatory services listed in sections 1.1102 through 1.1109 of the Commission's rules, 47 C.F.R. §§ 1.1102-1.1109, including the fees at issue here, are only refundable in the limited circumstances set forth in section 1.1113 of the rules. None of those circumstances is applicable here. The Bureau has consistently treated the conversion of a corporation to a limited liability company as a *pro forma* assignment of authorizations or a transfer of control requiring the licensee to report the conversion on Form 603 and not as a name change reportable as an Administrative Update on Form 601.¹⁴ Because this is no change in Bureau practice, no new or additional requirement is

⁶ See 47 C.F.R. § 1.948(c)(1) (permitting the *pro forma* assignment of Commercial Mobile Radio Service licenses subject only to post-consummation notice).

⁷ *Id.* at 2-3 (citing ULS File No. 0003757748). The *Pro Forma Assignment Application* was granted on March 24, 2009.

⁸ *Id.* (citing ULS File No. 0003809281).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 4-5; see also *id.* at 4 (stating that "the *Wireless Telecommunications Bureau Fee Filing Guide* explicitly provides that there 'is no fee for applications filed for purpose of ... Administrative Update'").

¹² *Id.* at 5-6.

¹³ *Id.* at 6.

¹⁴ Although *pro forma* applications to assign authorizations and to transfer control of commercial radio licenses are generally not subject to filing fees under forbearance, the 25 private operational fixed microwave licenses at issue are not subject to the forbearance procedures set forth in section 1.948(c)(1) of the rules and therefore are subject to filing fees, including the fees associated with the *Notification of Pro Forma Assignment* and the *Request for Waiver of Section 1.948(d)*. See note 6 *supra*. See also Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and

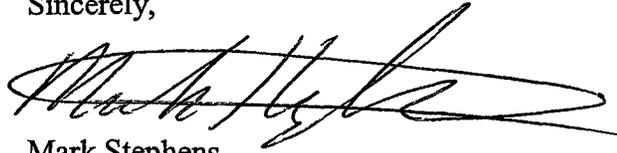
James H. Barker, Elizabeth R. Park, and Jarrett S. Taubman
being imposed on the Cricket licenses. Thus, contrary to its arguments, Cricket is not exempt from fees under section 1.1116(a) on the basis that it is filing to modify its licenses to comply with any new or additional requirement.

3.

Under facts substantially identical to those here, after Nextel Spectrum Acquisition Corp. filed an Administrative Update on Form 601 to report the conversion of Nextel Spectrum Acquisition Corp. from a corporation to a limited liability company (NSAC, LLC), the Bureau required Nextel Spectrum Acquisition Corp. to withdraw the Form 601 and to file an application to assign the licenses at issue on a Form 603.¹⁵ With respect to your claim that the conversion of a corporation to a limited liability company under Delaware law is a mere name change and, therefore, there is “no *pro forma* assignment of licenses,” the Bureau’s practice regarding the conversion of a corporation to a limited liability governs with respect to its own processing rules and filing fees, not Delaware law. For these reasons, we find that there are no extraordinary and compelling circumstances sufficient to warrant a refund of the filing fees or a waiver of our rules.¹⁶ We therefore deny your request.

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

Transfers of Control Involving Telecommunications Carriers, *Memorandum Opinion and Order*, 13 FCC Rcd 6293, 6396 (1998) (“[L]icensees . . . who do not meet the definition of ‘telecommunications carrier’ (e.g., public safety and private microwave licensees) are beyond the scope of our section 10 forbearance authority, and therefore are not subject to the revised procedures established by this *Order*.”).

¹⁵ See ULS File No. 0003611667. Nextel Spectrum Acquisition Corp. filed the required assignment application on October 15, 2008, and the Bureau granted consent to the application on October 17, 2008. See *Public Notice, Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, et al.*, Report Number: 4461, 2008 WL 4659827 (Oct. 22, 2008).

¹⁶ The Commission has discretion to waive filing fees upon a showing of good cause and a finding that the public interest will be served thereby. See 47 U.S.C. § 158(d)(2); 47 C.F.R. § 1.1119(a); *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 5 FCC Rcd 3558, 3572-73 (1990). We construe our waiver authority under section 8 of the Communications Act, 47 U.S.C. § 158(d)(2), narrowly and will grant waivers on a case-by-case basis to specific applicants upon a showing of “extraordinary and compelling circumstances.” See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 958 (1987); *Sirius Satellite Radio, Inc.*, 18 FCC Rcd 12551 (2003).

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www.lw.com

11926

LATHAM & WATKINS LLP

RECEIVED - FCC

JUL 29 2009

July 29, 2009

Federal Communications Commission
Bureau / Office

VIA HAND DELIVERY

Steven VanRoekel
Managing Director
Office of Managing Director
Federal Communications Commission
445 12th Street, SW, Room 1-A836
Washington, DC 20554

RECV'D & INSPECTED

AUG 06 2009

FCC-GBG MAILROOM

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Los Angeles	Singapore
Madrid	Tokyo
Milan	Washington, D.C.
Moscow	

Re: Cricket Licensee (Reauction), LLC Request for Refund of Application Fees

Dear Mr. VanRoekel:

0903059097573003
0904209097433001

Cricket Licensee (Reauction), LLC ("Cricket") hereby requests a refund of application fees totaling \$10,375.00 and remitted to the Commission on March 4, 2009 and April 17, 2009 in connection with the change of Cricket's name from "Cricket Licensee (Reauction) Inc." to "Cricket Licensee (Reauction), LLC." The requested refund is appropriate because the Commission's rules do not require the payment of any application fee in connection with a name change. In the alternative, and to the extent necessary, Cricket requests a waiver of the filing fees to facilitate such refund.

A. Background

On December 31, 2008, Cricket was converted from a corporation ("Cricket Licensee (Reauction), Inc.") to a limited liability company ("Cricket Licensee (Reauction), LLC") using procedures specified under Delaware state law. A copy of the Certificate of Conversion is attached hereto as Exhibit A. Under Delaware law, a corporate entity may elect to convert to a limited liability company ("LLC") resulting in the continuing existence of the original entity, with all rights and interests of the original entity remaining with the converted limited liability company.¹ Effectively, the new entity is the original entity, and thus, there is no *pro forma* assignment of licenses held by such entity.

¹ See 6 Del. Code § 18-214. Section 18-214 of the Delaware Code provides that "the existence of the limited liability company shall be deemed to have commenced on the date the other entity commenced its existence in the jurisdiction in which the other entity was first created, formed, incorporated or otherwise came into being." 6 Del. Code § 18-

LATHAM & WATKINS LLP

However, some of the licenses covered by that notice were industrial/business pool licenses. Such licenses are not subject to the forbearance procedures specified in Section 1.948(c)(1) of the Commission's Rules, which permit the *pro forma* assignment of CMRS licenses subject only to post-consummation notice.⁶ Consequently, Cricket could not simply provide post-consummation notice of the "*pro forma* assignment" of those licenses to notify the Commission of the name change. Instead, Cricket was required to file an application seeking authority for that "*pro forma* assignment" even though such an application was not necessary as a legal matter. Cricket did so on March 3, 2009, again for the sole purpose of ensuring the accuracy of the Commission's records (the "Assignment Application").⁷ Applications for an assignment of business radio licenses require a fee of \$245 for each license call sign included in the application. As evidenced by Exhibit B hereto, Cricket remitted filing fees totaling \$6,125.00 in connection with the 25 business radio licenses included in that application. In the Assignment Application, Cricket noted its intent to seek a refund of those fees from the Managing Director.⁸

The Assignment Application was granted on March 24, 2009. On April 16, 2009, Cricket filed a "notice of consummation" in connection with the "*pro forma* assignment" to complete the process of changing Cricket's name from "Cricket Licensee (Reauction), Inc." to "Cricket Licensee (Reauction), LLC" (the "Consummation Notice").⁹ In the Consummation Notice, Cricket specified December 31, 2008 as the date on which the "*pro forma* assignment" had been consummated. In fact, no assignment had been consummated on this date; December 31, 2008 was merely the date on which Cricket had been converted from a corporation to a LLC.

However, under Section 1.948(d) of the Commission's rules, a notice of consummation must be filed within 30 days of the consummation date.¹⁰ Because Cricket's conversion occurred on December 31, 2008 – more than 30 days prior to the filing of the Consummation Notice – ULS would not process the Consummation Notice unless Cricket requested a waiver of Section 1.948(d). Cricket requested such a waiver at the direction of staff so that ULS would process the Consummation Notice. As evidenced by Exhibit C hereto, Cricket remitted filing fees totaling \$4,250 in connection with that waiver request -- \$170 for each of the 25 business radio licenses included in that filing. Once again, Cricket noted its intent to seek a refund of those fees from the Managing Director.¹¹

because the electronic filing in ULS requires a separate FRN number to complete the *pro forma* assignment application.

⁶ 47 C.F.R. § 1.948(c)(1).

⁷ See ULS File No. 0003757748 (filed Mar. 3, 2009).

⁸ See Assignment Application, Exhibit 1.

⁹ See ULS File No. 0003809281 (filed Apr. 16, 2009).

¹⁰ 47 C.F.R. § 1.948(d).

¹¹ See Consummation Notice, Exhibit 1.

In short, Cricket should not be required to pay any application fees in connection with the filing of the Assignment Application or Consummation Notice. Cricket did so only to facilitate the processing of these filings by ULS, after consulting with Commission staff and clearly stating in those filings Cricket's intent to seek refund of those fees. And, it is plain that the public interest is served by encouraging licensees to provide the most accurate information possible to the ULS database. Accordingly, Cricket should be eligible for a refund of those fees under Section 1.1115(a) of the Commission's rules.

C. To the Extent Necessary, the Commission Should Waive its Fee Requirements to Facilitate the Refund of the Application Fees at Issue

While Cricket believes it is entitled to a refund pursuant to Section 1.1115(a) in connection with the Assignment Application and Consummation Notice for the reasons set forth above, Cricket requests a waiver of the Commission's filing fees and associated rules to facilitate the refund of Cricket's application fees to the extent necessary. Section 8(d)(2) of the Communications Act, as amended, provides that "[t]he Commission may waive or defer payment of an [sic] charge in any specific instance for good cause shown, where such action would promote the public interest."¹⁶ "Good cause" exists where special circumstances warrant a deviation from the general rule and such deviation would serve the public interest, or where the particular facts make strict compliance inconsistent with the public interest.¹⁷ Further, Section 1.1115(a)(5) of the Commission's rules makes clear that the Commission may refund filing fees already remitted pursuant to waiver.¹⁸

In this case, special circumstances justify a waiver because: (i) Cricket's name change is similar to other name changes that the Commission permits without prior consent or the payment of application fees; (ii) Cricket neither sought nor required authority for any *pro forma* assignment of licenses; (iii) Cricket filed the Assignment Application and Consummation only to ensure that the Commission's records accurately reflected Cricket's name change; and (iv) Cricket was unable to file an Administrative Update only because of technical limitations inherent in the Commission's filing systems.

Further, strict application of the Commission's filing fees and associated rules would be inconsistent with the public interest, particularly in light of clear Commission pronouncements recognizing that no fee should be incurred as the result of a licensee's name change. The staff's direction to Cricket to file the notification of name change in the form of a request for consent to a *pro forma* assignment application is akin to a filing made in response to a change in the Commission's policy. Under the Commission's rules, applications filed for the purpose of modifying an existing authorization to comply with new or additional requirements

¹⁶ 47 U.S.C. § 158(d)(2).

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

¹⁸ 47 C.F.R. § 1.1115(a)(5).

LATHAM & WATKINS^{LLP}

For the reasons set forth above, Cricket respectfully requests a refund in the amount of \$10,375.00. Please contact the undersigned should you have any questions.

Sincerely,



James H. Barker
Elizabeth R. Park
Jarrett S. Taubman

Counsel for Cricket Licensee (Reauction), LLC

cc: Kathy Harris, Wireless Telecommunications Bureau
Elizabeth Fishel, Wireless Telecommunications Bureau

Adama

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

APR 04 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: DAIJ Media, LLC
Station: KRCM
Fee: FY 2011 Regulatory Fee
Date Request Filed: Sept. 13, 2011
Date Regulatory Fee Paid: Sept. 13, 2011
Fee Control No.: RROG-11-00013828
Regulatory Fee Amount: \$900.00

Dear Mr. Alpert:

This letter responds to Licensee's *Request*¹ for waiver and refund of \$900.00 previously paid for the required fiscal year (FY) 2011 regulatory fee. For the reasons stated herein, we deny the *Request*.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a case-by-case showing of good cause and a finding that the public interest will be served thereby.² The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.³ Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.⁴ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."⁵ In reviewing

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.

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."⁸ Licensee provided a copy of the correspondence permitting the previous licensee, Voice Broadcasting, Inc., to remain silent,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 Voice Broadcasting, Inc., requested silent status, which is not relevant to Licensee's financial status. Moreover, Licensee failed to provide 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 financial position that met the Commission's relevant standards. Plainly, in

⁶ *Id.*

⁷ 10 FCC Rcd at 12762 ¶ 15.

⁸ *Request* at 1.

⁹ Letter from H. Taft Snowdon, Supervisory Attorney, Audio Division, Media Bureau, FCC to Ralph H. McBride, Voice Broadcasting, Inc., 977 Beagle Road, Orange, TX 77632 (Jul. 5, 2011).

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.

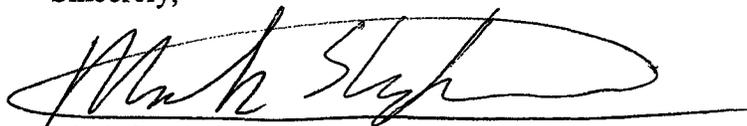
¹⁵ 10 FCC Rcd at 12762 ¶ 15.

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 it ever filed an application to go dark 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, the previous licensee, Voice Broadcasting, Inc., asserted the justification for its request to go dark was for "financial" reasons, but without supporting evidence. It merely asserted that "VOICE BROADCASTING ...REQUESTS SPECIAL TEMPORARY AUTHORITY FOR KRCM(AM) TO REMAIN SILENT. DUE TO THE DIFFICULT ECONOMIC TIMES, IT IS NOT FEASIBLE FOR KRCM(AM) TO REMAIN ON THE AIR AT THIS TIME. VOICE IS CURRENTLY FINALIZING AN AGREEMENT FOR SALE OF THE STATION."²¹ That is not evidence of the current Licensee's financial hardship. We will not assume the existence or sufficiency of information that is not part of the *Request*. Accordingly, without sufficient evidence of financial hardship, we deny licensee's *Request* for a waiver of the required regulatory fee and a refund of the amount paid.

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

Sincerely,



Mark Stephens
Chief Financial Officer

¹⁶ 9 FCC Rcd at 5344 ¶ 29.

¹⁷ *Request* at 1.

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

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

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

²¹ Notification of Suspension of Operations/Request for Silent STA, BLSTA-20110518ACN, Exhibit 1, Description.

RR0G-11-00013828

The Law Office of

Dan J. Alpert

2120 N. 21st Rd.
Arlington, VA 22201
DJA@COMMLAW.TV

(703) 243-8690

(703) 243-8692 (FAX)

September 13, 2011

Managing Director
Federal Communications Commission
445 12th St. S.W.
Washington, DC 20554

RECEIVED - FCC

SEP 13 2011

Federal Communications Commission
Bureau / Office

**Re: Station KRCM
Facility No. 14228
Shenandoah, TX
FRN: 0019055854**

To Whom This May Concern:

DAIJ Media, LLC, by its attorney, hereby requests a waiver and refund of its 2011 Annual Regulatory Fee. In support thereof, the following is stated.

In the Memorandum Opinion and Order issued with respect to Implementation of Section 9 of the Communications Act, FCC 95-257 (June 22, 1995), the FCC recognized that waiver of the annual Regulatory Fee was appropriate in certain instances, and specifically determined that it would grant waivers to licensees of broadcast stations which are dark (not operating). The Commission recognized that an imposition of regulatory fees could be an impediment to the restoration of broadcast service, and that such it would be unnecessary for such stations to make any further showing to warrant grant of a waiver. Id. at ¶ 15.

DAIJ Media, LLC is licensee of Station KRCM. The station currently is dark. See Attachment. Accordingly, a waiver and refund of the \$900.00 2011 Annual Regulatory Fee that has been paid is appropriate.

Please send the refund to the undersigned, who was the designated "Payor" of the Fee.

WHEREFORE, it respectfully is requested that this request be granted.

Very truly yours,

Dan J. Alpert

Counsel for DAIJ Media, LLC

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

July 5, 2011

IN REPLY REFER TO:
1800B3-FMH

Ralph H. McBride
Voice Broadcasting, Inc.
977 Beagle Road
Orange, TX 77632

In re: **KRCM (AM), Shenandoah, TX**
Facility ID No. 14228
Silent Since April 23, 2011

Request For Special Temporary
Authority To Remain Silent

Dear Mr. McBride:

This letter concerns the request, filed on May 18, 2011, on behalf of Voice Broadcasting, Inc. ("Voice"), for Special Temporary Authority to permit AM Station KRCM to remain silent.

Voice's request states that KRCM (AM) [REDACTED]
[REDACTED] Voice's request includes the appropriate certification regarding Section 5301 of the Anti-Drug Abuse Act of 1988.¹

Voice's request will be granted. Accordingly, Special Temporary Authority is granted to permit FM Station KZUS to remain silent for a period not to exceed 180 days from the date of this letter. **Notwithstanding the grant of this special temporary authority, the broadcast license for KZUS (FM) will automatically expire as a matter of law if broadcast operations do not commence by 12:01 a.m., April 24, 2012.**² See Section 312(g) of the Communications Act, 47 U.S.C. Section 312(g).

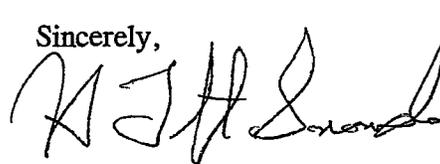
¹ In the event extension of Special Temporary Authority is sought, please renew the certification in this matter.

² Notification of resumption of broadcast operations must be mailed to:

Federal Communications Commission
Attn: 1800B3-DW, Room 2-B450
445 12th Street, S.W.
Washington, D.C. 20554

the safety of air navigation that any prescribed painting and illumination of the station's tower shall be maintained until removed. *See* 47 C.F.R. Sections 17.6 and 73.1740(a)(4).

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Taft Snowdon', written in a cursive style.

H. Taft Snowdon
Supervisory Attorney
Audio Division
Media Bureau

cc: A. Wray Fitch III, Esq.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 04 2012

Adama

OFFICE OF
MANAGING DIRECTOR

Mr. Kevin M. Fitzgerald
Geos Communications
54 Wilmar Drive
Post Office Box 701
Tunkhannock, PA 18657

Re: Deferral Request (Extraordinary circumstance;
47 C.F.R. § 1.1166(a) - (b))

Licensee: Geos Communications
Stations: ~~WGMF-AM, WZMF-FM, WZKN-FM,~~
~~WZKN-FM2, WNKZ-FM, W299BM-FM,~~
~~W297BG-FM, W283BJ-FM, W282BJ-FM,~~
~~W282BK, W230AP,~~¹ and Auxiliaries WLP640,
~~KB96793, WPOQ515, KQ7934, WBX276,~~
WQA976, and KQB686.

Fee: FY 2011 Regulatory Fees

Date Application Filed: Sep. 15, 2011

Fee Control No.: RROG-11-00013954

Regulatory Fee (FY 2011): \$7,530.00

Dear Mr. Fitzgerald:

This responds to Licensee's *Request*,² for deferment of the required Fiscal Year (FY) 2011 regulatory fees due for Stations WGMF-AM, WZMF-FM, WZKN-FM, WZKN-FM2, WNKZ-FM, W299BM-FM, W297BG-FM, W283BJ-FM, W282BJ-FM, W282BK, W230AP and Auxiliaries: WLP640, KB96793, WPOQ515, KQ7934, WBX276, WQA976, and KQB686. Our records reflect that FY 2011 fees have not been paid. For the reasons stated herein, we grant licensee's *Request*; however, the period of deferral is over, thus the \$7,530.00 FY 2011 regulatory fees are due. To avoid accrual of additional charges,³ full payment must be received within 30 days of the date of this letter.

¹ Our records show that Licensee is responsible for paying the fee due for Station W230AP, which was not included on the list of stations for deferral of payment. We have corrected that apparent oversight by including the station herein.

² Letter from Kevin Fitzgerald, Geo Communications, 54 Wilmar Drive, P.O. Box 701, Tunkhannock, PA 18652 to Marlene H. Dortch, FCC, Office of the Managing Director, 445 12th St., SW, Washington, DC 20554 (received Sept. 15, 2011) (*Request*).

³ 47 U.S.C. § 159(c)(1); 31 U.S.C. § 3717; 47 C.F.R. §§ 1.1164; 1.1940.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may be 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 authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.⁵

Licensee has the burden of demonstrating that deferral of payment will override the public interest, as determined by Congress, that the government should be reimbursed on or before the due date for the Commission's regulatory action.⁶ To carry its burden, Licensee must present compelling and extraordinary circumstances that outweigh the public interest.⁷

Licensee asserts that its "various stations located in Pennsylvania [were] affected by the 2011 Susquehanna River Flooding and Hurricane Irene."⁸ Specifically, "Northeastern and North Central Pennsylvania ... [was] devastated by flooding ... [n]ormal business activities at [Licensee's] stations [were] at a standstill because of road closures ... the main thoroughfare [was] damaged and impassable ... [o]ne of [Licensee's] studios [and] a transmitter building [were flooded] ... [and] the counties [where the stations are located are a FEMA- designated] disaster area."⁹ We find that the affects of Hurricane Irene on Licensee's stations during the FY2011 Regulatory Fee filing period created extraordinary and compelling circumstances to warrant deferral of payment of the regulatory fees on each of the identified Stations. Now, however, the period of deferment is over, and the fees are due.

The \$7,530.00 regulatory fees must be received, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. If Licensee fails to pay the full amount due by that date, any unpaid portion of the debt will be delinquent, and on that amount, we will assess the statutory penalty of 25% of the unpaid fee,¹⁰ 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

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 *Id.*

⁷ *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.).

⁸ *Request* at 1.

⁹ *Id.* at 2.

¹⁰ 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.").

letter. Furthermore, under the law,¹¹ the Commission will initiate collection proceedings. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

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

Mark Stephens
Chief Financial Officer

Enclosure

¹¹ See 47 C.F.R. § 1.1901, *et seq.*

Kevin M. Fitzgerald
Geos Communications
54 Wilmar Drive, P.O. Box 701
Tunkhannock, PA 18657
607-427-0452
E-mail kevin@kfitz.com

September 13, 2011

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

Received & Inspected

SEP 15 2011

FCC Mail Room

RE: Request for Regulatory Fee Deferral
Geos Communications Facilities
Affected by the 2011 Susquehanna River Flooding and Hurricane Irene

To the Managing Director,

I, Kevin M. Fitzgerald; General Partner of Geos Communications, a Pennsylvania Partnership, Licensee of various stations located in Pennsylvania, affected by the 2011 Susquehanna River Flooding and Hurricane Irene, hereby requests a deferral of payment of the 2011 Annual Regulatory Fees which are due on September 14, 2011.

Here is a list of the Geos Communications affected facilities:

1. WGMF, 1460AM, Tunkhannock, PA Fac. ID No. 19563 \$1150
2. WZMF, 730AM, Nanticoke, PA Fac. ID No. 59757 \$1800
3. WZKN, 96.9FM, Ridgebury, PA Fac. ID No. 40383 \$675
4. WNKZ, 103.9FM, Dushore, PA Fac. ID No. 66715 \$675
5. WZKN-FM2, 96.9FM, Towanda, PA Fac. ID No. 185614 \$395
6. W299BM, 107.7FM, New Albany, PA Fac. ID No. 141457 \$395
7. W297BG, 107.3FM, Ulster, PA Fac. ID No. 140305 \$395
8. W283BJ, 104.5FM, Wilkes-Barre, PA Fac. ID No. 141466 \$395
9. W282BK, 104.3FM, Tunkhannock, PA Fac. ID No. 156161 \$395
10. W282BJ, 104.3FM, Scranton, PA Fac. ID No. 156961 \$395
11. 7 Aux Licenses \$10 each; \$70 Total

Total Geos Communications 2011 Regulatory Fees: \$6,740

I am requesting that you allow for at least a 90 day deferral for the payment deadline. I am the Chief Engineer and a General Partner of Geos Communications who have AM and FM stations in Northeastern and North Central Pennsylvania. This area has been devastated by flooding that occurred over the past week. Normal business activities at our stations is at a standstill because of road closures, Route 6, the main thoroughfare through this area has been damaged and was impassable as of September 11, 2011. The water level of the Susquehanna river reached levels in excess of the Hurricane Agnes Flood in 1972 at Meshoppen, PA and at Wilkes-Barre, PA. One of our studios was flooded with 2 ft. of water and one of our transmitter sites was flooded with 6 ft. of water in the transmitter building. We have remained on air through most of the disaster barring issues from the power companies. A number of the banks in the area were devastated by flooding. FEMA, through a presidential declaration, has designated the counties we are in, Luzerne, Wyoming, Bradford, and Sullivan; all in PA, as a disaster area. In light of the disaster near us in New Jersey, Vermont, and New York caused by Hurricane Irene two weeks ago, many stations, particularly smaller local "mom and pop" stations like ours, are going to have extreme problems returning to normal business operations. We are requesting a 90 day deferral until December 13, 2011; to pay these regulatory fees. Thank You for reviewing our request.

It should be noted that this Licensee, Geos Communications, a Pennsylvania Partnership, and all parties to this request, certify that they are not subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. at 853a.

Thank You for reviewing our request.

Sincerely,

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

Kevin Fitzgerald,
Chief Engineer and General Partner,
Geos Communications



Fee Filer

[Main Menu](#) | [Regulatory Fee Manager](#) | Fee Details

Received & Inspected

Logged in as: GEOS COMMUNICATIONS (0010351716) [[Log Out](#)]

SEP 15 2011 [Help](#)

FCC Mail Room

Fee Details

Licensee FRN 0010351716		Licensee Name GEOS COMMUNICATIONS			Year 2011	Service Media	Grand Total \$6,740.00
#	Bill Number	Call sign	PTC	Quantity (1)	Facility ID	State & Community	Fee Amount
1	<input type="checkbox"/> N/A	WGFM	1124	1	19563	PA TUNKHANNOCK	\$1,150.00
2	<input type="checkbox"/> N/A	WZMF	1138	1	59757	PA NANTICOKE	\$1,800.00
3	<input type="checkbox"/> N/A	WNKZ	1141	1	66715	PA DUSHORE	\$675.00
4	<input type="checkbox"/> N/A	WZKN-FM2	1168	1	185614	PA TOWANDA	\$395.00
5	<input type="checkbox"/> N/A	W297BG	1168	1	140305	PA ULSTER	\$395.00
6	<input type="checkbox"/> N/A	W299BM	1168	1	141457	PA NEW ALBANY	\$395.00
7	<input type="checkbox"/> N/A	W283BJ	1168	1	141466	PA WILKES-BARRE	\$395.00
8	<input type="checkbox"/> N/A	W282BK	1168	1	156161	PA TUNKHANNOCK	\$395.00
9	<input type="checkbox"/> N/A	W282BJ	1168	1	156961	PA SCRANTON	\$395.00
10	<input type="checkbox"/> N/A	WZKN	1141	1	40383	PA RIDGEBURY	\$675.00
11	<input type="checkbox"/> N/A	KB96793	1169	1	19563		\$10.00
12	<input type="checkbox"/> N/A	WLP640	1169	1	19563		\$10.00
13	<input type="checkbox"/> N/A	WPOQ515	1169	1	66715		\$10.00
14	<input type="checkbox"/> N/A	KQ7934	1169	1	59757		\$10.00
15	<input type="checkbox"/> N/A	KQB686	1169	1	59757		\$10.00
16	<input type="checkbox"/> N/A	WBX276	1169	1	59757		\$10.00
17	<input type="checkbox"/> N/A	WQA976	1169	1	59757		\$10.00

Now displaying records 1 to 17 of 17.

Select the option that best describes how to proceed:

- I am finished viewing and editing fee details
- Enter additional 2011 Media fees for FRN 0010351716
- Edit selected fee details (select up to 10)
- Delete selected fee details
- Edit Licensee FRN and Name

Select a Reason for Deletion

SELECT A REASON

BACK

CONTINUE

Adama

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 29 2012

OFFICE OF
MANAGING DIRECTOR

Mr. Jim Lamke
Itasca Broadcasting, Inc.
507 S.E. 11th Street
Grand Rapids, MN 55744

Re: Waiver Request (Late Payment Penalties;
47 C.F.R. § 1.1164)
Licensee/Applicant: Itasca Broadcasting, Inc.
Stations: KOZY (AM) and KMFY (FM)
Fees: FY 2011 Regulatory Fee Late Payment Penalties
Date Request Filed: Sep. 20, 2011
Date Regulatory Fee Paid: Sep. 21, 2011
Fee Control No.: RROG-11-00013885
Late Penalty Amount: \$662.50

Dear Mr. Lamke:

This responds to Licensee's *Request*¹ for waiver of the statutory penalties² for late payment of the Fiscal Year (FY) 2011 regulatory fees. For the reasons stated herein, we must deny the *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,³ and when the required payment is received late or it is incomplete, and it is "not excused by bank error,"⁴ then to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."⁵ Thereafter, as may be appropriate, from the date of delinquency, as required by the law,⁶ we assess interest, penalties, and administrative charges for collection.

¹ Email from Jim Lamke, General Manager, KOZY/KMFY [kozykmygm@paulbunyan.net] to ARINQUIRIES, FCC (Sept. 20, 2011)(*Request*).

² 47 U.S.C. § 159(c).

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

⁴ 47 C.F.R. § 1.1164.

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

⁶ 31 U.S.C. §3717; 47 C.F.R. §§ 1.1164(f)(4), 1.1940; In The Matter Of 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, 5354 ¶ 65 (1994) ("Included in the recovery of any delinquent fee will be an assessment of interest on the debt due, a penalty for nonpayment, and the allowable cost incurred due to the federal government in the collection process."); In The Matter Of Assessment And Collection Of Regulatory Fees For Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9297-98 ¶ 54 (2010) ("A late payment penalty of 25 percent of the unpaid amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set

For FY 2011, the deadline for paying regulatory fees was Sept 16, 2011.⁷ By failing to pay the FY 2011 regulatory fees when due, Licensee failed to meet its obligations. The resulting consequences are not excused or mitigated by the unfortunate loss of a corporate officer “last October” or the lack of awareness that the annual fees were due until such time as the “FCC website [was accessed] to find out the process to be approved by the FCC [to transfer ownership of the Stations].”⁸ A change in corporate officers or a proposal to transfer station ownership, is neither a legal ground nor a clear mitigating circumstance to waive collection of the penalties. The Commission has repeatedly held that “[l]icensees are expected to know and comply with the Commission’s rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances.”⁹

On May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency’s Fee Filer system.¹⁰ 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.”¹¹ On July 31, 2009, the Commission released its order adopting these proposals.¹² 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.”¹³ 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.”¹⁴ On September 2, 2009, the Commission released a third public notice reiterating that “**HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.**”¹⁵

forth in section 1.1910 of the Commission’s Rules and in the Debt Collection Improvement Act of 1996 (“DCIA”). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission’s rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.”)

⁷ See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *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).

⁸ *Request*.

⁹ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

¹⁰ Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972 ¶ 16 (2009).

¹¹ *Id.* at 5973 ¶ 20.

¹² 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*).

¹³ *Id.* at 10309 ¶ 26.

¹⁴ *Fee Filer Mandatory for FY 2009 Regulatory Fees*, *Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

¹⁵ Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, *Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

Similarly, 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."¹⁶ This notification was part of the Commission's increased effort to notify licensees that hardcopy bills will no longer be mailed.¹⁷

Every licensee is obliged to make the fee payment by the deadline. For example, 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.¹⁸ Moreover, 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,"¹⁹ which are not described in Licensee's situation.

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

Sincerely,

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

Mark Stephens
Chief Financial Officer

¹⁶ Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9291 ¶ 37 (2010).

¹⁷ See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923 ¶ 12 (2010).

¹⁸ See *XO Communications, LLC* (OMD, Nov. 10, 2010).

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

Stephen French

RR06-11-00013885

From: Jim Lamke [kozykmfygm@paulbunyan.net]
Sent: Tuesday, September 20, 2011 2:07 PM
To: ARINQUIRIES
Subject: penalty fees waived

To whom it may concern,

My name is Jim Lamke, General Manager for KOZY/KMFY radio in Grand Rapids, mn. I am e-mailing you to ask to have our penalty fees waived from our regulatory fees due to the death of the previous owner. Mike laizzo who was the owner passed away last October, I am in the process of purchasing the stations from his wife. When I went on FCC website to find out the process to be approved by the FCC, I found out that the fees were due last Wednesday. However, I did go on line this morning and pay the fees along with the penalty. I am asking that you would consider my situation and waive the penalty fees. Our FRN # is 0002630358

Thank you in advance

Jim Lamke
General Manager
KOZY/KMFY
Grand Rapids, MN
218-999-5669

9/20/2011

Adama-

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

OFFICE OF
MANAGING DIRECTOR

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

Re: Waiver Request (Financial Hardship; 47 C.F.R.
§ 1.1166(c))
Licensee/Applicant: KM Television of El Dorado,
LLC
Station: KEJB (TV)
Fee: FY 2011 Regulatory Fee
Date Request Filed: Sep. 14, 2011
Fee Control No.: RROG-11-00013906
Regulatory Fee Amount: \$3,275.00

Dear Mr. Shainis:

This responds to Licensee's *Request*¹ for a waiver of the Fiscal Year (FY) 2011 regulatory fees and deferral of the payment. For the reasons stated herein, we deny the *Request* for a waiver.

Licensee included an "unaudited Profit and Loss Statement [*P&L*] for calendar year 2010," and stated that a "balance sheet for KM will be submitted as a supplement."² However, we have no record of a timely supplemental filing. Furthermore, it asserted the "poor financial condition of KM reflects that suffering due to the poor economy of its service area and the country as a whole."³

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

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.

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 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 net income of \$1,620.11.¹¹ It did not provide any financial information relevant to 2011. In that case, we will not speculate on the

⁶ 10 FCC Red at 12761-62 ¶ 13.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

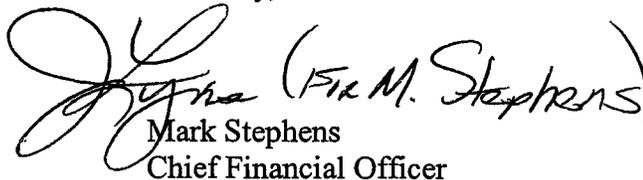
¹⁰ See *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner . . . has the 'burden of clarifying its position' before the agency."). See also 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

¹¹ Licensee asserted it has "no full-time employees," instead relying on "contract labor." *Request* at 2. Licensee did not provide any other information concerning this station and the multiple television and radio stations owned and operated by KM Communications, Inc. See <http://kmcommunications.com/>; see also FCC 323, Ownership Report for Commercial Broadcast Stations, File No. BOA-20100708HGR.

content of the request or its supporting evidence. Thus, the brevity of 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."¹² Because Licensee failed to furnish evidence sufficient to support its *Request*, it is denied.

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,¹³ and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter. Under the law,¹⁴ 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 M. Stephens)
Mark Stephens
Chief Financial Officer

Enclosure

¹² See e.g., <http://kmcommunications.com/>.

¹³ 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.").

¹⁴ See 47 C.F.R. § 1.1901, *et seq.*

Shainis & Peltzman, Chartered

Counselors at Law

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

Suite 240
1850 M Street, N.W.
Washington, D.C. 20036

(202) 293-0011
Fax (202) 293-0810
e-mail: shainispeltzman@s-plaw.com
September 14, 2011

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

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

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

FILED/ACCEPTED

SEP 14 2011

Re: KM Television of El Dorado, LLC

Federal Communications Commission
Office of the Secretary

Dear FCC:

KM Television of El Dorado, LLC ("KM"), licensee of KEJB(TV), El Dorado, Arkansas, Facility ID No. 84164 (the "Station"), by its counsel and pursuant to the Commission's Regulatory Fee Fact Sheet, Waivers, Reductions and Deferments of Regulatory Fees (dated August 2011, the "Waiver Fact Sheet"), respectfully requests a waiver of the annual regulatory fees to be paid by KM for the Station for fiscal year 2011 ("FY 2011"), as well as a deferment of the deadline for payment of the annual regulatory fees. The Waiver Fact Sheet states that the Commission will consider the waiver of annual regulatory fees in extraordinary and compelling circumstances, and upon a showing that such a waiver would serve the public interest. For the reasons stated herein, KM also respectfully requests that the Commission defer payment of the regulatory fees for the Station until the Commission acts upon this request for waiver of the fees.

The fee for the KM station is listed on Schedule I.

Shainis & Heltzman, Chartered

Office of the Managing Director

September 14, 2011

Page 2 of 2

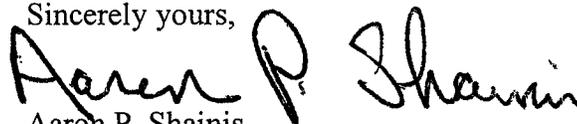
In support of KM showing of financial hardship, attached hereto as Schedule II is an unaudited Profit and Loss Statement for calendar year 2010. The P&L reflects that KM had a net income of merely \$1,620.11. The poor financial condition of KM reflects that suffering due to the poor economy of its service area and the country as a whole.

A Balance Sheet for KM will be submitted as a supplement.

KM has had no full-time employees. It utilizes part-time, contract labor

Accordingly, for the reasons stated herein, KM respectfully requests that the Commission waive the \$3,275 annual regulatory fee due from KM for the Station for fiscal year 2011. KM also requests that the Commission defer the deadline by which KM must pay such annual regulatory fees based on the financial hardship demonstrated herein.

Sincerely yours,



Aaron P. Shainis

Counsel for

KM Television of El Dorado, LLC

Adama

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

APR 30 2012

OFFICE OF
MANAGING DIRECTOR

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

Re: Waiver Request (Financial Hardship; 47 C.F.R.
§ 1.1166(c))
Licensee/Applicant: KM Television of Iowa, LLC
Station: KWKB (TV)
Fee: FY 2011 Regulatory Fee
Date Request Filed: Sep. 14, 2011
Fee Control No.: RROG-11-00013918
Regulatory Fee Amount: \$12,325.00

Dear Mr. Shainis:

This responds to Licensee's *Request*¹ for a waiver of the Fiscal Year (FY) 2011 regulatory fees and deferral of the payment. For the reasons stated herein, we deny the *Request* for a waiver.

Licensee included an "unaudited Profit and Loss Statement [*P&L*] for calendar year 2010," and stated that a "balance sheet for KM shall be submitted as a supplement."² However, we have no record of a timely supplemental filing. Furthermore, Licensee asserted "[t]he poor financial condition of KM reflects the poor economic condition of the Station's market," and that it had three "full time employees"³

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

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.

of the fee will adversely impact the licensee's ability to serve the public.⁶ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."⁷ In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.⁸ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.

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 net loss of \$37,351.53.¹¹ It did not provide any financial information relevant to 2011. Thus, the brevity of the submitted financial information fails to provide clear evidence from which to determine whether Licensee's ability

⁶ 10 FCC Rcd at 12761-62 ¶ 13.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

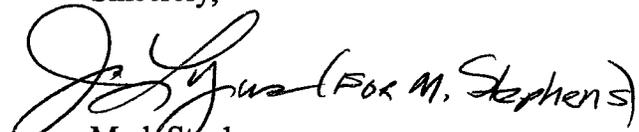
¹⁰ See *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner . . . has the 'burden of clarifying its position' before the agency."). See also 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

¹¹ Licensee asserted it has "three (3) full-time employees" (*Request* at 2), but no other information concerning this station and the multiple television and radio stations owned and operated by KM Communications, Inc. See <http://kmccommunications.com/>; see also FCC 323, Ownership Report for Commercial Broadcast Stations, File No. BOA-20111201LTW.

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."¹² Because Licensee failed to furnish evidence sufficient to support its *Request*, it is denied.

Payment of \$12,325.00 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,¹³ and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter. Under the law,¹⁴ 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,

A handwritten signature in black ink, appearing to read "Mark Stephens" with a stylized flourish at the end.

Mark Stephens
Chief Financial Officer

Enclosure

¹² See e.g., <http://kmcommunications.com/>.

¹³ 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.").

¹⁴ See 47 C.F.R. § 1.1901, *et seq.*

Shainis & Peltzman, Chartered

Counselors at Law

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

Suite 240
1850 M Street, N.W.
Washington, D.C. 20036

(202) 293-0011
Fax (202) 293-0810
e-mail: shainispeltzman@s-plaw.com

September 14, 2011

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

Of Counsel
William H. BuRoss, III
bill@s-plaw.com

Robert J. Keller
bob@s-plaw.com

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

FILED/ACCEPTED

SEP 14 2011

Re: KM Television of Iowa, LLC
Federal Communications Commission
Office of the Secretary

Dear FCC:

KM Television of Iowa, LLC ("KM"), licensee of KWKB(TV), Iowa City, Iowa, Facility ID No. 35096 (the "Station"), by its counsel and pursuant to the Commission's Regulatory Fee Fact Sheet, Waivers, Reductions and Deferments of Regulatory Fees (dated August 2011, the "Waiver Fact Sheet"), respectfully requests the waiver of the annual regulatory fees to be paid by KM for the Station for fiscal year 2011 ("FY 2011"), as well as a deferment of the deadline for payment of the annual regulatory fees. The Waiver Fact Sheet states that the Commission will consider the waiver of annual regulatory fees in extraordinary and compelling circumstances, and upon a showing that such a waiver would serve the public interest. For the reasons stated herein, KM also respectfully requests that the Commission defer payment of the regulatory fees for the Station until the Commission acts upon this request for waiver of the fees.

The fee for the KM station is listed on Schedule I.

ORIGINAL

Shainis & Heltzman, Chartered

Office of the Managing Director

September 14, 2011

Page 2 of 2

In support of KM's showing of financial hardship, attached hereto as Schedule II is an unaudited Profit and Loss Statement for calendar year 2010. The P&L reflects that KM suffered a net loss of \$37,351.53. The poor financial condition of KM reflects the poor economic condition of the Station's market. A balance sheet for KM shall be submitted as a supplement.

KM has three (3) full-time employees.

Accordingly, for the reasons stated herein, KM respectfully requests that the Commission waive the \$12,325 in annual regulatory fee due from KM for the Station for fiscal year 2011. KM also requests that the Commission defer the deadline by which KM must pay such annual regulatory fees based on the financial hardship demonstrated herein.

Sincerely yours,



Aaron P. Shainis

Counsel for

KM Television of Iowa, LLC