

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

DEC 11 2012

OFFICE OF
MANAGING DIRECTOR

Rachel Klein
Chief Financial Officer
Dollar Phone Corp.
232 Broadway
Brooklyn, NY 11211

Re: Waiver Request (47 C.F.R. §§ 0.401, 1.1166,
1.1914)
Licensee/Applicant: Dollar Phone Corp.
Station: N/A
Fee: Fiscal Year (FY) 2009 Regulatory Fee
Date Request Filed: Sep. 22, 2009
Date Regulatory Fees Paid: Not Paid
Fee Control No.: RROG-11-00014040
Regulatory Fee (FY 2009): \$876,572.00

Dear Ms. Klein:

This responds to Licensee's *Request*¹ for waiver of the Fiscal Year (FY) 2009 regulatory fee. For the reasons stated herein, we deny the *Request*, but grant Licensee's separate request² to pay the fee in installments.

First, we note that Licensee filed its *Request* using an informal email addressed to an individual at the Commission. That delivery method fails to comply with the Commission's rule at 47 C.F.R. § 1.1166(a)(2) that requires a waiver, reduction or deferral to be filed with the Commission's Secretary. The Commission maintains different offices for different purposes, and persons filing documents with the Commission must take care to ensure that their documents are filed at the correct location specified in the Commission's Rules.³ A document is filed with the Commission upon its receipt at the location designated by the Commission,⁴ which in this case is the Secretary. Accordingly, Licensee did not properly file its *Request* by sending it by email to an individual at the Commission,⁵ and as such it should be returned without processing.⁶ In this

¹ Email from Eitan Kimelman [eitan@dollarphone.com] to Adama Jarr, FCC (Sep. 22, 2009) (*Request*).

² *Id.* Letter from Rachel Klein, Chief Financial Officer, Dollar Phone Corp., 232 Broadway, Brooklyn, NY 11211 to Mr. Mark Stephens, FCC, Washington, DC 20554 (Sep. 15, 2011).

³ 47 C.F.R. § 0.401 and 47 C.F.R. § 1.1159.

⁴ 47 C.F.R. § 1.7. First Auction of Interactive Video and Data Service (IVDS) Licenses, Request for Waiver of Applications Deadline, *Memorandum Opinion and Order*, 11 FCC Rcd 1134, 1135 (1996); Complaints Regarding Cable Programming Services Prices, *Amended Order on Reconsideration*, 10 FCC Rcd 12778, 12780 n.14 (CSB 1995).

⁵ *See e.g., Id.* ("Petitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed."); *see, e.g.,* Memorandum of Agreement between the Federal Communications Commission and Elkins Institute, Inc., *Order on Reconsideration*, 14 FCC Rcd 5080 (WTB 1999) (determining that a facsimile copy to a division office did not comply with the

case, however, because of the elapsed time, and Licensee's subsequent request for an installment plan, we will bring this matter to a conclusion. We turn now to the content of Licensee's *Request*.

In the *Request*, Licensee asked for "a waiver, reduction or deferment of outstanding regulatory fees ... due to financial hardship [the Licensee was] currently encountering. ... Business has slowed down and some of [Licensee's] customers are failing to pay off their invoices while other customers are paying ... later. As a result[, Licensee does] not have the funds to pay [the fee]." ⁷ To support its *Request*, Licensee provided an account receivable aging report.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee might 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. ⁸ 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. ⁹ 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. ¹⁰ "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." ¹¹ 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. ¹² 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.

Commission's Rules); Columbia Millimeter Communications, LP, *Order on Reconsideration*, 14 FCC Rcd 2782 (WTB PSPWD 1999) (finding that a petition for reconsideration sent to the Commission's lock box at Mellon bank did not comply with the Commission's Rules), *aff'd.*, *Order on Reconsideration*, 15 FCC Rcd 10251 (WTB PSPWD 2000).

⁶ 47 C.F.R. § 0.401.

⁷ *Request*.

⁸ 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).

⁹ 9 FCC Rcd at 5344 ¶ 29.

¹⁰ 10 FCC Rcd at 12761-62 ¶ 13.

¹¹ *Id.*

¹² *Id.*

Licensee has the burden¹³ 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. The problem with Licensees' *Request* is that the account receivable aging report does not provide the range of information necessary to demonstrate financial hardship and extraordinary and compelling circumstances, and Licensee's assertion that business has slowed and receipts are erratic does add more to meet that standard. This may support Licensee's request to pay the fee in monthly installments, but it does not establish grounds to waive the fee. Accordingly, we find that Licensee did not present compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.

We are providing a separate installment payment plan for Licensee. If Licensee has 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

¹³ *Id.*



Dollar Phone Corp.
232 Broadway
Brooklyn, NY 11211
☎ 718-889-1100
☎ 718-889-1201

September 15, 2011

Mr. Mark Stephens
Federal Communications Commission
Washington, D.C. 20554

Re: Dollar Phone Corp request for Waiver of
Regulatory fees and Penalties

Dear Mr. Stephens,

Thanks for your detailed response in regard to the waiver of the 2011 Regulatory Fee. I do appreciate the fact that you brought to my attention that I have been communicating with the in incorrect member of your staff.

Dollar Phone Corp. has paid its 2011 Regulatory Fee in the amount of \$533,456.00 in full on 9/14/2011. Although it will strain our cash flow we are surely not in the position of allowing penalties and interest place even a greater strain.

Now that 2011 Regulatory Fee is behind us. We would like to clear the outstanding debt for 2009 & 2010. We are in agreement to pay the 2009 & 2010 Regulatory fees but we would appreciate a payment plan since our cash flow does not allow us to pay it in full. In regard to the penalty and interest, our Legal Counsel has sent a detailed email on 8/02/11 (see attached) and explained our view. As informed by Mr. Cascio we are still awaiting a reply.

Once again, Dollar Phone is ready to do what it takes to clear the 2009 & 2010 Regulatory Fee but we ask you please to remove penalties and interest.

We do appreciate all your time and we hope to settle this matter quickly.

Sincerely,

A handwritten signature in cursive script that reads "Rachel Klein".

Rachel Klein
Chief Financial Officer

Adama J

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
NOV 02 2012

OFFICE OF
MANAGING DIRECTOR

Mr. George V. Domerese
Post Office Box 215
Clarksville, AR 72830

Re: Regulatory Fee Deferment (47 U.S.C. §
159(c)(1), 47 C.F.R. §§ 1.1164, 1.1166, 1.1914)
Licensee/Applicant: George V. Domerese
Stations: KMTL and KWXT
Fee: FY 2011 Regulatory Fees
Date Request Filed: Sep. 22, 2011
Fee Control No.: RROG-11-00013903
Regulatory Fee (FY 2011): \$3,800.00

Dear Mr. Domerese:

This responds to Licensee's *Request*¹ for deferment of the unpaid required Fiscal Year (FY) 2011 regulatory fees due for Stations KMTL and KWXT. For the reasons stated herein, we must deny the *Request*; however, we acknowledge Licensee's separate request to pay the fees in installments, and in separate correspondence approve that request.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.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 affect the licensee's ability to serve the public.⁴ "Mere allegations or

¹Letter from George V. Domerese, P.O. Box 215, Clarksville, AR 72830 to FCC Commission, Washington, DC 20554 (dated Sep. 12, 2012)(rec'd Sep. 22, 2011) (*Request*).

² 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).

³ 9 FCC Rcd at 5344 ¶ 29.

⁴ 10 FCC Rcd at 12761-62 ¶ 13.

documentation of financial loss, standing alone,” do not suffice and “it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public.”⁵ In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee’s balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.⁶ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.

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.⁷ In this instance, Licensee limited the content of the *Request* to the brief assertion that “due to [the] local economy, [Licensee is] unable to pay at”⁸ at the time of the *Request*.

We require that a Licensee’s request for deferment include the required documentation, because it is on such a submission that we consider each request on a case-by-case basis.⁹ In this instance, Licensee failed to provide such documentation.¹⁰ The bare statement offered is insufficient because it does not provide information establishing the existence of financial hardship that rises to the level of compelling and extraordinary circumstances to defer payment. Accordingly, we deny the *Request*.

The FY 2011 regulatory fees are due for stations KMTL and KWXT now due. To complete payment, Licensee must either, within 20 days of the date of our the separate prepared installment payment plan, respond or, within 30 days of the date of this letter, pay the \$3,800.00 regulatory fee, together with a Form 159 (copy enclosed). If licensee fails to pay the full amount due by that date, or fails to make satisfactory arrangements as set forth in the terms of the installment payment plan, the debt is delinquent, and the statutory penalty of 25% of the unpaid fee,¹¹ and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue

⁵ *Id.*

⁶ *Id.*

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

⁸ *Request*.

⁹ 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.”).

¹⁰ *Id.*

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

from the date of this letter, and under the law,¹² 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', with a long horizontal flourish extending to the right.

Mark Stephens
Chief Financial Officer

Enclosure

¹² See 47 C.F.R. § 1.1901, *et seq.*

September 12, 2011

FCC Commission
Washington DC 20554

KMTL---23871---\$3,000 *

KWXT---23872---\$ 800 *

* for 2011

Received & Inspected

SEP 22 2011

FCC Mail Room

We realize that our fees are due September 14, 2011, however, due to our local economy, we are unable to pay at this time. We would appreciate a 60 day extension on our stations.

Please send a reply to our address:

George V. Domerese
P.O. Box 215
Clarksville, AR. 72830

Thank You

George V. Domerese