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FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FEB 01 2013

OFFICE OF
MANAGING DIRECTOR

Howard Bakke
Board Member
Trout Creek-Heron-Noxon TV District
Post Office Box 1627
Noxon, MT 59853

Re: Fee Refund Request (Governmental Entity; 47
U.S.C. § 159(h)(1), 47 C.F.R. § 1.1162(b) & (c))
Licensee/Applicant: Trout Creek-Heron-Noxon TV
District
Stations/Call Signs: K080Z-D, K10QH-D, K12QT-
D
Fees: Fiscal Year (FY) 2011 Regulatory Fees
Date Request Filed: Nov. 2, 2012
Fee Control No.: RROG 11-00014860

Dear Mr. Bakke:

This responds to Licensee's *Request*¹ for a refund of the required Fiscal Year (FY) 2011 regulatory fees on the ground that it should receive a governmental entity exemption. For the reasons set forth below, we must deny the *Request*.

Licensee asserts that it is a "non-profit governmental district created by the Sanders County Board of Commissioners and [it] is not subject to ... regulatory fees." In support, Licensee included a *Letter* stating, "the Trout Creek/Heron/Noxon Television District is a subdivision of the Sanders County government."

Under 47 C.F.R. § 1.1162, "[n]o regulatory fee established in §§ 1.1152 through 1.1156, unless otherwise qualified herein, shall be required for ... (b) Applicants, permittees, or licensees who qualify as government entities. For purposes of this exemption, a government entity is defined as any state, possession, city, county, town, village, municipal corporation, or similar political organization or subpart thereof controlled by publicly elected or duly appointed public

¹ Letter from Howard Bakke, Board Member, Trout Creek-Heron-Noxon TV District, P.O. Box 1627, Noxon, MT 59853 to Federal Communications Commission, Office of the Managing Director, 445 12th Street, SW, Washington, DC 20554 (dated Oct. 26, 2012, filed Nov. 2, 2012) (*Request*) (Licensee attached a letter from Anthony B. Cox, Presiding Officer, Carol Brooker, Commissioner, and Glen E. Mager, Commission, Sanders County Board of Commissioners, P.O. Box 519, 1111 Main St., Thompson Falls, MT 59873 to Whom It May Concern (Dec 28, 2012) (*Letter*)).

officials exercising sovereign direction and control over their respective communities or programs.” Licensee did not establish that it is entitled to this exemption.

Licensee’s *Letter* asserting that it is a “subdivision of Sanders County government”² does not include relevant supporting evidence to establish that the Licensee is a “government entity ... controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over [the] communities or programs.” Moreover, Licensee did not present any evidence to establish it is a non-profit entity.³ Because Licensee did not provide evidence that it is a governmental entity as that term is defined in our rule,⁴ we must deny the *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

² *Letter*.

³ 47 C.F.R. § 1.1162(c).

⁴ *See also* In the Matter of Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, *Report and Order*, 2 FCC Rcd 947, ¶¶ 78-79 (1987) (“We will adopt the definition of governmental entities as proposed in the NPRM. We believe it provides a clear benchmark for organizations to determine whether they qualify for a fee exemption. ... the commenters can readily apply the “publicly elected and/or duly appointed” criterion in the definition to determine whether their organizations are exempt from fees. ... The exemption for governmental entities is based on their status as a licensee of the service, not their use of a particular communication facility. ... the exemption is only available to a governmental entity filing as a prospective or current licensee of the underlying radio facility or service.”).

Trout Creek-Heron-Noxon TV District

P O Box 1627
Noxon MT 59853
406-847-9390

October 26, 2012

Federal Communications Commission
Office of the Managing Director
445 12th Street SW
Washington D.C. 20554

Received & Inspected
NOV 2 - 2012
FCC Mail Room

Gentlemen:

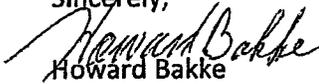
On Oct 9, 2012 in my capacity as a board member of the Trout Creek-Heron-Noxon TV District I prepared and mailed three checks in payment of the three bills detailed here:

Call Sign	Bill Number	Amount	Check #
K080Z-D	R11T181555	\$567.52	1030
K10QH-d	R11T181559	\$567.52	1031
K12QT-D	R11T181548	\$567.52	1029

I am writing to ask these amounts be refunded. The Trout Creek-Heron-Noxon TV Dist is a non-profit governmental district created by the Sanders County Board of Commissioners and is not subject to these regulatory fees. The district is a low power fully automated repeater station that does not generate any programming. Maintenance is performed by contract; office work by volunteers such as myself.

I apologize for causing this unnecessary work. If you require additional information please contact me.

Sincerely,



Howard Bakke
Board Member
Trout Creek-Heron-Noxon TV Dist.
406-847-9390 Home
406-531-0925 Cell
Howlb@Blackfoot.net

Enclosures (3): REMITTANCE ADVICE

FEDERAL COMMUNICATIONS COMMISSION

2012 NOV - 2 P 2:15

RECEIVED

**Federal Communications Commission
REMITTANCE ADVICE
BILL FOR COLLECTION**

Approved by OMB
3060-0509

Received & Inspected

Bill Number	Applicant FRN#	Current Bill Date	FOR INQUIRIES CALL 1-202-418-1995 (Revenue & Receivable Operations Group)
R11T181555	0004533170	7/18/12	

NOV 2 - 2012

Application Information:
Trout Creek-Heron-Noxon TV District
1111 Main Street
Sanders Cnty. Clerk
Thompson Falls, MT 59873

Payable to:
FCC Mail Room
Federal Communications Commission
Send a copy of this bill to:
Federal Communications Commission
Regulatory Fees
P.O. Box 979084
St. Louis, MO 63197-9000

Total Amount Due	TOTAL AMOUNT DUE MUST BE RECEIVED BY	Due Date
\$567.52		9/16/11

Payer FRN No.	Please Complete The Payer Information, FCC Registration Number (FRN) is required
0004533170	TROUT CREEK-HERON-NOXON TV DIST

Payer name (If paying by credit card enter name as it appears on the card):

Address Line No. 1 P.O. Box 1627

Address Line No. 2

City Noxon State MT Zip Code 59853

Daytime Phone Number (include area code)

Reason for Bill:
Our records show that by the above-stated Due Date, you had failed to pay in full your required annual regulatory fee set forth under 47 USC 159 and our rules, thus your account is Delinquent. Under 47 USC 159(c)(1), you incurred a 25% penalty, and under 31 USC 3717, you incurred the listed interest and additional penalty charges. To avoid additional charges, within 30 days of the above-stated Current Bill Date, we must receive your full payment of the Total Amount Due. Under 47 CFR 1.1910, you are red lighted until the Total Amount Due and any new charges are paid in full.

Call Sign/Other FCC ID	Payment Type Code	Quantity	Fee Due For (PTC)	Total Fee	FCC Code 1	FCC Code 2
K08OZ-D	1 1 6 7	1	\$395.00	\$395.00	181555	MTTROUTCREEK,ETC
K08OZ-D	D C I A	1		\$23.77	181555	MTTROUTCREEK,ETC
K08OZ-D	P E N	1		\$98.75	181555	MTTROUTCREEK,ETC
K08OZ-D	A D M	1		\$50.00	181555	MTTROUTCREEK,ETC
TOTAL DUE				\$567.52		

Please choose a method of Payment and complete the section if paying by Credit Card

Payment Method:

Credit Card Check #1080 Wire IPAC MIPR

MASTERCARD DISCOVER VISA AMEX

Account No.

Expiration Date

I hereby authorize the FCC to charge my Credit Card for the service(s) / authorization(s) herein described.

Authorized Signature *Howard Bahke* Date Oct 9, 2012

IF PAYING BY CHECK, PLEASE WRITE YOUR BILL NUMBER ON YOUR REMITTANCE AND ATTACH A COPY OF THIS BILL TO YOUR PAYMENT TO ENSURE PROPER CREDIT

Adama

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FEB 21 2013

OFFICE OF
MANAGING DIRECTOR

Peter Tannenwald, Esq.
Davina S. Sashkin, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: Waiver Request (Financial Hardship;
47 C.F.R. § 1.1166(c))
Licensee/Applicant: Southern TV Corporation
Stations: WGSA-DT, W41CR, WGSA-CA,
WGCW-LP, W25CQ, W32BJ, and WMU487
Fee: Fiscal Year (FY) 2011 Regulatory Fee
Date Request Filed: Sep. 12, 2011
Fee Control No.: RROG 11-00013840
Regulatory Fee Amount: \$14,310.00

Dear Counsel:

This responds to Licensee's *Request*¹ for deferral and waiver of the Fiscal Year (FY) 2011 regulatory fees owed by Southern TV Corporation (*Southern TV*) for Stations WGSA-DT (Baxley, GA), WMU487 (Broadcast Auxiliary), W41CR (Hinesville-Richmond, GA), WGSA-CA (Savannah, GA), WGCW-LP (Savannah, GA), W25CQ (Statesboro, GA), and W32BJ (Beaufort, Etc., GA) (collectively, Stations) on the grounds of financial hardship. Our records reflect that Licensee did not pay the FY 2011 regulatory fees, but petitioned to defer payment until a decision was made on its *Request*. For the reasons discussed, below, we deny Licensee's *Request* to waive the regulatory fees, and having granted a deferral until now,² require full payment.

¹ Letter from Peter Tannenwald, Esq. and Davina S. Sashkin, Esq., Fletcher, Heald & Hildreth, 1300 North 17th Street, Arlington, VA 22209 to Federal Communications Commission, Office of the Managing Director, (Sept. 12, 2011) (*Request*) (Request for Deferral and Waiver of FY 2010 [sic] Regulatory Fees, Southern TV Corporation, FRN: 003-7596-51); Letter from Peter Tannenwald, Esq. and Davina S. Sashkin, Esq., Fletcher, Heald & Hildreth, 1300 North 17th Street, Arlington, VA 22209 to Federal Communications Commission, Office of the Managing Director, (Sept. 14, 2011) (*Supplement*) (Supplement to Request for Deferral and Waiver of FY 2010 [sic] Regulatory Fees Southern TV Corporation, FRN 003-7596-51) (Licensee attached copies of the Commission's decisions on requests to waive the payment of the FY 2009 and FY 2010 Regulatory Fees.).

² 47 C.F.R. § 1.1166(b).

Licensee requests that we waive the Stations' fees "for reasons of financial hardship and because some of the stations are silent."³ Specifically, Licensee asserts "[a]ll of the stations listed[,] with the exception of WGSA (DT), its auxiliary WMU487, and W41CR, are silent," and the silent stations "will not return to the air on or before September 14, 2011,"⁴ the initial deadline for filing FY 2011 regulatory fees that was later extended to September 16, 2011.⁵ To clarify Licensee's apparent misconception, we emphasize here that Licensee is obliged to pay the regulatory fee on the licenses held on October 1, 2010,⁶ unless it obtains a waiver. Licensee added that "Southern TV has filed Notifications of Suspension of Operations and Requests for Silent Special Temporary Authority [(STA)] for these five (sic) stations:

WGSA-CA File No. BLSTA-20100610AEI Accepted for filing Feb. 7, 2011
WGCW-LP File No. BLSTA-20100106ABH Accepted for filing Feb. 7, 2011
W25CQ File No. BLSTA-20100610AEH Accepted for filing Feb. 18, 2011
W32BJ File No. BLSTA-20100108ABR Accepted for filing Jan. 26, 2011"⁷

Furthermore, Licensee asserts that WGSA (DT) and its auxiliary, WMU487, operate with a financial net loss, even discounting certain expense items.⁸ Licensee acknowledges discounting certain other interest expense could yield a positive cash flow, but such amount would be offset by the necessary expense to pay for the services provided by the "son of Southern TV's President."⁹ Licensee included Mr. Dan L. Johnson's declaration and financial information described by Mr. Johnson as a "*financial statement summary*" and captioned, "Unit: WGSA-TV 2010."¹⁰ Because the financial information is captioned with one of the Stations' call signs, it creates an ambiguity that Licensee did not clarify, *i.e.*, whether Licensee has separate financial information for each of its stations and for Southern TV Corporation.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.¹¹ The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory

³ *Id.* at 1.

⁴ *Request* at 1.

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 In The Matter Of Assessment And Collection Of Regulatory Fees For Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10824 (2011) ("Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2010.")

⁷ *Request* at 2.

⁸ Licensee added certain expense items back in to show that the Stations would nonetheless operate at a loss for the year, *e.g.*, non-cash trade and barter, interest to stockholders, stockholder salary, and non-cash depreciation.

⁹ *Request* at 3.

¹⁰ *Id.* at 4, Exhibit A, and Exhibit B.

¹¹ 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).

costs.¹² Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.¹³ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."¹⁴ In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.¹⁵ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.

Pertinent to stations that file "[p]etitions to go dark" in the manner 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."¹⁶ The Commission will consider whether a licensee has established that those circumstances are present and applicable.

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.¹⁷ To carry its burden,¹⁸ Licensee must present compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹⁹ For the following reasons, we find that Licensee did not meet its obligation.

First, Licensee's references to the notifications it filed with the Commission and the status of such filings that four of its Stations were misleading and inaccurate. Specifically, Licensee did not identify its more recent filings, and, as we discuss below, Licensee's stated reasons for going dark during were for technical, not financial grounds. Moreover, as noted, above, Licensee's assertion that a station was silent on the date the fee was due is not material to our determination. In each instance, we begin by looking to the information supporting the request to go silent, and consider whether under the circumstances the imposition of the regulatory fee could be an impediment to the restoration of broadcast service. In our analysis, below, we discuss the relevant history of Licensee's submissions for each of the four stations.

¹² 9 FCC Rcd at 5344 ¶ 29.

¹³ 10 FCC Rcd at 12761-62 ¶ 13.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 10 FCC Rcd at 12762 ¶ 15.

¹⁷ *Id.*

¹⁸ 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.).

¹⁹ 10 FCC Rcd at 12761-62 ¶ 13.

Concerning Call Sign WGSA-CA, on June 10, 2010, Licensee belatedly²⁰ notified the Commission that it was suspending operation for technical reasons.²¹ The notice explained in part “WGSA-CA resumed operation January 5, 2010; but ... the [tower] owner would not permit [Licensee] to continue to broadcast from that site ... so [Licensee] shut down again [on January 25, 2010].” Later, on December 3, 2010, Licensee filed an Engineering STA noting that it “needs to resume operation to avoid expiration of its license[, so Licensee requested STA at] reduced facilities, which are intended to be only temporary”²² On February 4, 2011, Licensee notified the Commission that it was silent for technical reasons, *i.e.*, “the station is operated with only 25 watts ERP, under BSTA-20101203ABW ... the station has been taken dark so that work can be done on the amplifiers”²³ Eleven months later, on January 25, 2012, Licensee acknowledged it had “been silent since February 4, 2011, and [Licensee] needs to resume operation to avoid expiration of its license[, thus Licensee specified] reduced facilities, which are intended to be only temporary.”²⁴ Thereafter, Licensee notified the Commission of another period in which it would be silent,²⁵ a subsequent resumption at reduced power,²⁶ and an application for renewal of its license.²⁷ Hence, Call Sign WGSA-CA was silent because of a stated technical reason; to work on the amplifiers.

Next, as to Call Sign WGCW-LP, on January 6, 2010, Licensee notified the Commission the station went silent on January 5, 2010, for technical reasons, stating that “the tower owner has advised the Licensee that it intends to dismantle the tower. [Licensee] will need to find another transmitter site.”²⁸ On December 3, 2010, Licensee filed an Engineering STA to operate at reduced power because “the station has been silent since January 5, 2010, and needs to resume operation soon to avoid expiration of its license[, thus] this STA request specifies reduced facilities, which are intended to be only temporary.”²⁹ Two months later, Licensee went silent to permit “work ... on the amplifiers in the transmitter[, and to look] for a better transmitter site”³⁰ Eleven months later, on January 25, 2012, Licensee noted the “station has been silent since February 3, 2011, and needs to resume operation[, so it requested] reduced facilities ... intended to be only temporary.”³¹ On May 1, 2012, Licensee went dark explaining that “most recently [the station] operated under an STA at reduced power at a temporary site. The owner of

²⁰ 47 C.F.R. § 73.1740(a)(4) provides, “In the event that causes beyond the control of a licensee make it impossible ... to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. ... If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.”

²¹ Notification of Suspension of Operations/Request for Silent STA, BLSTA-20100610AEI

²² Engineering STA, BSTA-20101203ABW.

²³ Notification of Suspension of Operations/Request for Silent STA, BLSTA-20110204AEZ.

²⁴ Engineering STA, BSTA-20120125AEB.

²⁵ Notification of Suspension of Operations/Request for Silent STA, BLSTA-20120529AAL.

²⁶ Engineering STA, BSTA-20121128BAK.

²⁷ Application for Renewal of Broadcast Station License, BRTTA-20121203BOG.

²⁸ Notification of Suspension of Operations/Request for Silent STA, BLSTA-20100106ABH.

²⁹ Engineering STA, BSTA-20101203ABX.

³⁰ Notification of Suspension of Operations/Request for Silent STA, BLSTA-20110204AFA.

³¹ Engineering STA, BSTA-20120125AEE.

that site does not want the station to remain there over the long term.”³² Even so, on November 28, 2012, Licensee resumed operation at “reduced facilities, which are intended to be only temporary.”³³ Thus, Call Sign WGCW-LP was silent at different periods and operating at reduced power because of technical reasons, *e.g.*, to work on its amplifiers and to locate a better transmitter.

As to Call Sign DW25CQ, on June 10, 2010, Licensee notified the Commission it had “resumed operation on January 8, 2010[, but it could not] pay tower rent and had to discontinue operations [on January 26, 2010].”³⁴ Thereafter, on January 28, 2011, Licensee acknowledged that it “had been off the air for several months[, and] when it resumed operation on January 20, 2011,” it was necessary to “operate at reduced ERP, transmitting through the exciter part of the transmitter, pending repairs.”³⁵ The following month, on February 17, 2011, Licensee notified the Commission that it had been operating “with reduced power under BSTA-20110128ADT[; however,] replacement transistors are not available ... and the exciter is also showing damage, possibly from rats, so operation has been suspended.”³⁶ On July 25, 2012, the Commission cancelled the license for call sign W25CQ.³⁷ At various times, Call Sign DW25CQ operated on reduced power or it was silent for technical reasons.

Finally, we look to Call Sign W32BJ. On January 8, 2010, Licensee notified the Commission that the station went silent on January 7, 2010, because Licensee was “unable to reach [a lease] agreement with the tower owner[, thus Licensee] request[ed] 6 months authority to remain silent to ... negotiate father ... or find a new site.”³⁸ On January 25, 2011, Licensee notified the Commission it went silent on January 21, 2011, because it was “having difficulty with the tower landlord over rent payments, and the landlord ... forced [Licensee] to suspend operation.”³⁹ Later, on March 19, 2012, Licensee explained the station went silent on March 10, 2012, because it was “not up to date on rent, and the landlord will not permit continued operation.”⁴⁰ When Licensee applied to renew its broadcast license on August 1, 2012, the station was silent.⁴¹ The common thread to Call Sign W32BJ is that it went dark because of disputes with the landlord over rent.

None of the relevant requests for STA included evidence of financial hardship that the station lacks sufficient funds to pay the regulatory fee and maintain service to the public sufficient to establish compelling and extraordinary circumstances outweighing the public interest in recouping the Commission’s regulatory costs.

³² Notification of Suspension of Operations/Request for Silent STA, BLSTA-20120529AAK.

³³ Engineering STA, BSTA-20121128AZZ.

³⁴ Notification of Suspension of Operations/Request for Silent STA, BLSTA-20100610AEH.

³⁵ Engineering STA, BSTA-20110128ADT.

³⁶ Notification of Suspension of Operations/Request for Silent STA, BLSTA-20110217ACI.

³⁷ Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau to Southern TV Corporation, 401 Mall Blvd, Ste 201B, Savannah, GA 31406-4867 (Jul. 25, 2012).

³⁸ Notification of Suspension of Operations/Request for Silent STA, BLSTA-20100108ABR.

³⁹ Notification of Suspension of Operations/Request for Silent STA, BLSTA-20110125ABD.

⁴⁰ Notification of Suspension of Operations/Request for Silent STA, BLSTA-20120319AFN.

⁴¹ Application for Renewal of Broadcast Station License, BRTTL-20120801ANJ.

We turn now to Licensee's documentation offered to support its assertion of financial hardship, which includes a declaration from Mr. Johnson, the President of Southern TV Corporation and a "*financial statement summary*,"⁴² Exhibit B, that reports income and expenses for Southern TV for calendar year 2010. In addition to the previously mentioned ambiguity as to whether the financial information is limited to a single station of Southern TV Corporation, we find the information is insufficient.

First, the *financial statement summary* fails to include the range of information usually included within the other relevant documents we require, e.g., a balance sheet, cash flow projection, and reports of compensation. Thus, Licensee's *financial statement summary* does not fully document its financial position and it does not demonstrate whether Licensee lacks sufficient funds to pay its regulatory fee and to maintain its service to the public. Moreover, the *financial statement summary* does not present a compelling case that Licensee's service to the public will suffer or adversely change upon payment of the required regulatory fees or that a waiver in this case outweighs the public interest in recouping the Commission's regulatory costs.⁴³ Plainly, the *financial statement summary* does not provide the necessary relevant evidence, including any relevant financial information concerning calendar year 2011. We will not speculate on the content of such missing information.

A waiver of the Commission's rules is appropriate only if the petitioner has established⁴⁴ that special circumstances warrant deviation from the general rule, and such deviation will serve the public interest.⁴⁵ 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."⁴⁶ As to the dark stations, Licensee asserts only that four were silent, but without providing required relevant evidence.⁴⁷ It is not enough merely to assert dark status, especially when, as in these instances, the requests to go dark were for reasons unrelated to financial hardship.⁴⁸ Inherent in the Commission's statement that "it is unnecessary to require a licensee to make a *further showing of financial hardship* (emphasis added),"⁴⁹ is the understanding that an applicant's petition to go dark was (a) filed because of financial hardship and (b) supported by full documentation of its financial position that met the Commission's relevant standards. Plainly, in order for it to be unnecessary to require a *further showing*, the applicant must have made a valid *prior* showing of the requisite financial information sufficient to demonstrate compelling and extraordinary circumstances that outweigh

⁴² *Id.* at 3, Declaration of Dan L. Johnson, Attachment (*financial statement summary*).

⁴³ We note that although Mr. Johnson provided some explanation of the *financial statement summary*, he did not explain the meaning or elements of some line items reported under generic headings, e.g., under income, "Other Income" (which also contains an unexplained difference in two entries in amounts reported) and under expenses, "Administrative Expenses," under "General & Admin. Pay. & Exp.," "Interest Expenses" and "Corporate Expenses" under "Other Charges."

⁴⁴ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

⁴⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

⁴⁶ 47 C.F.R. § 1.1166.

⁴⁷ 10 FCC Rcd at 12761-62 ¶ 13.

⁴⁸ 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.

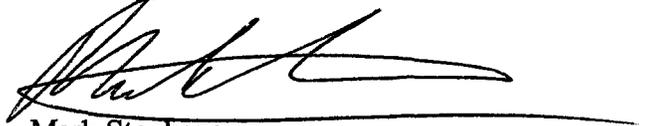
⁴⁹ 10 FCC Rcd at 12762 ¶ 15.

the public interest in recouping the Commission's regulatory costs.⁵⁰ No such showing has been made, thus we deny the *Request*.

Licensee requested confidential treatment of the submitted financial data. Pursuant to section 0.459(d)(1) of the Commission's rules, 47 C.F.R. §0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records. The records are treated confidentially in the meantime.

Payment of \$14,310.00 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,⁵¹ and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter. Under the law,⁵² the Commission will initiate collection proceedings. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

Encl.

⁵⁰ 9 FCC Rcd at 5344 ¶ 29.

⁵¹ 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.").

⁵² See 47 C.F.R. § 1.1901, *et seq.*

 **Fletcher, Heald & Hildreth**

HARRY F. COLE
ANNE GOODWIN CRUMP
PAUL J. FELDMAN
CHRISTINE GOEPP
KEVIN M. GOLDBERG
FRANK R. JAZZO
M. SCOTT JOHNSON
DANIEL A. KIRKPATRICK
MITCHELL LAZARUS
STEPHEN T. LOVELADY
SUSAN A. MARSHALL
HARRY C. MARTIN
MICHELLE A. McCLURE
MATTHEW H. McCORMICK
FRANCISCO R. MONTERO
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September 12, 2011

* NOT ADMITTED IN VIRGINIA

FILED/ACCEPTED

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HAND DELIVERY

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

SEP 12 2011

Federal Communications Commission
Office of the Secretary

**Re: Request for Deferment and Waiver of FY 2010 Regulatory Fees
Southern TV Corporation
FRN: 0003-7596-51**

Dear Sir or Madam:

Southern TV Corporation ("Southern TV") hereby respectfully requests waiver and/or deferment of its obligation to pay regulatory fees due September 14, 2011, for the following broadcast and associated auxiliary stations for reasons of financial hardship and because some of the stations are silent. The stations at issue are:

WGSA (DT), Baxley, GA (Facility ID 69446)
WMU487 (Broadcast Auxiliary for Facility ID 69446)
W41CR, Hinesville-Richmond, GA (Facility ID 69450)
WGSA-CA, Savannah, GA (Facility ID 69447) – silent
WGCW-LP, Savannah, GA (Facility ID 130085) – silent
W25CQ, Statesboro, GA (Facility ID 69448) – silent
W32BJ, Beaufort, Etc., GA (Facility ID 69449) – silent

Silent Stations

All of the stations listed above, with the exception of WGSA (DT), its auxiliary WMU487, and W41CR, are silent. The attached Declaration of Dan L. Johnson, Southern TV's President, states that these stations will not return to the air on or before September 14, 2011.

In its Order on Reconsideration, *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, 12762 (1995), the Commission determined that the imposition of a regulatory fee could be an impediment to the restoration of broadcast service; and therefore, it will grant "petitions for waivers of the regulatory fees on the grounds of financial hardship from licensees of broadcast stations which are dark (not operating)."

While the Media Bureau formerly took explicit action granting requests for authority to remain silent, now the Bureau simply registers requests as "accepted for filing" in its Broadcast Radio and Television Electronic Filing System (CDBS). Southern TV has filed Notifications of Suspension of Operations and Requests for Silent Special Temporary Authority for these five stations:

WGSA-CA	File No. BLSTA-20100610AEI	Accepted for filing Feb. 7, 2011
✓WGCW-LP	File No. BLSTA-20100106ABH ✓	Accepted for filing Feb. 7, 2011
✓W25CQ	File No. BLSTA-20100610AEH	Accepted for filing Feb. 18, 2011
W32BJ	File No. BLSTA-20100108ABR ✓	Accepted for filing Jan. 26, 2011

The current status information below was captured using the "Station Search" function in the Public Access section of CDBS report on September 1, 2011:

WGSA-CA	69447 CA	SOUTHERN TV CORPORATION	LICENSED AND SILENT
WGCW-LP	130085 TX	SOUTHERN TV CORPORATION	LICENSED AND SILENT
W25CQ	69448 TX	SOUTHERN TV CORPORATION	LICENSED AND SILENT
W32BJ	69449 TX	SOUTHERN TV CORPORATION	LICENSED AND SILENT

Financial Hardship for WGSA/WMU487

In *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5345-46 (1994), *recon. granted* 10 FCC Rcd 12759 (1995) ("Regulatory Fee Order"), the Commission determined that, in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. In such cases, the Commission considers a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Normally, such financial hardship is measured as negative cash flow without regard to payment to principals or non-cash expenses such as depreciation and amortization. *See, e.g., Letter to Barry D. Wood, Esq. (OMD,*

June 10, 2009) (addressing a waiver request by Alpha and Omega Communications, LLC). Presumably, this is because the Commission considers that a salaried employee with a vested interest in the station could reasonably be expected to forgo his monthly salary for a time, thus freeing up cash flow so that the station may pay its regulatory fees. Within the guidance of this policy, the Commission considers waivers on a fact-specific, case-by-case basis. See Regulatory Fee Order, *supra*, at 5344.

Southern TV requested and was granted relief from regulatory fees for FY2009 and FY2010 based on silent stations and financial hardship. Copies of the Commission's letters granting these waiver are attached. This letter establishes financial hardship through FY2011.

Mr. Johnson's attached Declaration includes a cash flow statement for the licensee for the year 2010, which represents the latest figures available. This statement shows a net loss of \$753,224.* That figure is adjusted to eliminate non-cash items and payments to principals. Non-cash items include trade/barter income and expense which involve no cash, interest paid to stockholders, and the salary of a 5.3% stockholder. That stockholder is the son of Southern TV's President. His full-time employment is with the licensee, and he earns only \$68,682.* While the Licensee believes that this individual should not be treated as a "principal," because his ownership interest is so small and he is not an officer or director, his salary is excluded in the cash flow table below. Payments to stockholders for travel costs and other expenses incurred in providing services to the television stations are not excluded, as they are reimbursement of operating expenses that the licensee could as well have paid directly.

The resulting calculation is as follows:

Net loss:	(753,224)*
Subtract non-cash trade and barter revenue:	(95,233)*
Add back non-cash trade and barter expense:	71,433*
Add interest expense to stockholders:	333,069*
Add stockholder salary:	68,682*
Add non-cash depreciation:	306,485*
Negative cash flow:	(68,788)*

Of the \$99,448* in interest expense not shown as paid to stockholders, \$85,603* was for payments on capital financing and loans that stockholders are now holding after exit by other lenders, a situation which the licensee has been unable to avoid given Southern TV's current financial condition. While excluding \$85,603* would yield a positive cash flow of \$16,815,* the licensee submits that it is not reasonable to exclude the salary of the son of Southern TV's President, which is an expense that must be paid to someone performing those duties. No matter who held the position, the salary would have to exceed \$16,815,* so cash flow would necessarily remain negative.

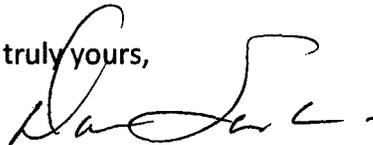
Confidentiality Request

Mr. Johnson's Declaration is supported by detailed financial data about Southern TV's income and expenses, submitted in a separate envelope marked "confidential." Pursuant to Section 0.459 of the Commission's Rules, Southern TV requests that the supporting information be withheld from public disclosure should disclosure ever be requested by an outside party. This information, which is not made available to the public or third parties by Southern TV, is entitled to protection pursuant to 47 C.F.R. § 0.459(b)(3-7) of the Commission's Rules, as it relates to the financial performance of Southern TV's business operation, which is subject to competition from other broadcasters and video service providers in the Savannah, Georgia, market. Disclosure would result in substantial harm to Southern, because it would give competitors the benefit of information not otherwise available to them about Southern TV's share of market revenues and thus Southern's competitive place in the market.

Conclusion

In light of the fact that all but two of Southern TV's broadcast stations are silent, and Southern TV suffered a negative cash flow in 2010 disregarding payments to principals other than the salary of a minor shareholder, Southern TV respectfully requests relief from payment of the FY 2010 regulatory fees due for the above-referenced stations. Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,



Peter Tannenwald

Davina S. Sashkin

Counsel for Southern TV Corporation

cc: Mr. Mark Stephens
Mr. Dan L. Johnson
Mr. Charles Robb

* Represents redaction for confidentiality purposes

Adams

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JAN 09 2013

OFFICE OF
MANAGING DIRECTOR

William K. Coulter, Esq.
Elizabeth Holowinski, Esq.
Baker & McKenzie, LLP
815 Connecticut Ave., N.W.
Washington, DC 20006

Re: Waiver and Refund of Regulatory Fees (Bankruptcy;
47 C.F.R. §§ 1.1160(a)(3), 1.1166)
Licensees/Applicants: The Roberts Companies: Roberts
Broadcasting Company, Roberts Radio Broadcasting, LLC,
Roberts Broadcasting Company of Jackson, MS, LLC,
Roberts Broadcasting Company of Evansville, IN, LLC,
Roberts Broadcasting Company of Columbia, SC, LLC
Stations: WRBU, WZRB, E040380, DDWAZE-TV,
WRBJ, WAZE-LP, WIKY-LP, WJPS-LP, WLP205,
WLP206, E002006368
Fiscal Year (FY) 2011 Regulatory Fees
Fee Control No.: RROG-11-00013889

Dear Counsel:

This responds to Licensees' *Request*¹ for a waiver or reduction and refund of the fiscal year (FY) 2011 regulatory fees. As we discuss below, we deny the *Request* because Licensees failed to establish both financial hardship and extraordinary and compelling circumstances outweighing the public interest in recouping the Commission's regulatory costs.²

Licensees paid the fees and petitioned for a waiver or, in the alternative, a reduction in the fees because Licensees "are currently in financial distress and are unable to pay their current debts. [Licensees are (at the time of the Request)] in the final stages of preparing a Petition for Reorganization under Chapter 11 of the Bankruptcy Code[, which is expected to be filed] on September 22, 2011 Due to the financial distress of [Licensees], good cause exists for a waiver or reduction of regulatory fees in this case to promote the public interest."³ Licensees did

¹ In the Matter of Roberts Broadcasting Company; Roberts Broadcasting Company of Jackson, MS, LLC, Roberts Broadcasting Company of Columbia, SC, LLC, Roberts Radio Broadcasting, LLC, and Roberts Broadcasting Company of Evansville, IN, Petition for Waiver or Reduction of Regulatory Fees, (dated Sep. 14, 2011, filed Sep. 20, 2011)(*Request*).

² Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344, ¶ 29 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995). 9 FCC Rcd at 5344; In The Matter of Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. . . . [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

³ *Request* at 2.

not seek to supplement its submission after filing the *Request* with financial documentation or copies of the bankruptcy filings.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced, or deferred upon a showing of good cause and a finding that the public interest will be served thereby.⁴ The Commission has narrowly interpreted its waiver authority to require a showing of extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.⁵ Fee relief may be granted based on a "sufficient showing of financial hardship."⁶ In such matters, however, "[m]ere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."⁷ Thus, in order to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, *e.g.*, a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.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.

We consider a licensee's bankruptcy to be a relevant fact;⁹ however, "in some circumstances a significant question may exist as to whether bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions."¹⁰ The primacy of the standard remains, the applicant must present "extraordinary and compelling circumstances showing that a waiver . . . would override the public interest" in collecting the fee.¹¹ Thus, even in petitions where a bankruptcy proceeding is asserted as the basis for relief, we analyze the facts of each case to determine whether the applicant has satisfied both prongs of the

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

⁵ 9 FCC Rcd at 5344 ¶ 29; In *The Matter of Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska*, *Memorandum Opinion and Order*, 18 FCC Rcd. 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. . . . [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

⁶ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (*FY 1994 MO&O*).

⁷ *Id.*

⁸ *Id.*

⁹ *See Id.* at 12762, ¶ 14 ("[W]here a bankruptcy trustee, receiver, or debtor in possession is negotiating a possible transfer of a license, the regulatory fee could act as an impediment to the negotiations and the transfer of the station to a new licensee.").

¹⁰ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice of Proposed Rulemaking*, 18 FCC Rcd 6085, 6090, ¶ 11 (2003).

¹¹ *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12.

Commission's standard, financial hardship and extraordinary¹² and compelling circumstances¹³ showing waiver is justified.¹⁴

Licensees failed to establish financial hardship and extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs. Licensees offer the unsupported assertion that "currently [they are] in financial distress and ... unable to pay [their] current debts," and that they are in the "final stages of preparing a Petition for reorganization under Chapter 11." This scant information fails to provide critical documentation of the proceeding or establish facts necessary to permit a determination whether Licensees meet our standard. Thus, Licensees' bare assertion of "financial distress" does not "fully document [Licensees'] financial position [to] show that [they] lack[ed] sufficient funds to pay the regulatory fees and to maintain its service to the public."¹⁵

Licensees failed to clarify their position with the Commission¹⁶ and to maintain the accuracy and completeness of their application.¹⁷ In such situations, we will not speculate about the content of information that might fill in the gaps. Finally, we note that Licensees made no showing how, in light of the current national financial climate, the public interest will be served by waiving and refunding the fees. Accordingly, we deny Licensees' *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

¹² Black's Law Dictionary (9th ed. 2009)(extraordinary-"a highly unusual set of facts that are not commonly associated with a particular thing or event").

¹³ *Id.* (compelling-"something so great that irreparable harm or injustice would result if not met").

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

¹⁵ *FY 1994 MO&O*, 10 FCC Rcd at 12762, ¶ 13.

¹⁶ *Bartholdi Cable Co. Inc. v FCC*, 114 F3d 274, 280 (DC Cir. 1997)(The Commission "'need not sift pleadings and documents' to identify arguments that are not 'stated with clarity' by a petitioner. It is the petitioner that has the burden of clarifying its petition before the agency.").

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

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

In the Matter of)	
Roberts Broadcasting Company;)	
✓Roberts Broadcasting Company of Jackson,)	
MS, LLC; ✓Roberts Broadcasting Company)	File No.
of Columbia, SC, LLC; (Roberts Radio)	
Broadcasting, LLC) and ✓Roberts)	
Broadcasting Company of Evansvil)	
)	
Petition for Waiver or Reduction)	
of Regulatory Fees)	

Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request

**PETITION FOR WAIVER OR
REDUCTION OF REGULATORY FEES**

The Roberts Broadcasting Companies (including Roberts Broadcasting Company, Roberts Broadcasting Company of Jackson, MS, LLC; Roberts Broadcasting Company of Columbia, SC, LLC; Roberts Radio Broadcasting, LLC; and Roberts Broadcasting Company of Evansvil),¹ by their undersigned counsel and pursuant to 47 U.S.C. § 159(d) and 47 C.F.R. § 1.1166, hereby petition the Commission for a waiver, or alternately, a reduction of the regulatory fees due by the Roberts Broadcasting Companies as FCC license holders.

The Commission may waive or reduce regulatory fees where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. 47 C.F.R. § 1.1166.

¹ The FRNs associated with the Roberts Broadcasting Companies are as follows: 0002528065; 0012226213; 0012226205; 0015060254; and 0015637473.

✓
RADIO

The Roberts Broadcasting Companies are currently in financial distress and are unable to pay their current debts. Roberts is in the final stages of preparing of a Petition for Reorganization under Chapter 11 of the United States Bankruptcy Code. Currently, Roberts expects the filing to be made on [REDACTED]

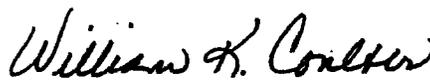
[REDACTED] Due to the financial distress of the Roberts Broadcasting Companies, good cause exists for a waiver or reduction of regulatory fees in this case to promote the public interest.

Further, because the Roberts Broadcasting Companies are minority owned, and the Commission has a long standing policy of promoting minority ownership in broadcast licensees, relief in this case would further the public interest.

WHEREFORE, Petitioner respectfully requests the Commission to waive, or alternatively, reduce the regulatory fees due associated with the FCC licenses held by the Roberts Broadcasting Companies.

Respectfully submitted,

ROBERTS BROADCASTING
COMPANIES



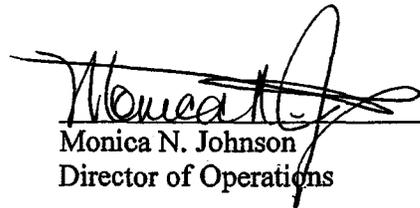
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Elizabeth Holowinski
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815 Connecticut Ave., NW
Washington, DC 20006
Tel: +1 202 835 6136
william.coulter@bakermckenzie.com

Their FCC Counsel

September 14, 2011

**SWORN AFFIDAVIT OF
MONICA N. JOHNSON**

I, Monica N. Johnson, Director of Operations for the Roberts Broadcasting Companies, hereby affirm under penalty of perjury that I am authorized to make this affirmation on behalf of the Roberts Broadcasting Companies. I further affirm that I have reviewed the Petition for Waiver or Reduction of Regulatory Fees, dated September 14, 2011, and hereby confirm that the information contained therein is true and correct to the best of my knowledge, information and belief.



Monica N. Johnson
Director of Operations

Date: September 14, 2011

Adena

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JAN 07 2013

OFFICE OF
MANAGING DIRECTOR

Dennis J. Kelly, Esq.
Post Office Box 41177
Washington, DC 20018

Re: Waiver and Refund of Regulatory Fee (Bankruptcy; 47
U.S.C. §159(c)(2); 47 C.F.R. §§ 1.1164(e), 1.1166(c),
1.1910)
Licensee/Applicant: Three Amigo's Broadcasting, Inc.
Station: WGBJ
Fiscal Year (FY) 2011 Regulatory Fee
Fee Control No.: RROG-11-00014491

Dear Counsel:

This responds to Licensee's *Request*¹ for a waiver of the fiscal year (FY) 2011 regulatory fee and accrued charges invoiced on our Demand Letter dated July 18, 2012. As discussed below, we dismiss the *Request* because Licensee is delinquent in paying its debt,² and, in the alternative, we deny the *Request* because Licensee failed to meet its burden of establishing both financial hardship and extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.³

Failure to pay the required regulatory fee and any late penalty subjects the licensee to sanctions, including those set forth at 47 U.S.C. §159(c)(2), 47 C.F.R. §§ 1.1164, 1.1166, and 1.1910 (the Commission's red light rule), and the Debt Collection Improvement Act of 1996

¹ Letter from Dennis J. Kelly, Post Office Box 41177, Washington, DC 20018 to Honorable Marlene H. Dortch, Office of the Secretary, FCC, Washington, DC 20554 (Aug. 2, 2012) (*Request*).

² 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application ... will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee"), 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship."), 1.1910; 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 forth in section 1.1910 of the Commission's Rules and in the Debt Collection Improvement Act of 1996 ('DCIA')").

³ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344, ¶ 29 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995), 9 FCC Rcd at 5344; In *The Matter of Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. . . . [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

(DCIA).⁴ Under 47 U.S.C. § 159(c)(2)⁵ and sections 1.1164, 1.1166, and 1.1910 of our rules,⁶ because Licensee is delinquent in paying a regulatory fee, we dismiss the *Request*. On separate alternative grounds, we deny Licensee's *Request*.

Instead of paying the fee and related late payment charges and then submitting a fully documented and properly supported request for a waiver and refund, Licensee asserted it is entitled to a "waiver [of] the regulatory fees" and that the Commission should "rescind the 'Demand Letter,' [and] determine that [Licensee] was exempt⁷ from fiscal year 2011 regulatory fees or otherwise does not have to pay them because of its Chapter 11 bankruptcy status." In support of its *Request*, Licensee provided only an extract portion of the Order Confirming Plan (Confirmation Order) with Notice Recipients⁸ along with assertions that it "was enmeshed in bankruptcy proceedings at the time the 2011 regulatory fees were due," and that "the law at the FCC is settled that, in ... Implementation of Section 9 of the Communications Act, FCC 95-257, at paragraph 14, released July 22, 1995 ... bankruptcy or receivership is sufficient to establish financial hardship, and ... imposition of the regulatory fee could act as an impediment ... to assign a license. Thus, the Commission held it would waive the regulatory fees for licensees whose stations are bankrupt It would also appear that the debt referenced ... was discharged by the Bankruptcy Court in Case No. 10-13875."⁹ As we discuss below, Licensee failed to support the *Request* with full documentation.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced, or deferred upon a showing of good cause and a finding that the public interest will be served thereby.¹⁰ The Commission has narrowly interpreted its waiver authority to require a showing of extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹¹ Fee relief may be granted based

⁴ Public Law 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

⁵ 47 U.S.C. § 159(c)(2) ("The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section.").

⁶ 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment."), 1.1166(c) ("Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship."), and 1.1910.

⁷ Under 47 U.S.C. § 159(h) and 47 C.F.R. § 1.1162, an exemption may extend to licensees who are governmental entities, nonprofit entities, or amateur radio licensees. Licensee does not qualify for that exemption.

⁸ *In the Matter of Three Amigo's Broadcasting, Inc.*, No. 10-13875 (REG) (N.D. Ind. Bnky) (Sep. 19, 2011).

⁹ *Request* at 1-2.

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

¹¹ 9 FCC Rcd at 5344 ¶ 29; *In The Matter of Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, Memorandum Opinion and Order*, 18 FCC Rcd. 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. . . . [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

Law Office of
DENNIS J. KELLY
Post Office Box 41177
Washington, DC 20018

MEMBER, DISTRICT OF COLUMBIA BAR ONLY;
PRACTICE LIMITED TO FEDERAL COURTS AND AGENCIES

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202-293-2300

TELECOPIER: 571-312-1601
E-MAIL: dkellyfcclaw1@comcast.net

August 2, 2012

FILED/ACCEPTED

Honorable Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
Washington, DC 20554

AUG - 2 2012

Federal Communications Commission
Office of the Secretary

Attention: Revenue and Receivables Operation
Group, Room 1-A821

RE: Three Amigo's Broadcasting, Inc.
FRN: 0015796303
Bill #BRF R11R008080 1

Dear Madame Secretary:

On behalf of our client Three Amigo's Broadcasting, Inc., this is to respond to your "Demand Letter" with "print date" of July 18, 2012, seeking payment of a fiscal year 2011 annual regulatory fee, plus interest and administrative charges. As today is the fifteenth day subsequent to the "print date", this is a timely response.

This is to contest your "Demand Letter" by pointing out that, at the time of fiscal year 2011 annual regulatory fees, this licensee was in Chapter 11 bankruptcy proceedings before the United States Bankruptcy Court for the Northern District of Indiana, Fort Wayne division, Case No. 10-13875. I attach an order of this bankruptcy court issued on September 19, 2011 relative to Three Amigo's. This demonstrates that our client was enmeshed in bankruptcy proceedings at the time the 2011 regulatory fees were due.

The law at the FCC is settled that, in its order **Implementation of Section 9 of the Communications Act**, FCC 95-257, at paragraph 14, released July 22, 1995, the Commission found that a bankruptcy or receivership is sufficient to establish financial hardship, and that imposition of the regulatory fee could act as an impediment to the efforts of a trustee, debtor in possession, or receiver to assign a license to a new licensee. Thus, the Commission held that it would

Federal Communications Commission
August 2, 2012
Page Two

waive the regulatory fees for licensees whose stations are bankrupt, undergoing Chapter 11 reorganizations or are in receivership.

It would also appear that the debt referenced in your "Demand Letter" of July 18, 2012 was discharged by the Bankruptcy Court in Case No. 10-13875.

Therefore, this is to call on your office to rescind the "Demand Letter", determine that Three Amigo's was exempt from fiscal year 2011 regulatory fees or otherwise does not have to pay them because of its Chapter 11 bankruptcy status, and return this FRN to "green light" status.

Should additional information be desired in connection with the above matter, kindly communicate with this office.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Kelly", written in a cursive style.

Dennis J. Kelly

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

AMD-FO
(CHRON)

FEB 01 2013

OFFICE OF
MANAGING DIRECTOR

Howard Bakke
Board Member
Trout Creek-Heron-Noxon TV District
Post Office Box 1627
Noxon, MT 59853

Re: Fee Refund Request (Governmental Entity; 47
U.S.C. § 159(h)(1), 47 C.F.R. § 1.1162(b) & (c))
Licensee/Applicant: Trout Creek-Heron-Noxon TV
District
Stations/Call Signs: K080Z-D, K10QH-D, K12QT-
D
Fees: Fiscal Year (FY) 2011 Regulatory Fees
Date Request Filed: Nov. 2, 2012
Fee Control No.: RROG 11-00014860

Dear Mr. Bakke:

This responds to Licensee's *Request*¹ for a refund of the required Fiscal Year (FY) 2011 regulatory fees on the ground that it should receive a governmental entity exemption. For the reasons set forth below, we must deny the *Request*.

Licensee asserts that it is a "non-profit governmental district created by the Sanders County Board of Commissioners and [it] is not subject to ... regulatory fees." In support, Licensee included a *Letter* stating, "the Trout Creek/Heron/Noxon Television District is a subdivision of the Sanders County government."

Under 47 C.F.R. § 1.1162, "[n]o regulatory fee established in §§ 1.1152 through 1.1156, unless otherwise qualified herein, shall be required for ... (b) Applicants, permittees, or licensees who qualify as government entities. For purposes of this exemption, a government entity is defined as any state, possession, city, county, town, village, municipal corporation, or similar political organization or subpart thereof controlled by publicly elected or duly appointed public

¹ Letter from Howard Bakke, Board Member, Trout Creek-Heron-Noxon TV District, P.O. Box 1627, Noxon, MT 59853 to Federal Communications Commission, Office of the Managing Director, 445 12th Street, SW, Washington, DC 20554 (dated Oct. 26, 2012, filed Nov. 2, 2012) (*Request*) (Licensee attached a letter from Anthony B. Cox, Presiding Officer, Carol Brooker, Commissioner, and Glen E. Mager, Commission, Sanders County Board of Commissioners, P.O. Box 519, 1111 Main St., Thompson Falls, MT 59873 to Whom It May Concern (Dec 28, 2012) (*Letter*).

officials exercising sovereign direction and control over their respective communities or programs.” Licensee did not establish that it is entitled to this exemption.

Licensee’s *Letter* asserting that it is a “subdivision of Sanders County government”² does not include relevant supporting evidence to establish that the Licensee is a “government entity ... controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over [the] communities or programs.” Moreover, Licensee did not present any evidence to establish it is a non-profit entity.³ Because Licensee did not provide evidence that it is a governmental entity as that term is defined in our rule,⁴ we must deny the *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

² *Letter*.

³ 47 C.F.R. § 1.1162(c).

⁴ *See also* In the Matter of Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, *Report and Order*, 2 FCC Rcd 947, ¶¶ 78-79 (1987) (“We will adopt the definition of governmental entities as proposed in the NPRM. We believe it provides a clear benchmark for organizations to determine whether they qualify for a fee exemption. ... the commenters can readily apply the “publicly elected and/or duly appointed” criterion in the definition to determine whether their organizations are exempt from fees. ... The exemption for governmental entities is based on their status as a licensee of the service, not their use of a particular communication facility. ... the exemption is only available to a governmental entity filing as a prospective or current licensee of the underlying radio facility or service.”).

Incoming Communication Tracking - Entry Screen

Tracking Number	14860	Date Received	11/2/2012	Letters Sent 2 day <input type="checkbox"/> 30 day <input type="checkbox"/> 60 day <input type="checkbox"/> 60 day (2) <input type="checkbox"/>
File Number		Date Filed		
		Date Completed		

General Information

Source	Letter	Call Sign	
Program	Regulatory Fee	FCC Code 1	
Communication Type	Refund	FCC Code 2	
Bureau		Licensing System	
Secondary Bureau		Wavier Amount	\$0.00

Applicant/Contact Information

FRN	0004533170		
Applicant Name	Trout Creek-Heron-Noxon TV District		
Address 1	1111 Main Street		
Address 2	Sanders Cnty. Clerk		
City, State Zip	Thompson Falls	MT	59873
Contact Name	Howard Bakke	Additional FRN	
Contact Phone	406-531-0925	Additional Name	

Assignment/Status Information

Assigned To		Disposition Status	
Assigned To POC		Outcome	
RE		Filer ID	
Date Assigned		Bill Number	
Reassigned To		Fee Control Number	
Date Reassigned			
2nd Reassigned To			
2nd Date Reassigned			
RMA			

Assignment/Status Information

Comments
 Trout Creek-Heron-Noxon TV District is a government entity and exempt from Regulatory Fees. They are requesting a refund of the fees paid.

HELP DESK LOG FORM

Tracking Number 14860

Today's Date: 11/5/2012

Call Start Time

Call End Time:

ORIGINAL

Help Desk Operator (Preparer):
Stephen French

Source: Letter
Voice Mail (418-1995)

Contact Name: Howard Bakke

Primary FRN: 0004533170

Additional FRN (s):

Company Name: Trout Creek-Heron-Noxon TV District

Contact Address: 1111 Main Street
Thompson Falls MT 59873

Contact Phone: 406-531-0925

Contact Email:

Contact Fax:

Issue Presented by Contact: Exempt from Regulatory Fees. Requesting a refund. Red Light Letter ID:

Red Light Ltr Date:

Date of Request for Reconsideration or subsequent appeal:

Reference:

Date of Dismissal:

Tax Payer Identification Number:

Was payment or challenge received within 30 days of the date of the red-light notice?

Enter Date of Payment or Challenge:

Recommend Reinstatement of service or license:

Reinstatement Reason:

Comments:

Action Taken:

Issue Reslvd Date:

Trout Creek-Heron-Noxon TV District
P O Box 1627
Noxon MT 59853
406-847-9390

October 26, 2012

Federal Communications Commission
Office of the Managing Director
445 12th Street SW
Washington D.C. 20554

Received & Inspected
NOV 2 - 2012
FCC Mail Room

Gentlemen:

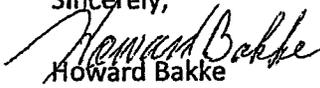
On Oct 9, 2012 in my capacity as a board member of the Trout Creek-Heron-Noxon TV District I prepared and mailed three checks in payment of the three bills detailed here:

<u>Call Sign</u>	<u>Bill Number</u>	<u>Amount</u>	<u>Check #</u>
K080Z-D	R11T181555	\$567.52	1030
K10QH-d	R11T181559	\$567.52	1031
K12QT-D	R11T181548	\$567.52	1029

I am writing to ask these amounts be refunded. The Trout Creek-Heron-Noxon TV Dist is a non-profit governmental district created by the Sanders County Board of Commissioners and is not subject to these regulatory fees. The district is a low power fully automated repeater station that does not generate any programming. Maintenance is performed by contract; office work by volunteers such as myself.

I apologize for causing this unnecessary work. If you require additional information please contact me.

Sincerely,


Howard Bakke

Board Member
Trout Creek-Heron-Noxon TV Dist.
406-847-9390 Home
406-531-0925 Cell
Howlb@Blackfoot.net

Enclosures (3): REMITTANCE ADVICE

RECEIVED
2012 NOV - 2 P 2:15
FEDERAL COMMUNICATIONS COMMISSION

**Federal Communications Commission
REMITTANCE ADVICE
BILL FOR COLLECTION**

Approved by OMB
3060-0509

Bill Number	Applicant FRN#	Current Bill Date	<i>FOR INQUIRIES CALL</i> 1-202-418-1995 (Revenue & Receivable Operations Group)						
R11T181559	0004533170	7/18/12							
Application Information:			Payable to:						
Trout Creek-Heron-Noxon TV District 1111 Main Street Sanders Cnty. Clerk Thompson Falls, MT 59873			Federal Communications Commission Regulatory Fees P.O. Box 979084 St. Louis, MO 63197-9000						
			Received & Inspected NOV 2 - 2012 FCC Mail Room						
Total Amount Due		TOTAL AMOUNT DUE MUST BE RECEIVED BY		Due Date					
\$567.52				9/16/11					
Payer FRN No.	Please Complete The Payer Information, FCC Registration Number (FRN) is required								
0004533170	TROUT CREEK-HERON-NOXON TV DIST								
Payer name (if paying by credit card enter name as it appears on the card):									
Address Line No. 1 P.O. Box 1627									
Address Line No. 2									
City	NOXON	State	MT	Zip Code	59853-1627				
Daytime Phone Number (Include area code)									
Reason for Bill:									
Our records show that by the above-stated Due Date, you had failed to pay in full your required annual regulatory fee set forth under 47 USC 159 and our rules, thus your account is Delinquent. Under 47 USC 159(c)(1), you incurred a 25% penalty, and under 31 USC 3717, you incurred the listed interest and additional penalty charges. To avoid additional charges, within 30 days of the above-stated Current Bill Date, we must receive your full payment of the Total Amount Due. Under 47 CFR 1.1910, you are red lighted until the Total Amount Due and any new charges are paid in full.									
Call Sign/Other FCC ID	Payment Type Code	Quantity	Fee Due For (PTC)	Total Fee	FCC Code 1	FCC Code 2			
K10QH-D	1 1 6 7	1	\$395.00	\$395.00	181559	MTTROUTCREEK,ETC			
K10QH-D	A D M	1		\$50.00	181559	MTTROUTCREEK,ETC			
K10QH-D	D C I A	1		\$23.77	181559	MTTROUTCREEK,ETC			
K10QH-D	P E N	1		\$98.75	181559	MTTROUTCREEK,ETC			
TOTAL DUE				\$567.52					
Please choose a method of Payment and complete the section if paying by Credit Card									
Payment Method:									
Credit Card	<input type="checkbox"/>	Check	<input checked="" type="checkbox"/> #1031	Wire	<input type="checkbox"/>	IPAC	<input type="checkbox"/>	MIPR	<input type="checkbox"/>
MASTERCARD	<input type="checkbox"/>	DISCOVER	<input type="checkbox"/>	VISA	<input type="checkbox"/>	AMEX	<input type="checkbox"/>		
Account No.						Expiration Date			
[Empty Box]						[Empty Box]		[Empty Box]	
I hereby authorize the FCC to charge my Credit Card for the service(s) / authorization(s) herein described.						Month		Year	
Authorized Signature <i>Howard Babbe</i>						Date <i>Oct 9, 2012</i>			

IF PAYING BY CHECK, PLEASE WRITE YOUR BILL NUMBER ON YOUR REMITTANCE AND ATTACH A COPY OF THIS BILL TO YOUR PAYMENT TO ENSURE PROPER CREDIT



SANDERS COUNTY BOARD OF COMMISSIONERS

December 28, 2012

To Whom It May Concern:

This letter is to inform you that the Trout Creek/Heron/Noxon Television District is a subdivision of the Sanders County government.

Sincerely,

Board of Commissioners
Sanders County, Montana

Anthony B. Cox

Anthony B. Cox, Presiding Officer
District No. 3

Carol Brooker

Carol Brooker, Commissioner
District No. 1

Glen E. Magera

Glen E. Magera, Commissioner
District No. 2

P.O. BOX 519, 1111 MAIN ST, THOMPSON FALLS, MT. 59873
PHONE: (406) 827-6966 • FAX: (406) 827-4388
EMAIL: KBATES@SANDERSCOUNTY.MT.GOV