

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

Petition for Reconsideration

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2013)	MD Docket No. 13-140
)	
Procedures for Assessment and Collection of Regulatory Fees)	MD Docket No. 12-201
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2008)	MD Docket No. 08-65

**PETITION OF FIREWEED COMMUNICATIONS LLC AND JEREMY LANSMAN
FOR RECONSIDERATION OF THE REPORT AND ORDER
IN THE ABOVE CAPTIONED PROCEEDING, ADOPTED: AUGUST 8, 2013 , RELEASED: AUGUST
12, 2013**

PETITION FOR RECONIDERATION

Pursuant to § 1.429 Fireweed Communications LLC and Jeremy Lansman (Fireweed) hereby requests reconsideration of the fee rules adopted in the above captioned Report and Order (R&O), and hereby pursuant to § 1.429 (f), for good cause, requests a stay in the applicability of the R&O as they pertain to petitioner.

Description of Fireweed: Fireweed is an FCC regulatee¹, broadcasting as KYES-TV on channel 5 and translators serving South Central Alaska. It is a member managed LLC of which Jeremy Lansman is one of two members. Fireweed has two broadcast operations. One is KYES-TV, which main channel is a My Network television affiliate. The other is KNIK-LP which operates an analog aural FM service, under LMA to a local radio broadcasting company. FWTV and its

¹ Since some regulatees of the Commission may not be licensed, but are authorized to conduct regulated activities, it is more accurate to use the term user.

members have no other broadcast interests.

Under SBA rules, FWTV combined with revenue of its members qualifies as a small business².

Applicability of 47 USC 307 (f): KYES is an Alaska station serving areas not otherwise served by over the air television broadcasts. This statute provides that the Commission shall not fine or subject Fireweed to any penalty, forfeiture, or revocation related to providing such service.^{3 4 5} Setting Fireweed into Red Light status and assessing fee penalties is contrary to the law, which states that such a station ...”shall not be fined or subject to any other penalty. This was not addressed in the M&O. Therefore we request request the Commission consider applicability of this statutory law with respect to Fireweed.

The IRFA was Deficient: Fireweed filed comments in this proceeding addressing deficiencies in the IRFA. Most notably, the IRFA did not mention Full Service Television, thus the IRFA did not comply with rule or law⁶. The R&O states⁷:

Fireweed Communications and Jeremy Lansman filed joint comments to the IRFA. They contend that the proposals in the FY 2013 NPRM greatly increase the reporting burden on small broadcasting entities requesting a fee waiver. They also contend that the IRFA does not describe significant alternatives to the proposed rules or exemptions for small entities. The Schedule of Regulatory Fees to be paid by radio and television broadcasters, which appears at 47 C.F.R. § 1153, takes into account the **size of the market** and/or size of the population served by the various classes of television and radio stations. Thus, consideration for smaller stations is already built in to the Commission’s regulatory fee structure. Any station experiencing financial hardship from the fee increase adopted today can file for a waiver pursuant to 47 C.F.R. § 1.116. This Report and Order makes no change in the fee waiver procedure for any entities seeking a waiver. We have not proposed any changes in our regulatory fee process for small entities. We have not increased the reporting burden on small entities in this proceeding. [emphasis added]

- 1) The commission says (see above) that it takes into account the size of the market. True enough, but the schedule of fees does not take into account the size of a television broadcast

2 The Small Business Administration sets the upper revenue limit for small television broadcasters at \$35.5 million. Fireweed’s revenue is far less. <http://www.sba.gov/content/table-small-business-size-standards>

3 Comments page 9

4 A full showing of qualification under 47 USC 307 (f) is found here: https://licensing.fcc.gov/cdbs/CDDBS_Attachment/getattachment.jsp?appn=101234983&qnum=5350©num=1&exhnum=1

5 Previous filing in regard to 37 (f) is attached. See page 5.

6 See <http://apps.fcc.gov/ecfs/document/view?id=7520922593>

7 Attachment F, Paragraph 34 B 5

station within a market. A large station in a small market can be much larger than a small station in a large market. We request consideration of rule changes that would take station size into account⁸. Fireweed did suggest that a revenue based fee would do that. 3) The rules do not take into account the population actually reached by the TV stations signal. The statement in the R&O that population served is taken into account is in error⁹. That error should be corrected. As we suggest using revenue as a basis for fees, we do not now, and did not previously suggest pop count be used for setting fees. However, if the Commission did use pop count, it certainly would be more accurate than Nielsen market rank size. 4) Fireweed cannot, for reasons stated elsewhere, request a waiver including required supporting IRS filings. There is no rule specifically requiring audited or IRS filings in support of a waiver request. It appears staff has made this “rule” by fiat. We request that the Commission reconsider needed financial showings for fee waivers, and submit whatever rules might be proposed to public process (as required by the Administrative Procedures Act).

- 2) The Commission could have suggested a way to reduce the waiver reporting burden on smaller entities. Requesting a waiver is itself a burden only placed on the very smallest entities. Fireweed did propose specific rules in its informal comments. We request consideration of our suggestions.

VHF Versus UHF: Fireweed, in its comments, cites FCC proclamations on the inferiority of VHF, especially low band VHF (KYES is low band) compared to UHF. Since analog shut down in 2009, the Commission has continued to charge VHF stations more than UHF stations. The M&O has ruled that VHF and UHF will be assessed the same fee in FY 2014, even though the VHF over UHF

8 By not adjusting fees to the stations size, Fireweed faces a commission imposed, unconstitutional (Equal Protection 14th Amendment), discriminatory and impossible burden. Cell telephone companies pay regulatory fees per subscriber, Fireweed should be treated as well as Verizon.

9 Radio propagation prediction software such as that created by OET to be used as a guide to reverse auction was created by the FCC and automatically predicts actual population that might be served. http://data.fcc.gov/download/incentive-auctions/OET-69/2013Sep_TVStudyManual128.pdf Notice “pop” is one output of this software. See page 67.

has been inverted to UHF over VHF since shutdown. Yet the M&O has not one iota of justification for its past history of outsized VHF charges, or setting charges equal on 2014. The commission knows low band VHF is undesirable, and should consider setting low band VHF at a properly lower rate. Reconsideration of the disparity in rates is requested. Justification should be included for whatever action is taken.

The Commission Admits Poor Compliance With 47 USC § 15 (b) 1 (A): The law requires the Commission to calculate fees by determining the full-time equivalent number of employees (FTE) performing enforcement activities, policy and rulemaking activities, user information services, and international activities. The Commission admits it has not performed the calculation since 1998¹⁰. Although the law does not specify how often the calculation should be performed, 15 years without performing what should be a simple and routine calculation demonstrates willful disregard of legal requirements that the Commission itself would not tolerate in a television station licensee.¹¹ In its review of the Commission's fee process, the Government Accountability Office said the process is "not transparent"¹³. We have searched the web, and find no records of the Commission submitting its methodology of FTE work assignment to public comment or explaining how the

10 At Paragraph 10: "As discussed in the FY 2013 NPRM, the current allocations of direct and indirect FTEs are taken from FTE data compiled in FY 1998 and may no longer accurately reflect the time that Commission employees devote to these activities."

11 Imagine the FCC having to meet the same standards of reporting required of TV stations. Here is an example of a small low power station getting a whopper of a fine (\$42,000) for not timely reporting its otherwise admirable compliance with Commission rules. See Facility ID No. 68905, 68911 and 68910 NAL Account 201341420026, 201341420044 and 201341420027 http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-13-1552A1.doc
http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-13-1546A1.doc

12 47 U.S.C. § 312 (f) (f) "**Willful**" and "**repeated**" defined

For purposes of this section:

- (1) The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this chapter or any rule or regulation of the Commission authorized by this chapter or by a treaty ratified by the United States.
- (2) The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

13 GAO Report, Regulatory Fee Process Needs to be Updated, August, 2012. First Paragraph, "What the GAO Found": FCC officials said it has become more challenging to align current FTEs to the 86 fee categories given the increasingly cross-cutting nature of FCC's work, raising the potential that FCC's fee categories may also be out of date. FCC's regulatory fee process also lacks transparency because of the limited nature of the information FCC has published on it. This has made it difficult for industry and other stakeholders to understand and provide input on fee assessments.

calculations are performed. Consultants, lawyers, engineers have time sheet software tracking use of time by project. Billing for most is monthly. It is beyond the pale to imagine the Commission has not automated the collection of this sort of FTE information over the last 15 years. The Commission should adopt a simple time sheet accounting system to track actual project time spent by employees, and report the results on a monthly basis. If law firms can do it, so can the FCC.¹⁴ Law firms that wait 15 years before billing do not exist.

Red Light Causing FCC Rule Violation Beyond Licensee Control: When a regulatee does not pay assessed fees, processing of applications to the FCC are placed on hold and not processed. We noted that there are some circumstances, such as during an emergency, when an application for special temporary authorization will not be processed even when the situation is dire and may be a matter of public safety. Such a station in a Red Light bind, if it has no funds to pay overdue fees, may wind up violating FCC rules due to circumstances not in control of the broadcaster, but rather in control of the FCC. The Commission should consider a rule change directing staff to grant such emergency applications.

Changes Contributing to Fireweeds' Impecunity Are Largely A Result of FCC Policy and

Rule Change: We noted that Fireweed does not have the money to pay overdue or current fees. Thus, a government effort to collect may, in the case of Fireweed, be fruitless.

When the station was founded, there was a robust marketplace for independent syndicated television programming. Early in its existence, KYES became a UPN and The WB affiliate. Although it was not wealthy, two network and a robust syndication market meant the station could offer find programs attractive to advertisers and viewers. Over time finances eroded. First came

¹⁴ For less than the regulatory fee charged one TV station in the larger markets, one can acquire time tracking software and hire a consultant to evaluate products, set one up and train users. One example at < \$16 per seat: <http://www.getklok.com/store/purchase.php> The Commission should rush to issue a consultancy RFP.

Commission elimination of Financial Interest in Syndication rules¹⁵, sharply reducing competition in the syndicated programming marketplace.

"Prior to the repeal of fin-syn there was robust competition among independent producers," the Caucas says in its five-page filing. "This competition resulted in high quality programming that reflected a wide range of views. Since the demise of fin-syn there has been a crippling of competition and decline in diversity of views presented." (<http://www.tvnewscheck.com/article/43604/producers-to-fcc-bring-back-finsyn>)

KYES affiliated with two mini networks. First was CBS/Paramount UPN. Shortly thereafter, the station contracted with Warner Brothers and began broadcasting The WB. Each provided four hours a day plus weekend specials. In 1998 The WB was reformed into a virtual local TV channel for small markets called WB+. The new full time service was placed in the hands of a multiple station owner, having a station in Anchorage. WB+ is a 24 hour a day service, so the move not only took audience from KYES, as it entered the already contracting syndicated TV show market to compete against KYES for attractive programs, it took audience to another dial position for shows we had promoted. In 2006 CBS merged UPN with The WB to form CW, which then marched more KYES audience up the dial as the old WB+ channel now became CW+¹⁶. Finally, now financially strapped, in 2009 the station faced analog shutdown during bankruptcy. As a result, the station's license was pulled¹⁷. However, we did not let KYES go dark. Committed to serving its audience, the station not only converted to digital with whatever equipment it could scrape up, but added three subchannels, one of which was a full time news service, and another full time NCE service produced by the University of Washington. KYES eventually convinced the Commission to reinstate the call sign, although to date license has been issued. Put simply, the station owners are dedicated serving its viewers. In the last election cycle, it offered free political advertising time,

15 http://en.wikipedia.org/wiki/Financial_Interest_and_Syndication_Rules

16 http://en.wikipedia.org/wiki/The_CW_Plus

17 The unfunded federal mandate resulted in many stations leaving the air. A search of call sign d% in CDDBS will bring up a long list of deleted call signs, most due to the digital transition. Go to http://licensing.fcc.gov/prod/cdbs/pubacc/prod/app_sear.htm, enter call sign d%, service television, and date 06/01/2009.

something very unusual if not unknown¹⁸.

Thus, the stations inability to pay the regulatory fee is largely due to circumstances beyond Fireweeds control, but quite a lot in control of the Commission. Killing fin-sin, promoting media consolidation are significant factors.

Stay Request: Fireweed states herewith that the fees, at approximately 10% of annual revenue, cannot be paid. They presently are \$ 21,659.38, which is approximately 10% of the gross revenue of the station in one year.

The issues were not addressed in the captioned report and order (R&O). In our comments we explained that present fee waiver showings require personal tax returns of LLC members, which, when the petitioner has an IRS filing extension, can make it impossible to submit a timely waiver request ¹⁹ including the non existent IRS returns. The R&O claims²⁰ that Fireweed,

...”contends that we should not require parties to support a waiver request with tax returns. Fireweed has not, however, suggested an alternative method to substantiate financial hardship. Tax returns or audited audited financial statements are generally used by parties before the Commission to demonstrate financial hardship.”

The very suggestion that a small entity such as Fireweed could submit results of an audit reflect gross lack of understanding on the part of the persons at the Federal Communications Commission who are engaged in writing the M&O. Audits are expensive. If an audit were an option for Fireweed, then paying the fee would be the best option as it would cost less than an audit. However, with no fund available, both paying the fee AND an audit are unavailable options.

The M&O is factually wrong. Fireweed did not contend the Commission drop a requirement of

18 <http://whatdoino-steve.blogspot.com/search?q=kyles>

19 Comments of Fireweed, Catch 22 Fireweed Ruling, Page 7.

20 R&O paragraph 41.

submission of tax returns. It was suggested, however, is that the Commission open up an option for Fireweed and others in the same Catch 22 situation to file waiver requests to file their data when it becomes available. In the alternative, the Commission could require use the most recent financial information, such as older returns²¹. This suggestion was not addressed in the M&O. We request it be addressed upon reconsideration.

I declare under penalty of perjury, under the laws of the United States of America that the foregoing is true and correct. Executed on 2013/09/09.

Signed
Jeremy Lansman
Member, Fireweed Communications LLC
17 September 2013

21 <http://apps.fcc.gov/ecfs/document/view?id=7520936114>

Fireweed Fees for 2013 total \$8,300
Back payments are 13359.38
Fees due including 2013 total \$ 21,659.38

Fireweed Fees In Arrears
Listing From Red Light System

R12T021488	\$7,633.18
R12T021490	\$551.21
R12T021491	\$551.21
R12T021492	\$551.21
R12T131081	\$551.21
R12T131085	\$551.21
R11T021490	\$572.62
R11T021491	\$572.62
R11T021492	\$572.62
R11T131081	\$572.62
R11T131085	\$572.62
Total	13359,38