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FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
AUG 20 2013

OFFICE OF
MANAGING DIRECTOR

Dan J. Alpert, Esq.
The Law Office of Dan Alpert
2120 N. 21st Road
Arlington, VA 22201

Re: Waiver of Regulatory Fee (NCE FM
Translator) (47 U.S.C. § 159(c); 47 C.F.R. §§
1.1160(a), 1.1162(e) & (g), 1.1164, 1.1166, 73.501,
et seq.)
Licensee/Applicant: Rio Bravo Entertainment, LLC
Station: K261DW
Fee: Fiscal Year (FY) 2012 Regulatory Fee
Date Request Filed: Sep. 18, 2012
Fee Control No.: RROG-12-00014724
Regulatory Fee Amount: \$385.00
§ 3717-charges: \$ 19.96
Charge of Collection: \$ 50.00
Penalty: \$ 96.25
Current Balance Due: \$551.21

Dear Counsel:

This responds to Licensee's *Request*¹ for waiver for the required Fiscal Year (FY) 2012 regulatory fee.² For the reasons stated herein, we dismiss and deny Licensee's *Request*.

¹ Letter from Dan J. Alpert, 2120 N. 21st Rd., Arlington, VA 22201 to Managing Director, FCC, 445 12th St. S.W., Washington, DC 20554 (Sep. 14, 2012) (email rec'd Sep. 18, 2012)(*Request*).

² In The Matter Of Assessment And Collection Of Regulatory Fees For Fiscal Year 2012, *Report and Order*, 27 FCC Rcd 8390, 8398 (2012) ("Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2011.").

Our records show that Licensee failed to make a timely³ submission of either full payment of the FY 2012 regulatory fee or a petition to defer payment⁴ to the proper office.⁵ Thus, because Licensee failed to comply with our procedures and it is delinquent in paying the fee, under 47 U.S.C. § 159(c) and 47 C.F.R. §§ 1.1164(c)⁶ & (e)⁷ and 1.1166, we assess the late payment penalty and charges,⁸ and we dismiss the *Request*. The delinquent fee and accrued charges are due immediately, and because we dismissed the *Request*, we need not discuss the merits. Nonetheless, as a courtesy, we look to Licensee's submission, which asserts "Licensees of NCE [Noncommercial educational] stations are exempt from payment of Annual Regulatory Fees. In the case [of] FM translators, an FM translator that designates a full-service NCE station as its 'primary station; is considered to be an 'NCE FM Translator.'" Licensee added, "as of October 1, 2011 and at the time Annual Regulatory Fees were due, the Primary Station of Station K261DW has been designated as NCE station KDRP-LP."⁹ Without more (including clarification of contradictory information as to the identity and status of the station being broadcast¹¹), these assertions do not establish that Licensee is exempt from the fee, thus for the reasons we discuss below, we dismiss.

Although Licensee did not refer to our rule at 47 C.F.R. § 1.1162, it appears to base its requested relief on that provision.¹² Under that rule the Commission grants an exemption from

³ Reminder That FY 2012 Regulatory Fees Are Due No Later Than September 13, 2012, Eastern Time (ET), *Public Notice*, DA 12-1423 (Aug. 31, 2012), 27 FCC Rcd 10297 (2012).

⁴ 47 C.F.R. § 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.")

⁵ 47 C.F.R. § 1.1166(a)(2) ("If no fee payment is submitted, the request should be filed with the Commission's Secretary.")

⁶ 47 C.F.R. § 1.1164(c) ("If a regulatory fee is not paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.")

⁷ 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. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.")

⁸ See 31 U.S.C. § 3717.

⁹ *Request*.

¹⁰ *Id.*

¹¹ Licensee asserts in the *Request* that it broadcasts "NCE station KDRP-LP;" however, Licensee did not clarify that assertion with the differing information contained in FCC 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, File No. BMPFT 20120301AEP, in which Licensee certified that its primary station was Call Sign KLZT, Channel 261. Our records show that Call Sign KLZT is a commercial broadcast station (see FCC 323 Ownership Report for Commercial Broadcast Stations, FCC File No. BOA 20111129FEK.).

¹² 47 C.F.R. § 1.1162, provides, in part:

(e) Applicants, permittees or licensees of noncommercial educational (NCE) broadcast stations in the FM or TV services, as well as AM applicants, permittees or licensees operating in accordance with § 73.503 of this chapter.

* * *

(g) Other applicants, permittees or licensees providing, or proposing to provide, a NCE or

paying the regulatory fee to a NCE licensee in the FM or TV services, as well as AM licensees operating in accordance with 47 C.F.R. § 73.503. In this case, Licensee provided no evidence that it falls within that exemption. Rather, it asserts only it should be “considered to be an ‘NCE FM Translator,’” and on that ground exempt from paying the fee.¹³

On that brief claim, we turn to whether Licensee established an exemption either under 47 C.F.R. § 1.1162(g) on the ground that it provides or proposes to provide “NCE or instructional service” or 47 C.F.R. § 1.1162(g)(1) - (3) on the ground that Licensee qualifies under one of the described circumstances. Licensee missed the mark. Specifically, Licensee failed to furnish evidence that it is a NCE station within the licensing requirements set forth at 47 C.F.R. § 73.503.¹⁴ Moreover, Licensee failed to present any evidence to support its assertions that it is a “NCE FM Translator.” Finally, Licensee’s brief assertions do not demonstrate that under § 1.1162(g)(1) - (3) Licensee is (1) “an organization that, like the Public Broadcasting Service or National Public Radio, receiv[ing] funding ... through the Public Broadcasting Fund,” (2) a “translator ... proposing to operate an NCE service who, after grant, provides proof that it has received funding for the construction of the station through the National Telecommunications and Information Administration,” or (3) the recipient of a “fee refund under § 1.1160 and operating as an NCE station [under 47 C.F.R. § 73.503], is exempt from fees [as set forth in] subparts D, E, F, and G of part 74 ... where such authorization is to be used in conjunction with the NCE translator”¹⁵ Licensee failed to provide evidence that it receives the required funding, and Licensee provided no evidence the Commission provided a fee refund and that Licensee is operating as an NCE station under § 73.503, which extends specifically to “a nonprofit educational organization and upon a showing that the station will be used for the advancement of an educational program.”¹⁶ Rather than falling within the confines of a NCE, it

instructional service, but not qualifying under paragraph (e) of this section, may be exempt from regulatory fees, or be entitled to a refund, in the following circumstances:

- (1) The applicant, permittee or licensee is an organization that, like the Public Broadcasting Service or National Public Radio, receives funding directly or indirectly through the Public Broadcasting Fund, 47 U.S.C. 396(k), distributed by the Corporation for Public Broadcasting, where the authorization requested will be used in conjunction with the organization on an NCE basis;
- (2) An applicant, permittee or licensee of a translator or low power television station operating or proposing to operate an NCE service who, after grant, provides proof that it has received funding for the construction of the station through the National Telecommunications and Information Administration (NTIA) or other showings as required by the Commission; or
- (3) An applicant, permittee, or licensee provided a fee refund under § 1.1160 and operating as an NCE station, is exempt from fees for broadcast auxiliary stations (subparts D, E, F, and G of part 74 of this chapter) or stations in the wireless radio, common carrier, or international services where such authorization is to be used in conjunction with the NCE translator or low power station.

¹³ *Request.*

¹⁴ We were unable to locate a required relevant Licensee-filed FCC 323, Ownership Report for Commercial Broadcast Stations or a FCC 323-E, Ownership Report for Noncommercial Educational Broadcast Stations. Information in such reports may have been helpful in resolving Licensee’s issues.

¹⁵ *Id.*

¹⁶ 47 C.F.R. § 73.503(a).

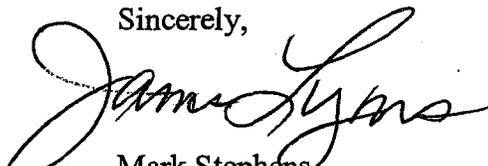
appears that Licensee is a “for profit corporation,” that it operates the translator on a non-qualifying channel, *i.e.*, Channel 261,¹⁷ and that the translator does not operate under the relevant subparts.¹⁸

Licensee failed to show it is a NCE licensee as set forth at § 73.503, and it failed to demonstrate it should be exempt from the fee under any one of the specific conditions set forth at § 1.1162(g)(1)-(3). Thus, for these alternative reasons, we deny License’s *Request* for a waiver of the required regulatory fees.

Payment of \$551.21, Licensee’s FY 2012 regulatory fees, 25% penalty, and other charges is now due. To avoid additional charges, within 30 days of the date of this letter, we must receive that amount with a Form 159 (copy enclosed). If the full amount is not received by that date, any unpaid portion of the debt will be delinquent, and we will assess interest and applicable additional penalties and charges required by 31 U.S.C. § 3717(e) that will accrue from the date of delinquency. Under the law,¹⁹ charges continue to accrue until the debt is paid in full. Furthermore, under 47 C.F.R. § 1.1910(b), Licensee is subject to the Commission’s red light rule, which means that the Commission will withhold action on any application filed or pending, and if the debt is not paid, or other satisfactory arrangements are not made, the Commission may dismiss the application. *See* 47 C.F.R. §§ 1.1108, 1.1109, 1.1116, and 1.1118. Additionally, any Commission action taken prior to the payment of delinquent non-tax debt owed to the Commission is contingent and subject to rescission. Finally, the Commission may collect amounts due by administrative offset.²⁰

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

Sincerely,



For: Mark Stephens
Chief Financial Officer

Enclosure

¹⁷ *See* 47 C.F.R. § 73.501(a).

¹⁸ *See e.g.*, FCC 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, BMPFT 201120301AEP (Mar. 1, 2012).

¹⁹ 31 U.S.C. § 3717; 47 C.F.R. § 1.1940.

²⁰ 47 C.F.R. § 1.1912.

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September 14, 2012

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

**Re: 2012 Regulatory Fee
K261DW
Facility No. 148373
FRN: 0019702661**

To Whom This May Concern:

Rio Bravo Entertainment, LLC, by its attorney, hereby requests a waiver of the 2012 Annual Regulatory Fee. In support thereof, the following is stated.

Licenses of NCE stations are exempt from payment of Annual Regulatory Fees. In the case of FM translators, an FM translator that designates a full-service NCE station as its "primary station" is considered to be an "NCE FM Translator."

Both as of October 1, 2011 and at the time Annual Regulatory Fees were due, the Primary Station of Station W295AP has been designated as NCE station KDRP-LP.

Rio Bravo Entertainment, LLC is licensee of Station K261DW. Accordingly, a waiver of the \$385.00 2012 Annual Regulatory Fee is appropriate.

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

Very truly yours,

Dan J. Alpert

Counsel for Rio Bravo Entertainment, LLC

*Fy 2011
was exempt
Lower Power FM station*