

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

MAY 2 2014

OFFICE OF
MANAGING DIRECTOR

Jeff Lovett
President/General Manager
Lovett Broadcasting Enterprises, Inc.
644 Hall Road
Cairo, GA 39828

Applicant/Licensee: **Lovett Broadcasting Enterprises, Inc.**
Waiver and Deferral of Regulatory Fee: Financial Hardship
Disposition: Denied
Stations: WGRA-AM
FRN: 0005012281
Fee: Fiscal Year (FY) 2013 Regulatory Fee
Date Request Filed: Sep. 13, 2013
Date Regulatory Fee Paid: Not Paid
Fee Control No.: RROG-13-00015370
Regulatory Fee (FY 2013): \$1,000.00

Dear Mr. Lovett:

This responds to Licensee's *Request*¹ for a waiver and deferment of payment of the Fiscal Year (FY) 2013 regulatory fee. For the reasons stated below, we deny the *Request* for waiver and require full payment of the fee within 30 days of the date of this letter.

Licensee requests a "waiver and deferral of the 2013 Annual Regulatory Fees ... based on financial hardship that has occurred in [the corporate president's] personal and business life during [the] past year."² In particular, Licensee explains that a key employee was involved in a motorcycle accident causing serious injuries that generated significant expenses and prevented

¹ Letter from Jeff Lovett, President/General Manager, Lovett Broadcasting Enterprises, Inc., 644 Hall Road, Cairo, GA 39828 to Marlene Dortch, Secretary, FCC, Attn: Office of Managing Director, Regulatory Fee Waiver/Deferral Request: WGRA-AM, 445 12th St., S.W., Room TW-B204, Washington, DC 20554 (Sep. 12, 2013) (*Request*) with six exhibits: 2013 Regulatory Fee Information Site (Exhibit 1); State of Georgia Traffic Crash Report, GSPG13CAD027509 (6/15/2013) (Exhibit 2); Archbold Medical Center, Emergency Room Itemized Bill, 6/16/2013 (Exhibit 3); Della W. Lovett, Jeff Lovett, Partial Statement Checking Account, Page 4 (Exhibit 4); Lovett Broadcasting Enterprises Inc., United National Bank Business Checking Account, Page 2 (Exhibit 5); Prof & Loss YTD Comparison, September 1 -13, 2013 (Exhibit 6).

² *Request*.

her from working at Licensee's station.³ Licensee provided six exhibits describing, in part, the employee's traffic accident,⁴ itemized medical emergency room expenses,⁵ extract portions of bank statements from a personal checking account and a business checking account,⁶ and a partial Profit & Loss Statement reporting a comparison for the period from September 1 – 13, 2013, and January 1 – September 13, 2013.⁷ Unfortunately, Licensee's explanation and those exhibits are insufficient to meet Licensee's obligations to show good cause and that the public interest will be served by waiving the fee.

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, but only upon a showing of good cause and a finding that the public interest will be served thereby.⁸ The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.⁹ A "sufficient showing of financial hardship"¹⁰ requires more than "[m]ere allegations or documentation of financial loss, standing alone," rather "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."¹¹ For example, in situations where the regulatee seeks a 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.¹² Licensee failed to meet these standards.

First, Licensee failed to provide its complete required financial information. Instead, Licensee included only partial financial information for the limited period of January 1, 2013, through September 13, 2013, which fails to show that Licensee did or will experience financial hardship sufficient to support a showing of good cause and a finding that the public interest will be served by waiving the FY 2013 fee. We require more. For example, Licensee should have provided relevant complete financial information, *e.g.*, a balance sheet, an annualized profit and loss statement, and cash flows. Because Licensee failed to include these additional required documents, Licensee failed to provide the detailed financial information necessary to assert the

³ *Id.*

⁴ *Id.*, Exhibit 2.

⁵ *Id.*, Exhibit 3.

⁶ *Id.*, Exhibits 4 & 5.

⁷ *Id.*, Exhibit 6.

⁸ 47 U.S.C. §159(d); 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). *See also* 9 FCC Rcd 5344, ¶ 29.

⁹ *Id.*

¹⁰ 10 FCC Rcd at 12761-62, ¶ 13.

¹¹ *Id.*

¹² *Id.*

existence of financial hardship and present that information in the context of meeting the two prongs of our standard, good cause and that the public interest is served by waiving the fee. We are sympathetic to Licensee's explanation of the employee's personal injuries sustained after striking an animal, but Licensee failed to provide evidence connecting the accident and its consequences¹³ to Licensee's ability to pay the fee and provide service to the public. Moreover, Licensee's furnished information is incomplete and inconclusive. For example, the business checking account shows only that in one monthly period, the total of the checks written and withdrawals made approach the total amount of its deposits.¹⁴ It does not show financial hardship. In addition, the profit and loss information is inconclusive because it reports only a portion of the 2013 calendar year, and Licensee failed to include information from the past year or to project revenues and expenses for the remainder of the current calendar year. Additionally, Licensee did not show how the employee's partial financial information affects the Licensee's financial ability to pay the fee.¹⁵ The Commission will not speculate to fill gaps in information that Licensee should have provided.¹⁶

Next, Licensee did not carry its burden¹⁷ of demonstrating compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹⁸ For example, Licensee failed to show how the limited profit & loss information that reports only eight and one-half months, and that does not show Licensee's details of past, present, or future financial circumstances, relates to paying the FY 2013 regulatory fees.¹⁹ Licensee's limited financial information shows only that station WGRA-AM had negative net income during the period. It fails to present compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs. Moreover, it does not show Licensee's service to the public will suffer upon payment of the required regulatory fees or that the public interest will be served by waiving the fee.²⁰

Licensee failed to meet the standards required for a waiver, hence we deny the *Request*, and because the period for deferral has passed, we require full payment of the \$1,000.00 regulatory fee within 30 days of the date of this decision. If licensee fails to pay the full amount

¹³ We note Licensee described the accident in the Request and provided an accident report (Exhibit 2) and hospital itemized bill (Exhibit 3), but Licensee did not include any information concerning insurance coverage (e.g., key employee coverage, automobile coverage, disability payments, or separate accident coverage).

¹⁴ The single page (page 2) of the business checking account is incomplete because it is missing pages and it fails to include all transactions, e.g., the page shows 25 numbered check transactions; however, the summary balance information reports 37 debit/withdrawal items, including several transactions predating the specific checks, and it reports 17 deposits.

¹⁵ Licensee did not show how the medical expenses and the portion of the personal checking account statement relate to the Licensee's burden under 47 C.F.R. § 1.1166 to establish good cause and that the waiver will promote the public interest.

¹⁶ 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.).

¹⁷ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹⁸ See *Bartholdi Cable Co., supra*, 47 C.F.R. § 1.16.

¹⁹ The profit & loss fails to show that (a) Licensee experienced any financial hardship, (b) the proffered showing of short term negative income affected Licensee's or its station's service to the public, or (c) the negative net income started and continued beyond the reported period.

²⁰ 47 C.F.R. § 1.1166.

due by that date, the debt is delinquent, and the statutory penalty of 25% of the unpaid fee,²¹ and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter. Under the law,²² the Commission will initiate collection proceedings.

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

Sincerely,



FOR: Mark Stephens
Chief Financial Officer

²¹ 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.”).

²² See 47 C.F.R. § 1.1901, *et seq.*