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FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

JAN 31 2003

OFFICE OF
MANAGING DIRECTOR

David Tillotson, Esq.
4606 Charleston Terrace, N.W.
Washington, D.C. 20007-1911

Re: Phoenix Broadcasting, Inc.
Stations KSWD(AM) and KPFN(FM), Seward, Alaska
Request for Waiver of FY 2000 Regulatory Fees
Fee Control No. 00000RROG-03-040

Dear Mr. Tillotson:

This is in response to your request dated October 21, 2002, filed on behalf of Phoenix Broadcasting, Inc. (Phoenix), that the Commission's Office of Managing Director reconsider its decision denying Phoenix's request for a waiver of the fiscal year (FY) 2000 regulatory fees for Stations KSWD(AM) and KPFN(FM) on the grounds of financial hardship. Our records reflect that you have not paid the $300.00 FY 2000 regulatory fee or the $75.00 late charge penalty for late payment of the regulatory fee associated with Station KSWD(AM) or $300.00 FY 2000 regulatory fee or the $75.00 late charge penalty for late payment of the regulatory fee associated with Station for Station KPFN(FM).

In a previous letter dated September 24, 2002 (*Letter Decision*), we informed Phoenix that its waiver request had to be supported by a "compelling case of financial hardship." Phoenix was afforded 30 days to submit appropriate documentation in accordance with our instructions.

In your request, you reassert that Stations KSWD and KPFN are in precarious financial condition because of "the Commission's failure to enforce its February 2000 decision[1] requiring Peninsula Communications, Inc. (Peninsula) to cease operating two FM translators in Seward, Alaska" and because of the Commission's "failure to act expeditiously on its May 2001 order[2] directing Peninsula to show cause as to why it

[1] *See Peninsula Communications, Inc., Memorandum Opinion and Order,* 15 FCC Rcd 3293 (2000) (*Peninsula Order*) (footnote added).

[2] *See Peninsula Communications, Inc., Memorandum Opinion and Order and Order to Show Cause,* 16 FCC Rcd 11364 (2001) (footnote added).

should not be required to cease operating the [Seward t]ranslators." You also assert that Stations KSWD and KPFN have suffered "severe financial harm" as a result of the Commission's lack of expedition in addressing Peninsula's operation of the two Seward translators in violation of the Commission's rules. You further claim that the Commission's statement in the *Peninsula Order* that continued operation of Peninsula's Seward translators "would be a clear detriment to the continued viability of full service broadcast stations licensed to Seward"[3] is a "clear finding" by the Commission that Stations KSWD(AM) and KSWD(FM) are suffering significant financial hardship.

You have failed to submit the documentation or support necessary for establishing financial hardship for purposes of a waiver of the Commission's regulatory fees as set forth in the *Letter Decision*. The Commission orders to which you refer do not address or involve the issue of fee waivers and thus cannot be relied on to support your contention that Phoenix's stations have suffered financial hardship sufficient to warrant a waiver. As we explained in our *Letter Decision*, you were required to submit:

> information such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (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. *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, 12761-62 (1995).

In the absence of appropriate documentation or support, you have failed to establish a compelling case of financial hardship. Therefore, your request for FY 2000 regulatory fee relief for Stations KSWD(AM) and KPFN(FM) regulatory fees is denied. Payment of the FY 2000 regulatory fee in the amount of $300.00 and the $75.00 late charge penalty for late payment of the regulatory fee for Station KSWD(AM) and KPFN(FM) is now due. The total of $750.00 should be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter.[4]

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[3] *See Peninsula Order* at 3295.

[4] We note that the *Letter Decision* erroneously stated in paragraph 4 that Phoenix owed $300.00 as opposed to $375.00 for FY 2000 for Station KSWD(AM).

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

Sincerely,

Mark A. Reger
Chief Financial Officer

Enclosure:
Form 159

00000RR06-03-040

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October 21, 2002

Mr. Andrew Fischel
Managing Director
Federal Communications Commission
Washington, DC 20054

Re: Petition for Reconsideration

Dear Mr. Fischel:

I am writing on behalf of Phoenix Broadcasting, Inc. ("Phoenix"), licensee of Station KSWD and KPFN, Seward, Alaska (the "Seward Stations"), to request reconsideration of the letter ruling issued September 24, 2002, denying Phoenix' request for waiver of the FY 2000 regulatory fees for the Seward Station on the grounds of financial hardship.

The waiver request was predicated on the fact that the Seward Stations have been placed in precarious financial condition due and have suffered sever economic harm as a consequence of the Commission's failure to enforce its February 2000 decision requiring Peninsula Communications, Inc. ("Peninsula") to cease operating two FM translator's in Seward, Alaska, (the "Translators") and the Commission's subsequent failure to act expeditiously on its May 2001 order directing Peninsula to show cause as to why it should not be required to cease operating the Translators. The waiver request was denied on the grounds that Phoenix had not submitted adequate evidence to establish "financial hardship." For the reasons set forth below, it is respectfully submitted that the denial of the waiver should be reconsidered and that the waiver should be granted.

In the February 2000 Commission decision referred to by Phoenix in its waiver request, *Peninsula Communications, Inc.*, FCC 00-45 released February 14, 2000 (the "Feb 2000 Decision"), the Commission terminated waivers that it had granted to Peninsula for operation of the Translators because the Translators "are taking between $4,000 and $6,000 per month in radio revenues out of Seward, which is a community of fewer than 5,000 people with limited sources of advertising revenue and, consequently, continued operation of the Translators "would be a clear

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detriment to the continued viability of full service broadcast stations licensed to Seward." Thus, the Feb 2000 Decision stands as a clear finding by the Commission that the Seward Stations were suffering significant financial hardship, so significant as to place their continued viability in doubt, as a consequence of the operation of the Translators. Based upon this finding, no further evidence that the Seward Stations are suffering financial hardship and are in "precarious financial condition" should be required to justify grant of the requested waiver.

Having found that the Seward Stations' very viability was placed in jeopardy by Peninsula's operation of the Translators, the Commission allowed Peninsula openly to defy the ordering clauses of the Feb Decision for more than 15 months, during which time the Translators continued to take revenues out of the Seward market that the Seward Stations desperately needed to survive. Finally, on May 18, 2001, the Commission acted with respect to the Translators and several other translators operated by Peninsula which were the subject of the Feb Decision. *Peninsula Communications, Inc.* FCC 01-159 released May 18, 2001 (the "May Decision"). In the May Decision, the Commission concluded that it had not used the correct procedural means to require Peninsula to cease operating the Translators and it ordered Peninsula to show cause why its licenses for the Translators should not be modified to discontinue the previously granted waivers of the Commission's rules with respect to translators without which the Translators could not lawfully be operated. The Commission promised that if Peninsula were to protest the proposed modification of its licenses for the Translators, it would "rule on the matter expeditiously." Peninsula protested the proposed modification of the licenses within the thirty day protest period following release of the May Decision provided for in Section 316 of the Communications Act. It is now more than 17 months since that protest was filed. Even by Commission standards, the Commission clearly has not kept its promise to act "expeditiously." And during these 17 months and counting that the Commission has not acted, the Seward Stations continue to suffer severe financial harm from the operation of the Translators.

Regulatory fees supposedly are predicated on the value of licensees to regulatees. They are also part of a structure devised by Congress for defraying the costs of the Commission's regulatory operations. The Commission's failure to follow through on its Feb Decision and its subsequent failure to act "expeditiously" following its May Decision has devalued the licenses for the Seward Stations towards worthlessness. In fact, the only reason that Phoenix continues to operate the Seward Stations is that it continues to hope that the Commission will

enforce its rules and require the Translators to cease operating, and thereby make it possible for the Seward Stations to eek out a profit in Seward notwithstanding the community's small advertising base. In these circumstances, waiver of the regulatory fees for the Seward Stations based on financial hardship is clearly warranted. Moreover, as the Commission has failed to fulfill its obligations to enforce its own Decisions and Rules, it is adding insult to injury to expect Phoenix to pay regulatory fees to defray the Commission's costs for services that it is not performing.

Respectfully submitted,

David Tillotson