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Federal Communications Commission
Washington, D.C. 20554

Mark D. Weller
Assistant General Counsel
Real Alloy
3700 Park East Drive
Suite 300
Beachwood, Ohio 44122

Licensees/Applicants: **Real Alloy Specification, Inc., Real Alloy Recycling, Inc., Real Alloy, Debtors-In-Possession**

Re: Waiver of Application Fees

Disposition: **Dismissed and Denied** (47 U.S.C. §158(d)(2); 47 C.F.R. §1.1119(a))

Fee: Form 603 Application Fee

Date Request Filed: April 23, 2018

Date Application Fees Paid: April 18 and 19, 2018

Date Late Penalty Fee Paid: N/A

Fee Control No.: RROG- PGC3085510,
PGC3084896, PGC3084876

Dear Mr. Weller:

This responds to the requests (collectively, the Requests) of Real Alloy Specification, Inc., Real Alloy Recycling, Inc. and Real Alloy (collectively, the Real Alloy entities) for waivers of the application fees the Real Alloy entities paid when they filed their Form 603 applications with the Commission.¹ As the reasons stated below, we dismiss and deny the Requests.

In their Requests, the Real Alloy entities ask the Commission to waive the application fees the entities paid when they filed their Form 603 applications, asserting that they are “undergoing a Chapter 11 Reorganization case... and while our business is in the stage of

¹Letters from Mark D. Weller, Real Alloy, 3700 Park East Drive, Suite 300, Beachwood, Ohio 44122, to Marlene H. Dortch (April 18, 2018, *rec'd* April 23, 2016) (collectively, *Requests*). The *Requests* are identical to one another; we will therefore treat them as one for the purpose of rendering this decision.

reorganization, our cash flow is indeed constrained.”² The Requests do not include any financial documentation or documentation pertaining to the bankruptcy cases to support the parties’ assertion of financial hardship.

First, the Requests fail on procedural grounds, because the Real Alloy entities failed to provide any documentation supporting their assertion of financial hardship. In order to establish financial hardship, a licensee must provide such financial and other documentation as is necessary to demonstrate its financial position and that it lacks sufficient funds to pay the fee and to maintain service to the public.³ Accordingly, we dismiss the Requests.

As an alternative and independent basis for our decision, we deny the Requests on the merits. The Commission may waive, reduce, or defer payment of an application fee 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 administrative costs.⁵ As we have noted, while fee relief may be granted based on financial hardship, mere allegations of financial hardship, without documentation fully supporting the assertion, do not suffice.⁶ Only with sufficient supporting documentation will the Commission consider, on a case-by-case basis, whether the regulatee has met its burden of proof and should be granted a waiver.

While we consider a licensee’s bankruptcy to be a relevant fact, we do not consider it to be dispositive. Instead, we recognize that “in some circumstances a significant question may exist as to whether a 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.”⁷ Thus, even when a regulatee is in

² *Requests*.

³ *See e.g.*, 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*).

⁴ 47 U.S.C. § 158(d)(2); 47 C.F.R. § 1.1119(a). 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, 958, ¶ 70 and 961, ¶¶ 87, 88 (1987) (*Application Fee Order*).

⁵ *Application Fee Order* at 958, ¶ 70; *see also id.* at 961, ¶ 88 (“As we have stated... we believe that, in most instances, the general public’s interest in reimbursing the government for services provided would far outweigh the private interest in waiving or deferring the small, incremental cost represented by these fees.”)

⁶ 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); 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.”).

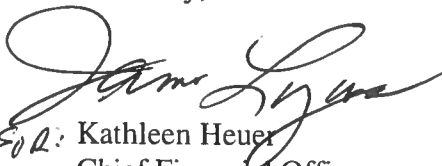
⁷ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice of Proposed Rulemaking*, 18 FCC Rcd 6085, 6090, ¶ 11 (2003).

bankruptcy, we analyze the facts of each case to determine whether the requestor has satisfied the Commission's standard and shown that a waiver is justified.⁸

Here, the Real Alloy entities failed to provide documentary evidence supporting their claim of financial hardship and thus, failed to demonstrate the existence of extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's administrative costs. Accordingly, we deny the Requests on substantive grounds.

If the Real Alloy entities have any questions concerning this matter, please call the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,


For: Kathleen Heuer
Chief Financial Officer

⁸ 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).