

Efrain J. Archilla Muñoz
El Yunque Broadcasting, Inc.
P.O. Box 9300
Fajardo, Puerto Rico 00738

May 13, 2021

Licensee: El Yunque Broadcasting, Inc. a/k/a Fajardo
Broadcasting Company, Inc.
Deferral and Waiver Request: FY 2016 Regulatory Fee
Disposition: Dismissed and Denied (47 U.S.C. §159(d);¹ 47
CFR §§ 1.1160, 1.1166, 1.1164, and 1.1910)
Date Request Filed: December 6, 2016
Date Paid: July 19, 2018
Fee Control No.: RROG-2017-16289

Dear Mr. Muñoz:

This responds to the request (Request)² of El Yunque Broadcasting, Inc. (El Yunque) for a waiver and deferral of its Fiscal Year (FY) 2016 regulatory fee.³ For the reasons stated below, we dismiss and deny the Request.

El Yunque filed the Request by hand delivery to the Commission's Office of Managing Director. In it, El Yunque asks that the Commission waive and defer its FY 2016 regulatory fees for financial hardship reasons. In support of its financial hardship argument, El Yunque attached one document which appears to be a tax form for the calendar year of 2015.⁴

Section 1.1166 of the Commission's rules requires that a party seeking both a waiver and a deferral of its regulatory fees file each such request as a separate pleading. If payment is not tendered at the time of the filing, the request must be filed with the Commission's Secretary, to the attention of the Managing Director, by mailing or delivering a copy of the filings to the Office of the Secretary. Filings that do not comply with these requirements will not be considered.⁵

The Request does not comply with the foregoing requirements. First, it was filed as one pleading rather than as two pleadings (a request to waive and a request to defer). Also, El Yunque mailed the Request directly to the Office of Managing Director, rather than filing it with the Commission's Office of the Secretary, as section 1.1166 requires.⁶ Accordingly, the Request is dismissed on each of these two separate procedural grounds.

¹ 47 U.S.C. § 159(d) is now codified at 47 U.S.C. § 159A(d).

² Letter from Efrain J. Archilla Muñoz, El Yunque Broadcasting, Inc., P.O. Box 9300, Fajardo, PR to Office of Managing Director, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554 (Dec. 6, 2016) (Request).

³ Because El Yunque has since paid its FY 2016 regulatory fees we will consider the Request as a request to waive and refund the FY 2016 fees pursuant to 47 CFR §§ 1.1166 and 1.1160.

⁴ Request. The financial form attached to the Request is written in Spanish.

⁵ 47 CFR § 1.1166(a).

⁶ 47 CFR § 1.1166.

At the time El Yunque filed the Request, it had not paid its FY 2016 regulatory fees and was on “red light.” Accordingly, we also dismiss the Request pursuant to sections 1.1164 and 1.1910 of the Commission’s rules.⁷

As an alternative and independent basis for our decision, we deny the Request on the merits because El Yunque failed to demonstrate that good cause exists for waiver of the fee and that waiver is in the public interest, as required by section 9(d) of the Communications Act of 1934, as amended.⁸ The Commission has narrowly interpreted its statutory waiver authority under section 9 to require a showing of extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.⁹ While fee relief may be granted based on financial hardship, “[m]ere allegations or documentation of financial loss, standing alone,” do not suffice.¹⁰ Among the documents the Commission has suggested that a regulatee provide to prove its claim of financial hardship are audited balance sheets and profit and loss statements, cash flow projections for the next twelve months (with an explanation of how calculated), a list of officers and highest paid employees (other than officers) and each individual’s compensation, or similar information.¹¹ The foregoing list of documents is not exhaustive and “it is incumbent upon each [requestor] to fully document its financial position and show that it lacks sufficient funds to pay the ... fee and maintain its service to the public.”¹² On this information, the Commission considers on a case-by-case basis whether the requesting party has met its burden of proof and has demonstrated the existence of extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.¹³

El Yunque asks that the Commission waive its FY 2016 regulatory fee on the basis of financial hardship but fails to prove financial hardship. The Request merely states that El Yunque experienced negative cashflow in 2015, referring to the only financial document El Yunque submitted, a 2015 tax form, as proof.¹⁴ Even assuming that El Yunque experienced negative cashflow in 2015, that does not prove that El Yunque was experiencing financial hardship – i.e., that it lacked sufficient funds to pay the FY 2016 regulatory fee and continue operating – in September of 2016, when the fee was due. Accordingly, we deny the Request, because it fails to establish financial hardship justifying deferral and waiver of the fee and fails to otherwise establish extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.

⁷ 47 CFR §§ 1.1164 and 1.1190.

⁸ 47 U.S.C. § 159(d), now codified at 47 U.S.C. § 159A(d).

⁹ See *Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, Report and Order, 9 FCC Rcd 5333, 5344, para. 29 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995) (Adopting the Commission’s “extraordinary and compelling circumstances” application fee waiver standard for waiver of regulatory fees.)

¹⁰ *Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, Memorandum Opinion and Order, 10 FCC Rcd 12759, 12761-62, para. 13 (1995).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Request.

If El Yunque has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

James Lyons

James Lyons
Deputy Chief Financial Officer