



Federal Communications Commission
Washington, D.C. 20554

February 15, 2008

DA 08-383

In Reply Refer to:

1800B3-KAW

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Michael H. Schacter, Esq.
Womble, Carlyle, Sandridge & Rice
1401 I Street, NW, 7th Floor
Washington, DC 20005

Re: KAKN(FM), Naknek, AK
Bay Broadcasting Company Inc.
Facility ID # 4079
File No. BRH-20050929BHF
BRH-20060206ABO

Dear Mr. Schacter:

The staff has under consideration the referenced applications of Bay Broadcasting Company Inc. (the "Licensee") for renewal of license for Station KAKN(FM), Naknek, Alaska. For the reasons set forth below, we deem filed the renewal application filed on March 28, 2005 (the "Renewal Application"), dismiss as moot the renewal application filed on July 19, 2006, and assess the Licensee a 25 percent late-fee penalty charge. Furthermore, we grant, contingent on the timely payment of the requisite penalty, the Renewal Application.

Background. Section 73.3539(a) of the Commission's Rules (the "Rules") requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."¹ An application for renewal of KAKN(FM)'s license should have been filed by October 1, 2005. No such application was successfully filed, and the Station's license expired on February 1, 2006. In fact, the Licensee did not properly file a renewal application for KAKN(FM) until February 6, 2006.

On November 8, 2006, the Licensee filed a letter explaining that it attempted to timely file the license renewal application for KAKN(FM) (FCC Form 303-S), as well as the requisite Ownership Report and Broadcast Equal Employment Opportunity Report (FCC Forms 323 and 396, respectively) electronically on or about September 29, 2005.² When, several months later, it checked on the status of the application, it discovered that the Form 396 was listed as "Filed," but the license renewal application and Ownership Report were listed as "Ready."³ Assuming the cause of this irregularity was that the filing fees had not been received by the Commission, the Licensee attempted to resubmit the appropriate

¹ 47 C.F.R. § 73.3539(a).

² Letter to Ms. Marlene H. Dortch from Michael H. Schacter, Esq. (rec'd Nov. 8, 2006).

³ CDBS assigned the renewal application submission the number "20050929BHF," and it assigned the Ownership Report the number "20050929BHC." The filing fee for license renewal applications for commercial FM stations is \$150.00, and the filing fee for ownership reports is \$55.00. See 47 C.F.R. § 1.1104.

fees. When that failed to achieve the desired result, the Licensee contacted Commission staff, who assisted it in refiling the license renewal application on February 6, 2006.⁴

The Licensee notes that the renewal application for KAKN(FM) listed in CDBS is the February 6 filing, and the Ownership Report tendered in September of 2005 still does not appear in CDBS, even though its Credit Card records indicate that the \$55.00 filing fee was charged to the station. It speculates that one explanation for the absence of a record of the filing fees tendered on September 29, 2005 is an error in the Commission's CDBS electronic filing system; alternatively, it speculates that weather conditions could have interfered with its internet connection, its only connection from rural Naknek is *via* satellite, which is subject to interruption by snow. The Licensee therefore requests that: (1) license renewal application CDBS-20050929BHF be accepted for filing and processed; (2) the fee currently associated with BRH-20060206ABO be associated with that prior-filed application; (3) renewal application BRH-20060206ABO be dismissed as duplicative; and (4) the \$55.00 filing fee charged to the licensee's credit card in February 2006 be applied to ownership report CDBS-20050929BHC.⁵ Finally, the Licensee states that it is a small broadcaster operating in a remote area of the country, frequently in the face of financial hardship, and that it is a not-for-profit entity (although KAKN(FM) is licensed as a commercial station. It argues that a fine for a late renewal filing would have a "crippling effect" on the Station and the service it furnishes to its remote Alaskan community.

Discussion. We have reviewed the record in this case and the Commission's data bases, and we find that the Licensee did in fact tender a license renewal application and an ownership report for KAKN(FM) on September 29, 2005, but failed to pay the requisite filing fee for either submission. On February 6, 2006, the Licensee tendered a \$150.00 payment for a license renewal application – the renewal application tendered with the fee and designated "BRH20060206ABO" – and a \$55.00 payment, presumably to cover the previously tendered 2005 Ownership Report. The Licensee did not retender an Ownership Report with the \$55.00 payment. The Commission has no record of receiving a filing fee for the electronic application or ownership report prepared on September 29, 2005, until February 6, 2006;⁶ no funds were received or charged until that date, and the renewal application designated "20050929BHF" and the Ownership Report designated "20050929BHC" remained (and remain) in "Ready" Status. There appears to be no error in the CDBS electronic filing system.

Section 1.1116(b) of the Rules⁷ sets forth the procedures for processing applications submitted without required fees. Specifically, a filer is billed the fee amount due plus a 25 percent penalty if the application is inadvertently forwarded to Commission staff for substantive review and the discrepancy is not discovered until after 30 calendar days from receipt of the filing. Section 1.1116(b) antedates electronic application filing, when fee processing and substantive review were performed by separate Commission staff. Thus, under current electronic application filing procedures, the January 2005 submissions were never "forwarded to Commission staff for substantive review." To the extent that

⁴ The Licensee states that it was assured by the Commission staff member that "there would be no adverse consequences from the procedure."

⁵ The Licensee also observes that both license renewal applications erroneously included applications to renew two FM translator stations that have not yet been licensed; it requests that the two translator proposals be dismissed and the associated filing fees refunded to the licensee.

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⁷ 47 C.F.R. § 1.1116(b).

Section 1.1116(b), both as written and as originally conceived, provides that the Commission's recourse, once 30 days have elapsed from the date an application is submitted with no fee, is to retroactively bill the applicant and impose the 25 percent penalty,⁸ we will do so here.

Conclusion/Actions. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.⁹ That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁰ Apart from the filing irregularities discussed above, we have no record of operational violations by Licensee. Further, we find that Station KAKN(FM) served the public interest, convenience, and necessity during the subject license term.

As discussed above, the \$150.00 fee required for a license renewal application was not submitted with the September 29, 2005, application, and the \$55.00 fee required for an ownership report was not submitted with the September 29, 2005 Ownership Report. Accordingly, pursuant to Section 1.1116(b) of the Rules, Bay Broadcasting Company Inc. will be assessed a penalty charge equal to 25 percent of the filing fees. Therefore, Bay Broadcasting Company Inc. will be billed a total of \$256.25 under separate cover.¹¹

Accordingly, pursuant to Section 309(k) of the Communications Act of 1934, as amended, IT IS ORDERED, that the license renewal application and Ownership Report of Bay Broadcasting Company

⁸ See *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, 957, *supplemental order*, 2 FCC Rcd 1882 (1987), *recon. granted in part*, 3 FCC Rcd 5987 (1988), *aff'd sub nom. Brown v. FCC*, 888 F.2d 898 (D.C. Cir. 1989) ("On further review, we believe that a clearer demarcation point is necessary to avoid industry confusion and uncertainty as to the consequences of an insufficient fee payment. Generally, when applications are received, tracking information is put into a data base. Although some bureaus and offices may enter data fast than others [sic], the process generally takes approximately 30 days. During this same 30 day period we will expect bureau and office staff to take a second review of the fee and enter identifying codes into the fee system. Thus, this timeframe allows the Commission to complete its initial review of fees and return unprocessable applications before authorizations are granted. Therefore, fee underpayments identified by Commission staff in 30 calendar days or less from the time of receipt of the application at the Commission or Treasury lockbox bank will result in dismissal of the application and its return to the applicant. . . . Underpayments identified after this time will result in a bill to the applicant that includes a penalty charge of 25 percent of the amount due."). See also *Leon F. Petterson*, Letter, 22 FCC Rcd 14021 (MB 2007) (after 30 days, recourse when application is submitted without appropriate filing fee is to bill the applicant retroactively for a 25% penalty).

⁹ 47 U.S.C. § 309(k).

¹⁰ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

¹¹ This amount includes the requisite filing fee plus a 25% penalty for each submission: $\$150.00 \times .25 = \37.50 , for a total bill of \$187.50 for the license renewal application; $\$55.00 \times .25 = \13.75 , for a total bill of \$68.75 for the Ownership Report. We will not associate the February 2006 filing fees with these submissions. The Licensee may, if it chooses to do so, seek a refund of those filing fees from the Office of Managing Director.

Inc. for Station KAKN(FM), Naknek, Alaska filed on September 29, 2005, (File Nos. BRH-20050929BHF and BOA-20050929BHC, respectively) ARE DEEMED FILED. IT IS FURTHER ORDERED, that the license renewal application filed on February 6, 2006 (File No. BRH-20060206ABO) IS DISMISSED AS MOOT. IT IS FURTHER ORDERED, that the September 29, 2005, license renewal application IS GRANTED contingent on timely payment of the application fees and assessed penalty charges and IS SUBJECT to rescission for failure to make a timely payment.¹²

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Bay Broadcasting Company Inc.

¹² See 47 C.F.R. § 1.1116(b) (“Any Commission action taken prior to timely payment of these charges is contingent and subject to rescission.”)