



Federal Communications Commission
Washington, D.C. 20554

May 21, 2010

DA 10-921

In Reply Refer to:

1800B3-KAW

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Frank R. Jazzo, Esq.
Fletcher, Heald, & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: KHCA(FM), Wamego, KS
KHCA, Inc.
Facility ID # 34525
File No. BRH-20050125AFX
BRH-20091022ABY

Dear Mr. Jazzo:

The staff has under consideration the referenced applications of KHCA, Inc. (the "Licensee") for renewal of license for Station KHCA(FM), Wamego, Kansas. For the reasons set forth below, we deem filed the renewal application filed on January 25, 2005 (the "Renewal Application"), dismiss as moot the renewal application filed on October 22, 2009, 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 KHCA(FM)'s license should have been filed by February 1, 2005. No such application was successfully filed, and the Station's license expired on June 1, 2005.

On October 16, 2009, the staff wrote to KHCA, Inc. indicating that the Station's license had expired and that (1) all authority to operate the Station was terminated; and (2) the Station's call letters were deleted from the Commission's database. The Licensee was advised that any further operation of the Station was unauthorized and must cease immediately.² Upon receipt of the license expiration letter, on October 22, 2009, the Licensee properly filed a license renewal application for KHCA(FM). Subsequently, on October 22, 2009, it filed a request for special temporary authorization ("STA") to

¹ 47 C.F.R. § 73.3539(a).

² *Letter to KHCA, Inc.*, Ref. 1800B3-PAD (MB Oct. 16, 2009) (the "License Expiration Letter").

continue operations pending consideration of the untimely KHCA(FM) renewal application.³ The staff granted the STA Request on November 17, 2009, and it expired on May 17, 2010.⁴

In the STA Request, the Licensee explains that it attempted to timely file the license renewal application for KHCA(FM) on January 25, 2005, but did not submit the requisite filing fee with the application. Therefore, the application was never accepted for filing or processing.⁵ The Licensee states that it then filed a second license renewal application – with the appropriate filing fee – and the STA Request.

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 for KHCA(FM) on January 25, 2005, but failed to pay the requisite filing fee. On October 22, 2009, it re-filed the KHCA(FM) renewal application with a clear explanation of its error as soon as it realized it had failed to file properly, and before any action was taken on its original application.⁶ Section 1.1116 of the Rules⁷ sets forth the procedures for processing applications submitted without required fees. Under 1.1116(a), if the defect is discovered within 30 days of filing, the application is dismissed and can be refiled with a new filing date. If the defect is discovered after 30 days have passed without being “forwarded to Commission staff for substantive review,” pursuant to 1.1116(b), a filer is billed the fee amount due plus a 25 percent penalty. Section 1.1116 predates electronic application filing. In this case, the January 25, 2005 submission was never “forwarded to Commission staff for substantive review.” To the extent that 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 bill the applicant retroactively and impose the 25 percent penalty,⁸ we will do so here.⁹

³ See File No. BLSTA-20091022ABZ (the “STA Request”).

⁴ In light of our action here regarding the Renewal Application, we will consider neither the Licensee's operation of the Station after the expiration of its license nor its operation after expiration of the STA to be “unauthorized.”

⁵ CDBS assigned this submission the file number “BRH-20050125AFX.” The filing fee for license renewal applications for commercial FM stations is \$150. See 47 C.F.R. § 1.1104.

⁶ Licensee recognized its original application was not properly filed and re-filed its renewal application with a fee and an explanation in the STA request about its error prior to any Commission action against the license. Cf. *MFR, Inc.*, Forfeiture Order, 24 FCC Rcd 5688 (MB 2009) (licensee required to pay forfeiture when it files application without fee and later re-files, but only provides an explanation of its initial filing error in response to an NAL).

⁷ 47 C.F.R. § 1.1116.

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

Conclusion/Actions. As discussed above, the \$150 fee required for a license renewal application was not paid with the January 25, 2005 submission. Accordingly, pursuant to Section 1.1116(b) of the Rules, KHCA, Inc. will be assessed the \$150.00 filing fee for the 2005 application plus a penalty charge equal to 25 percent of the filing fee. Therefore, KHCA, Inc. will be billed a total of \$187.50 under separate cover.

Accordingly, pursuant to Section 309(k) of the Communications Act of 1934, as amended, IT IS ORDERED, that the license renewal application of KHCA, Inc. for Station KHCA(FM), Wamego, Kansas filed on January 25, 2005 (File No. BRH-20050125AFX), IS DEEMED FILED.

IT IS FURTHER ORDERED, that the license renewal application filed on October 22, 2009 (File No. BRH-20091022ABY), IS DISMISSED AS MOOT.

IT IS FURTHER ORDERED, that the call sign KHCA(FM) IS REINSTATED.

IT IS FURTHER ORDERED, that the January 25, 2005, license renewal application IS GRANTED contingent on timely payment of the assessed penalty charge and IS SUBJECT to rescission for failure to make a timely payment.¹⁰

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: KHCA, Inc.

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 This action is consistent with prior cases. *See, e.g., Matthew H. McCormick*, Esq., Letter, 25 FCC Rcd 2116 (MB 2010).

¹⁰ *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.”)