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In Reply Refer to:
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In re: Cortaro Broadcasting Corp.
DKCKY(AM), Coolidge, Arizona
Facility ID No. 48814
File No. BR-20130603BJB

Petition for Reconsideration

Dear Counsel:

We have before us a Petition for Reconsideration (Petition) filed by Cortaro Broadcasting Corp. (Cortaro) on July 31, 2017. The Petition seeks reconsideration of a staff letter that (1) dismissed Cortaro's application (Renewal Application) to renew the license of DKCKY(AM), Coolidge, Arizona (Station), (2) cancelled the Station's license and (3) deleted its call sign from the Commission's database.¹ Staff dismissed the Renewal Application pursuant to the Commission's "red light" rules, which prohibit grant of an application when an applicant is delinquent on debts owed to the Commission.² In light of this dismissal, staff found that all authority to operate the Station had terminated, cancelled the Station's license and deleted its call letters from the Commission's database. For the reasons set forth below, we grant the Petition in part, dismiss it in part and otherwise deny it. Having done so, we reinstate the Station's license and call letters.

In the Petition, Cortaro asserts that staff's dismissal of the Renewal Application "contravene[d] Sections 309(e) and (k)" of the Communications Act of 1934, as amended (Act).³ According to Cortaro, the Commission "is statutorily obligated to grant" a renewal application if the criteria set forth in Section 309(k)(1) are met.⁴ If the criteria are not met, Cortaro argues that "[t]he only other option" is to proceed

¹ *Cortaro Broadcasting Corp.*, Letter Order (MB June 29, 2017) (Dismissal Letter). *See also*, *Broadcast Actions*, Public Notice, Report No. 49020 (MB July 5, 2017).

² *See Amendment of Parts 0 and 1 of the Commission's Rules - Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, Report and Order, 19 FCC Rcd 6540 (2004). *See also* 47 CFR §§ 0.283, 1.1910(b)(3).

³ Petition at 2. Under Section 309(k)(1) of the Act, the Commission is to grant a renewal application if, upon consideration of the application and pleadings, it finds 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 that, taken together, constitute a pattern of abuse. 47 U.S.C. § 309(k)(1). If, however, we find the Station failed to meet this standard, we may deny the renewal application, after notice and opportunity for a hearing under Section 309(e) of the Act, or grant the Application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted." 47 U.S.C. § 309(k)(2) and (3).

⁴ Cortaro points out that non-payment of regulatory fees is not mentioned in Section 309(k)(1). Petition at 2. While this is true, failure to pay regulatory fees violates Section 1.1157(b)(1) of the rules, 47 CFR § 1.1157(b)(1), which requires "[p]ayments of standard regulatory fees applicable to certain ... mass media ... services" to be "filed in full on an annual basis at a time announced by the Commission or the Managing Director." Further, "[t]he Commission

under Section 309(k)(3), which requires notice and an opportunity for a hearing. We disagree. Cortaro's arguments regarding Section 309(k) are inapposite here. Section 309(k) governs decisions to grant or deny a renewal application (*i.e.*, situations where the Commission reaches the merits of a renewal application). Here, staff did not grant or deny the Renewal Application. Instead, staff dismissed the Renewal Application under Section 1.1910 of the Rules.⁵ Section 1.1910 does not include an exception for renewal applications.⁶

Cortaro also contends that staff erred in “fail[ing] to take into account the public service provided by Cortaro and its parent non-profit company,” their financial struggles or the fact that cancellation of the Station's license would “reduce minority ownership of broadcast facilities in the Coolidge area.”⁷ Cortaro appears to be arguing that, given these considerations, staff should not have dismissed the Renewal Application. Cortaro makes this argument for the first time in the Petition. However, it has failed to establish any of the limited circumstances contemplated in section 1.106(c) by which the Bureau may grant a petition for reconsideration that relies on facts and arguments not previously raised before it. Accordingly, we dismiss this portion of the Petition on procedural grounds.⁸ We further note that, had Cortaro wished to avoid dismissal of the Renewal Application, it could have sought waiver, reduction or deferral of its regulatory fees and raised these public interest factors in requests for such action.⁹

considers outstanding debts owed to the United States Government, in any amount, to be a serious matter.” *See, e.g., Filing Instructions for Cross-Service FM Translator Auction Filing Window for AM Broadcasters to Be Open July 26 – August 2, 2017*, Public Notice, DA 17-533 (MB/WTB June 6, 2017); *Application Procedures for Broadcast Incentive Auction Scheduled to Begin on March 29, 2016*, Public Notice, 30 FCC Rcd 11034, 11081 para. 43 (MB/WTB); *Auction of FM Broadcast Construction Permits Scheduled for March 27, 2012*, Public Notice, 26 FCC Rcd 15484, 15505 para. 72 (MB/WTB 2008); *Auction of AWS-1 and Broadband PCS Licenses Rescheduled for August 13, 2008*, Public Notice, 23 FCC Rcd 7496, 7526 para. 110 (WTB 2008); *Auction of Full Power Television Construction Permits Scheduled for March 15, 2006*, Public Notice, 20 FCC Rcd 18097 (MB/WTB 2005). Accordingly, failure to pay regulatory fees appears to fall within the “serious violations of the Act or the Rules” provision of Section 309(k)(1). We need not decide this question here, however, because we find that Section 309(k) does not cover dismissals of renewal applications for failure to pay regulatory fees.

⁵ Dismissal Letter at 1. Specifically, staff identified that Cortaro was delinquent in paying regulatory fees and sent a letter notifying Cortaro of its delinquent debt and allowing it 30 days in which to “pay or arrange for payment of the delinquent debt.” Letter from Peter H. Doyle, Chief, Audio Division, FCC Media Bureau, to Barry D. Wood, Esq. (July 2, 2015). The letter indicated that “[f]ailure to have the ‘red light’ status removed within this time period” would result in dismissal of the Renewal Application. When Cortaro failed to respond, staff dismissed the application, citing Section 1.1910(b)(3) of the Rules. This was error. Because this case involves delinquent regulatory fees, staff should have been proceeding under Section 1.1164 of the Rules. *See* 47 CFR § Section 1.1910(b)(1) (“[A]pplications by any entity found not to have paid the proper ... regulatory fee will be handled pursuant to the rules set forth in 47 CFR part 1, subpart G.”); 47 CFR § 1.1164. The error was harmless, though, as Section 1.1164(e) authorizes dismissal of pending applications.

⁶ Neither does Section 1.1164. *See, supra*, note 5.

⁷ Petition at 3-4.

⁸ 47 CFR § 1.106(c). Section 1.106(c)(1) provides that a petition for reconsideration that relies on “facts or arguments not previously presented” may be granted only if the facts or arguments (1) “relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters,” or (2) were unknown to petitioner until after his last opportunity to present such matters and could not, through the exercise of ordinary diligence, have been learned prior to such opportunity). 47 CFR §§ 1.106(c); 1.106(b)(2). Section 1.1106(c)(2) allows consideration of facts or arguments not previously presented if consideration of them “is required in the public interest.” 47 CFR § 1.106(c)(2).

⁹ Section 9(d) of the Act and Section 1.1166 of the rules permit waiver, reduction or deferment of regulatory fees “for good cause shown, where such action would promote the public interest.” 47 U.S.C. § 159(d); 47 CFR § 1.1166. Cortaro did request waiver of the Station's FY 2013 regulatory fees. That request was dismissed by the Office of the Managing Director (OMD) on April 10, 2014. *Cortaro Broadcasting Corp.*, Letter Order (OMD April 10, 2014), *recons. dismissed and den.*, *Cortaro Broadcasting Corp.*, Letter Order (OMD Aug. 18, 2017). Cortaro did not request waiver, reduction or deferment of its other delinquent regulatory fees.

Cortaro also challenges staff's cancellation of the Station's license and deletion of its call sign. While we affirm staff's dismissal of the Renewal Application, we find these other actions were premature and reverse them herein. Section 307(c)(3) of the Act states that the filing of a renewal application continues a station's license in effect.¹⁰ This continuance runs through "any hearing and final decision on such an application and the disposition of any petition for rehearing."¹¹ Because Cortaro timely filed the Petition, its previous license continues in effect.¹² Accordingly, we rescind staff's cancellation of the Station's license and deletion of its call letters, and reinstate them.¹³ We note, however, that "[t]he Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter."¹⁴ Accordingly, concurrent with our decision herein, the Media Bureau is initiating a proceeding under Section 9(c)(3) of the Act¹⁵ and Section 1.1164(f) of the Rules¹⁶ to revoke the Station's license for failure to pay delinquent regulatory fees owed to the Commission.¹⁷

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED, that the Petition for Reconsideration filed by Cortaro Broadcasting Corp. on July 31, 2017, IS GRANTED IN PART, DISMISSED IN PART, and DENIED IN PART. IT IS FURTHER ORDERED that the license (BL-19840709AD) and call letters for KCKY(AM), Coolidge, Arizona, ARE REINSTATED. Finally, IT IS ORDERED that the request for special temporary authority (BLSTA-20170630ABW) filed by Cortaro Broadcasting on June 30, 2017, IS DISMISSED AS MOOT.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁰ 47 U.S.C. § 307(c)(3).

¹¹ *Id.*

¹² *United States v. Peninsula Communications, Inc.*, 335 F. Supp. 2d 1013, 1019 (D. Alaska 2004); *Pinelands, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6058, 6061 n.12 (1992).

¹³ Our action herein renders moot the request for special temporary authority filed by Cortaro on June 30, 2017. BLSTA-20170630ABW. Accordingly, we dismiss the request herein.

¹⁴ *See, supra*, note 4.

¹⁵ 47 U.S.C. § 159(c)(3).

¹⁶ 47 CFR §§ 1.1164(f).

¹⁷ *Cortaro Broadcasting Corp.*, Order to Pay or to Show Cause, DA 17-1092 (MB Nov. 8, 2017).