

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Cortaro Broadcasting Corp., Licensee of) BL-19840709AD
KCKY(AM), Coolidge, Arizona) FRN: 0007276561

ORDER TO PAY OR TO SHOW CAUSE

Adopted: November 8, 2017

Released: November 8, 2017

By the Chief, Media Bureau:

I. INTRODUCTION

1. By this Order to Pay or to Show Cause, we initiate a proceeding to revoke the license held by Cortaro Broadcasting Corp. (Cortaro) for KCKY(AM), Coolidge, Arizona, for failure to pay delinquent regulatory fees owed to the Commission. For the reasons set forth below, we direct Cortaro to pay the overdue regulatory fees, including any associated penalties and charges of collection, or show cause why the payment demanded is inapplicable or should otherwise be waived or deferred.

II. DISCUSSION

2. Under Section 9 of the Communications Act of 1934, as amended (Act),¹ and the Commission's implementing rules,² the Commission is required to "assess and collect regulatory fees" to recover the costs of certain regulatory activities.³ When the required payment is received late or is incomplete, the Commission must assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."⁴ For fiscal year (FY) 2008, the deadline for paying regulatory fees was September 11, 2008;⁵ for FY 2011, it was September 16, 2011;⁶ for FY 2012, it was September 13, 2012;⁷ for FY 2013, it was September 20, 2013;⁸ for FY 2014, it was September 23, 2014;⁹ and for FY 2015, it was September 24, 2015.¹⁰ When Cortaro failed to pay its regulatory fees by these deadlines, the Commission assessed charges that included the statutory late payment penalty required by Section

¹ 47 U.S.C. § 159(c)(3).

² 47 CFR §§ 1.1151-1.1167.

³ 47 U.S.C. § 159(a)(1); 47 CFR § 1.1151.

⁴ 47 U.S.C. § 159(c)(1); 47 CFR §§ 1.1157(c)(1), 1.1164.

⁵ See *Payment Methods and Procedures for Fiscal Year 2008 Regulatory Fees*, Public Notice, 23 FCC Rcd 12849 (OMD 2008).

⁶ See *Payment Methods and Procedures for Fiscal Year 2011 Regulatory Fees*, Public Notice, 26 FCC Rcd 11371 (OMD 2011).

⁷ See *Reminder That FY 2012 Regulatory Fees Are Due No Later Than September 13, 2012, Eastern Time (ET)*, Public Notice, 27 FCC Rcd 10297 (OMD 2012).

⁸ See *Payment Methods and Procedures for Fiscal Year 2013 Regulatory Fees*, Public Notice, 28 FCC Rcd 12635 (OMD 2013).

⁹ See *FY 2014 Regulatory Fees Due No Later Than September 23, 2014, 11:59 pm Eastern Time (ET)*, Public Notice, 29 FCC Rcd 10414 (OMD 2014).

¹⁰ See *Payment Methods and Procedures for Fiscal Year 2015 Regulatory Fees*, Public Notice, 30 FCC Rcd 9941 (OMD 2015).

9(c)(1)¹¹ of the Act and Sections 1.1157(c)(1) and 1.1164 of the Commission's rules (Rules),¹² and additional charges of interest, penalties, and charges of collection required by Section 3717 of Title 31 of the U.S. Code¹³ and Section 1.1940 of the Rules.

3. The Commission's records show that Cortaro currently has unpaid regulatory fees of \$9,299.10 for FY 2008, \$8,411.36 for FY 2011, \$12,998.21 for FY 2012, \$13,387.00 for FY 2013, \$12,487.49 for FY 2014, and \$11,824.10 for FY 2015. Additional charges continue to accrue on these debts. Demand Letters were sent to Cortaro, which demanded payment of Cortaro's delinquent regulatory fees. Cortaro did not respond to these letters, and thereafter the delinquent debt for the FY 2008, FY 2011, FY 2012, FY 2013, FY 2014 and FY 2015 regulatory fees was transferred to the Secretary of Treasury for collection.¹⁴

4. In addition to financial penalties, Section 9(c)(3) of the Act,¹⁵ and Section 1.1164(f) of the Rules¹⁶ grant the FCC the authority to revoke authorizations for failure to pay regulatory fees in a timely fashion. Accordingly, we require Cortaro to file with the Media Bureau documented evidence within sixty (60) calendar days of the date of this Order that full payment of all outstanding regulatory fees has been made, plus any associated penalties as calculated by the Secretary of Treasury in accordance with Section 1.1164(a) of the Rules,¹⁷ or show cause why the payment is inapplicable or should be waived or deferred. Cortaro is hereby notified that failure to provide such evidence of payment or to show cause within the time specified may result in revocation of Cortaro's above-captioned license for KCKY(AM).

5. Any response to this Order to Pay or to Show Cause does not relieve Cortaro of its duty to respond to demands by the Department of Treasury (Treasury) or to pay directly to Treasury any delinquent debts. Moreover, nothing in this Order to Pay or to Show Cause withdraws from Treasury its authority under the law to collect the referred debts. Under Section 1.1164(f)(1),¹⁸ an adjudicatory hearing will not be designated unless Cortaro presents a substantial and material question of fact related to the debt. Accordingly, disposition of any adjudicatory hearing shall be based upon written evidence only,¹⁹ and Cortaro will bear the burden to introduce evidence and to provide proof in any such hearing.

6. We note that Cortaro may have been or continues as a respondent in other administrative proceedings. Action in this proceeding is without prejudice to action in those proceedings, and the existence of those proceedings and matters raised therein are not considered by the Commission in this proceeding.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 9(c)(3) of the Act and Sections 0.61, 0.283, and 1.1164(f) of the Rules,²⁰ Cortaro Broadcasting Corp. is hereby **ORDERED TO PAY TO THE SECRETARY OF THE TREASURY** (and provide the Commission with proof of payment in the amount calculated by the Secretary of Treasury) within sixty (60) calendar days of the date of this

¹¹ 47 U.S.C. § 159(c)(1).

¹² 47 CFR CFR §§ 1.1157(c)(1), 1.1164.

¹³ 31 U.S.C. § 3717; 47 CFR § 1.1940.

¹⁴ See 31 U.S.C. § 3711(g), 31 CFR §§ 285.12(c) & 901.1; 47 CFR § 1.1917.

¹⁵ 47 U.S.C. § 159(c)(3).

¹⁶ 47 CFR § 1.1164(f).

¹⁷ 47 CFR § 1.1164(a).

¹⁸ 47 CFR § 1.1164(f)(1).

¹⁹ 47 U.S.C. § 159(c)(3); 47 CFR § 1.1164(f)(2).

²⁰ 47 U.S.C. § 159(c)(3); 47 CFR §§ 0.61, 0.283, 1.1164(f).

Order the outstanding regulatory fees for FY 2008, FY 2011, FY 2012, FY 2013, FY 2014 and FY 2015, **OR SHOW CAUSE** to the Commission (with a copy furnished to Treasury) within sixty (60) calendar days of the date of this Order why these regulatory fees are inapplicable or should otherwise be waived or deferred.

8. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by certified mail, return receipt requested, to Cortaro Broadcasting Corp., Attn. Moises Herrera, Jr., 1445 West Baseline Road, Phoenix, AZ 85041, and its counsel, Barry D. Wood, Esq., Wood Martin & Hardy, P.C., 3300 Fairfax Drive, Suite 202, Arlington, VA 22201.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey, Chief
Media Bureau



Federal Communications Commission
Washington, D.C. 20554

November 8, 2017

DA 17-1091
In Reply Refer to:
1800B3-HOD

Barry D. Wood
Wood, Martin & Hardy, P.C.
3300 Fairfax Drive, Suite 202
Arlington, VA 22201

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).

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