



Federal Communications Commission  
Washington, D.C. 20554  
October 14, 2010

*In Reply Refer to:*  
1800B3-KAW

Mr. Gary L. Peterson  
Summit Public Radio and TV, Inc.  
P.O. Box 6392  
Breckenridge, CO 80424

Re: K232AC, Breckenridge, CO  
Summit Public Radio and TV, Inc.  
Facility ID # 55405  
File No. BRFT-20050708AAK  
BRFT-20091007ACR

Dear Mr. Peterson:

The staff has under consideration the referenced application of Summit Public Radio and TV, Inc. (the "Licensee") for renewal of license for FM Translator Station K232AC, Breckenridge, Colorado. For the reasons set forth below, we deem filed the license renewal application filed on July 8, 2005 (the "Renewal Application"), dismiss as moot the renewal application filed on October 7, 2009, and assess the Licensee a 25 percent late-fee penalty charge. Furthermore, we grant, contingent on the timely payment of the requisite filing fee and penalty, the Renewal Application, and we reinstate the Station's call sign.

*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."<sup>1</sup> An application for renewal of K232AC's license should have been filed by December 1, 2004. No such application was successfully filed, and the Station's license expired on April 1, 2005. Accordingly, on June 24, 2005, the staff wrote to Summit Public Radio and TV, 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.<sup>2</sup> Upon receipt of the letter, on October 7, 2009, the Licensee properly filed a license renewal application for K232AC. On December 26, 2006, it filed a request for special temporary authorization ("STA") to continue operations pending consideration of the untimely renewal application.<sup>3</sup> The staff granted the STA Request on May 10, 2010, and it is to expire on November 10, 2010.<sup>4</sup>

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<sup>1</sup> 47 C.F.R. § 73.3539(a).

<sup>2</sup> *Letter to Summit Public Radio and TV, Inc.*, Ref. 1800B3-KAW (Chief, Audio Division, Media Bureau, Jun. 24, 2005) (the *Cancellation Letter*).

<sup>3</sup> See File No. BLSTA-20061226AAS (the "STA Request").

<sup>4</sup> *Letter to Mr. Gary L. Peterson*, Ref. 1800B3-MFW (Chief, Audio Division, Media Bureau, May 10, 2010).

In the STA Request, the Licensee states that it inadvertently allowed the license to expire and that it attempted to timely file the license renewal application for K232AC, but did not submit the requisite filing fee with the application. Therefore, the application was never accepted for filing or processing.<sup>5</sup> 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 databases, and we find that the Licensee did in fact tender a license renewal application for K232AC on July 8, 2005, but failed to pay the requisite filing fee. Section 1.1116(b) of the Rules<sup>6</sup> 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 July 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 retroactively bill the applicant and impose the 25 percent penalty,<sup>7</sup> 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.<sup>8</sup> 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

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<sup>5</sup> CDBS assigned this submission the number "20050708AAK." The filing fee for license renewal applications for commercial FM stations is \$150.00. See 47 C.F.R. § 1.1104.

<sup>6</sup> 47 C.F.R. § 1.1116(b).

<sup>7</sup> 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 database. 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).

<sup>8</sup> 47 U.S.C. § 309(k).

other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>9</sup> Apart from the filing irregularities discussed above, we have no record of operational violations by Licensee. Further, we find that FM Translator Station K232AC 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 July 8, 2005, application. Accordingly, pursuant to Section 1.1116(b) of the Rules, Summit Public Radio and TV, Inc. will be assessed a penalty charge equal to 25 percent of the filing fee. Therefore, Summit Public Radio and TV, 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 Summit Public Radio and TV, Inc. for FM Translator Station K232AC, Breckenridge, Colorado filed on July 8, 2005, (File No. BRFT-20050708AAK) IS DEEMED FILED.

IT IS FURTHER ORDERED, that the license renewal application filed on October 7, 2009 (File No. BRFT-20091007ACR), IS DISMISSED AS MOOT.

IT IS FURTHER ORDERED, that the July 8, 2005, Petition for Reconsideration filed by Summit Public Radio and TV, Inc., IS GRANTED, and the call sign K232AC IS REINSTATED.

IT IS FURTHER ORDERED, that the July 8, 2005, license renewal application IS GRANTED contingent on timely payment of the application fee and assessed penalty charge and IS SUBJECT to rescission for failure to make a timely payment.<sup>10</sup>

Sincerely,



Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>9</sup> 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).

<sup>10</sup> 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.")