



Federal Communications Commission
Washington, D.C. 20554
November 19, 2010

In Reply Refer to:
1800B3-KAW

Gwendolyn Walker
M.R.S. Ventures, Inc.
P.O. Box 4942
Tyler, TX 75712

Re: KOFY(AM), Gilmer, TX
Jerry Russell d/b/a The Russell Company
Facility ID # 34558
File No. BR-20050408ABH

Dear Ms. Walker:

The staff has under consideration the referenced application of Jerry Russell d/b/a The Russell Company (the "Licensee") for renewal of license for Station KOFY(AM), Gilmer, Texas. For the reasons set forth below, we deem filed the renewal application filed on April 8, 2005, 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."¹ An application for renewal of KOFY(AM)'s license should have been filed by April 1, 2005. No such application was successfully filed, and the Station's license expired on August 1, 2005. Accordingly, on September 1, 2005, the staff wrote to Jerry Russell d/b/a The Russell Company 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 25, 2005, the Licensee filed a request for special temporary Authorization ("STA") to continue operations pending consideration of the KOFY(AM) renewal application.³

In the STA Request, the Licensee indicated that he had submitted the license renewal application for KOFY(AM) and his other stations in April of 2005, and did not realize that there was no record of the application at the Commission until he was notified by a trade association in September of 2005 that the application for renewal "had a problem." The problem, it appears, is that the Licensee never tendered the requisite filing fee for the KOFY(AM) renewal application, and therefore the application was never

¹ 47 C.F.R. § 73.3539(a).

² *Letter to Jerry Russell d/b/a The Russell Company*, Ref. 1800B3 (MB Sep. 1, 2005) (the *License Expiration Letter*).

³ See File No. BLSTA-20051025ACS (the "STA Request").

accepted for filing or processing.⁴ The Licensee states that it then paid the appropriate filing fee, and filed 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 KOFY(AM) on April 8, 2005, but failed to pay the requisite filing fee. Section 1.1118(b) of the Rules⁵ 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 1.1118(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 April 2005 submission was not "forwarded to Commission staff for substantive review" until March of 2008. To the extent that Section 1.1118(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,⁶ 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.⁷ 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

⁴ CDBS assigned this submission the number "20050408ABH." The filing fee for license renewal applications for commercial AM stations is \$150.00. See 47 C.F.R. § 1.1104. Russell indicates that he tendered \$150.00 filing fee for the renewal application along with the STA request on October 22, 2005. The KOFY(AM) renewal application ultimately was accepted for filing on March 25, 2008, see *Broadcast Applications*, Public Notice, Report No. 26700 (Mar. 25, 2008), and the STA Request was granted on September 23, 2008. *Letter to Mr. Jerry Russell*, Reference 1800B3 (MB Sep. 23, 2008).

⁵ 47 C.F.R. § 1.1118(b).

⁶ 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).

⁷ 47 U.S.C. § 309(k).

other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.⁸ Apart from the filing irregularities discussed above, we have no record of operational violations by Licensee. Further, we find that Station KOFY(AM) served the public interest, convenience, and necessity during the subject license term.

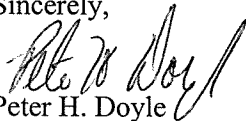
As discussed above, the \$150.00 fee required for a license renewal application was not submitted with the April 8, 2005, application. Accordingly, pursuant to Section 1.1118(b) of the Rules, Jerry Russell d/b/a The Russell Company will be assessed a penalty charge equal to 25 percent of the filing fee. Therefore, Jerry Russell d/b/a The Russell Company 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 Jerry Russell d/b/a The Russell Company for Station KOFY(AM), Gilmer, Texas filed on April 8, 2005, (File No. BR-20050408ABH) IS DEEMED FILED.

IT IS FURTHER ORDERED, that the call sign KOFY(AM) IS REINSTATED.

IT IS FURTHER ORDERED, that the April 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.⁹

Sincerely,


Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Jerry Russell

⁸ 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).

⁹ 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.")