

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Shelley Broadcasting Company, Inc.	)	FRN: 0003756806
Licensee of WGEA(AM), Geneva, Alabama	)	File Nos. BL-4950,
	)	BR-20111212AHG

REVOCATION ORDER

Adopted: September 9, 2019**Released: September 10, 2019**

By the Chief, Media Bureau, and the Managing Director, Office of Managing Director:

I. INTRODUCTION

1. By this *Revocation Order*, we revoke the license held by Shelley Broadcasting Company, Inc. (SBC) for WGEA(AM), Geneva, Alabama (Station), for failure to pay delinquent regulatory fees owed to the Commission.¹ We also dismiss the pending application for renewal of the Station's license.²

II. DISCUSSION

2. Under section 9 of the Communications Act of 1934, as amended (Act), and the Commission's implementing rules, 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 that was not paid in a timely manner."⁴ In addition to financial penalties, section 9A(c)(4)(A) of the Act, and section 1.1164(f) of the Commission's rules (Rules) grant the Commission the authority to revoke authorizations for failure to pay regulatory fees (or related interest and penalties) in a timely fashion.⁵

3. For fiscal year (FY) 2008, the deadline for paying regulatory fees was September 25, 2008;⁶ for FY 2009, it was September 22, 2009;⁷ for FY 2010, it was August 31, 2010;⁸ for FY 2011, it

¹ Although this *Revocation Order* addresses SBC's failure to pay the Station's regulatory fees for a number of fiscal years, we note that failure to pay any regulatory fee, related interest or penalties, or any portion thereof is grounds for revocation. See 47 U.S.C. § 159A(c)(4)(A) ("[T]he Commission may revoke any instrument of authorization held by any licensee that has not paid in a timely manner a regulatory fee assessed under section 9 or any related interest or penalty.").

² File No. BR-20111212AHG.

³ 47 U.S.C. § 159(a); 47 CFR §§ 1.1151-1.1167.

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

⁵ 47 U.S.C. § 159A(c)(4)(A); 47 CFR § 1.1164(f).

⁶ See *Payment Methods and Procedures for Fiscal Year 2008 Regulatory Fees*, Public Notice, 23 FCC Rcd 12849 (OMD 2008).

⁷ See *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees*, Public Notice, 24 FCC Rcd 11513 (OMD 2009).

⁸ See *Payment Methods and Procedures for Fiscal Year 2010 Regulatory Fees*, Public Notice, 25 FCC Rcd 10670 (OMD 2010).

was September 16, 2011;⁹ for FY 2012, it was September 13, 2012;¹⁰ for FY 2013, it was September 20, 2013;¹¹ for FY 2014, it was September 23, 2014;¹² for FY 2015, it was September 24, 2015;¹³ and for FY 2016, it was September 27, 2016.¹⁴

4. SBC failed to timely pay or only partially paid the Station's regulatory fees for FY 2008, FY 2009, FY 2010, FY 2011, FY 2012, FY 2013, FY 2014, FY 2015, and FY 2016. Thus, for each delinquent regulatory fee, the Commission assessed the statutory late payment penalty required by the Act¹⁵ and sections 1.1157(c)(1), and 1.1164 of the Rules,¹⁶ and interest, penalties, and administrative costs required by section 3717 of Title 31 of the U.S. Code and section 1.1940 of the Rules.¹⁷ The Commission sent demand letters to SBC demanding payment of the delinquent regulatory fee debt,¹⁸ and when SBC did not respond or pay its debts, the Commission transferred the debts to the Secretary of Treasury for collection.¹⁹ In June 2019, at the Commission's request, the Secretary of the Treasury returned all of the previously transferred regulatory fee debt to the Commission for further collection.

5. On June 6, 2019, the Media Bureau (Bureau) and the Office of Managing Director jointly issued an *Order to Pay or to Show Cause (Order)* requiring SBC to file with the Bureau within sixty (60) calendar days²⁰ evidence of full payment of the debt, or show cause why the fees were inapplicable or should be waived or deferred.²¹ The *Order* further stated that failure to provide such evidence of payment or to show cause within the time specified could result in revocation of the Station's license.²²

6. On June 19, 2019, SBC responded to the *Order*, stating that it is unable to pay its outstanding regulatory fees because the Internal Revenue Service has allegedly withheld a sizeable refund owed to SBC's president and his wife since 1987.²³

III. DISCUSSION

7. The *Order* requires SBC to do one of two things—demonstrate that it has paid the

⁹FY 2011 Regulatory Fee Deadline is Extended to 11:59 PM, ET, September 16, 2011, Public Notice, 26 FCC Rcd 10329 (OMD 2011).

¹⁰ 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).

¹¹ See *Payment Methods and Procedures for Fiscal Year 2013 Regulatory Fees*, Public Notice, 28 FCC Rcd 12635 (OMD 2013).

¹² 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).

¹³ See *Payment Methods and Procedures for Fiscal Year 2015 Regulatory Fees*, Public Notice, 30 FCC Rcd 9941 (OMD 2015).

¹⁴ See *Payment Methods and Procedures for Fiscal Year 2016 Regulatory Fees*, Public Notice, 2016 WL 4625515 (OMD rel. Sep. 6, 2016).

¹⁵ 47 U.S.C. § 159A(c)(1); 47 U.S.C. § 159A(c)(1) (2017). The RAY BAUM'S Act, Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018, Pub. L. No. 115-141, 132 Stat. 348, 1095, modified section 9 of the Act and added a new section 9A. Prior to October 1, 2018, when the RAY BAUM'S Act became effective, section 9(c)(1) set forth the penalties for late payment of regulatory fees. As amended by the RAY BAUM's Act, section 9A(c)(1) now sets forth those penalties.

¹⁶ 47 CFR §§ 1.1157(c)(1), 1.1164.

¹⁷ 31 U.S.C. § 3717; 47 CFR § 1.1940.

¹⁸ In addition to these Demand Letters, the Bureau notified SBC of its delinquency in paying the Station's regulatory fees for FY 2008, FY 2009, FY 2010, FY 2011, FY 2012, FY 2013, and FY 2014. Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to H. Jack Mizell, Shelley Broad. Co., Inc. (MB dated June 8, 2015).

Station's outstanding regulatory fee debt, including penalties, interest and costs, in full, or demonstrate that the fees are inapplicable or should be waived or deferred.²⁴ SBC has not provided any proof that payment has been made, nor has it denied that the fees are owed or are applicable. Instead, SBC seems to be arguing that it is financially unable to pay the delinquent fees until the Internal Revenue Service issues the refund SBC's president believes he and his wife are owed.²⁵ While not expressly framed as such, we will therefore treat the Response as a request for waiver and/or deferral of fees based on financial hardship.

8. The Commission recognizes that in certain instances, payment of a fee may impose an undue financial hardship upon a licensee, and the fee may be waived, reduced or deferred upon a showing of good cause and a finding that the public interest will be served thereby.²⁶ The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.²⁷ The required showing of financial hardship is more than mere allegations of financial hardship, standing alone.²⁸ Rather, as the Commission has held, "it is incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."²⁹ Relevant financial documents a licensee should produce to support a financial hardship waiver request include the licensee's balance sheet and profit and loss statement (audited if available), a cash flow projection for the next twelve months (with an explanation of how calculated), and a list of the licensee's officers and their individual compensation, as well as any other financial documentation the regulatee believes is necessary to prove its financial hardship. On this information, the Commission considers on a case-by-case basis whether the licensee has met the requisite standard for a

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¹⁹ See 31 U.S.C. § 3711(g); 31 CFR §§ 285.12(c) & 901.1; 47 CFR § 1.1917.

²⁰ While not required by the statute, the Commission adopted the 60-day response period for regulatees "to assure that the subject regulatee will have a full opportunity to obtain the funds needed to make payment and to prepare its case." *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, MD Docket No. 94-19, Report and Order, 9 FCC Rcd. 5333, 5354 para. 62 (1994) (*1994 Report and Order*).

²¹ *Shelley Broad. Co., Inc.*, Order to Pay or to Show Cause, DA 19-524, para. 5 (MB June 6, 2019) (*Order*). At that time, the Commission's records showed that SBC had unpaid regulatory fees of \$1,172.14 for FY 2008, \$1,239.47 for FY 2009, \$1,212.73 for FY 2010, \$1,207.72 for FY 2011, \$903.00 for FY 2012, \$970.35 for FY 2013, \$1,163.17 for FY 2014, \$1,075.80 for FY 2015, and \$1,029.42 for FY 2016. *Id.* at para. 4.

²² *Id.* at para. 5. See also 47 U.S.C. § 159A(c)(4).

²³ Petition for Reconsideration of Shelley Broad. Co., Inc. (filed June 19, 2019) (Response). While SBC captioned its pleading as a petition for reconsideration, the Rules do not permit the filing of petitions for reconsideration of interlocutory orders such as the *Order*. 47 CFR § 1.106(a). Accordingly, we treat the pleading as a response to the *Order*.

²⁴ *Order*, DA 19-524, para. 5.

²⁵ Response at 1.

²⁶ 47 C.F.R. § 159A(d); 47 C.F.R. § 1.1166; *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Report and Order and Further Notice of Proposed Rulemaking, FCC 19-83 __ FCC Rcd __, __, para. 50 (2019)

(continued....)

waiver based on financial hardship.³⁰

9. Here, SBC's claim of financial hardship is unsubstantiated. The only evidence submitted by SBC relates to an apparently unresolved dispute with the Internal Revenue Service over a refund that SBC's President believes is owed to himself and his wife, individually. SBC has provided no documentary evidence that SBC itself is financially unable to pay the outstanding regulatory fee debt. In failing to provide the required documentation, SBC has not met its burden of showing extraordinary and compelling circumstances outweighing the public interest to justify a waiver of its outstanding regulatory fee obligations.³¹

10. Accordingly, we find SBC has not made the showings required by the *Order* and we revoke SBC's license for the Station.³² We note that this *Revocation Order* does not relieve SBC of its obligation to pay any debt, including any regulatory fee, or any other financial obligation that is owed or may in the future be owed to the Commission. We further note that SBC may have been or may continue to be 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.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to section 9A(c)(4) of the Act and sections 0.11, 0.61, 0.231, 0.283, and 1.1164(f) of the Rules,³³ the license of Shelley Broadcasting Co., Inc., for Station WGEA(AM), Geneva, Alabama **IS HEREBY REVOKED**.

12. **IT IS FURTHER ORDERED** that all authority to operate this facility **IS TERMINATED** and any operation of the facility **is now unauthorized and must cease immediately**.³⁴

13. **IT IS FURTHER ORDERED** that the Commission's public and internal database will be modified to reflect the revocation, and the Station's call sign **IS HEREBY DELETED**.

14. **IT IS FURTHER ORDERED** that the renewal application filed on December 12, 2011 (File No. BR-20111212AHG) **IS DISMISSED**.

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(2019 Report and Order). We note that though the 2019 Report and Order makes certain changes to section 1.1166 of the Commission's Rules to conform it to changes made to the Commission's regulatory fee authority by section 102 of the RAY BAUM's Act, the changes do not affect our analysis or decision here.

²⁷ *Id.* at __, para. 50.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ The Office of the General Counsel concurs with our finding that a waiver or deferral is not warranted. 47 CFR § 1.1166(a).

³² See, e.g., *LDC Telecomm., Inc.*, Revocation Order, 31 FCC 11662 (2016) (revoking authorizations held by LDC for failure to pay delinquent regulatory fees).

³³ 47 U.S.C. § 159A(c)(5); 47 CFR §§ 0.11, 0.61, 0.231, 0.283, 1.1164(f).

³⁴ **It is imperative to the safety of air navigation that any prescribed painting and illumination of the Station's tower be maintained.** See 47 CFR §§ 17.6 and 73.1213.

15. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by first class mail and registered mail, return receipt requested, to Mr. H. Jack Mizell, Shelley Broadcasting Company, Inc, 409 E. Broad Street, Ozark, AL 36360.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey, Chief
Media Bureau

Mark Stephens, Managing Director
Office of Managing Director