

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 27 2015

OFFICE OF
MANAGING DIRECTOR

Wolfgang Kurtz
Seward Media Partners, LLC
12358 Roundtable Drive
Seward, AK 99664

Licensee/Applicant: **Seward Media Partners, LLC**
Waiver Request: Financial Hardship
Disposition: **Dismissed and Denied** (47 U.S.C. § 159(c)(2); 47 C.F.R. §§ 1.1164, 1.1166(c) & (e), 1.1910)
Stations: DKSEW, KKNi, DK17HL, and DK06OR-D
Fees: Fiscal Years (FY) 2010, FY 2011, FY 2012, FY 2013, and FY 2014 Regulatory Fees
Date Request Filed: Jan. 6, 2015
Date Regulatory Fees Paid: Not Paid
Date Regulatory Late Fees Paid: Not Paid
Fee Control No.: RROG-14-00015874
Amount Due: *See Fee Filer*

Dear Mr. Kurtz:

This responds to Licensee's *Request*¹ to abate its delinquent fees and penalties, remove the Commission's red light sanction imposed because of Licensee's delinquency status, and waive and defer the delinquent regulatory fees for Fiscal Years (FY) 2010, FY 2011, FY 2012, FY 2013, and FY 2014 for stations DKSEW², KKNi³, DK17HL⁴, and DK06OR-D.⁵ As discussed below, because Licensee is a delinquent debtor, we dismiss the *Request* and demand immediate payment of the delinquent charges. Furthermore, as a courtesy, we explain in the alternative that we deny the relief because Licensee failed to meet its burden under our standards.

¹ Letter from Wolfgang Kurtz, Seward Media Partners, LLC, to Marlene H. Dortch, Secretary, FCC, (Attn: Managing Director), Office the Secretary, 445 12th St., SW, Room TW-A325, Washington, DC 20554 (received Jan 12, 2015)(*Request*).

² Regulatory Fees for license DKSEW are valid for FY 2010, FY 2011, FY 2012, FY 2013, and FY 2014.

³ Regulatory Fees for license KKNi are valid for FY 2010 and FY 2011. License was transferred to Kenai Broadcasting, Inc. on 5/30/2012.

⁴ License DK17HL was cancelled on 6/24/13; all Regulatory Fees are valid up to and including FY 2013.

⁵ License DK06OR-D was cancelled on 6/24/2013. Regulatory Fees for FY 2013 are valid.

Background

On January 6, 2015, Licensee submitted its *Request* "for abatement of the outstanding fees and penalties ... to remove the red light status and permit re-licensing and transfer of KSEW(AM)." Additionally, Licensee "petitions the Commission to defer interim payment of outstanding fees and penalties" on the ground of financial hardship, but without supporting documentation and, importantly, without first paying the delinquent debts.⁶ Instead, of resolving the delinquency and providing verified appropriate financial documentation necessary to establish financial hardship, Licensee asserts only it was "involuntary dissolved;"⁷ however, "the principals maintain their mutual legal engagement and pursue any obligations under the application(s) and contracts(s) relating to DKSEW (AM)." Licensee asserts it is "financially distressed" and "it has no financials."⁸ Furthermore, Licensee asserts it "has not been 'in business' nor had a bank account nor accounts receivable," and the station "signal has been maintained due to donated tower space, power and other accommodations."⁹

Standards

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.¹⁰ 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.¹¹ In an appropriate situation, fee relief may be granted based on a "sufficient showing of financial hardship."¹² In such matters, however, "[m]ere allegations or documentation of financial loss, standing alone," do not suffice and "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."¹³ Thus, in order to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, *e.g.*, a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with

⁶ *Request*.

⁷ *Id.* at 1. Licensee did not furnish verified evidence of the basis for dissolution; rather it suggested that the Commission look to the State of Alaska internet webpage. The available information indicates that Licensee failed to comply with one or more state law requirements, and that Licensee failed to respond to official notification of the particular delinquency that would lead to involuntary dissolution. Under procedures set forth in Alaska Statute, 10.06.633, the dissolved corporation may apply for reinstatement.

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344, ¶ 29 (1994), *recon. granted in part*, 10 FCC Rcd 12759 (1995).

¹¹ *Id.*

¹² Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (*FY 1994 MO&O*).

¹³ *Id.*

an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.¹⁴

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,¹⁵ and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."¹⁶ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."¹⁷

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. §§ 1.1157(c)(1) and 1.1164, and additional charges of interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940.

Any unpaid portion of a regulatory fee is a delinquent debt, and under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940, interest, penalties, and charges of collection on the unpaid balance accrue from the original date of delinquency. Moreover, the licensee becomes a delinquent debtor subject to the Commission's red light rule,¹⁸ and as required by 47 C.F.R. §§ 1.1164(e)¹⁹ and 1.1910, any application or request for relief filed may be dismissed.

Under 31 U.S.C. § 3711(g)(1), 31 C.F.R. § 285.12, and 47 C.F.R. § 1.1917, the Commission is required to transfer delinquent debt to the Secretary of the Treasury. On behalf of the Commission, the Secretary of the Treasury, Bureau of Fiscal Service will take appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action.²⁰ As such, when the debt is transferred, the Commission ceases collection action related to the debt.²¹

Under 31 C.F.R. § 903.2, agencies may suspend collection action when the agency cannot locate the debtor, the debtor's financial condition is expected to improve, or the debtor has requested a waiver or review of the debt.

¹⁴ *Id.*

¹⁵ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

¹⁶ 47 U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164.

¹⁷ 47 C.F.R. § 1.1164.

¹⁸ 47 C.F.R. § 1.1910.

¹⁹ 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment."), 1.1910.

²⁰ 31 C.F.R. § 285.12(c).

²¹ 47 C.F.R. § 1.1917(b).

Discussion

Because Licensee is delinquent in paying regulatory fees due for several past years, under 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1164, 1.1166, and 1.1910(a)(2) & (3),²² we dismiss the *Request*. Further, if a licensee submits a request for a waiver based on financial hardship that does not include either the full fee or a timely petition to defer payment supported by documentation of the financial hardship, we will impose the statutory penalty²³ on the unpaid annual regulatory fee.

Our dismissal makes it unnecessary to address in detail our disposition of either Licensee's request for "abatement" of the delinquent debts or Licensee's request for a waiver and deferral of payment of the unpaid fees. Nonetheless, as a courtesy, we briefly explain why, in the alternative, we deny this requested relief. First, Licensee's request to abate or suspend collection fails to meet the standards set forth at 31 C.F.R. § 903.2. Next, Licensee's unsubstantiated assertion of financial hardship does not meet our standards²⁴ to establish good cause for the Commission to find that a waiver will serve the public interest.²⁵ Licensee's assertion of financial hardship is unsubstantiated,²⁶ and the Commission will not speculate to fill gaps in information that Licensee should have provided.²⁷ Thus, in the alternative, we deny Licensee's *Request*.

Refer to the Commission's fee filer website or contact the U.S. department of Treasury to determine a payoff, and immediately make full payment with a Form 159.²⁸ Charges continue to

²² 47 U.S.C. § 159(c)(2) ("The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section."); 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment."); 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.")

²³ 47 U.S.C. § 159; 47 C.F.R. § 1.1166; *Waivers, Reductions and Deferments of Regulatory Fees, Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) ("The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. * * * The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.")

²⁴ 47 C.F.R. § 1.1166; *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971) ("burden is on the applicant seeking waiver of ... rules to plead specific facts and circumstances which would make the general rule inapplicable"); see *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner . . . has the 'burden of clarifying its position' before the agency."); see also 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.")

²⁵ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). See also 9 FCC Rcd 5333, 5344, ¶ 29.

²⁶ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

²⁷ *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner . . . has the 'burden of clarifying its position' before the agency."); see also 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.)

²⁸ The Form 159 with complete instructions is at <http://www.fcc.gov/fees/form159.html>.

accrue until we or the Treasury receives and credits the full amount; furthermore, under the law,²⁹ we will apply debt collection procedures.³⁰

Because Licensee is delinquent in a debt owed the United States, this provides notification that under 31 U.S.C. § 3711(g), without further notice, and usually within 180 days or less of delinquency, we will transfer the delinquent debt to Treasury, which will initiate collection action through private collection activities and assess additional charges. In addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs. Furthermore, having furnished notice here, Licensee may not receive another notification of this process. Finally, Licensee will be red lighted³¹ until it pays the debt or makes other satisfactory arrangements.³²

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

²⁹ See 47 C.F.R. § 1.1901, *et seq.*

³⁰ See 31 C.F.R. § 3717.

³¹ See 47 C.F.R. § 1.1910(b)(2) (“Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or request for authorization by any entity found to be delinquent in its debt to the Commission”); 47 C.F.R. § 1.1164(e) (“Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.”).

³² See 47 C.F.R. § 1.1914 (“If a debtor is financially unable to pay a debt in one lump sum, the Commission, in its sole discretion, may accept payment in regular installments.”).