



Federal Communications Commission  
Washington, D.C. 20554

January 26, 2010

**DA 10-123**

*In Reply Refer to:*

1800B3-ATS

NAL/Acct. No. MB200741410067

Released: January 26, 2010

Jerrold Miller, Esq.  
Miller and Neely, P.C.  
6900 Wisconsin Ave.  
Suite 704  
Bethesda, Maryland 20815

In re: KVIK(FM), Decorah, Iowa  
Facility ID No. 33080  
File No. BRH-20050705AAK

Dear Mr. Miller:

We have before us a March 13, 2007, Petition for Reconsideration (“Response”) filed on behalf of Wennes Communications Stations, Inc. (“Wennes”) licensee of Station KVIK(FM), Decorah, Iowa (“Station”). The Response seeks cancellation or substantial reduction of the February 13, 2007, Notice of Apparent Liability for Forfeiture (“NAL”)<sup>1</sup> in the amount of seven thousand dollars (\$7,000), to Wennes for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”) for its failure to timely file a license renewal application (“Application”) and for unauthorized operation of the Station after its license had expired.<sup>2</sup> For the reasons set forth below, we cancel the monetary forfeiture issued on February 13, 2007, and assess Wennes a 25 percent late-fee penalty for its late filing.

*Background.* Section 73.3539(a) of 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>3</sup> An application for renewal of KVIK(FM)’s license should have been filed by October 1, 2004. No such application was filed, and the Station’s license expired on February 1, 2005. Accordingly, in a June 24, 2005, letter (“*Staff Letter*”), the staff informed Wennes 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 data base. Wennes was advised that any further

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<sup>1</sup> *Wennes Communications Stations, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2752 (MB 2007).

<sup>2</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301. The Commission granted the above-referenced license renewal application on February 13, 2007.

<sup>3</sup> 47 C.F.R. § 73.3539(a).

operation of the Station was unauthorized and must cease immediately. Subsequent to receipt of the *Staff Letter*, on July 1, 2005, Wennes filed a request for special temporary authorization (“STA”) to continue operations and on July 5, 2005, tendered the captioned license renewal application. The staff granted the STA on July 14, 2005, and it was to expire on January 14, 2006;<sup>4</sup> however, Wennes filed a request for extension of the STA on December 13, 2005.<sup>5</sup> On February 13, 2007, the staff advised Wennes of its apparent liability for a forfeiture of \$7,000 for failure to file a timely renewal application for the Station and for unauthorized operation of the Station after its license expired. Wennes filed its Response on March 13, 2007.

In its Response, Wennes states that the *NAL* is incorrect in several significant matters addressed therein, and attributes the Application’s late filing to its first time using on-line filing, doing so without the benefit of counsel, and the consequent unsuccessful attempt to pay the filing fee.<sup>6</sup> Wennes states that the June 2005 *Staff Letter* was the first indication that its license renewal application had not been properly filed.<sup>7</sup> It asserts that upon receipt of the *Staff Letter*, it contacted its counsel, who ascertained that the Application had been filed but that the Commission had not received the licensee’s fee payment, and on July 1, 2005 submitted a request for STA and a separate request for waiver of the application filing deadline to allow KVIK(FM) to continue broadcast operations.<sup>8</sup> Wennes states that, contrary to the *NAL*’s assertion, both the waiver request and STA request contained the explanation for the Application’s late-filing, noting that the original Application was filed on September 30, 2004, prior to the required filing date, and was assigned File Number “20040930BCH.”<sup>9</sup> Wennes acknowledges, however, that it did not properly tender the requisite filing fee with its September 30th submission.<sup>10</sup>

Wennes avers that the proposed forfeiture is improper and excessive because it is premised on incorrect factual findings,<sup>11</sup> and that a simple reminder or a bill for payment pursuant to then Section 1.1116(b) of the Rules could have resulted in the proper payment of the filing fee and the Application being timely filed.<sup>12</sup> Wennes also states that the Commission failed to consider its good faith effort to timely file the Application and its history of compliance with the Rules.<sup>13</sup>

*Discussion.* We have reviewed the record in this case and the Commission’s CDBS database, and we find that Wennes did in fact tender a license renewal application for the Station on September 30,

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<sup>4</sup> File No. BLSTA-20050701ADN.

<sup>5</sup> File No. 20051213ADK. The staff dismissed the STA extension request as moot when it granted the KVIK(FM) license renewal application.

<sup>6</sup> Response at 4.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 2. *See also* File No. BLSTA-20050701ADN.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.* at 4, 6.

<sup>11</sup> *Id.* at 4-5.

<sup>12</sup> *Id.* at 6. Section 1.1116(b) of the Rules was subsequently redesignated as Section 1.1118(b).

<sup>13</sup> *Id.* at 9.

2004, but failed to pay the requisite filing fee. We further note that Wennes acknowledged its error, prior to any Commission action on its license renewal application.<sup>14</sup> For the reasons set forth below, we will cancel the *NAL* and impose a 25% penalty as provided in Section 1.1118 of the Rules.

Under Section 1.1118(a) of the Rules,<sup>15</sup> if the defective fee is discovered within 30 days of filing, the application is dismissed and can be refiled with a new filing date. If the defective fee is discovered after 30 days have passed and the application has not been “forwarded to Commission staff for substantive review,” pursuant to Section 1.1118(b) of the Rules,<sup>16</sup> a filer is billed the fee amount due plus a 25 percent penalty. Under current electronic application filing procedures, Wennes’ September 30, 2004, submission was never “forwarded to Commission staff for substantive review” because it did not contain the requisite filing fee. Because the Rules provide that the Commission’s recourse, once 30 days have elapsed from the date an application is submitted with no fee, is to bill the applicant retroactively and impose the 25 percent penalty,<sup>17</sup> we will do so here. In light of this disposition, we need not address Wennes’ remaining arguments.

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<sup>14</sup> We also note that Wennes experienced similar filing fee issues when submitting its license renewal applications for Stations KHPP(AM) and KNEI-FM in Waukon, Iowa. See *Wennes Communications Stations, Inc.*, Letter, DA 10-122 (MB 2010) (cancelling forfeiture and imposing a 25 percent penalty for failure to submit the application fee with its original application); *Wennes Communications Stations, Inc.*, Letter, DA 09-2571 (MB 2009) (same). Cf. *MFR, Inc.*, Forfeiture Order, 24 FCC Rcd 5688 (MB 2009) (licensee required to pay forfeiture when it files application without fee and later re-files, but only provides an explanation of its initial filing error in response to an *NAL* ).

<sup>15</sup> 47 C.F.R § 1.1118(a).

<sup>16</sup> 47 C.F.R § 1.1118(b).

<sup>17</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 data base. Although some bureaus and offices may enter data faster 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 percent penalty).

*Conclusion/ Action.* In view of the foregoing, Wennes Communications Stations, Inc.'s March 13, 2007, Response to our February 13, 2007, *NAL* in the amount of \$7,000 IS GRANTED, and the Notice of Apparent Liability (NAL/Acct. No. MB-200741410067) for violation of Section 73.3539 of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended, is HEREBY CANCELLED. Pursuant to Section 1.1118(b) of the Rules, Wennes Communications Stations, Inc. will be assessed a penalty charge equal to 25 percent of the filing fee, in addition to the filing fee. Therefore, Wennes Communications Stations, Inc. will be billed a total of \$187.50 under separate cover.

Sincerely,

Peter H. Doyle, Chief  
Audio Division  
Media Bureau

cc: Wennes Communications Stations, Inc.