

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
La Favorita, Inc.,	)	FRN: 0009983149
Licensee of WAOS(AM), Austell, Georgia,	)	Fac. ID 36157
WLBA(AM), Gainesville, Georgia, and	)	Fac. ID 8606
WXEM(AM), Buford, Georgia	)	Fac. ID 36158

**ORDER TO PAY OR TO SHOW CAUSE**

**Adopted: October 25, 2019**

**Released: October 28, 2019**

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

**I. INTRODUCTION**

1. By this Order to Pay or to Show Cause, we initiate a proceeding to revoke the licenses held by La Favorita, Inc. (La Favorita), for WAOS(AM), Austell, Georgia, WLBA(AM), Gainesville, Georgia, and WXEM(AM), Buford, Georgia (collectively, Stations), for failure to pay delinquent regulatory fees and associated interest, administrative costs, and penalties owed to the Commission. For the reasons set forth below, we direct La Favorita to pay the overdue regulatory fees, including any associated interest, penalties, and administrative costs, or show cause why the payment demanded is inapplicable or should otherwise be waived or deferred.

**II. DISCUSSION**

2. Under Section 9 of the Communications Act of 1934, as amended (Act), and the Commission's rules (Rules), the Commission is required to "assess and collect regulatory fees" to recover the costs of certain regulatory activities.<sup>1</sup> 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 which was not paid in a timely manner."<sup>2</sup>

3. For fiscal year (FY) 2007 the deadline for paying regulatory fees was September 19, 2007;<sup>3</sup> for FY 2008, it was September 11, 2008;<sup>4</sup> for FY 2009, it was September 22, 2009;<sup>5</sup> for FY 2010, it was August 31, 2010;<sup>6</sup> for FY 2011, it was September 16, 2011;<sup>7</sup> for FY 2012, it was September 13,

<sup>1</sup> 47 U.S.C. § 159(a)(1); 47 CFR §§ 1.1151-1.1167.

<sup>2</sup> 47 U.S.C. § 159A(c)(1); 47 CFR §§ 1.1157(c)(1), 1.1164.

<sup>3</sup> See *Fee Filer Now Available for 2007 Regulatory Fees*, Public Notice, 22 FCC Rcd 16051 (OMD 2007).

<sup>4</sup> See *Payment Methods and Procedures for Fiscal Year 2008 Regulatory Fees*, Public Notice, 23 FCC Rcd 12849 (OMD 2008).

<sup>5</sup> See *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees*, Public Notice, 24 FCC Rcd 11513 (OMD 2009).

<sup>6</sup> See *Payment Methods and Procedures for Fiscal Year 2010 Regulatory Fees*, Public Notice, 25 FCC Rcd 10670 (OMD 2010).

<sup>7</sup> *FY 2011 Regulatory Fee Deadline is Extended to 11:59 PM, ET, September 16, 2011*, Public Notice, 26 FCC Rcd 10329 (OMD 2011).

2012;<sup>8</sup> for FY 2013, it was September 20, 2013;<sup>9</sup> for FY 2014, it was September 23, 2014;<sup>10</sup> for FY 2015, it was September 24, 2015;<sup>11</sup> for FY 2016, it was September 27, 2016;<sup>12</sup> for FY 2017, it was September 26, 2017;<sup>13</sup> and for FY 2018, it was September 25, 2018.<sup>14</sup> When La Favorita failed to pay or only partially paid the Stations' regulatory fees by these deadlines, the Commission assessed charges that included the statutory late payment penalty required by the Act<sup>15</sup> and Sections 1.1157(c)(1) and 1.1164 of the Rules,<sup>16</sup> and interest, penalties, and administrative costs required by law.<sup>17</sup>

4. The Commission's records show that La Favorita currently has unpaid regulatory fees of \$7,711.93 for FY 2010; \$5963.60 for FY 2011; \$9,217.85 for FY 2012; \$9,364.61 for FY 2013; \$9,031.93 for FY 2014; \$8,997.48 for FY 2015; \$9,593.75 for FY 2016; and \$10,941.65 for FY 2017; and \$8634.89 for FY 2018.<sup>18</sup> Additional charges will continue to accrue on these debts until they are paid in full. Demand Letters, which demanded payment of La Favorita's delinquent regulatory fees, were previously sent to La Favorita.<sup>19</sup> La Favorita has not fully paid any of the debts.<sup>20</sup>

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<sup>8</sup> 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).

<sup>9</sup> See *Payment Methods and Procedures for Fiscal Year 2013 Regulatory Fees*, Public Notice, 28 FCC Rcd 12635 (OMD 2013).

<sup>10</sup> 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).

<sup>11</sup> See *Payment Methods and Procedures for Fiscal Year 2015 Regulatory Fees*, Public Notice, 30 FCC Rcd 9941 (OMD 2015).

<sup>12</sup> See *Payment Methods and Procedures for Fiscal Year 2016 Regulatory Fees*, Public Notice, 2016 WL 4625515 (OMD Sep. 6, 2016).

<sup>13</sup> See *Payment Methods and Procedures for Fiscal Year 2017 Regulatory Fees*, Public Notice, 2017 FCC LEXIS 2779 (2017).

<sup>14</sup> See *Payment Methods and Procedures for Fiscal Year 2018 Regulatory Fees*, Public Notice, (rel. Aug. 30, 2018), available at <https://docs.fcc.gov/public/attachments/DOC-353883A1.pdf>.

<sup>15</sup> 47 U.S.C. § 159A(c)(1).

<sup>16</sup> 47 CFR §§ 1.1157(c)(1), 1.1164.

<sup>17</sup> Prior to October 1, 2018, the Commission was required to and did assess administrative charges on delinquent regulatory fee debt pursuant to Section 3717 of the Debt Collection Improvement Act. 37 U.S.C. § 3717(e)(1); see also 47 CFR § 1.1940. Effective October 1, 2018, and as a result of the changes wrought by Section 9A of 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, the Commission may no longer assess the administrative cost of collecting delinquent regulatory fee debt, though the mandate that it charge a 25 percent late payment penalty and interest remains. 47 U.S.C. § 159A(c)(1) and (2).

<sup>18</sup> La Favorita also has unpaid regulatory fee debts for FY 2006, FY 2007, FY 2008, and FY 2009. This order does not focus upon these debts because La Favorita is paying them pursuant to a payment agreement it entered into with the Secretary of the Treasury.

<sup>19</sup> In addition to these Demand Letters, the Bureau notified La Favorita of its delinquency in paying the Stations' regulatory fees for FYs 2007 through FY 2016. Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to Gary S. Smithwick, Esq., Smithwick & Belendiuk, PC (MB dated June 27, 2017).

<sup>20</sup> See 31 U.S.C. § 3711(g); 31 CFR §§ 285.12(c) and 901.1; 47 CFR § 1.1917. The debts for FY 2007 through FY 2015 were transferred to the Secretary of Treasury for collection. However, at the Commission's request, the Secretary of the Treasury has returned to the Commission those debts not covered by its payment agreement with La Favorita (*i.e.*, the Secretary of the Treasury has returned the debts for FY 2010 through FY 2015).

5. In addition to financial penalties, Section 9A(c)(4) of the Act,<sup>21</sup> and Section 1.1164(f) of the Rules<sup>22</sup> grant the FCC the authority to revoke authorizations for failure to pay regulatory fees (or related interest and penalties) in a timely fashion. Accordingly, we require La Favorita to file with the Media Bureau documented evidence within sixty (60) calendar days of the date of this Order that full payment of all outstanding regulatory fee debt has been made in accordance with Section 1.1164(a) of the Rules,<sup>23</sup> or show cause why the payment is inapplicable or should be waived or deferred.<sup>24</sup> La Favorita is hereby notified that failure to provide such evidence of payment or to show cause within the time specified may result in revocation of La Favorita's licenses for the Stations.

6. Under Section 9A(c)(4)(C) of the Act and Section 1.1164(f),<sup>25</sup> an adjudicatory hearing will not be designated unless La Favorita presents a substantial and material question of fact. Further, disposition of any adjudicatory hearing will be based upon written evidence only, and La Favorita will bear the burden to introduce evidence and to provide proof in any such hearing.<sup>26</sup>

7. To the extent that La Favorita is a respondent in other administrative proceedings, both before this agency and other federal agencies, action in this proceeding is without prejudice to action in those proceedings. Further, the existence of any such proceedings and matters raised therein are not considered in this proceeding.

### III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 9A(c)(4) of the Act and Sections 0.61, 0.283, and 1.1164(f) of the Rules,<sup>27</sup> La Favorita, Inc., is hereby **ORDERED TO PAY TO THE FEDERAL COMMUNICATIONS COMMISSION** within sixty (60) calendar days of the date of this Order the outstanding regulatory fees for FY 2007, FY 2008, FY 2009, FY 2010, FY 2011, FY 2012, FY 2013, FY 2014, FY 2015, FY 2016, FY 2017, and FY 2018, **OR SHOW CAUSE** to the Commission within sixty (60) calendar days of the date of this Order that the regulatory fee debt has been paid in full, or why these regulatory fees are inapplicable or should otherwise be waived or deferred.

9. **IT IS FURTHER ORDERED** that payment of the delinquent regulatory fee debt must be made by wire transfer and must include the FRN referenced above. Additional wire transfer instructions are as follows:

ABA Routing Number 021030004

Receiving Bank:  
TREAS NYC  
33 Liberty St.

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<sup>21</sup> 47 U.S.C. § 159A(c)(4).

<sup>22</sup> 47 CFR § 1.1164(f).

<sup>23</sup> 47 CFR § 1.1164(a).

<sup>24</sup> The Commission may waive, reduce, or defer payment of a fee, associated penalties and interest where good cause is shown and where waiver, reduction or deferral would promote the public interest. The Commission interprets this provision narrowly, granting relief only when a requesting party has shown extraordinary circumstances outweighing the public interest in recovering the cost of the Commission's regulatory services. A party seeking a waiver for financial hardship must conclusively prove financial hardship, providing copies of all such financial documents as are necessary to show that it lacks sufficient funds to pay its regulatory fees and maintain its service to the public. *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, MD Docket 19-105, Report and Order and Further Notice of Proposed Rulemaking, 2019 WL 4072476, at \*16 (2019).

<sup>25</sup> 47 U.S.C. § 159A(c)(4)(C)(i); 47 CFR § 1.1164(f)(1).

<sup>26</sup> 47 U.S.C. § 159A(c)(4)(C)(ii); 47 CFR § 1.1164(f)(2).

<sup>27</sup> 47 U.S.C. § 159A(c)(4); 47 CFR §§ 0.61, 0.283, 1.1164(f).

New York, NY 10045

(BNF) Beneficiary: FCC

Account #: 27000001

OBI Field (skip one space between each information item)

La Favorita, Inc., must provide the Payer FRN (if different than the FRN referenced above) and a contact phone number.

La Favorita, Inc., must fax a copy of the wire transfer confirmation to the FCC at (202) 418-2843 or send the wire transfer confirmation copy to the FCC via email to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same day the wire transfer is initiated.

10. **IT IS FURTHER ORDERED** that La Favorita, Inc., must submit a completed FCC Form 159 (Remittance Advice) at the time of payment. The FCC Form 159 must be faxed to the FCC at (202) 418-2843. An FCC Form 159 and detailed instructions for completing the form may be obtained at [http://www.fcc.gov/Forms/Forms\\_159/159.pdf](http://www.fcc.gov/Forms/Forms_159/159.pdf). When completing the FCC Form 159, La Favorita, Inc., must enter its FRN in block number 23A (call sign/other ID) and enter the following payment codes for the fiscal years involved in block number 24A (payment type code): 0725 and 0738 (for FY 2007), 0825 and 0838 (for FY 2008), 0925 and 0938 (for FY 2009), 1025 and 1038 (for FY 2010), 1125 and 1138 (for FY 2011), 1225 and 1238 (for FY 2012), 1325 and 1338 (for FY 2013), 1425 and 1438 (for FY 2014), 1525 and 1538 (for FY 2015), 1625 and 1638 (for FY 2016), 1725 and 1738 (for FY 2017), and 1825 and 1838 (for FY 2018).

11. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by registered mail, return receipt requested, to La Favorita, Inc., 5815 Westside Road, Austell, GA 30001, and its counsel, Gary S. Smithwick, Esq, Smithwick & Belendiuk, PC, 5028 Wisconsin Avenue, NW, Suite 301, Washington, DC 20016.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey  
Chief, Media Bureau

Mark Stephens, Managing Director  
Office of Managing Director