



**Federal Communications Commission
Washington, D.C. 20554**

June 6, 2019

DA 19-523
In Reply Refer to:
1800B3-SS

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In re: **Metropolitan Mgmt. Corp. of
Tennessee
DWNPZ(AM), Knoxville, TN**
Facility ID No. 11191
File No. BR-20120402ANI

Petition for Reconsideration

Dear Counsel:

We have before us a Petition for Reconsideration (Petition) filed by Metropolitan Management Corporation of Tennessee (Metropolitan) on July 21, 2017. The Petition seeks reconsideration of a staff letter that: (1) dismissed Metropolitan's application (Renewal Application) to renew the license of DWNPZ(AM), Knoxville, Tennessee (Station); (2) cancelled the Station's license; and (3) deleted its call sign from the Commission's database.¹ The staff dismissed the Renewal Application pursuant to the Commission's "red light" rules, which prohibit grant of an application when an applicant is delinquent on debts owed to the Commission.² In light of this dismissal, the staff found that all authority to operate the Station had terminated, cancelled the Station's license and deleted its call letters from the Commission's database. For the reasons set forth below, we grant the Petition in part, dismiss it in part and otherwise deny it. Having done so, we reinstate the Station's license and call letters, and we provisionally reinstate the Renewal Application.

In the Petition, Metropolitan asserts that on June 8, 2015, the staff notified Metropolitan's then-counsel Stephen T. Yelverton (Yelverton) by letter, that Metropolitan was delinquent on debts owed to the Commission and that unless satisfactory arrangements were made for payment, the Renewal Application would be dismissed. According to Metropolitan, it entered into an agreement with the Commission's Office of Managing Director (OMD) for payment of the debt owed and then notified the Media Bureau's (Bureau) Audio Division staff of the agreement. Metropolitan also states that it made the first several payments in accordance with the payment plan but was forced to stop when economic conditions made those payments unsustainable.³ Metropolitan further claims that neither it nor its principals ever received a December 2016 notification from the staff regarding Metropolitan's debt delinquency and that if the notification went to Yelverton—whose license to practice law had been suspended and who died a few months later, the message was never received.⁴ Metropolitan

¹ *Metropolitan Mgmt. Corp. of Tennessee*, Letter Order, (MB Jun. 20, 2017) (Dismissal Letter). *See also Broadcast Actions*, Public Notice, Report No. 49013 (MB rel. Jun. 23, 2017).

² *See Amendment of Parts 0 and 1 of the Commission's Rules - Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, Report and Order, 19 FCC Rcd 6540 (2004). *See also* 47 CFR §§ 0.283, 1.1910(b)(3).

³ Petition at 1-2.

⁴ *Id.* at 2.

acknowledges, however, that it did receive the Dismissal Letter, and since that time it claims that it has entered into another payment plan with OMD.⁵ Finally, Metropolitan argues that it would be in the public interest to reinstate the Station's Renewal Application, license and call letters because Metropolitan is a "100 percent minority-owned" broadcaster.⁶

Initially, we note that the staff dismissed the Renewal Application under Section 1.1910 of the FCC's rules (Rules).⁷ Section 1.1910 does not include an exception for renewal applications.⁸ More importantly, however, regarding Metropolitan's latest payment plan entered into with the U.S. Treasury on July 24, 2017, OMD reports that Metropolitan defaulted on that agreement.⁹

Concerning Metropolitan's contention that the staff erred in failing to take into account the public service provided by Metropolitan as an independently owned station, its financial struggles, or the fact that cancellation of the Station's license would limit the number of minority-owned broadcast facilities in the area,¹⁰ Metropolitan makes this argument for the first time in the Petition. However, it has failed to establish any of the limited circumstances contemplated in Section 1.106(c)¹¹ by which the Bureau may grant a petition for reconsideration that relies on facts and arguments not previously raised before it. We further note that, had Metropolitan wished to avoid dismissal of the Renewal Application, it could have sought waiver, reduction or deferral of its regulatory fees and raised these public interest factors in requests for such action.¹² Accordingly, we dismiss this portion of the Petition on procedural grounds.

Metropolitan also challenges the staff's cancellation of the Station's license and deletion of its call sign. While the staff clearly had the authority to dismiss the Renewal Application, we find that these other actions were premature and reverse them herein. Section 307(c)(3) of the Act states that the filing of a renewal application continues a station's license in effect.¹³ This continuance runs through "any hearing and final decision on such an application and the disposition of any petition for rehearing."¹⁴

⁵ *Id.* at 3.

⁶ *Id.*

⁷ Dismissal Letter at 1. Specifically, staff identified that Metropolitan was delinquent in paying regulatory fees and sent a letter notifying Metropolitan of its delinquent debt and allowing it 30 days in which to "pay or arrange for payment of the delinquent debt." *Letter from Peter H. Doyle, Chief, Audio Division, FCC Media Bureau, to Stephen Thomas Yelverton, Esq.* (MB rel. Jun. 8, 2015). The letter indicated that "[f]ailure to have the 'red light' status removed within this time period" would result in dismissal of the Renewal Application. When Metropolitan failed to respond, the staff dismissed the Renewal Application, citing Section 1.1910(b)(3) of the Rules. This was error. Because this case involves delinquent regulatory fees, staff should have been proceeding under Section 1.1164 of the Rules. *See* 47 CFR § Section 1.1910(b)(1) ("[A]pplications by any entity found not to have paid the proper ... regulatory fee will be handled pursuant to the rules set forth in 47 CFR part 1, subpart G."); 47 CFR § 1.1164. The error was harmless, though, as Section 1.1164(e) authorizes dismissal of pending applications.

⁸ Neither does Section 1.1164. *See, supra*, note 7.

⁹ *See* November 29, 2017, 1:42 pm (EST) email from OMD to the Bureau's Audio Division staff.

¹⁰ Petition at 3.

¹¹ 47 CFR § 1.106(c).

¹² *See* 47 U.S.C. § 159A(d); 47 U.S.C. § 159(d) (2017); 47 CFR § 1.1166. Prior to October 1, 2018, when 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, became effective, Section 9(d) permitted waiver, reduction or deferment of regulatory fees "for good cause shown, where such action would promote the public interest." As amended by the RAY BAUM'S Act, Section 9A(d) of the Act now authorizes such action. The Commission requires that requests for waiver, reduction or deferral of a regulatory fee be received before the fee due date. *See, e.g., Regulatory Fees Fact*

Because Metropolitan timely filed the Petition, its previous license continues in effect.¹⁵ Accordingly, we rescind the staff's cancellation of the Station's license and deletion of its call letters, and reinstate them. We note, however, that "[t]he Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter."¹⁶ Accordingly, concurrent with our decision herein, the Bureau is initiating a proceeding under Section 9A(c)(4) of the Act¹⁷ and Section 1.1164(f) of the Rules¹⁸ to revoke the Station's license for failure to pay delinquent regulatory fees owed to the FCC.¹⁹

Finally, in order to give full effect to the due process rights established by Sections 9A(c)(4) and 307(c)(3) of the Act,²⁰ we are provisionally reinstating the Renewal Application to pending status. The Renewal Application will remain in this status until there are decisions in this proceeding and in the related debt proceeding.²¹

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED, that the Petition for Reconsideration filed by Metropolitan Management Corporation of Tennessee on July 21, 2017, IS GRANTED IN PART, DISMISSED IN PART and DENIED IN PART.

IT IS FURTHER ORDERED, that the Station's license, most recently renewed by Application File No. BR-20040401ATN, and call letters for Station WNPZ(AM), Knoxville, Tennessee, ARE REINSTATED.

IT IS FURTHER ORDERED, that the license renewal application for Station WNPZ(AM) (File No. BR-20120402ANI), IS REINSTATED.

Sincerely,

Albert Shuldiner

Sheet, Procedures for Filing Waivers, Reductions and Deferments of Regulatory Fees, Public Notice (Aug. 30, 2018), <https://www.fcc.gov/document/fy-2018-regulatory-fee-waiver-fact-sheet>.

¹³ 47 U.S.C. § 307(c)(3).

¹⁴ *Id.*

¹⁵ *United States v. Peninsula Communications, Inc.*, 335 F. Supp. 2d 1013, 1019 (D. Alaska 2004); *Pinelands, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6058, 6061 n.12 (1992).

¹⁶ *See, e.g., Filing Instructions for Cross-Service FM Translator Auction Filing Window for AM Broadcasters to Be Open July 26 – August 2, 2017*, Public Notice, DA 17-533 (MB/WTB June 6, 2017); *Application Procedures for Broadcast Incentive Auction Scheduled to Begin on March 29, 2016*, Public Notice, 30 FCC Rcd 11034, 11081 para. 43 (MB/WTB); *Auction of FM Broadcast Construction Permits Scheduled for March 27, 2012*, Public Notice, 26 FCC Rcd 15484, 15505 para. 72 (MB/WTB 2008); *Auction of AWS-1 and Broadband PCS Licenses Rescheduled for August 13, 2008*, Public Notice, 23 FCC Rcd 7496, 7526 para. 110 (WTB 2008); *Auction of Full Power Television Construction Permits Scheduled for March 15, 2006*, Public Notice, 20 FCC Rcd 18097 (MB/WTB 2005).

¹⁷ 47 U.S.C. § 159A(c)(4).

¹⁸ 47 CFR §§ 1.1164(f).

¹⁹ *See, e.g., KSBH, LLC*, Order to Pay or to Show Cause, DA 19-266 (MB April 8, 2019); *Sun Media, Inc.*, Order to Pay or to Show Cause, DA 19-267 (MB April 8, 2019); *Deane Bros. Broad. Corp.*, Order to Pay or to Show Cause, DA 18-1218 (MB Nov. 30, 2018).

²⁰ 47 U.S.C. §§ 159A(c)(4); 307(c)(3).

²¹ *Metropolitan Mgmt. Corp. of Tennessee*, Order to Pay or to Show Cause, DA 19-522 (rel. June 6, 2019).

Chief, Audio Division
Media Bureau

cc: Metropolitan Mgmt. Corp. of Tennessee