



Federal Communications Commission
Washington, D.C. 20554

June 6, 2019

DA 19-525
In Reply Refer to:
1800B3-SS

Mr. H. Jack Mizell
Shelley Broadcasting Co., Inc.
4518 Woodledge Drive
Montgomery, AL 36109

In re: **Shelley Broadcasting Co., Inc.**
DWGEA(AM), Geneva, AL
Facility ID No. 60100
File No. BR-20111212AHG

Petition for Reconsideration

Dear Mr. Mizell:

We have before us a Petition for Reconsideration (Petition) filed by Shelley Broadcasting Co., Inc. (SBC) on April 26, 2017. The Petition seeks reconsideration of a staff letter that: (1) dismissed SBC's application (Renewal Application) to renew the license of DWGEA(AM), Geneva, Alabama (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 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, SBC asserts that it is willing, but has been unable, to pay its regulatory fees to the Commission because of a decades-long dispute with the Internal Revenue Service (IRS) over a large refund that SBC claims it is due from the IRS.³ SBC claims that it needs these funds in order to satisfy its debts with the Commission.⁴ SBC's President H. Jack Mizell also states that although he is in poor health, he "will somehow meet . . . [his] obligation."⁵

Initially, we note that the staff dismissed the Renewal Application under Section 1.1910 of the FCC's rules (Rules).⁶ Section 1.1910 does not include an exception for renewal applications.⁷ More

¹ *Shelley Broadcasting Co., Inc.*, Letter Order, (MB Apr. 12, 2017) (Dismissal Letter). *See also Broadcast Actions*, Public Notice, Report No. 48966 (MB rel. Apr. 13, 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.

⁴ *Id.* at 2.

⁵ *Id.*

⁶ Dismissal Letter at 1. Specifically, staff identified that SBC was delinquent in paying regulatory fees and sent a letter notifying SBC of its delinquent debt and allowing it 30 days in which to "pay or arrange for payment of the (continued . . .)

importantly, however, although SBC entered into an installment payment plan with the U.S. Treasury, SBC made eight payments of \$42.97 and stopped. SBC's last recorded payment was posted on February 19, 2015.⁸

Although SBC argues that its inability to pay stemmed from a longstanding dispute with the IRS,⁹ SBC has failed either to establish a material error in the Dismissal Letter or raise changed circumstances or additional facts not known or existing at the time of its last opportunity to present such matters.¹⁰ We further note that, had SBC 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.¹¹

Nonetheless, 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.¹² This continuance runs through "any hearing and final decision on such an application and the disposition of any petition for rehearing."¹³ Because SBC timely filed the Petition, its previous license continues in effect.¹⁴ 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."¹⁵ Accordingly, concurrent with our decision herein, the Bureau is initiating a proceeding under Section 9A(c)(4) of the Act¹⁶ and Section 1.1164(f) of the Rules¹⁷ to revoke the Station's license for failure to pay delinquent regulatory fees owed to the Commission.¹⁸

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,¹⁹ we are provisionally reinstating the Renewal Application to pending status. The

(Continued from previous page)

delinquent debt." Letter from Peter H. Doyle, Chief, Audio Division, FCC Media Bureau, to H. Jack Mizell (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 SBC 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 § 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. 47 CFR § 1.1164(e).

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

⁸ *See* December 13, 2017, 10:51 am (EST) email from OMD to the Bureau's Audio Division staff.

⁹ SBC had previously raised its concerns during conversations with the staff.

¹⁰ *See* 47 CFR § 1.106. *See also* *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff'd sub nom., Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966), and *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415, para. 4 (2003).

¹¹ *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 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>.

¹² 47 U.S.C. § 307(c)(3).

Renewal Application will remain in this status until there are decisions in this proceeding and in the related debt proceeding.²⁰

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED, that the Petition for Reconsideration filed by Shelley Broadcasting Co., Inc., on April 26, 2017, IS GRANTED IN PART and DENIED IN PART.

IT IS FURTHER ORDERED, that the Station's license, most recently renewed by Application File No. BR-20031124AAV, and call letters for Station WGEA(AM), Geneva, Alabama, ARE REINSTATED.

IT IS FURTHER ORDERED, that the license renewal application for Station WGEA(AM) (File No. BR-20111212AHG) IS REINSTATED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

(Continued from previous page)

¹³ *Id.*

¹⁴ *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).

¹⁵ *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).

¹⁶ 47 U.S.C. § 159A(c)(4).

¹⁷ 47 CFR §§ 1.1164(f).

¹⁸ *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).

¹⁹ 47 U.S.C. §§ 159A(c)(4), 307(c)(3).

²⁰ *See Shelley Broad. Co., Inc.*, Order to Pay or to Show Cause, DA 19-524 (MB rel. June 6, 2019).