

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Consolidated Radio, Inc.) Facility ID 6429
Licensee of KVOZ(AM), Del Mar Hills, Texas) FRN: 0004355210

ORDER TO PAY OR TO SHOW CAUSE

Adopted: February 10, 2020

Released: February 11, 2020

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 license held by Consolidated Radio, Inc. (Licensee), for KVOZ(FM), Del Mar Hills, Texas (Station), for failure to pay delinquent regulatory fees, penalties and interest owed to the Commission. For the reasons set forth below, we direct Licensee to pay its delinquent 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. 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.”

3. For fiscal year (FY) 2016, the deadline for paying regulatory fees was September 27, 2016; for FY 2017, it was September 26, 2017; for FY 2018, it was September 25, 2018, and for FY

1 In addition to unpaid regulatory fees and the penalties and interest required by section 9A(c) of the Act, 47 U.S.C. § 159A(c), Licensee’s fee debt may include penalties and costs assessed under 31 U.S.C. § 3717(e). Under section 9A of the Act, 47 U.S.C. § 159A, the Commission may revoke a license for nonpayment of outstanding fees, or penalties or interest assessed under section 9A(c), but may not revoke a license for nonpayment of outstanding penalties and costs assessed under 31 U.S.C. § 3717(e). The Commission applies payment first to outstanding penalties and administrative costs, then to accrued interest, and finally, to outstanding fees. Thus, anything less than full payment of the Licensee’s regulatory fee debt means that, at a minimum, it will not have wholly extinguished the outstanding fees due because outstanding fees are the last category of obligation paid. As a result, a failure to make full payment of the debt due will necessarily leave a basis for revocation under section 9A(c). See 47 CFR § 1.1940(f).

2 47 U.S.C. § 159(a)(1); 47 CFR §§ 1.1151-1.1167.

3 47 U.S.C. § 159A(c)(1); 47 CFR §§ 1.1157(c)(1), 1.1164.

4 See Payment Methods and Procedures for Fiscal Year 2016 Regulatory Fees, Public Notice, 2016 WL 4625515 (OMD Sep. 6, 2016).

5 See Payment Methods and Procedures for Fiscal Year 2017 Regulatory Fees, Public Notice, 2017 FCC LEXIS 2779 (2017).

6 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.

2019, it was September 27, 2019.⁷ When Licensee failed to pay its regulatory fees by these deadlines, the Commission assessed charges that included the statutory late payment penalty required by the Act⁸ and sections 1.1157(c)(1) and 1.1164 of the Rules,⁹ and interest, penalties, and administrative costs required by section 3717 of Title 31 of the U.S. Code and section 1.1940 of the Rules.¹⁰

4. The Commission's records show that Licensee currently has unpaid regulatory fees of \$3,015.45 for FY 2016; \$3,249.75 for FY 2017; \$2,741.93 for FY 2018; and \$2,950.15 for FY 2019.¹¹ Additional charges will continue to accrue on these debts until they are paid in full. Demand Letters, which demanded payment of Licensee's delinquent regulatory fees, were previously sent to Licensee. When Licensee did not pay its unpaid regulatory fee debts, the Commission transferred some of the debt to the Secretary of Treasury at the Treasury Department for collection.¹² At the Commission's request, and in order to consolidate the collection process, the Secretary of the Treasury has returned all of the previously transferred regulatory fee debt to the Commission for further collection.

5. In addition to financial penalties, section 9A(c)(4) of the Act,¹³ and section 1.1164(f) of the Rules¹⁴ grant the FCC the authority to revoke authorizations for failure to pay regulatory fees (or related interest or penalties) in a timely fashion. Accordingly, we require Licensee 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,¹⁵ or show cause why the payment is inapplicable or should be waived or deferred.¹⁶ Licensee is hereby notified that failure to provide evidence of payment or to show cause within the time specified may result in revocation of Licensee's license for the Station.

6. Under section 9A(c)(4)(C) of the Act and section 1.1164(f),¹⁷ an adjudicatory hearing will not be designated unless Licensee presents a substantial and material question of fact. Further,

⁷ See *Regulatory Fee Filing Window is Extended to Friday, September 27, 2019*, Public Notice (rel. Sept. 23, 2019), 2019 WL 4948565 (OMD Sep. 23, 2019).

⁸ 47 U.S.C. § 159A(c)(1); 47 U.S.C. § 159A(c)(1) (2017). 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, modified section 9 of the Act and added a new section 9A. Prior to October 1, 2018, when the RAY BAUM'S Act became effective, section 9(c)(1) set forth the penalties for late payment of regulatory fees. As amended by the RAY BAUM'S Act, section 9A(c)(1) now sets forth those penalties.

⁹ 47 CFR §§ 1.1157(c)(1), 1.1164.

¹⁰ 31 U.S.C. § 3717; 47 CFR § 1.1940.

¹¹ The Commission's records also show that Licensee and its affiliate, S.M. Radio Inc., share the same Tax Identification Number (TIN), and that S.M. Radio Inc. has unpaid regulatory fee debt of \$1,181.25 for FY 2007, and \$1,368.75 for FY 2009. Under the Commission's rules, because the entities share one TIN, each will remain on red light until all of their combined debt is paid in full or arrangements satisfactory to the Commission have been made to pay the parties' debt. 47 CFR § 1.1910(a) (providing that applications "will be examined to determine if the applicant has paid the appropriate application fee, appropriate regulatory fees, is delinquent in its debts owed the Commission, or is debarred from receiving Federal benefits: and explaining that "fee payments, delinquent debt, and debarment will be examined based on the entity's taxpayer identifying number (TIN), supplied when the entity acquired or was assigned an FRN"). See also *Amendment of Parts 0 and 1 of the Commission's Rules*, Report and Order, 19 FCC Rcd 6540, n. 15 (2004) ("delinquent debt attributable to the same TIN will trigger our red light rule"); *Important Notice to Entities Delinquent in Debt Owed to the FCC*, Public Notice, 2004 FCC LEXIS 5174 (2004) ("[W]hen an application ... is filed, the FCC Registration Number (FRN) will be checked to determine if the entity or person is delinquent in debt owed to the Commission. Multiple FRNs associated with a Tax Payer Identification Number will be included in the red-light check; and if the TIN is found to have delinquent debt - your application will receive a red-light.").

disposition of any adjudicatory hearing will be based upon written evidence only, and Licensee will bear the burden to introduce evidence and to provide proof in any such hearing.¹⁸

7. To the extent that Licensee 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,¹⁹ Consolidated Radio, 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 2016, FY 2017, FY 2018 and FY 2019, **OR SHOW CAUSE** to the Commission within sixty (60) calendar days of the date of this Order why the regulatory fee debt owed by Licensee is 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.
New York, NY 10045

(BNF) Beneficiary: FCC
Account #: 27000001
OBI Field (skip one space between each information item)

Consolidated Radio, Inc., must provide the Payer FRN (if different than the FRN referenced

¹² See 31 U.S.C. § 3711(g); 31 CFR §§ 285.12(c) & 901.1; 47 CFR § 1.1917.

¹³ 47 U.S.C. § 159A(c)(4). As noted, *supra* at note 6, the RAY BAUM'S Act modified section 9 of the Act and added a new section 9A. Prior to October 1, 2018, when the RAY BAUM'S Act became effective, section 9(c)(3) authorized the Commission to revoke "any instrument of authorization held by any entity that has failed to make payment of a regulatory fee." 47 U.S.C. § 159(c)(3) (2017). As amended by the RAY BAUM's Act, section 9A(c)(4) now authorizes such action.

¹⁴ 47 CFR § 1.1164(f).

¹⁵ 47 CFR § 1.1164(a).

¹⁶ The Commission may waive, reduce, or defer payment of fee debt 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).

¹⁷ 47 U.S.C. § 159A(c)(4)(C)(i); 47 CFR § 1.1164(f)(1).

¹⁸ 47 U.S.C. § 159A(c)(4)(C)(ii); 47 CFR § 1.1164(f)(2).

¹⁹ 47 U.S.C. § 159A(c)(4); 47 CFR §§ 0.61, 0.283, 1.1164(f).

above) and a contact phone number.

Consolidated Radio, 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 on the same day the wire transfer is initiated.

10. **IT IS FURTHER ORDERED** that Consolidated Radio, 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>. When completing the FCC Form 159, Consolidated Radio, 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): 1626 (for FY 2016), 1726 for FY 2017, 1826 (for FY 2018) and 1926 (for FY 2019).

11. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by registered mail, return receipt requested, to Consolidated Radio, Inc, PO Box 252, McAllen, TX 78505, and its counsel, Lauren Lynch Flick, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW, Washington, DC 20037.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau

Mark Stephens, Managing Director
Office of Managing Director