



Federal Communications Commission  
Washington, D.C. 20554

February 15, 2008

**DA 08-385**

*In Reply Refer to:*

1800B3-KAW

Released: February 15, 2008

John S. Neely, Esquire  
6900 Wisconsin Avenue  
Suite 704  
Bethesda, MD 20815

Re: WMER(AM), Meridian, MS  
Michael H. Glass  
Facility ID # 48542  
File No. BR-20040127AEI  
BR-20060426AAJ

Dear Mr. Neely:

The staff has under consideration the referenced applications of Michael H. Glass (the "Licensee") for renewal of license for Station WMER(AM), Meridian, Mississippi. For the reasons set forth below, we deem filed the renewal application filed on January 27, 2004 (the "Renewal Application"), dismiss as moot the renewal application filed on April 26, 2006, and assess the Licensee a 25 percent late-fee penalty charge. Furthermore, we grant, contingent on the timely payment of the requisite filing fee and penalty, the Renewal Application.

*Background.* Section 73.3539(a) of the Commission's Rules (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>1</sup> An application for renewal of WMER(AM)'s license should have been filed by February 1, 2004. No such application was successfully filed, and the Station's license expired on June 1, 2004. In fact, the licensee did not properly file a license renewal application for WMER(AM) until April 26, 2006. It also filed a request for special temporary authorization ("STA") to continue station operations pending consideration of this ostensibly untimely license renewal application on May 2, 2006.<sup>2</sup> The staff granted the STA Request on July 20, 2006.<sup>3</sup> The STA was to expire on January 20, 2007. On January 12, 2007, the Licensee filed a timely request for extension of the STA,<sup>4</sup> which remains pending.

In the STA Request, the Licensee explains that it originally filed the license renewal application on January 27, 2004. However, the renewal application appeared as "Ready" but had not been "Filed" in the Commission's CDBS filing system, because the Licensee did not associate the proper filing fee with

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<sup>1</sup> 47 C.F.R. § 73.3539(a).

<sup>2</sup> See File No. BLSTA-20060502AEL (the "STA Request").

<sup>3</sup> Letter to Mr. John S. Neely, Esquire, Ref. 1800B3 (Chief, Audio Division, Media Bureau, Jul. 20, 2006).

<sup>4</sup> See File No. BLSTA-20070112AIO.

the application.<sup>5</sup> The Licensee states that it then filed a second license renewal application – with the appropriate filing fee – and the STA Request.

*Discussion.* We have reviewed the record in this case and the Commission’s data bases, and we find that the Licensee did in fact tender a license renewal application for WMER(AM) on January 27, 2004, but failed to pay the proper filing fee amount. Section 1.1116(b) of the Rules<sup>6</sup> sets forth the procedures for processing applications submitted without required fees. Specifically, a filer is billed the fee amount due plus a 25 percent penalty if the application is inadvertently forwarded to Commission staff for substantive review and the discrepancy is not discovered until after 30 calendar days from receipt of the filing. Section 1.1116(b) antedates electronic application filing, when fee processing and substantive review were performed by separate Commission staff. Thus, under current electronic application filing procedures, the January 2005 submission was never “forwarded to Commission staff for substantive review.” To the extent that Section 1.1116(b), both as written and as originally conceived, provides that the Commission’s recourse, once 30 days have elapsed from the date an application is submitted with an incorrect fee, is to retroactively bill the applicant and impose the 25 percent penalty,<sup>7</sup> we will do so here.

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<sup>5</sup> CDBS assigned this submission the number “20040127AEI.” The filing fee for license renewal applications for commercial FM stations when the Renewal Application was filed was \$150.00. *See* 47 C.F.R. § 1.1104 (2005). In a subsequent pleading filed on August 6, 2007, the Licensee explains that:

Glass filed a timely WMER license renewal application in January 2004 (ARN-20040127AEI) without the assistance of counsel. In conjunction therewith, Glass remitted a \$600 filing fee upon the recommendation of the station’s consulting engineer. In February 2005, concerned that the renewal application had not been accepted for filing, the consulting engineer advised that the \$600 remittance was excessive; that Glass should have remitted \$145 license renewal application filing fee; and that remitting the correct amount might resolve the matter. In response, Glass promptly remitted a \$145 payment. Thereafter, Revenue and Receivables returned the \$145 payment on the basis that a license renewal application filing fee had increased to \$150 in September 2004. Glass remitted the \$150 fee promptly in further reply and the Commission deposited and retained this fee.

The Commission has no record of receiving the \$600 fee the Licensee states that it originally tendered with the Renewal Application.

<sup>6</sup> 47 C.F.R. § 1.1116(b).

<sup>7</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 fast 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% penalty).

*Conclusion/Actions.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.<sup>8</sup> That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>9</sup> Apart from the filing irregularities discussed above, we have no record of operational violations by Licensee. Further, we find that Station WMER(AM) served the public interest, convenience, and necessity during the subject license term.

As discussed above, the \$150.00 fee required for a license renewal application was not submitted with the January 27, 2004, application. Accordingly, pursuant to Section 1.1116(b) of the Rules, Michael H. Glass will be assessed a penalty charge equal to 25 percent of the filing fee. Therefore, Michael H. Glass will be billed a total of \$187.50 under separate cover.

Accordingly, pursuant to Section 309(k) of the Communications Act of 1934, as amended, IT IS ORDERED, that the license renewal application of Michael H. Glass for Station WMER(AM), Meridian, Mississippi filed on January 27, 2004, (File No. BR-20040127AEI) IS DEEMED FILED. IT IS FURTHER ORDERED, that the license renewal application filed on April 26, 2006 (File No. BR-20060426AAJ) IS DISMISSED AS MOOT. IT IS FURTHER ORDERED, that the January 27, 2004, license renewal application IS GRANTED contingent on timely payment of the application fee and assessed penalty charge and IS SUBJECT to rescission for failure to make a timely payment.<sup>10</sup>

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Michael H. Glass

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<sup>8</sup> 47 U.S.C. § 309(k).

<sup>9</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

<sup>10</sup> See 47 C.F.R. § 1.1116(b) ("Any Commission action taken prior to timely payment of these charges is contingent and subject to rescission.")