



Federal Communications Commission  
Washington, D.C. 20554

February 15, 2008

**DA 08-386**

*In Reply Refer to:*

1800B3-KAW

Released: February 15, 2008

Jeffery M. Jennings  
693 North 400 West  
St. George, UT 84777

Re: K276DA, Cedar City, UT  
Jeffery M. Jennings  
Facility ID # 40851  
File No. BRFT-20050531AFW  
BRFT-20070912ABR

Dear Mr. Jennings:

The staff has under consideration the referenced applications of Jeffery M. Jennings (the "Licensee") for renewal of license for FM translator Station K276DA, Cedar City, Utah. For the reasons set forth below, we deem filed the renewal application filed on May 31, 2005 (the "Renewal Application"), dismiss as moot the renewal application filed on September 12, 2007, 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 K276DA's license should have been filed by June 1, 2005. No such application was successfully filed, and the Station's license expired on October 1, 2005. In fact, the Licensee did not properly file a license renewal application for K276DA until September 12, 2007. It also filed a request for special temporary authorization ("STA") to continue station operation pending consideration of this ostensibly untimely license renewal application on September 19, 2007.<sup>2</sup> The staff granted the STA Request on November 29, 2007.<sup>3</sup>

In the STA Request, the Licensee explains that it originally filed the license renewal application on May 31, 2005. 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 the application.<sup>4</sup> The Licensee states that it then filed a second license renewal application – with the appropriate filing fee – and the STA Request.

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<sup>1</sup> 47 C.F.R. § 73.3539(a).

<sup>2</sup> See File No. BLSTA-20070919AAB (the "STA Request").

<sup>3</sup> Letter to Mr. Jeffery M. Jennings., Ref. 1800B3 (Chief, Audio Division, Media Bureau, Nov. 29, 2007).

<sup>4</sup> CDBS assigned this submission the number "20050531AFW." 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).

*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 K276DA on May 31, 2005, but failed to pay the requisite filing fee. Section 1.1116(b) of the Rules<sup>5</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 no fee, is to retroactively bill the applicant and impose the 25 percent penalty,<sup>6</sup> we will do so here.

*Conclusion/Actions.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.<sup>7</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>8</sup> Apart from the filing irregularities discussed above, we have no record of operational violations by Licensee. Further, we find that FM translator Station K276DA 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 May 31, 2005, application. Accordingly, pursuant to Section 1.1116(b) of the Rules, Jeffery M.

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<sup>5</sup> 47 C.F.R. § 1.1116(b).

<sup>6</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).

<sup>7</sup> 47 U.S.C. § 309(k).

<sup>8</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).

Jennings will be assessed a penalty charge equal to 25 percent of the filing fee. Therefore, Jeffery M. Jennings 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 Jeffery M. Jennings for FM translator Station K276DA, Cedar City, Utah filed on May 31, 2005, (File No. BRFT-20050531AFW) IS DEEMED FILED. IT IS FURTHER ORDERED, that the license renewal application filed on September 12, 2007 (File No. BRFT-20070912ABR) IS DISMISSED AS MOOT. IT IS FURTHER ORDERED, that the May 31, 2005, 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>9</sup>

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>9</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.”)