

Before the  
Federal Communications Commission  
Washington, D.C. 20554

## PUBLIC NOTICE

Released: August 11, 1992

FEE DECISIONS OF THE MANAGING  
DIRECTOR AVAILABLE TO THE PUBLIC

The Managing Director is responsible for fee decisions in response to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. On a monthly basis, a public notice is released and the entire text of these fee decisions is published in the FCC Record.

The decisions are placed in General Docket 86-285 and are available for public inspection. A copy of the decision is also placed in the appropriate docket, if one exists.

The following Managing Director fee decisions are released for public information:

**Adams, C.K. d/b/a Abilene Community Radio** - Request for refund of a hearing fee for a FM station at Amarillo, Texas - **Granted** (July 29, 1992).

**Adams, C.K. d/b/a Westwind Two** - Request for refund of a hearing fee for a FM station at Amarillo, Texas - **Granted** (July 29, 1992).

**Alexsii Corporation** - Petition for Reconsideration for a new FM station at Temecula, California - **Denied** (July 27, 1992).

**Boyle, Donna Haseloff** - Request for refund of a hearing fee for a new FM broadcast station at Telluride, Colorado - **Granted** (July 13, 1992).

**Broadcasting Systems, Inc.** - Request for refund of a filing fee for a LPTV station in Phoenix, Arizona - **Denied** (July 20, 1992).

**Button, David T. and Ann D.G.** - Request for refund of a hearing fee for a new FM broadcast station in Canton, New York - **Granted** (July 27, 1992).

**Cincinnati Bell Telephone** - Request for refund of a filing fee for waiver of Part 69 - **Denied** (July 07, 1992).

**Cornick, James Killinger** - Request for refund of a hearing fee for a new FM station at Marion, Virginia - **Granted** (July 29, 1992).

**DMR Media, Inc.** - Request for refund of a hearing fee for a new FM broadcast station at Morris, Illinois - **Granted** (July 07, 1992).

**Delmarva Broadcast Service General Partnership** - Request for refund of a fee - **Granted** (July 20, 1992).

**Desert Rock Limited Partnership** - Request for refund of a hearing fee for a new FM station at Healdsburg, California - **Granted** (July 13, 1992).

**EH Communications, Inc.** - Request for reinstatement - **Denied** (July 20, 1992).

**Great American Communications, Inc.** - Request for refund of a hearing for a new FM station at Manahawkin, New Jersey - **Granted** (July 27, 1992).

**Imbragulo, Bobbye** - Request for refund of a hearing for a new FM station at Pearl, Mississippi - **Granted** (July 07, 1992).

**Jersey Devil Broadcasting Company** - Request for refund of a hearing for a new FM station at Manahawkin, New Jersey - **Granted** (July 28, 1992).

**Koor Communications, Inc.** - Request for refund of a hearing fee for a radio station at New London, New Hampshire - **Denied** (July 29, 1992).

**Macon County Broadcasting, Inc.** - Petition for Reconsideration for a new FM station in Lafayette, Tennessee - **Denied** (June 30, 1992).

**Mardirossian, Aris** - Request for refund of a hearing fee for a new FM station at Ocean City, Maryland - **Granted** (July 27, 1992).

**Platte Broadcasting Co., Inc.** - Petition for reconsideration for a new FM station at Plattsmouth, Nebraska - **Denied** (July 21, 1992).

**Rocky Mount Broadcasting** - Request for refund of a hearing fee for a new FM station at Greenville, Georgia - **Granted** (July 29, 1992).

**Scott County Communications, Inc.** - Request for refund of a hearing fee for a new FM station at Stamping Ground, Kentucky - **Granted** (July 20, 1992).

**Sorenson Broadcasting Corporation** - Request for refund of a filing fee for a AM station at Red Wing, Minnesota - **Granted** (July 20, 1992).

**Tri-State Broadcasting** - Request for refund of a hearing fee for a new FM station at Asbury, Iowa - **Granted** (July 27, 1992).

**NOTE: ANY QUESTIONS REGARDING THIS REPORT SHOULD BE DIRECTED TO THE PREPARER, CLAUDETTE E. PRIDE, CHIEF, FEE SECTION ON (202)632-0241.**

FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

ORIGINAL  
FILE

OFFICE OF  
MANAGING DIRECTOR

JUL 29 1992

Barbara L. Waite, Esquire  
Venable, Baetjer, Howard  
& Civiletti  
1201 New York Avenue, N.W.  
Suite 1000  
Washington, D.C. 20005-3917

*Jh. 285*

Dear Ms. Waite:

This is in response to your request for a hearing fee refund submitted on behalf of Nadine P. Richardson, d/b/a Rocky Mount Broadcasting (Rocky), former applicant for a construction permit for a new FM station on Channel 239A at Greenville, Georgia.

You state that Rocky's application was designated for hearing with that of Orchon Broadcasting Company, Inc. You further state that the parties reached a settlement agreement to resolve this comparative hearing for which approval was sought from the presiding Administrative Law Judge on or before April 30, 1992, the date established for entering Notices of Appearance. You now request that Rocky's hearing fee be refunded.

Section 1.1111(b)(4) of the Commission's rules provides for a hearing fee refund in cases where a settlement agreement, filed by the Notice of Appearance deadline, provides for the dismissal of all but one of the applicants and the surviving application is immediately grantable or if matters specified in the designation order can be deleted. 47 C.F.R. §1.1111(b)(4). In this case, a settlement agreement was filed prior to the Notice of Appearance deadline and approved on June 1, 1992.

Accordingly, your request is granted. A check for \$6,760.00, payable to the maker of the original check, will be forwarded to you at the earliest practicable time. If you have any questions about this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

*Marilyn J. McDermott*

Marilyn J. McDermott  
Associate Managing Director  
for Operations

*Kathy*

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RECEIVED  
JUN 16 1992  
DATE FAX

VENABLE, BAETJER, HOWARD & CIVILETTI JUN 16 1992  
ATTORNEYS AT LAW

BALTIMORE, MD  
MCLEAN, VA  
ROCKVILLE, MD  
TOWSON, MD  
BEL AIR, MD

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

SUITE 1000  
1201 NEW YORK AVENUE, N. W.  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

RICHARD M. VENABLE (1839-1910)  
EDWIN G. BAETJER (1868-1945)  
CHARLES MCH. HOWARD (1870-1942)

WRITER'S DIRECT NUMBER IS  
202/962-4811

June 16, 1992

The Honorable Andrew S. Fishel  
Managing Director  
Federal Communications Commission  
1919 M Street, N.W., Room 852  
Washington, DC 20554

RE: Request for Hearing Fee Refund -- FCC File No.  
BPH-901222MG

Dear Mr. Fishel:

The application of Nadine P. Richardson, d/b/a Rocky Mount Broadcasting, for a construction permit for a new FM station to serve Greenville, Georgia, on Channel 239A, was designated for hearing under MM Docket No. 92-63 with that of Orchon Broadcasting Company, Inc. by Order adopted April 13, 1992. The parties reached a Settlement Agreement to resolve this comparative proceeding, for which approval was sought from the Presiding Judge on or before the date for entering Notices of Appearance in this proceeding, i.e., on April 30, 1992. Consequently, pursuant to Section 1.1111(b)(4) of the Commission's Rules, **Nadine P. Richardson, d/b/a Rocky Mount Broadcasting, seeks a refund of its hearing fee, submitted on July 12, 1991.**

Copies of the Hearing Designation Order and of the Memorandum Opinion and Order granting the Joint Petition for Approval of Settlement Agreement and Orchon Broadcasting Company, Inc.'s application are attached hereto. If there are any questions, please do not hesitate to contact me. Thank you for your assistance.

Sincerely yours,

Barbara L. (Pixie) Waite

BLW/arp

Enclosures (2)

cc: Ms. Nadine Richardson

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 92M-633  
02973

In re Applications of ) MM DOCKET NO. 92-63  
)  
NADINE P. RICHARDSON d/b/a )  
ROCKY MOUNT BROADCASTING ) File No. BPH-901221MG  
)  
ORCHON BROADCASTING COMPANY, INC. ) File No. BPH-901221MI  
)  
For Construction Permit for a )  
New FM Station on Channel 239A )  
in Greenville, Georgia )

MEMORANDUM OPINION AND ORDER

Issued: June 1, 1992 ; Released: June 2, 1992

1. Under consideration are a "Joint Motion for Approval of Settlement Agreement" filed by Orchon Broadcasting Company (Orchon) and Nadine P. Richardson d/b/a Rocky Mount Broadcasting (Richardson) on April 30, 1992; "Supplement to Joint Motion for Approval of Settlement Agreement" filed by Richardson on May 4, 1992; "Further Supplement to Joint Motion for Approval of Settlement Agreement" filed by Richardson on May 8, 1992; and "Mass Media Bureau's Comments on Joint Motion for Approval of Agreement" filed by the Bureau on May 14, 1992.

2. Orchon and Richardson have entered into an agreement to resolve this proceeding and have submitted such agreement for approval. Pursuant thereto, Richardson has agreed to dismiss her application in consideration of the payment by Orchon of \$16,860.90. The dismissal of the Richardson application will moot the comparative issue. Because there are no basic issues outstanding with respect to Orchon, its application may be immediately granted.<sup>1</sup>

3. The applicants have complied with the requirements of Sections 73.3525(a)(1) and (a)(2) of the Commission's rules, and Section 311(c)(3) of the Communications Act of 1934, as amended. Specifically, a copy of the

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<sup>1</sup> By Order of the Presiding Judge (FCC 92M-604), released May 27, 1992, the contingent environmental issue specified against Orchon was DELETED.

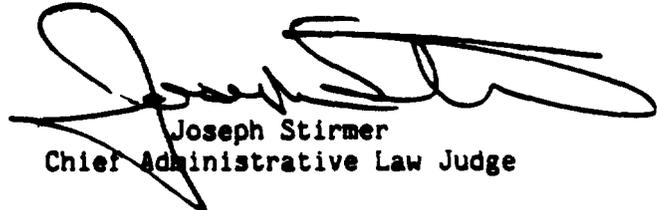
settlement agreement has been filed, both applicants have demonstrated that approval of the settlement agreement would serve the public interest, and that neither application was filed for the purpose of reaching or carrying out a settlement agreement. Moreover, it has been established that the \$16,860.90 to be paid to Richardson is not in excess of legitimate and prudent expenses. Thus, approval of the agreement will serve the public interest.

Accordingly, IT IS ORDERED that the "Joint Motion for Approval of Settlement Agreement" filed by Orchon Broadcasting Company and Nadine P. Richardson d/b/a Rocky Mount Broadcasting on April 30, 1992, IS GRANTED; the agreement IS APPROVED; payment in the amount of \$16,860.90 IS AUTHORIZED; the application of Nadine P. Richardson d/b/a Rocky Mount Broadcasting (File No. BPH-901221MG) IS DISMISSED, with prejudice; the application of Orchon Broadcasting Company, Inc. (File No. BPH-901221MI) for a construction permit for a new FM station on Channel 239A in Greenville, Georgia, IS GRANTED;

IT IS FURTHER ORDERED that the prehearing conference to be held June 12, 1992, and the hearing scheduled to commence August 26, 1992, ARE CANCELLED;

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Joseph Stirmer  
Chief Administrative Law Judge

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 92-63

In re Applications of

NADINE P. RICHARDSON File No. BPH-901221MG  
d/b/a ROCKY MOUNT  
BROADCASTING  
(hereafter "RMB")

ORCHON BROADCASTING File No. BPH-901221MI  
COMPANY, INC.  
(hereafter "Orchon")

For Construction Permit  
for a New FM Station on  
Channel 239A (95.7 MHz)  
in Greenville, Georgia.

#### HEARING DESIGNATION ORDER

Adopted: March 23, 1992; Released: April 13, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.<sup>1</sup>

2. *Preliminary matters.* RMB, on April 10, 1991, filed a Petition to Deny against Orchon's application. According to RMB, it is impossible to determine whether Orchon's proposal adequately covers the community of license. RMB asserts that this is so, because Orchon's coverage map is smudged, making it impossible to clearly determine the community's boundaries. On April 22, 1991, Orchon filed an Opposition to RMB's Petition, noting that the original copy of its application adequately depicts the requisite boundaries. An examination by the Commission staff of that copy reveals that it does, in fact, clearly and legibly delineate the city boundary of Greenville. Thus, the map satisfies the FM "hard look" processing requirements. See *Richard Culpepper*, 5 FCC Rcd 2983 (1990).<sup>2</sup> Accordingly, RMB's petition will be denied below.

3. RMB submitted an amendment on November 8, 1991, addressing the issue of RF exposure to workers on its proposed tower. This amendment was filed after the designated period for filing amendments as of right. The defect which this amendment seeks to cure is classified as a "grantability" defect, and thus would require the designation of an environmental issue against RMB. The amendment has been studied by the staff and found to

specify an appropriate means for protecting persons authorized to be on the RMB tower. The amendment will therefore be accepted for purposes of administrative convenience, as it eliminates the necessity for a hearing on this issue. RMB will, however, be permitted no comparative advantage as a result of this amendment.

4. *Orchon.* An engineering study base upon OST Bulletin No. 65, 1985 entitled "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation" reveals that Orchon did not sufficiently address the issue of potential occupational hazards caused by the proposed facility. Therefore, Orchon must submit, within thirty days of the date of this order, an amendment that explains what steps will be taken to limit RF exposure to workers authorized access to the tower site. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the amendment, that Orchon's proposal will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted and the judge shall thereafter not consider the environmental effects of the proposal. See 47 C.F.R. § 1.1308(d).

5. Orchon petitioned for leave to amend its application on December 4, 1991. The accompanying amendment was filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, and comparative advantage resulting from the amendments will be disallowed.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Orchon in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

<sup>1</sup> An application filed by Greenville Communications, Inc. (File No. BPH-901221MH) was dismissed on August 29, 1991 for failure to pay the hearing fee.

<sup>2</sup> See *Amendment of Sections 73.3572 and 73.3573 Relating to Processing of FM and TV Broadcast Applications*, 50 Fed. Reg. 19,936 (May 13, 1985).

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3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED. That the petition to deny filed by RMB on April 10, 1991, IS DENIED.

9. IT IS FURTHER ORDERED. That, in accordance with paragraph 4 above, Orchon shall submit an amendment to the presiding Administrative Law Judge describing the steps it will take to limit RF exposure to workers authorized access to the tower site.

10. IT IS FURTHER ORDERED. That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington D.C. 20554.

11. IT IS FURTHER ORDERED. That, to avail themselves of the opportunity to be heard, the applicants and any party, respondent herein shall, pursuant to Section 1.221 (c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required material may constitute a failure to prosecute, resulting in dismissal of the application. See generally *Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd. 3403 (1991).

12. IT IS FURTHER ORDERED. That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief  
Audio Services Division  
Mass Media Bureau