

FEDERAL COMMUNICATIONS COMMISSION

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

PUBLIC NOTICE

Released: September 1, 1992

**ORIGINAL
FILE**

92-50

**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:

Bakcor Broadcasting, Inc. - Petition for reconsideration of an application for a radio station at Abilene, Texas - Reinstated (June 26, 1992).

Broadcast Properties of La Crosse, Inc. - Request for refund of a hearing fee at La Crosse, Wisconsin - Granted (August 20, 1992).

Clemson Broadcasting, Inc. - Request for refund of hearing fee for a new FM radio broadcast station at Clemson, South Carolina - Granted (August 10, 1992).

Golden Corners Broadcasting, Inc. - Request for refund of hearing fee for a new FM station at Clemson, South Carolina - Granted (August 10, 1992).

Idas, Sam - Request for refund of hearing fee for a new commercial FM station at Thousand Palms, California - Granted (August 10, 1992).

Orchon Broadcasting Company - Request for refund of hearing fee for a new FM station at Greenville, Georgia - Granted (August 10, 1992).

Orkus, Judith O. and Larry R. - Request for refund of a hearing fee for a new FM radio broadcast station at Port Matilda, Pennsylvania - Denied (August 20, 1992).

P. V. R. Communications, L.P. - Request for refund of hearing fee for a new FM radio broadcast station at Martinez, Georgia - Granted (July 30, 1992).

Rochlis, Jeffrey - Request for refund of hearing fee for a new FM station at Thousand Palms, California - Granted (August 10, 1992).

WSMK - Request for refund of a hearing fee for a new FM radio station at Essex, New York - Granted (August 20, 1992).

NOTE: ANY QUESTIONS REGARDING THIS REPORT SHOULD BE DIRECTED TO THE PREPARER, CLAUDETTE E. PRIDE, CHIEF, FEE SECTION ON (202)6320241.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

AUG 10 1992

OFFICE OF
MANAGING DIRECTOR

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

92-50 /

Dear Ms. Waite:

This is in response to your request for a refund of the hearing fee submitted by Golden Corners Broadcasting, Inc. (Golden) in connection with its application for a new FM station at Clemson, South Carolina.

Golden and the competing applicants filed a settlement agreement with the presiding Administrative Law Judge (ALJ) prior to the time for filing Notices of Appearance in the proceeding. Pursuant to the terms of the agreement, the ALJ dismissed the competing applicants and granted Golden's application, after deleting an air hazard issue specified against Golden in the designation order. See Golden Corners Broadcasting, Inc., MM Docket No. 92-50, FCC 92M-737, released July 6, 1992; see also Golden Corners Broadcasting, Inc., MM Docket No. 92-50, FCC 92M740, released July 6, 1992.

Section 1.1111(c)(4) of the Commission's rules provides that a hearing fee will be refunded whenever the competing applicants in a proceeding file a settlement agreement with the presiding ALJ prior to the time for filing Notices of Appearance and the application is "immediately grantable" due to the deletion of any outstanding issues designated against the surviving applicant. 47 C.F.R. § 1.1111(c)(4). In the instant case, the presiding judge deleted Golden's outstanding environmental issue and, therefore, Golden is entitled to a refund.

Accordingly, your request is granted. A check, drawn in the amount of \$6,760.00 and made payable to Golden Corners Broadcasting, Inc., will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,


Marilyn J. McDermett
Associate Managing Director
for Operations

Jm

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11/2/92
NIC-center

RECEIVED

VENABLE, BAETJER, HOWARD & CIVILETTI
ATTORNEYS AT LAW

JUL - 9 1992

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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

SUITE 1000
1201 NEW YORK AVENUE, N. W.
WASHINGTON, D.C. 20005-3917
(202) 962-4800
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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

July 9, 1992

Enclosed

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-901218MH

Dear Mr. Fishel:

The application of Golden Corners Broadcasting, Inc. for a construction permit for a new FM station to serve Clemson, South Carolina, on Channel 285A, was designated for hearing under MM Docket No. 92-50 with those of Fisher Communications of Clemson, Inc. and Clemson Broadcasting, Inc. by Order released 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 May 2, 1992.

Furthermore, although an air hazard issue was designated against Golden Corners Broadcasting, Inc., this issue was deleted by the Presiding Officer by Memorandum Opinion and Order released July 6, 1992, and the application of Golden Corners Broadcasting, Inc., the sole remaining applicant, was granted by Memorandum Opinion and Order released the same date. Consequently, pursuant to Section 1.1111(b)(4) of the Commission's Rules, Golden Corners Broadcasting, Inc. seeks a refund of its hearing fee, submitted on July 12, 1991.

Copies of the Hearing Designation Order and of the Memorandum Opinion and Orders referenced above are attached hereto for convenience of reference. If there are any questions, please do not hesitate to contact me. Thank you for your assistance.

Sincerely yours,

Barbara L. Waite

Barbara L. (Pixie) Waite

BLW/arp

Enclosures (3)

cc: Mr. and Mrs. George F. Clement

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 92-50

If any of the defects listed above are overlooked during the initial review and are found later in the process, the application will be returned as inadvertently accepted for tender and, if resubmitted, will not be accepted *nunc pro tunc*. Return of the application will void the application reference number inadvertently assigned and whatever rights of tender might have been associated with it.

In re Applications of

GOLDEN CORNERS
BROADCASTING, INC.
(Hereafter "GCBI")

File No. BPH-901218MH

FISHER
COMMUNICATIONS
OF CLEMSON, INC.
(Hereafter "Fisher")

File No. BPH-901219MB

CLEMSON
BROADCASTING, INC.
(Hereafter "CBI")

File No. BPH-901219MD

MATT PHILLIPS,
JOEL KAY AND
BEVERLY LOCKRIDGE,
A PARTNERSHIP,
d/b/a FM 104.9
BROADCASTING
(Hereafter "FM 104")

File No. BPH-901218MD
[Dismissed Herein]

For Construction Permit
for a New FM Station on
Channel 285A (104.9 MHZ)
in Clemson, South Carolina

HEARING DESIGNATION ORDER

Adopted: March 3, 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.

2. *Preliminary Matters.* Review of FM 104's application reveals that it has failed to respond to Section VII, Item 1, certification of public notice, in accordance with the provisions of 47 C.F.R. § 73.3580. This omission by FM 104 is considered to be a tenderability defect in accordance with the provisions of Appendix D of the *Report and Order* in MM Docket 84-750, 50 Fed. Reg. 19936 (1985). See *Taber Broadcasting Company*, 4 FCC Rcd 7892 (1989). Appendix D also states that:

Accordingly, the application of FM 104 will be returned as inadvertently accepted for tender.¹

3. *GCBI.* On July 3, 1991 GCBI amended its application to specify a reduced tower height of 73 meters, and clarified that amendment on November 8, 1991. Both amendments were accompanied by the good cause showing required by 47 C.F.R. § 73.3522(a)(2), as GCBI reduced the overall height above ground of the proposed tower structure in order to satisfy FAA concerns. However, the FAA continues to maintain that the proposed site will have Electromagnetic Interference ("EMI") problems. Consequently, an air hazard issue will be added below and the FAA made a party to the proceeding. In addition, GCBI states that it will protect workers engaged in the maintenance and repair in the vicinity of the antenna by reducing or discontinuing operation. Therefore, GCBI complies with the environmental criteria set forth herein. Consequently, the amendments are accepted for filing. However, an applicant may not improve its comparative advantage after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

4. *Fisher.* Fisher proposes to locate its transmitting antenna on a new tower. Our engineering study indicates that the applicant failed to address the matter of how it proposes to resolve any RF exposure to workers on its tower. See 47 C.F.R. § 1.1307(b). Consequently, we are concerned that Fisher may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). See also, *Public Notice* entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 24, 1986). Under the rules, an applicant must determine whether its proposal would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. Section 1.1307 states that an EA must be prepared if the proposed operation would cause exposure to workers or the general public to levels of RF radiation exceeding specific standards. Since Fisher failed to indicate how workers engaged in maintenance and repair would be protected from exposure to levels exceeding the ANSI guidelines, it will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. See generally, OST Bulletin No. 65 (October, 1985) entitled "Evaluating Compliance With FCC-Specified Guidelines For Human Exposure to Radiofrequency Radiation," at 28. Therefore, Fisher will be required to

¹ On April 10, 1991, GCBI filed a petition to deny the application of FM 104. In light of the action taken hereinabove, the

petition will be dismissed as moot.

19. 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.

20. 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 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 materials 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).

21. 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

FCC 92M-737
03330

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

In re Applications of)	MM Docket No. 92-50
)	
GOLDEN CORNERS BROADCASTING, INC.)	File No. BPH-901218MH
)	
FISHER COMMUNICATIONS OF CLEMSON, INC.)	File No. BPH-901219MB
)	
CLEMSON BROADCASTING, INC.)	File No. BPH-901219MD
)	
For Construction Permit for New FM)	
Station on Channel 285A in)	
Clemson, South Carolina)	

MEMORANDUM OPINION AND ORDER

Issued: July 1, 1992

Released: July 6, 1992

1. Golden Corners Broadcasting, Inc. (GCBI) seeks a ruling on a "Motion to Delete Issue Upon Imposition of Condition." They filed their motion on May 8, 1992, and want the air hazard issue that has been designated against them deleted. See DA 92-263 released April 13, 1992, Issue 1.

2. In support, they indicate that they're willing to accept the condition that the Commission customarily imposes in such situations. On May 14, 1992, the Mass Media Bureau supported a grant of GCBI's motion ". . . absent an objection from the Federal Aviation Administration . . ." GCBI's motion stands unopposed.¹

Ruling

3. GCBI's unopposed motion will be granted. They are willing to accept the condition the Commission has imposed on applicants under similar circumstances. See Texas Communications Limited Partnership, 5 F.C.C. Rcd. 5876, 5879 (Rev.Bd. 1990).

4. By accepting the Texas Communications condition, GCBI will take the risk, notwithstanding theoretical computer model predictions, that it can operate without creating an actual hazard to air navigation. Since Clemson,

¹ Any oppositions to GCBI's motion were due on May 21, 1992. No oppositions were filed.

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

FCC 92M-740
03334

In re Applications of)	MM Docket No. 92-50
)	
GOLDEN CORNERS BROADCASTING, INC.)	File No. BPH-901218MH
)	
FISHER COMMUNICATIONS OF CLEMSON, INC.)	File No. BPH-901219MB
)	
CLEMSON BROADCASTING, INC.)	File No. BPH-901219MD
)	
For Construction Permit for New FM)	
Station on Channel 285A in)	
Clemson, South Carolina)	

MEMORANDUM OPINION AND ORDER

Issued: July 1, 1992

Released: July 6, 1992

1. Golden Corners Broadcasting, Inc. (GCBI), Fisher Communications of Clemson, Inc. (Fisher), and Clemson Broadcasting, Inc. (CBI) seek a ruling on: (1) a Joint Petition for Approval of Settlement Agreement; (2) a Supplement to Joint Petition for Approval of Settlement Agreement; and (3) a Joint Amendment of Joint Petition for Approval of Settlement Agreement.

2. They filed the Joint Petition on May 2, 1992, the Supplement on May 8, 1992, and the Joint Amendment on June 26, 1992. The Mass Media Bureau, on May 14, 1992, supported approval of the Joint Petition.

3. These three applicants have settled their differences. Fisher has agreed to dismiss their application. In return GCBI will pay Fisher a minimum of \$7,617.47 and a maximum of \$8,617.47.¹ The additional \$1,000 is for any additional legal expenses Fisher may incur in connection with the Amendment to Settlement Agreement and Amendment to Joint Petition for Approval of Settlement Agreement. If those additional expenses are less than \$1,000 the \$8,617.47 is reduced accordingly.

¹ The \$8,617.47 is exclusive of the hearing fee.

Golden Corners Broadcasting, Inc's application (BPH-901218MH) IS GRANTED subject to the following condition:

"Upon receipt of notification from the Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as is necessary to eliminate the harmful interference. This condition expires after one-year of interference-free operation."

This proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Walter C. Miller
Administrative Law Judge