

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

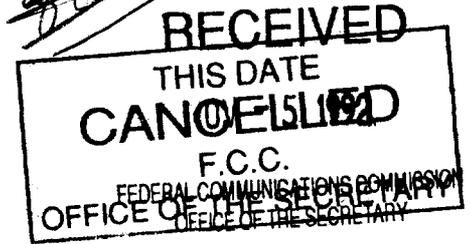
OFFICE OF  
MANAGING DIRECTOR

SEP 30 1992

92-187

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NOV - 4 1992



Roy F. Perkins, Jr., Esq.  
1724 Whitewood Lane  
Herndon, Virginia 22070

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

ORIGINAL  
FILE

Dear Mr. Perkins:

This will respond to your request for refund of a hearing fee filed on behalf of William K. Durst and William L. Faircloth, d/b/a Lexco Radio, in connection with their construction permit application for a new FM station at South Congaree, South Carolina.

You state, and your documentation demonstrates that, prior to designation for hearing, Lexco Radio entered into a settlement agreement with one of its competing applicants. The Hearing Designation Order approved the settlement agreement, and dismissed Lexco Radio's application.

Under the circumstances, since Lexco Radio voluntarily dismissed its application and was not designated for hearing, refund of the hearing fee is appropriate. See 47 C.F.R. §1.1111(c)(2); see also Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 FCC Rcd 157, 158 (1990).

Accordingly, your request is granted. A check, made payable to the maker of the original check and drawn in the amount of \$6,760.00, 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,

A handwritten signature in cursive script that reads "Marilyn J. McDermett".

Marilyn J. McDermett  
Associate Managing Director  
for Operations

*Holly - take your time!  
reasonable, of course*

RECEIVED

AUG 27 1992

*Law Offices*

ROY F. PERKINS, JR.

Federal Communications Commission  
Office of the Secretary

1724 WHITEWOOD LANE  
HERNDON, VA 22070

August 27, 1992

(703) 435-9700

91071781762400

Mr. Andrew S. Fishel, Managing Director  
Federal Communications Commission  
1919 M Street, N. W., Room 852  
Washington, D. C. 20554

**Application for Hearing Fee Refund**

Dear Mr. Fishel

On behalf of William K. Durst and William L. Faircloth, d/b/a Lexco Radio (hereinafter, "Lexco"), applicants for construction permit for a new FM broadcast station at South Congaree, South Carolina, under File No. BPH-910228MB, this letter requests, pursuant to Section 1.1111(b)(2) of the Commission's Rules, refund of the hearing fee paid for their application in the amount of \$6,760.00.

- ✓ Prior to designation for hearing, Lexco entered a settlement agreement with a competing applicant for the same FM channel. The settlement agreement was approved and, pursuant thereto, the application of Lexco was dismissed in the Hearing Designation Order for the remaining applicants for that channel. Pursuant to Section 1.1111(b)(2) of the Rules, the dismissal of Lexco's application in the Hearing Designation Order entitles Lexco to a refund of the hearing fee paid for its application.

In support of this application for refund, the following attachments are submitted herewith:

- A. Copies of (1) the cover letter of counsel submitting the fee payment, date-stamped "FCC/Mellon, Jul 15, 1991", (2) the check of Mr. Durst to the Commission for the hearing fee, and (3) the Form 155 under which the fee was submitted. (The copy of the check also contains a hand-written number below the check; this is the fee payment number for the Lexco hearing fee provided by the Commission's staff to the undersigned counsel).
- B. Copy of the Hearing Designation Order, released August 19, 1992 (DA 92-1077), in re applications of Alexander Snipe, Jr., d/b/a Glory Communications, et al., approving the settlement agreement which Lexco had entered, approving reimbursement of Lexco's expenses reasonably

Mr. Andrew S. Fishel  
August 27, 1992

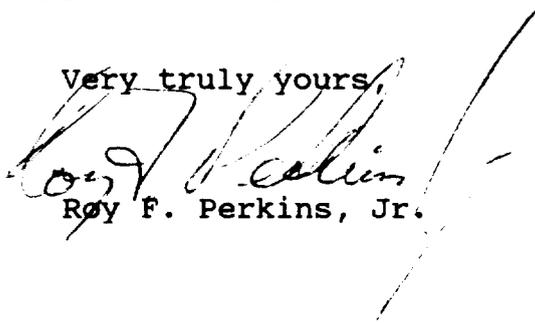
- 2 -

and prudently incurred as provided in the settlement agreement, and dismissing the application of Lexco (Ibid, paras. 2 and 10).

- C. Copy of Attachment 2 submitted in the joint request for approval of the settlement agreement, the Declaration of William K. Durst. It concerns, among other things, the consideration to be paid pursuant to the settlement agreement and, more especially, that it will not exceed the legitimate expenses of Lexco. It is resubmitted here to demonstrate that the expenses of Lexco to be reimbursed by the other party to the settlement agreement are exclusive of the hearing fee paid to the Commission which, as stated in Mr. Durst's Declaration (page 2), it was intended to request the Commission to refund.<sup>1</sup> Thus, refund of the hearing fee as here requested will not result in any payment to Lexco exceeding its expenses reasonably and prudently incurred.

If any question should arise or there is any further information desired in connection with this application, please advise the undersigned counsel.

Very truly yours,



Roy F. Perkins, Jr.

bc: William K. Durst

---

<sup>1</sup> The same also was stated in footnote 4 of the "Joint Request for 1. Approval of Agreement", etc., filed February 4, 1992.

1991 JUL 16 1991

*Law Offices*  
ROY F. PERKINS, JR.

1724 WHITE WOOD LANE  
HERNDON, VA 22070

July 15, 1991

(703) 435-9700

**Please  
DATE STAMP  
AND  
RETURN**

C  
O  
P  
Y

Ms. Donna R. Searcy, Secretary  
Federal Communications Commission  
1919 M Street, N. W.  
Washington, D. C. 20554

Dear Ms. Searcy

On behalf of William K. Durst and William L. Faircloth, d/b/a Lexco Radio, applicants for construction permit for a new FM broadcast station at South Congaree, S. C., under File No. BPH-910228MB, there is submitted herewith the check of William K. Durst, No. 134, dated July 9, 1991, in the amount of \$6,760.00, in payment of the hearing fee.

Very truly yours,

Roy F. Perkins, Jr.

bc: William K. Durst

WILLIAM K. DURST  
RTE 1, BOX 22  
SALUDA, SC 29138

134

July 9, 1991

57-7873  
2539

Pay to the order of The Federal Communications Commission \$ 6760.00  
Six Thousand Seven Hundred Sixty +  $\frac{N.D.}{100}$  ~~DOUBLED~~

**SCU** STATE CREDIT UNION  
COLUMBIA, SOUTH CAROLINA 29902

Hearing Fee

W. K. Durst

⑆ 253978730⑆ 20009007426 0⑆ 0134

# 9107178170220005

Approved by OMB  
3060-0440  
Expires 2/28/93

FEDERAL COMMUNICATIONS COMMISSION  
**FEE PROCESSING FORM**

FOR FCC USE ONLY	
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Please read instructions on back of this form before completing it. Section I MUST be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form must accompany all payments. Only one Fee Processing Form may be submitted per application or filing. Please type or print legibly. All required blocks must be completed or application/filing will be returned without action.

<b>SECTION I</b>													
APPLICANT NAME (Last, first, middle initial) <b>LEXCO RADIO</b>													
MAILING ADDRESS (Line 1) (Maximum 85 characters - refer to instruction (2) on reverse of form) <b>Route 1, Box 22</b>													
MAILING ADDRESS (Line 2) (If required) (Maximum 85 characters)													
CITY <b>Saluda</b>		Federal Communications Commission Office of the Secretary											
STATE OR COUNTRY (if foreign address) <b>South Carolina</b>	ZIP CODE <b>29138</b>	CALL SIGN OR OTHER FCC IDENTIFIER (if applicable) <b>910228MB</b>											
Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in FCC Fee Filing Guides. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.													
(A)	(B)	(C)	FOR FCC USE ONLY										
FEE TYPE CODE	FEE MULTIPLE (if required)	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)											
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M	W	R											
\$	6,760												

<b>SECTION II</b> — To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.													
(A)	(B)	(C)	FOR FCC USE ONLY										
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## Federal Communications Commission

DA 92-1077

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

MM Docket No. 92-184

In re Applications of

Alexander Snipe, Jr. d/b/a      File No. BPH-910228MC  
GLORY COMMUNICATIONS  
(hereafter "Glory")

VALENTINE                      File No. BPH-910228MD  
COMMUNICATIONS, INC.  
(hereafter "Valentine")

William K.                      File No. BPH-910228MB  
Durst and William L.      (DISMISSED HEREIN)  
Faircloth d/b/a LEXCO RADIO  
(hereafter "Lexco")

For Construction Permit  
for a New FM Station on Channel 237A  
in South Congaree, South Carolina

#### HEARING DESIGNATION ORDER

Adopted: August 5, 1992;      Released: August 19, 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. *Joint Settlement Agreement.* On February 4, 1992, Glory and Lexco filed a joint request for approval of settlement agreement, which they supplemented on February 25 and May 5, 1992. Under the terms of the agreement Lexco has agreed to dismiss its application. Separate and apart from Lexco's promise to dismiss is Glory's promise to reimburse Lexco for its legitimate and prudent expenses if Glory is ultimately awarded the construction permit. We have examined the agreement, including the accompanying declarations. Based upon this examination, we find that approval of the agreement would serve the public interest by eliminating a comparative applicant and thus simplifying the hearing, conserving the resources of the Commission and the applicants, and assisting the expeditious inauguration of a new FM broadcast service at South Congaree, South Carolina. We further find that none of the applications was filed for the purpose of reaching or carrying out the agreement, and that no consideration other than that detailed in the agreement has

been directly or indirectly paid or promised. In addition, Lexco has certified and submitted documentation establishing that the consideration to be received (\$9,734.63) will not exceed its legitimate and prudent expenses incurred in preparing, filing, and prosecuting its application. Accordingly, the applicants have complied with the provisions of 47 U.S.C. § 311(c)(3) and 47 C.F.R. § 73.3525. Since all the applicants propose to serve the same community, no § 307(b) questions have been presented and no publication is required. Therefore, we shall grant the joint request and approve the settlement agreement.

3. *Petition to Deny.* On November 19, 1991, Glory filed a petition to deny the Valentine application. A portion of Glory's petition is, in essence, a request for reconsideration of our October 2, 1991 action granting Valentine's petition for reconsideration and reinstating its application *nunc pro tunc*. In this regard, the reinstatement of the Valentine application was an interlocutory staff action and is thus not subject to reconsideration. See 47 C.F.R. § 1.106(a)(1). Accordingly, this portion of the petition will be dismissed. The remainder of the petition is essentially a petition to specify issues, which does not properly lie at the pre-designation stage and will therefore be dismissed. Nevertheless, Glory may raise this matter anew post-designation. See *Revised Processing of Broadcast Applications*, 72 FCC 2d 202, 213-15 (1979).<sup>2</sup>

4. *Divesiture.* Alexander Snipe, Jr., the sole principal of Glory, is also the General Sales Manager of WWDM(FM), Sumter, South Carolina. However, he has indicated his intent to terminate his relationship with WWDM(FM) in the event of grant of Glory's application. Accordingly, in the event of grant of Glory's application, Alexander Snipe, Jr. will be required to sever all connection with WWDM(FM) prior to the commencement of program test authority.

5. *Environmental.* Our engineering study based upon OST Bulletin No. 65, October, 1985 entitled "Evaluating Compliance with Specific Guidelines for Human Exposure to Radiofrequency Radiation" reveals that Glory and Valentine did not address the matter of how it would protect workers on their respective towers from RF radiation exposure. See 47 C.F.R. § 1.1307(b). Consequently, we are concerned that Glory and Valentine 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, applicants must determine whether their proposals 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. 47 C.F.R. § 1.1307(b) states that an EA must be prepared if the proposed operation would cause exposure to workers exceeding specific standards. Since Glory and Valentine failed to indicate

<sup>1</sup> On October 2, 1991, the Chief, Audio Services Division granted the petition for reconsideration filed May 6, 1991 by Valentine Communications, Inc. and reinstated its application *nunc pro tunc*.

<sup>2</sup> Also, we note that Glory's petition alleges that page 24,

Section VII of Valentine's application, which contains both the public notice and tower site certifications, was missing. However, staff review reveals that page 24 was contained in the original application when filed.

how workers engaged in maintenance and repair on the tower would be protected from exposure to levels exceeding the ANSI guidelines, the applicants will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. See generally OST Bulletin No. 65, *supra*, at 28. Accordingly, Glory and Valentine will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. 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 Environmental Assessments, that the proposal will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted, and the presiding judge shall thereafter not consider the environmental effects of the respective proposals. See 47 C.F.R. § 1.1308(d).

6. *Amendment.* On October 24, 1991, Valentine filed a petition for leave to amend. We will grant the petition and accept the amendment pursuant to 47 C.F.R. § 1.65. Nevertheless, since the petition was filed after the expiration of the amendment-of-right period, no comparative upgrading will be permitted as a result of the amendment.

7. *Comparative Coverage.* Data submitted by the applicants indicate there would be a significant difference in the size of the populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

8. *Conclusion.* Except as may be indicated by any issues specified below, Glory and Valentine 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.

9. 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 Glory or Valentine 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. §§ 1.1301-1.1319.
2. To determine which of the proposals would, on a comparative basis, best serve the public interest.
3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That the joint request for approval of settlement agreement filed on February 4 (and supplemented on February 25 and May 5), 1992 by Glory and Lexco IS GRANTED; the settlement agreement IS APPROVED; and the application of Lexco IS DISMISSED.

11. IT IS FURTHER ORDERED, That the Glory "Petition to Deny or Dismiss" the Valentine application IS HEREBY DISMISSED, as indicated in paragraph 3.

12. IT IS FURTHER ORDERED, That in the event of the grant of Glory's application, Alexander Snipe, Jr. will be required to divest himself of all interests in and sever all connections with Station WWDM(FM) prior to the commencement of program test authority.

13. IT IS FURTHER ORDERED, That in accordance with paragraph 5 hereinabove, Glory and Valentine shall submit the environmental assessments required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

14. IT IS FURTHER ORDERED, That the petition for leave to amend filed on October 24, 1991 by Glory IS GRANTED, and the amendment ACCEPTED, to the extent indicated in paragraph 6.

15. 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 also 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.

16. 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 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).

17. 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

Attachment C

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

In re Application of	)	
	)	
William K. Durst and	)	File No. BPH-910228MB
William L. Faircloth,	)	
d/b/a <b>LEXCO RADIO</b>	)	
	)	
For Construction Permit for a	)	
New FM Broadcast Station at	)	
South Congaree, S. C.	)	

**DECLARATION RE SETTLEMENT AGREEMENT**

My name is William K. Durst. I am a partner in the above-styled application of William K. Durst and William L. Faircloth, d/b/a Lexco Radio (hereinafter, "Lexco"), for construction permit for a new frequency modulation (FM) broadcast station at South Congaree, South Carolina.

Lexco Radio has entered a Settlement Agreement for Dismissal of Competing Application (hereinafter, "Settlement Agreement") with Alexander Snipe, Jr., d/b/a Glory Communications (hereinafter, "Snipe"), mutually exclusive applicant under File No. BPH-910228MC. It calls for dismissal of the application of Lexco and, subject to certain conditions precedent, reimbursement by Snipe of Lexco's expenses reasonably and prudently incurred in the preparation and prosecution of its application and in the preparation and filing of the Settlement Agreement in an amount not exceeding \$10,000.

The Settlement Agreement states the entire agreement of the parties and all consideration of any and every type and character to be paid by Snipe to Lexco and its partners with respect to the dismissal of the application of Lexco.

Attachment A hereto lists expenses reasonably and prudently incurred by Lexco for the foregoing purposes, totalling \$9,734.63.<sup>1</sup> Pursuant to the Settlement Agreement, Lexco requests the Commission approve and authorize reimbursement to be paid to it in that amount.

Approval of the Settlement Agreement and dismissal of the application of Lexco will simplify hearing on the application of Snipe and the remaining competing application for the FM channel at South Congaree, minimizing the cost thereof to the applicants and the Commission, and expedite the provision of a new broadcast service at South Congaree.

The application of Lexco was not filed for the purpose of entering or effectuating a settlement, including that represented by the instant Settlement Agreement.

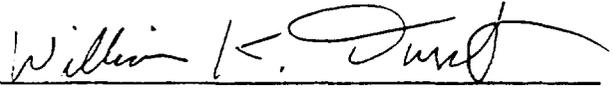
I declare under penalty of perjury that the foregoing is true and correct.

Executed January 8, 1992.

W. K. Smith

<sup>1</sup> Exclusive of the hearing fee paid by Lexco, which it will request be reimbursed by the Commission.

William K. Durst and  
William L. Faircloth,  
d/b/a **LEXCO RADIO**

A handwritten signature in cursive script, appearing to read "William K. Durst". The signature is written in dark ink and is positioned above a horizontal line.

---

William K. Durst, Partner

COSTS INCURRED BY LEXCO RADIO

Consulting engineer (Declaration attached)	\$2,336.00
Legal counsel (Declaration attached)	5,111.21
FCC filing fee	2,030.00
Newspaper notice of application	202.52
Public file placement charge	50.00
Postage	<u>4.90</u>
	<u><b>\$9,734.63</b></u>

Note: the above is exclusive of the FCC hearing fee paid in the amount of \$6,760.00.