FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

OCT 20 1992

OCT 29 1992

92-188

Julian P. Freret, Esquire
Booth, Freret & Imlay
1233 20th Street, N.W.
Suite 204
Washington, D.C. 20036

Dear Mr. Freret:

This will respond to your request for refund of a hearing fee filed on behalf of Doris A. Studstill in connection with her construction permit application for a new FM station at Oglesby, Illinois.

You state and your documentation demonstrates that, prior to the Notice of Appearance deadline, the other two competing applicants voluntarily dismissed their applications, and the application of Doris A. Studstill was granted.

Section 1.1111 (c)(4) of the Commission's rules provides for a refund of a hearing fee whenever an application is withdrawn pursuant to a settlement agreement prior to the Notice of Appearance deadline. Since the settlement agreement was timely filed and Doris A. Studstill's application was granted, refund of the hearing fee is appropriate.

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,

S/TMH for

Marilyn J. McDermett
Associate Managing Director
for Operations

Due 11/4/92 Holly

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October 6, 1992

Ms. Claudette Pride
Federal Communications Commission
1919 M Street, N. W., Room 452
Washington, D. C. 20554

In re: Refund of Hearing Fee - Applicant
Doris A. Studstill (BPH-910820MC)
MM Docket No. 92-188

Dear Ms. Pride:

Pursuant to §1.1111(b)(4) of the Commission's rules, it is respectfully requested that the hearing fee in the sum of $6,760.00, paid by the captioned applicant, be refunded.

In accord with the Commission's Report and Order in General Docket 90-264 (Proposals to Reform the Commission's Comparative Hearing Process), 6 FCC Rcd. 157, 157-158 (1990), Studstill paid the required hearing fee. A Hearing Designation Order was released August 19, 1992 (copy attached). Notice of Appearance was filed by each of the three parties on or before the due date, September 8, 1992.

A settlement agreement was filed with the Presiding Judge on the same date, providing for dismissal of all but one of the applicants and grant of the single remaining applicant, that of Doris A. Studstill. The only issues, standard comparative issues, became moot and did not require resolution. A copy of the Agreement is enclosed.

The Administrative Law Judge in a Memorandum Opinion and Order released September 29, 1992, granted the application of Doris A. Studstill and dismissed the applications of Stephen W. Samet and First Assembly of God Church. The proceeding was terminated without the necessity of hearing. A copy of the Judge's Order is attached hereto.

Accordingly, pursuant to the above-cited rule section, the hearing fee paid by Doris A. Studstill (as well as any hearing fees paid by Stephen W. Samet and First Assembly of God Church) should be refunded.

Should any question arise concerning any of the foregoing, kindly communicate with the undersigned.

Yours very truly,

Julian P. Freret

JPF:mf

CC Doris A. Studstill

Enclosures

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

MM Docket No. 92-188

In re Applications of

STEPHEN W. SAMET (hereafter "Samet")	File No. BPH-910820MB
DORIS A. STUDSTILL (hereafter "Studstill")	File No. BPH-910820MC
FIRST ASSEMBLY OF GOD CHURCH (hereafter "Assembly")	File No. BPH-910821ME
Charles Tiemann d/b/a STARVED ROCK RADIO (hereafter "Radio")	File No. BPH-910822ME (DISMISSED HEREIN)

For Construction Permit for a New Commercial FM Station on Channel 271A at Oglesby, Illinois

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 commercial FM station.

2. *Hearing Fee.* Radio has not paid the hearing fee which was required by March 2, 1992, the date set forth in *Public Notice*, Mimeo No. 13110, released December 27, 1991. *See* revised Section 73.3573(g)(2) of the Commission's Rules and *Report and Order* in Gen. Dkt. 90-264 ("Proposals to Reform the Commission's Comparative Hearing Process"), 6 FCC Rcd 157, 157-158, 170 (1990), *Erratum*, 6 FCC Rcd 3472, *recon. granted in part*, 6 FCC Rcd 3403 (1991). Accordingly, the application of Radio will be dismissed.[1]

3. *Late-Filed Amendments.* Samet and Studstill petitioned for leave to amend their applications on November 25, 1991 and March 13, 1992, respectively. The accompanying amendments were filed after November 20, 1991, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

4. *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.

5. *Conclusion.* Except as may be indicated by any issues specified below, Samet, Studstill, and Assembly 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.

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

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

7. IT IS FURTHER ORDERED, That the application of Starved Rock Radio IS DISMISSED and the informal objection filed by Studstill on February 21, 1992 against the Starved Rock Radio application IS HEREBY DISMISSED AS MOOT.

8. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Samet (11/25/91) and Studstill (3/13/92) ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extend indicated in paragraph 3.

9. 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.

[1] In light of this action, the informal objection filed by Studstill on February 21, 1992 against the Radio application will be dismissed as moot.

10. 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(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).

11. 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

FILE COPY

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September 8, 1992

RECEIVED
SEP 8 1992
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Administrative Law Judge
Joseph Chachkin
Federal Communications Commission
2000 L Street, N. W., Room 226
Washington, D. C. 20554

In re: Oglesby, IL Proceeding, MM Docket 92-188

Dear Judge Chachkin:

All parties to the captioned hearing have reached a settlement, whereby - subject to your approval - the applications of Stephen W. Samet and the First Assembly of God Church would be dismissed and that of Doris A. Studstill granted.

Samet and Assembly would be paid the reasonable and prudent expenses incurred in drafting, filing and prosecuting their respective applications.

Accordingly, there are enclosed herewith the following documents:

1. Joint Petition for Approval of Settlement Agreements.

2. Settlement Agreement between Doris A. Studstill and Stephen W. Samet.

3. Declaration of Stephen W. Samet of no consideration other than as set forth in the said Agreement, expenses incurred, application filed solely for the purpose of securing a grant and public interest served thereby.

4. Settlement Agreement between Doris A. Studstill and First Assembly of God Church.

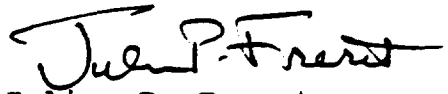
5. Declaration of First Assembly of God Church of no consideration other than as set forth in the said Agreement, expenses incurred, application filed solely for the purpose of securing a grant and public interest served thereby.

6. Statement of Doris A. Studstill re application for the sole purpose of securing a grant, no consideration paid or promised other than as set forth in the said Agreements and public interest served by approval of settlement agreements.

Counsel for Assembly will supplement its statement of expenses with a specific showing with respect to reasonable and prudent charges for legal services.

Copies of this letter and all enclosures have been served upon all parties to this proceeding.

Yours very truly,



Julian P. Freret

JPF:mf

CC: James Shook, Esquire
Christine V. Simpson, Esquire
John R. Wilner, Esquire

Enclosures

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

In re Applications of	)	MM Docket No. 92-188
	)	
STEPHEN W. SAMET	)	BPH-910820MB
	)	
DORIS A. STUDSTILL	)	BPH-910820MC
	)	
FIRST ASSEMBLY OF GOD CHURCH	)	BPH-910821ME
	)	
For Construction Permit for a New Commercial FM Station on Channel 271A at Oglesby, Illinois	)	

TO: The Honorable Joseph Chachkin
Administrative Law Judge

JOINT PETITION FOR APPROVAL OF SETTLEMENT AGREEMENTS

Doris A. Studstill ("Studstill"), Stephen W. Samet ("Samet") and First Assembly of God Church ("Assembly") by their respective counsel herewith request the Presiding Judge to approve the agreements submitted herewith, dismiss the above-referenced applications of Samet and Assembly and grant the above-referenced application of Studstill, in accordance with the terms of the Settlement Agreements. In support of such request the following is shown:

1. The above-referenced applications were designated for hearing in the above proceeding. The applications seek identical facilities for a new FM at Oglesby, Illinois, making these applications mutually exclusive. Only the standard comparative issues are outstanding.

2. Assembly and Samet have reached agreements with Studstill to request dismissal of their respective applications in consideration for reimbursement by Studstill of their expenses, legitimately and prudently incurred in the preparation, filing and prosecution of their respective applications. A written Settlement Agreement between Studstill and Samet was executed on September 8, 1992, a copy of which is attached hereto as Exhibit A. A written Settlement Agreement between Studstill and Assembly was also executed on September 3, 1992, a copy of which is attached hereto as Exhibit B. Under the terms of these written Settlement Agreements, Studstill has agreed that she will, following the issuance of a Final Order, approving the Settlement Agreements, dismissing Samet's and Assembly's applications and granting Studstill's application, reimburse Samet and Assembly their expenses, legitimately and prudently incurred in the preparation, filing and prosecution of their respective applications, in amounts and under the terms set forth in the Settlement Agreements.

3. Therefore, under the terms of the attached Settlement Agreements, the parties propose a resolution of the conflict caused by their competing applications for a new FM broadcast station to operate at Oglesby, Illinois. The applicants submit that a grant of this Joint Petition, approving the Agreements entered into by them, would resolve the conflict between their applications, avoid further hearing proceedings and reduce the expenditure of time and resources which will be required of the Commission and the

applicants in the resolution of this proceeding, thereby providing for the more expeditious entry of this new FM broadcast service to Oglesby, Illinois.

4. The applicants further submit in support of this Joint Petition:

(a) The Declaration of Stephen W. Samet, setting forth all relevant facts, as specified in Section 73.3525 of the Commission's Rules and Regulations (attached hereto as Exhibit C); and

(b) The Declaration of Sam Mayo, President, First Assembly of God Church, setting forth all relevant facts, as specified in Section 73.3525 of the Commission's Rules and Regulations (attached hereto as Exhibit D).

WHEREFORE, premises considered and good cause having been shown, it is respectfully requested that, contingent upon the fulfillment of the conditions set forth in Settlement Agreements, the Commission:

1. APPROVE the Agreement entered into by Studstill and Samet; and

2. APPROVE the Agreement entered into by Studstill and Assembly; and

3. DISMISS the above-referenced applications of Samet and Assembly; and

4. GRANT the above-referenced application of Studstill.

Respectfully submitted,

DORIS A. STUDSTILL

By John P. Ferrel

Julian P. Freret
Her Counsel

BOOTH, FRERET & IMLAY
1233 20th Street, N. W.
Suite 204
Washington, D. C. 20036
(202) 296-9100

FIRST ASSEMBLY OF GOD CHURCH

By _____
Christine V. Simpson
Its Counsel

WILKINSON, BARKER, KNAUER
& QUINN
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(202) 783-4141

STEPHEN W. SAMET

By _____
John R. Wilner
His Counsel

BRYAN, CAVE, McPHEETERS
and McROBERTS
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Washington, D. C. 20005
(202) 508-6041

RECEIVED SEP 30 1992

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

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In re Applications of	)	MM DOCKET NO. 92-188
	)	
STEPHEN W. SAMET	)	File No. BPH-910820MB
	)	
DORIS A. STUDSTILL	)	File No. BPH-910820MC
	)	
FIRST ASSEMBLY OF GOD CHURCH	)	File No. BPH-910821ME
	)	
For Construction Permit for a New Commercial FM Station on Channel 271A at Oglesby, Illinois	)	

MEMORANDUM OPINION AND ORDER

Issued: September 25, 1992 Released: September 29, 1992

1. On September 8, 1992, Stephen W. Samet (Samet), Doris A. Studstill (Studstill), and First Assembly of God Church (Assembly) filed a joint petition for approval of settlement agreements. Samet filed a supplement on September 11, 1992. Assembly filed a supplement on September 16, 1992. The Mass Media Bureau filed comments on September 23, 1992 in support of the joint petition.

2. The proposed settlement agreements contemplate the dismissals of Samet's and Assembly's applications in consideration of payments from Studstill, which are not to exceed their expenses. Samet is to receive $8,000. Assembly is to receive $12,924.56. The payments are contingent upon dismissal of both the Samet and Assembly applications.

3. Review of the settlement agreements and declarations of the respective principals shows that the applicants have complied with the requirements of Section 73.3525 of the Commission's Rules, which implements Section 311(c)(3) of the Communications Act of 1934, as amended. They show that their applications were not filed for an improper purpose, and Samet and Assembly have provided itemized accountings which establish that the amounts promised by Studstill do not exceed Samet's and Assembly's legitimate and prudent expenses. The applicants also show that approval of the joint request will serve the public interest. See Settlement Agreements, 6 FCC Rcd 85 (1990), modified, 6 FCC Rcd 2901 (1991).

Accordingly, IT IS ORDERED, That the "Joint Petition For Approval Of Settlement Agreements" filed September 8, 1992 by Doris A. Studstill, Stephen W. Samet, and First Assembly of God Church IS GRANTED; the applications of Stephen W. Samet and First Assembly of God Church ARE DISMISSED; the application of Doris A. Studstill IS GRANTED; and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph Chachkin

Joseph Chachkin
Administrative Law Judge