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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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April 5, 1993

Andrew S. Fishel
Managing Director
Federal Communications Commission
1919 M Street, NW
Room 852
Washington, DC 20554

Re: File No. BPH-911031MC
MM Docket No. 93-26
Bowdon, Georgia

Dear Mr. Fishel:

Spectrum Broadcasting Co. ("Spectrum"), by its attorney, hereby requests refund of its \$6760 Hearing Fee paid in conjunction with the above-referenced application. With respect thereto, the following is stated:

Spectrum timely paid its \$6760 Hearing Fee. The proceeding was designated for hearing by Hearing Designation Order, DA-93-122 (Feb. 24, 1993), and notices of appearance in the proceeding were due on March 16, 1993. As noted in the attached Memorandum Opinion and Order, FCC 93M-141 (April 5, 1993), Spectrum did not file a Notice of Appearance (id. at n.2), and by that MO&O issued on April 1, 1993, Spectrum's application was dismissed. See Attachment 1.

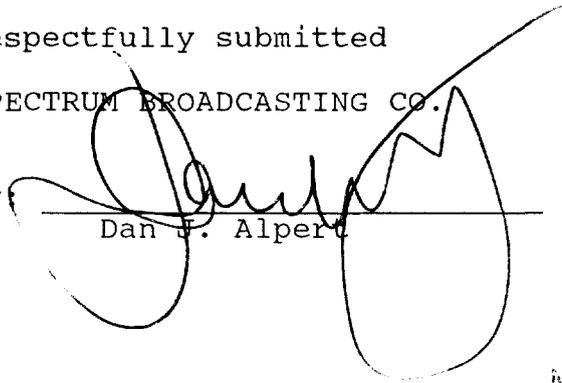
Consequently, Spectrum is entitled to a refund of its \$6760 Hearing Fee pursuant to Section 1.1111(b)(2) of the Commission's Rules.

WHEREFORE, it is respectfully requested that Spectrum Broadcasting Co. be granted a refund of its Hearing Fee, as permitted under the Commission's rules.

Respectfully submitted

SPECTRUM BROADCASTING CO.

By


Dan J. Alpert

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LISTA B C D E

ATTACHMENT 1

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

FCC 93M-141

In re Applications of) MM DOCKET NO. 93-26
)
SPECTRUM BROADCASTING CO.) File No. BPH-911031MC
)
STEVEN L. GRADICK) File No. BPH-911031MD
)
TERRY C. JENKS) File No. BPH-911031MF
)
For Construction Permit for a New FM)
Station on Channel 288A)
in Bowdon, Georgia)

MEMORANDUM OPINION AND ORDER

Background

Issued: April 1, 1993;

Released: April, 5, 1993

1. This is a ruling on a Joint Request For Dismissal Of Application And Approval Of Settlement Agreement ("Joint Request") that was filed on March 16, 1993, by Spectrum Broadcasting, Inc. ("Spectrum") and Terry C. Jenks ("Jenks"). Spectrum also filed on March 25, 1993, a Supplement To Joint Request For Dismissal Of Application And Approval Of Settlement Agreement ("Spectrum Supplement"). Jenks filed on March 26, 1993, its Supplement To Joint Petition And For Dismissal Of Application And Approval Of Settlement Agreement ("Jenks Supplement"). The Mass Media Bureau ("Bureau") filed Comments on March 31, 1993, and the Bureau supports the settlement. Approval of this partial settlement will reduce the number of competing applicants to two parties.

Facts

2. The Joint Request contemplates that Spectrum's application will be voluntarily dismissed with prejudice in return for a payment from Jenks not to exceed \$12,000.00. The Commission's rules permit recovery in a settlement of only the actual legitimate and prudent expenses incurred by the dismissing party. 47 C.F.R. §73.3525(a)(3) (1991). Spectrum lists its expenses in the Declaration of Tana Stalnaker, Spectrum's partner and president, that was filed with Spectrum's Supplement as follows:

Filing Fee	\$2,300
Engineering	2,850
Trips to Bowden	702
Telephone Expenses	283

Attorney's Fee	<u>2,735</u>
TOTAL	\$15,360

Counsel for Spectrum has filed a narrative statement in which he represents and explains his legal fees and expenses in the amount of \$2,735.00. See Amendment Of Section 73.3525, 6 F.C.C. Rcd 85, 91 n. 54 (1990). Also, there have been filed the required Declarations Of No Consideration by Jenks and Steven L. Gradick. 47 C.F.R. §73.3525(d).

3. It appears that Spectrum is willing to settle for an amount which is less than its allowable expenses. However, the Agreement also contemplates that Spectrum will apply for a refund of its hearing fee. The Jenks Supplement states that Jenks will defer payment of any portion of Spectrum's hearing fee (\$6,760) until such time as such reimbursement is denied by a final Commission order. If the Commission refunds the fee, Jenks will have paid to Spectrum only the sum of \$8,100.00, a capped amount agreed to by the parties.¹ If the Commission denies the refund,² Jenks will pay Spectrum the difference between \$8,100.00 and \$12,000.00 (\$3,900.00). Therefore, the parties are asking for authorization of a settlement payment from Jenks to Spectrum in an amount no greater than \$12,000.00.

Settlement

4. The statutory standard to be applied in accepting or rejecting a settlement proposal provides:

The Commission shall approve the agreement only if it determines that (a) the agreement is consistent with the public interest, convenience or necessity, and (b) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement.

Communications Act of 1934, as amended, Section 311(c)(3). See Oak Television of Everett, Inc., et al., 93 F.C.C. 2d 926 (Review Bd. 1983).

¹ The arithmetical count of Spectrum's expenses without the hearing fee computed to \$8,600.00. Presently, the parties have agreed to reduce \$500.00

5. In this case, the Joint Request was filed in accordance with Section 73.3525. The parties have represented under penalty of perjury that their applications were not filed for the purpose of reaching or carrying out a settlement agreement and that the agreement is in the public interest. Also, the Bureau has no objection to approving the settlement. Therefore, it is determined that the parties have complied with 47 C.F.R. §§73.3525(a)(1) and (a)(2) of the Commission's rules. In addition, a review of Spectrum's line-item expenses totalling \$15,360.00 as of March 25, 1993, has been made by the Presiding Judge and those expenses are found to be legitimate and