

DOCKET FILE COPY ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554  
FEB 9 1999

86-285

OFFICE OF  
MANAGING DIRECTOR

Lee J. Peltzman, Esquire  
Shainis & Peltzman, Chartered  
1901 L Street, N.W.  
Suite 290  
Washington, D.C. 20036

Re: BK Radio  
New FM Station  
Winona, Texas  
FeeControl # 9602238195059002

Dear Mr. Peltzman:

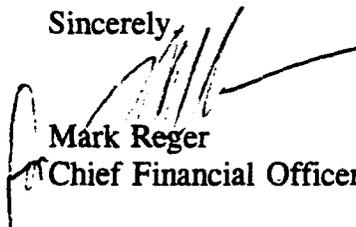
This is in response to your request for refund of the application fee filed on behalf of BK Radio ("BK"), former applicant for a new FM station at Winona, Texas.

You represent that BK "paid its application fee in anticipation that its application would be reviewed and . . . if found to be mutually exclusive, would be designated for hearing." You further represent that at the time it filed its application BK did not know that the Winona channel would be awarded through the competitive bidding procedures, and that when it became aware that the Commission adopted such procedures, it decided to dismiss its application pursuant to an universal settlement.

Under the circumstances, because BK timely disavowed any interest in participating in the auction and sought dismissal of its application, and further because BK's dismissal has been rendered final, refund of the filing fee is appropriate. *See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, 13 FCC Rcd 15920, 15957 (1998); *see also* 47 C.F.R. § 1.1113(a)(4).

Accordingly, your request is granted. A check, made payable to the maker of the original check and drawn in the amount of \$2,335.00, 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) 418-1995.

Sincerely,



Mark Reger  
Chief Financial Officer

4602238175057002

Holly

# Shainis & Heltzman, Chartered

Counselors at Law

Suite 290  
1901 I Street, N.W.  
Washington, D.C. 20036

(202) 293-0011  
Fax (202) 293-0810

Aaron H. Shainis  
Lee J. Heltzman

Of Counsel  
William H. BuRoss, III  
Ruth S. Baker-Battist  
Robert J. Keller

November 17, 1998

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

NOV 17 1998

NOV 17 1998

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

Re: Request for Refund of Application Fee  
BK Radio  
Winona, Texas  
BPH-960220MH

Dear Mr. Fishel:

This letter is submitted on behalf of BK Radio ("BK"), a former applicant for a new FM construction permit at Winona, Texas. By this letter, BK requests the refund of its application fee submitted to the Commission as part of that Winona, Texas application. A brief synopsis of the facts follows.

*type see check enclosed*

On February 20, 1998, BK filed its application for a new FM construction permit at Winona, Texas. A total of seven applications were received by the Commission. None of them was reviewed or accepted for filing. As part of BK's Winona filing, it paid a Two Thousand Three Hundred Thirty-five Dollar (\$2,335.00) filing fee to the Federal Communications Commission. See Attachment A. As noted, the application was not accepted for filing. Rather, on February 3, 1998, the seven applicants filed a Joint Motion for Approval of Universal Settlement Agreement with the Commission, contemplating the grant of the application of S. O. 2000, L. L. C. As part of the Joint Motion, BK requested dismissal of its application. The Commission, on November 13, 1998, released a Public Notice which granted the Joint Request, dismissed BK's application, and granted the application of S. O. 2000, L. L. C., as amended. See Attachment B.

BK paid its application fee in anticipation that its application would be reviewed and granted, or, if found to be mutually exclusive, would be designated for hearing. BK did not file with knowledge that the Winona channel would be awarded by auction. When BK became aware that its application would not undergo a comparative hearing, it made the decision to

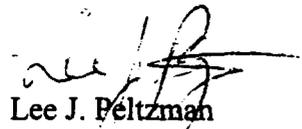
# Shainis & Peltzman, Chartered

Mr. Andrew S. Fishel  
November 17, 1998  
Page Two

dismiss its application as part of an overall settlement. Therefore, in light of the facts presented, BK respectfully requests that the Commission refund its application fee in the amount of \$2,335.00.<sup>1</sup>

If the Commission has any questions with respect to this request, kindly contact the undersigned.

Sincerely yours,



Lee J. Peltzman  
Counsel for  
BK Radio

Enclosures

---

<sup>1</sup> The Commission has noted that it will refund filing fees paid by applicants who do not participate in an auction, stating that such refunds are premised on the fact such applications were filed in anticipation of hearings which were not held. See Implementation of Section 309(j) of the Communications Act, FCC 98-194, released August 18, 1998 at paras. 101, 103. The same principle applies here since BK dismissed its application rather than participate in an auction. It should also be noted that BK filed its application in anticipation that the Commission would utilize the services of its personnel in reviewing that application. Since no review occurred here -- BK's application was never accepted for filing -- it is only fair and equitable that it be reimbursed its filing fee.

**ATTACHMENT A**

# BACK UP FILING

Approved by (Date)  
1060 (102)  
Expires 07/10/95

FCC 301

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20541

FOR FCC USE ONLY	
---------------------------	--

## APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION

FOR COMMISSION USE ONLY  
FILE NO.

### Section 1 - GENERAL INFORMATION

RECEIVED

NOV 17 1998

1. APPLICANT NAME B K RADIO		
MAILING ADDRESS (Line 1) (Maximum 35 characters) 1809 Lightsey Road		
MAILING ADDRESS (Line 2) (if required) (Maximum 35 characters)		
CITY Austin	STATE OR COUNTRY (if foreign address) Texas	ZIP CODE 78704
TELEPHONE NUMBER (include area code) 512 444 9268	CALL LETTERS OTHER FCC IDENTIFIER (IF APPLICABLE)	

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

FOR MAILING THIS APPLICATION, SEE INSTRUCTIONS FOR SECTION 1 - GENERAL INFORMATION B.

2 A Is a fee submitted with this application?  Yes  No

B. If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1312) and go to Question 3.

Governmental Entity.  Noncommercial educational licensee

C. If Yes, provide the following information:

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in the "Mass Media Services Fee Filing Guide." Column (B) lists the Fee Multiple applicable for this application. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number listed in Column (B).

(A)	(B)	(C)	FOR FCC USE ONLY
FEE TYPE CODE	FEE MULTIPLE (if required)	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	
(1) M T R	0 0 0 1	\$2,335.00	

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
(2)	0 0 0 1	\$	

ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (2), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.

TOTAL AMOUNT REMITTED WITH THIS APPLICATION
\$2,335.00

FOR FCC USE ONLY

3 This application is for: (check one box)  AM  FM  TV

(b) Channel No. or Frequency  
274

(b) Principal Community	City	State
	Winona	TX

**ATTACHMENT B**

BROADCAST ACTIONS

TX BPH	-960216MB	NEW 102.7 MHZ	S.O. 2,000, LLC WINONA, TX	APPLICATION GRANTED TO FM BROADCAST STATION CP FOR NEW STN JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT FILED 2/2/98 SETTLEMENT AND APPLICATION GRANTED 06 NOV 1998.
TX BPH	-960220MA	NEW 102.7 MHZ	RADIOSUNGROUP OF TEXAS INC WINONA, TX	APPLICATN DISMISSED TO FM BROADCAST STATION CP FOR NEW STN SETTLEMENT GRANTED AND APPLICATION DISMISSED 06 NOV 1998.
TX BPH	-960222MC	NEW 102.7 MHZ	B K RADIO WINONA, TX	APPLICATN DISMISSED TO FM BROADCAST STATION CP FOR NEW FM STN SETTLEMENT GRANTED AND APPLICATION DISMISSED 06 NOV 1998.
TX BPH	-960222ME	NEW 102.7 MHZ	MICHAEL HARRIS WINONA, TX	APPLICATN DISMISSED TO FM BROADCAST STATION CP FOR NEW FM STN SETTLEMENT GRANTED AND APPLICATION DISMISSED 06 NOV 1998.
TX BPH	-960222MF	NEW 102.7 MHZ	HUGGINS & GRANSEE BROADCASTING WINONA, TX	APPLICATN DISMISSED TO FM BROADCAST STATION CP FOR NEW FM STN SETTLEMENT GRANTED AND APPLICATION DISMISSED 06 NOV 1998.
TX BPH	-960222MG	NEW 102.7 MHZ	METROSOUND INC DBA METROSOUND/ E TX WINONA, TX	APPLICATN DISMISSED TO FM BROADCAST STATION CP FOR NEW FM STN SETTLEMENT GRANTED AND APPLICATION DISMISSED 06 NOV 1998.
TX BPH	-960222MH	NEW 102.7 MHZ	JOHN C. CARSEY BDA WINONA AIRWAVE CO WINONA, TX	APPLICATN DISMISSED TO FM BROADCAST STATION CP FOR NEW FM STN SETTLEMENT GRANTED AND APPLICATION DISMISSED 06 NOV 1998.
WA BMP	-981005DC	KJR 950 KHZ	KJR RADIO, INC. SEATTLE, WA	APPLICATION GRANTED TO AM BROADCAST STATION EXTENSION OF CP (BP-940425AC) 1ST REQUEST
WI BPH	-980910IA	WGLX-FM 103.3 MHZ	WR BROADCASTING, LLC WISCONSIN RAPIDS, WI	APPLICATION GRANTED TO FM BROADCAST STATION CP TO CORRECT COORDINATES AND ELEVATION

**Note to file:**

**Ref: FCN 9602238195059002**

**According to James Crutchfield in the Mass Media Bureau, BK Radio is NOT entitled to a refund of their application fee submitted in connection with an application for a new FM station in Winona, TX.**

**Tom Putnam**

**11/25/1998**

**Payment Transactions Detail Report**

Date: 11/25/98

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
9602238195059002	SHAINIS & PELTZMAN 2000 L STREET NW SUITE 200  WASHINGTON DC 20036	FCC2003637	02/22/96

Payment Amount	Current Balance	Seq Num	Payment		Callsign		Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
			Type Code	Quantity	Other Id							
\$2,335.00	\$2,335.00	1	MTR	1		B K RADIO		78704		\$2,335.00	1	PMT
<b>Total</b>		<b>1</b>								<b>\$2,335.00</b>		