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

Federal Communications Commission
Office of the Secretary

In Re Application of:)
DAVID A. RINGER) File No. BPH-911230MA
Application for Construction)
Permit for a new FM station,)
Channel 280A, Westerville,)
Ohio)
TO: Chief, Audio Services
Division

PETITION TO DENY AND DISMISS THE APPLICATION
OF DAVID A. RINGER

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Section 73.3584(a) of the Commission's Rules, hereby submits this petition to deny and dismiss the application of David A. Ringer ("Ringer"). This petition is timely filed pursuant to Public Notice, Report No. NA-156, released February 21, 1992, establishing a deadline of March 26, 1992, to file petitions to deny in this proceeding. ORA requests that the application of Ringer be denied and dismissed because his proposed tower site is short-spaced to an existing station and because there are other qualified applicants in this proceeding with fully-spaced and technically suitable tower sites. In support of its petition, ORA submits the following comments.

Ringer, at Section V-B, p. 3, item 13(a), concedes that his application is short-spaced to Station WTTF-FM, Channel 279B, Tiffin, Ohio. Under Section 73.207, a minimum spacing of 113 km.

is required. Ringer proposes use of the former Station WBBY-FM tower site. However, this tower is located 106.16 km. from Station WTTF-FM. Thus, the short-spacing is 6.84 km.

ORA and another applicant in the proceeding, Westerville Broadcasting Company, Limited Partnership, are fully-spaced to all stations and pending applications,¹ including Station WTTF-FM. Under long-established Commission policy in comparative hearings, when an applicant is short-spaced and at least one other applicant in the proceeding is fully-spaced and no question is raised as to the availability or technical suitability of the fully-spaced site, the short-spaced applicant must be denied. That applicant will not be designated for hearing and will be immediately dismissed from the proceeding. Madalina Broadcasting, Inc., 6 FCC Rcd. 2508, 2509, paras. 3-5 (MMB 1991); Valley Radio, 5 FCC Rcd. 4875, 4876, para. 5 (MMB 1990); Donavan Burke, 104 FCC2d 843 (1986). See also, Megamedia, 67 FCC2d 1527 (1978); Clearlake Broadcasting Co., 47 Fed. Reg. 47931 (1982); North Texas Media, Inc. v. FCC, 778 F.2d 28, 34, n. 2 (D.C. Cir. 1985). Accordingly, the application of Ringer must be denied and dismissed.

In order to justify his short-spacing, Ringer proposes a directional antenna and requests processing under Section 73.215. However, in MM Docket No. 87-121, 4 FCC Rcd. 1681,

¹The proposed tower site for ORA and Westerville Broadcasting Company is located 164.7 km. from Station WPAY-FM, Portsmouth, Ohio. A spacing of 165 km. is required. However, under Section 73.208(c)(8), this distance rounds to 165 km. Thus, under Commission policy, there is no short-spacing.

paras. 2, 5, 26, 30 (1988), the Commission stated that even the liberal provisions of Sections 73.215, as to directional antennas, could only be utilized where fully-spaced tower sites are unavailable or had limited suitability. To hold otherwise,

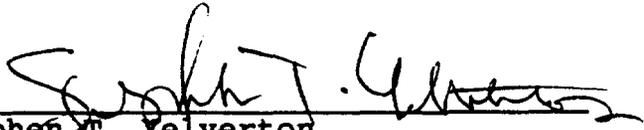
proposed short-spacing. Under Section 73.213(c)(2), applications for authorization of Class A facilities greater than 3.0 kw. (in any lobe or radial) and at 100 meters must submit an exhibit demonstrating the consent of the licensee for which the requirements of Section 73.207 are not met.² Ringer failed to submit any such consent from the licensee of Station WTTF-FM.

The Commission, in MM Docket No. 88-375, 6 FCC Rcd. 6375, 6382, para. 52 (1991), stated that in a power increase, under Section 73.213, between a Class A station and other facilities, no fully-spaced or less short-spaced site must be available. Here, a fully-spaced site is available and technically suitable. See also, MM Docket No. 88-375, 6 FCC Rcd. 3417, 3418, para. 10 (1991), which requires a showing of no fully-spaced tower sites.

WHEREFORE, in view of the foregoing, ORA requests that the Commission deny and dismiss the application of Ringer. In the alternative, a short-spacing issue must be designated against his application.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY: 
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Attorneys for Ohio Radio
Associates, Inc.

²Ringer cannot utilize Section 73.213(c)(1). That provision only applies to facilities which have omnidirectional operations at no greater than 3.0 kw. ERP and 100 meters HAAT.

CERTIFICATE OF SERVICE

I, Kate D. Shawcross, a secretary in the law offices of
Maupin Taylor Ellis & Adams, P.C., do hereby certify that on this
26th day of March, 1992, I have caused to be hand delivered or
mailed, U.S. mail, postage prepaid, a copy of the foregoing
"Petition to Deny and Dismiss the Application of David A. Ringer"
to the following:

Dennis Williams, Chief*
FM Branch
Room 332
Federal Communications Commission
Washington, D.C. 20554

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