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April 20, 1992

Federal Communications Commission  
Office of the Secretary

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

RE: David A. Ringer  
BPH-911230MA  
Channel 280A  
Westerville, Ohio

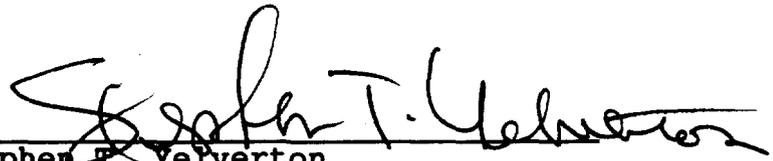
Dear Ms. Searcy:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and four (4) copies of its "Reply to Opposition of David A. Ringer."

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY:   
Stephen P. Yelverton  
Attorneys for Ohio Radio  
Associates, Inc.

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APR 20 1992

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

REPLY TO OPPOSITION OF DAVID A. RINGER

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Section 73.3584(b) of the Commission's Rules, hereby submits this "Reply to Opposition of David A. Ringer" ("Ringer"). On March 26, 1992, ORA filed a petition to deny and dismiss the application of Ringer. On April 8, 1992, he filed an opposition thereto. In reply to the opposition, ORA submits the following comments.

Ringer, in his opposition, concedes that he is short-spaced to Station WTTF-FM, Channel 279B, Tiffin, Ohio. He further concedes that Commission policy as stated in 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); Megamedia, 67 FCC2d 1527 (1978); Clearlake Broadcasting Co., 47 Fed. Reg. 47931 (1982); and North Texas Media, Inc. v. FCC, 778 F.2d 28, 34 (D.C. Cir. 1985), mandates the dismissal of short-spaced applications in a comparative hearing if another applicant proposes a fully-spaced tower site which is available and technically suitable.

Ringer nevertheless contends that this policy of dismissal would not apply if a short-spaced applicant requests processing under the directional antenna provisions of Section 73.215. However, he offers no support for this novel proposition. Moreover, no public interest rationale would support such a special exception to Commission policy. Why should an applicant be considered in a comparative hearing if it proposes a short-spaced tower site which requires the Commission to spend time and resources processing a directional antenna proposal, when other applicants propose a fully-spaced tower site which would require no special processing? Commission policy strongly disfavors short-spaced tower sites and allows use of a directional antenna only when necessary. Here, there is no need to be short-spaced and to use a directional antenna.

Ringer ignores the fact that the use of Section 73.215 is a waiver of Section 73.207. He also ignores the language of Section 73.215 which states that a short-spaced application filed

[REDACTED]

suitable tower site be available. However, he fails to cite to any Commission precedent in support. In MM Docket No. 87-121, 4 FCC Rcd. 1681 (1989), the Commission stated at paras. 2, 5, 26 and 30, that directional antennas were contemplated to be used only where fully-spaced tower sites are unavailable or had limited suitability. To hold otherwise, would effectively repeal Section 73.207 and would allow tower sites to be placed anywhere so long as no actual interference is caused. However, the purpose of the minimum spacing requirements is not only to prevent interference, but also to allow a sufficient buffer zone for stations to modify and improve their facilities. North Texas Media, Inc. v. FCC, supra, at 33-34, n. 27.

Ringer further contends that he can invoke the "grandfather" provisions of Section 73.213 to prevent dismissal of his application. However, Ringer ignores MM Docket No. 88-375, 6 FCC Rcd. 3417 (1991), which governs the interpretation of Section 73.213. There, at 3418, n. 7, the Commission stated as follows:

" ... we wish to clarify our policy regarding applications for construction permit filed to implement allotments resulting from petitions for rulemaking to amend the Table of FM Allotments filed prior to October 2, 1989. Such applications must meet the new spacing requirements with respect to all facilities and allotments except those to which the allotment reference coordinates were short-spaced on the effective date of the allotment."

Thus, the only exception to this Commission policy are applications for facilities which were short-spaced at the time the allotment in question was made. At the time that the Channel 280A allotment was made to Westerville, there was no

short-spacing to Station WTTF-FM. These stations were fully-spaced to each other under the rules existing at the time of allotment. Accordingly, even if Ringer qualifies under Section 73.213, he must nevertheless meet the minimum spacing requirements of Section 73.207 with respect to Station WTTF-FM.

Ringer ignores MM Docket No. 88-375, 4 FCC Rcd. 6375 (1989). There, at 6382, para. 52, the Commission stated that, when utilizing Section 73.213, no fully-spaced or less short-spaced tower site must be available. Here, a fully-spaced tower site is available and technically suitable.

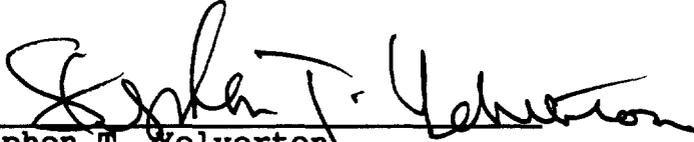
directionally at 6,000 watts. The provision which he seeks to invoke does not state "at no more than 3,000 watts in the direction of the short-spaced station," as suggested by Ringer. Therefore, Section 73.213(c)(1) applies only to stations which will operate at no more than 3,000 watts.

WHEREFORE, in view of the foregoing, ORA requests that the Commission deny and dismiss the application of Ringer. He failed to refute that Commission policy mandates the dismissal of short-spaced applicants in a comparative hearing where another applicant proposes a fully-spaced tower site which is available and technically suitable.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

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April 20, 1992  
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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 20th day of April, 1992, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Reply to Opposition 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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Kate D. Shawcross

Hand Delivery\*  
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