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AUDIO SERVICES

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APR 20 1992

April 20, 1992

Federal Communications Commission
Office of the Secretary

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

RE: Wilburn Industries, Inc.
BPH-911230MC
Channel 280A
Westerville, Ohio

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FM EXAMINERS

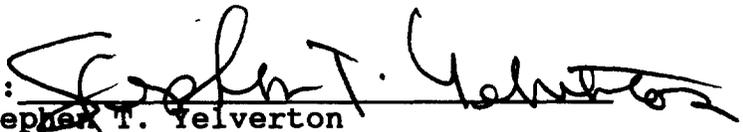
Dear Ms. Searcy:

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

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

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY: 
Stephen T. 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:)
)
WILBURN INDUSTRIES, INC.) File No. BPH-911230MC
)
Application for Construction)
Permit for a new FM station,)
Channel 280A, Westerville,)
Ohio)

TO: Chief, Audio Services
Division

REPLY TO OPPOSITION OF WILBURN INDUSTRIES, INC.

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 Wilburn Industries, Inc." ("Wilburn"). On March 26, 1992, ORA filed a petition to deny and dismiss the application of Wilburn. On April 8, 1992, Wilburn filed an opposition thereto. On April 14, 1992, a supplement to the opposition was filed. In reply to the opposition, as supplemented, ORA submits the following comments.

Wilburn, in its opposition, concedes that it is short-spaced to Station WTTF-FM, Channel 279B, Tiffin, Ohio. It contends 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), which

mandates dismissal of short-spaced applicants in a comparative hearing if another applicant proposes a technically suitable and available fully-spaced tower site. applies only where a waiver of

decision also referenced MM Docket No. 88-375, 6 FCC Rcd. 3417, 3418, n. 7 (1991). There, 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 WTTT-FM. These stations were fully-spaced to each other under the rules existing at the time of allotment. Accordingly, even if qualifying under Section 73.213, Wilburn must nevertheless meet the minimum spacing requirements of Section 73.207 with respect to Station WTTT-FM.

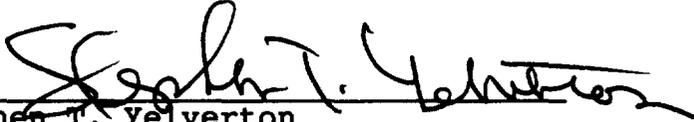
Wilburn contends that because ORA failed to demonstrate that its proposed city-grade coverage is less than 80%, no issue should be specified against it. However, Wilburn fails to acknowledge that a visual examination of its proposed city-grade contour and its map of Westerville shows that 80% coverage is, at best, doubtful. The burden is on Wilburn to show compliance with Section 73.315. Accordingly, Wilburn's failure to demonstrate in its application at least 80% coverage requires specification of a city-grade coverage issue.

WHEREFORE, in view of the foregoing, ORA requests that the Commission deny and dismiss the application of Wilburn. It failed to refute that Commission policy mandates the dismissal of short-spaced applicants in a comparative hearing if another applicant proposes a fully-spaced tower site which is available and technically suitable. If Wilburn's application is not denied and dismissed, a city-grade coverage issue must be specified against it.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY:


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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 Wilburn Industries, Inc." to the following:

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

Eric S. Kravetz, Esq.
Brown, Finn & Nietert, Chartered
1920 N Street, Suite 660
Washington, D.C. 20036
Counsel for Wilburn Industries, Inc.


Kate D. Shawcross

Hand Delivery*

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