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May 17, 1993

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

Re: **MM Docket No. 93-107**  
**Channel 280A**  
**Westerville, Ohio**

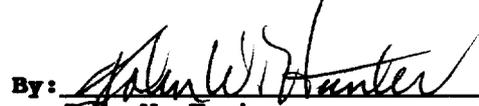
Dear Ms. Searcy:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and six (6) copies of its "Motion to Enlarge Issues Against Wilburn."

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

Respectfully submitted,

MCNAIR & SANFORD, P.A.

By:   
John W. Hunter

By:   
Stephen T. Yelverton

Enclosure

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

MAY 17 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of:

DAVID A. RINGER

et al.

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)  
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MM Docket No. 93-107

File Nos. RPH-911230MA

MOTION TO ENLARGE ISSUES AGAINST WILBURN

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Section 1.229 (b)(1) of the Commission's Rules, hereby submits this motion to enlarge the issues against Wilburn Industries, Inc. ("Wilburn"). This motion is based on information in the application of Wilburn and other pre-designation matters and thus is timely filed within thirty (30) days of the release of the hearing designation order on April 15, 1993. See, DA 93-423. In support of its motion to enlarge the issues, ORA submits the following comments.

Section 73.315 Issue

A map showing Wilburn's proposed 70 dBu coverage to Westerville does not indicate that at least 80% coverage would be provided to the community of license, as required by Section 73.315. See, attachment 1. The burden is on Wilburn to demonstrate in its application compliance with all rules, or to request a waiver. It did neither. Where an applicant fails to demonstrate compliance with Section 73.315, an issue must be specified. Port St. Lucie Broadcasting, 6 FCC Rcd 2063, 2065, para.10 (MMB 1991); Pearce Broadcasting Partnership, 6 FCC Rcd 5775, para. 2 (MMB 1991).

Accordingly, the Presiding Judge is requested to specify the following issue:

To determine whether the application of Wilburn Industries, Inc. violates Section 73.315 of the Commission's Rules by not providing at least 80% city-grade coverage to Westerville, and if so whether it is basically qualified to be a Commission licensee, and whether its application should be granted?

Bd. 1986), aff'd, Evergreen Broadcasting Co., 6 FCC Rcd 5599, 5605, n. 3 (1991); Naguabo Broadcasting Co., 6 FCC Rcd 4879, para. 5 (1991); 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) (all of the cited cases will hereinafter be referred to as the "North Texas" policy or line of cases).

ORA is not filing a pleading repetitious of its April 22, 1993, motion to certify. That motion addressed dismissing any short-spaced applicants from the hearing. This motion addresses the specification of basic qualifying issues against any short-spaced applicants, which is a different matter. Indeed, the Memorandum Opinion and Order, FCC 93M-224, at para. 11, and n. 3, released May 4, 1993, indicated that a motion to enlarge the issues might be an appropriate means to pursue a short-spacing issue.

This motion is also based on On the Beach Broadcasting, FCC 93-211, which is a Commission decision released on May 10, 1993, and thus a new matter warranting consideration. Therein, at n. 1, the Commission reaffirmed that North Texas Media, Inc. v. FCC, is still binding precedent.

Wilburn fails to acknowledge that the use of Section 73.213 is merely a standardized procedure to obtain a waiver of the spacing requirements of Section 73.207. Indeed, FCC Form 301, Section V-B, page 3, Question 13, acknowledges that the use of Section 73.213 is a waiver of Section 73.207. Therein, Question 13 (a) asks if the application meets the spacing requirements of Section 73.207. Questions 13 (b) and (c) then ask if Section 73.213 applies and if so include a summary of previous waivers.

Wilburn also fails to understand that the issue is not whether it is entitled to use the grandfathering provisions of Section 73.213. Rather, the issue is whether it is in the public interest to award the Westerville permit to an applicant with inferior short-spaced facilities operating at only 3.0 kw., or

to an applicant operating at maximum 6.0 kw. power with a fully-spaced tower site. Nothing in the adoption of Section 73.213 negated or overruled the "North Texas" policy of preferring on a basic qualifying basis a fully-spaced applicant over a short-spaced applicant in a comparative hearing.

Accordingly, the Presiding Judge is requested to specify the following issue:

To determine whether the application of Wilburn Industries, Inc. proposes a tower site in violation of Section 73.207 of the Commission's Rules, and if so whether the use of 3.0 kw. pursuant to Section 73.213 of the Rules would be in the public interest and whether it is basically qualified to be a Commission licensee, and thus whether its application should be granted?

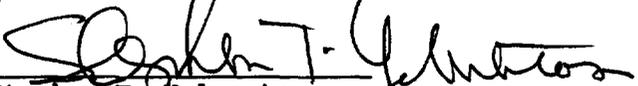
If the issue is specified, ORA requests the production of all documents indicating the efforts of Wilburn to locate a fully-spaced tower site.

WHEREFORE, in view of the foregoing, ORA requests that the foregoing issues be specified against Wilburn.

Respectfully submitted,

McNAIR & SANFORD, P.A.

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May 17, 1993

202979.00001  
ORA.44

0 5 10 15 20 25 30 Kilometers

0 5 10 15 Nautical Miles

CONTOUR INTERVAL 100 FEET  
DOTTED LINES REPRESENT 50-FOOT CONTOURS

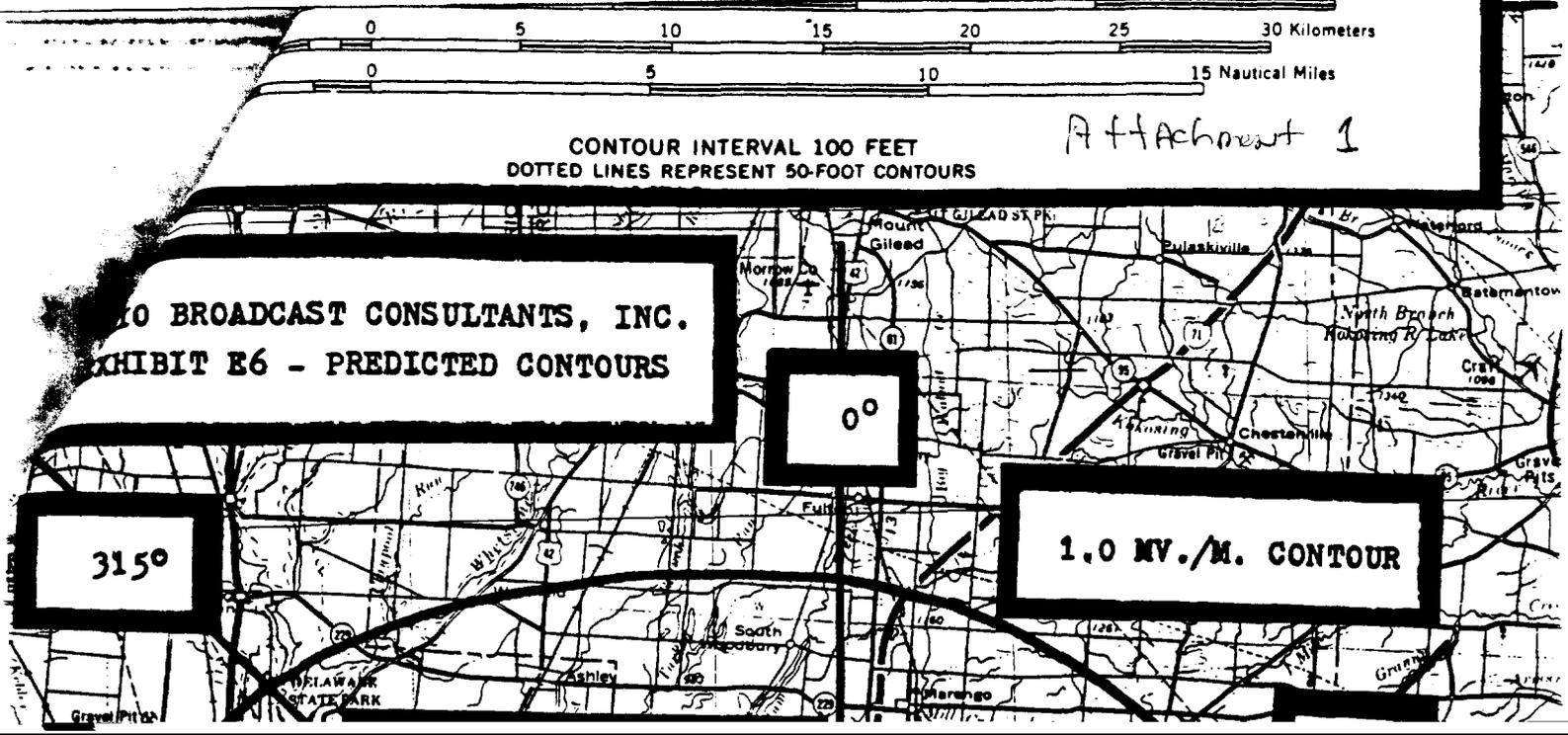
Attachment 1

10 BROADCAST CONSULTANTS, INC.  
EXHIBIT E6 - PREDICTED CONTOURS

315°

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1.0 MV./M. CONTOUR



CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney in the law firm of McNair & Sanford, P.A., do hereby certify that on this 17th day of May, 1993, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Motion to Enlarge Issues Against Wilburn" to the following:

The Honorable Walter C. Miller\*  
Administrative Law Judge  
Federal Communications Commission  
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Washington, D.C. 20554

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