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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 Matchak."

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

Respectfully submitted,

MCNAIR & SANFORD, P.A.

By: John W. Hunter
John W. Hunter

By: Stephen T. Yelverton
Stephen T. Yelverton

Enclosure

B:SEARCY52.FCC

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MAY 17 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

In re Applications of:	)	
	)	
DAVID A. RINGER	)	**MM Docket No. 93-107**

MOTION TO ENLARGE ISSUES AGAINST MATCHAK

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 Kyong Ja Matchak ("Matchak"). This motion is based on information in the application of Matchak 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 73.316 Violation

The application of Matchak, as amended in March 1991, proposes the use of a directional antenna. See, attachment 1. Section 73.316 (c) of the Rules requires that all FM applications proposing the use of a directional antenna must include certain information or data. See also, FCC Form 301, Section V-B, page 3, Question 10. Section 73.316 (c)(1) requires a complete description of the proposed antenna system, including the manufacturer and model number of the proposed directional antenna. This sub-section specifically states that it is not sufficient to label the proposed antenna with a generic term and that a specific model number must be provided. In the case of custom designed antennas, a full description of the antenna design must be submitted.

Matchak fails to comply with this specific and unambiguous requirement. Her failure to comply with the requirements of Section 73.316 mandates the specification of a hearing issue. Sub-section (c)(1) requests information essential for the Commission staff to properly analyze and process a directional antenna application. This is critical data. The staff must know what type and model of antenna will be used in order to determine whether the applicant's proposed directional pattern will correspond with that specific antenna's predicted output and performance.

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

> To determine whether the application of Kyong Ja Matchak violates Section 73.316 of the Commission's Rules, and if so whether she is basically qualified to be a Commission licensee, and thus whether her application should be granted?

If this issue is specified, ORA requests that the following documents be produced: (1) all correspondence between Matchak, her engineer, and other persons with respect to the use of a directional antenna; (2) all work papers created by Matchak's engineer in preparing the directional antenna portion of her application.

Section 73.215 Violation

Section 73.215 states the processing requirements for directional antenna proposals. Sub-section (b)(2)(ii) requires that an applicant, such as Matchak, which desires to take advantage of directionalization, must protect an affected short-spaced station's contours based on that station's maximum effective radiated power and not on its actual contours. See, On the Beach Broadcasting, FCC 93-211, para. 10, released May 10, 1993. The application of Matchak fails to state that she will provide this required protection to affected short-spaced stations and, in particular, to Station WTTF-FM, Tiffin, Ohio.

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

> To determine whether the application of Kyong Ja Matchak violates Section 73.215 of the Commission's Rules, and if so whether she is basically qualified to be a Commission licensee, and thus whether her application should be granted?

If this issue is specified, ORA requests the production of the same documents as requested in the Section 73.316 issue.

Short-Spacing Issue

The application of Matchak indicates that her proposed tower site is 6.84 km. short-spaced, under Section 73.207, to Station WTTF-FM, Tiffin, Ohio. Under long-established Commission policy, when an applicant in a comparative hearing is short-spaced, a hearing issue must be specified as to that applicant's basic qualifications. Jemez Mountain Broadcasters, 7 FCC Rcd 4219, 4220, paras. 2 and 12 (1992); Payne Communications, Inc., 1 FCC Rcd 1052, 1053, paras. 6, 9-10 (Rev. 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, 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. Moreover, a short-spaced applicant in that proceeding attempted to make the same argument, as has Matchak, that the use of a directional antenna renders Section 73.207 a nullity and thus there is no need to demonstrate that a fully-spaced tower site is unavailable. However, the Commission did not accept that argument and required a showing of no available fully-spaced sites. On the Beach Broadcasting, paras. 8 and 11.

Matchak fails to acknowledge that the use of Section 73.215 to employ a directional antenna is merely a standardized procedure to obtain a waiver of the spacing requirements of Section 73.207. See, MM Docket No. 87-121, 6 FCC Rcd 5356, 5360, para. 27 (1991). Section 73.215 does not in any way eviscerate the spacing requirements of Section 73.207, or the necessity to show the unavailability of fully-spaced sites. See, para. 27, supra, where the Commission explicitly states that a short-spaced tower site can not be used unless the unavailability of a fully-spaced site is demonstrated. Moreover, Section 73.215

states that a public interest showing must be made in order to obtain a grant under its provisions.

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

> To determine whether the application of Kyong Ja Matchak proposes a tower site in violation of Section 73.207 of the Commission's Rules, and if so whether the use of a directional antenna pursuant to Section 73.213 or 73.215 of the Rules would be in the public interest and whether she is basically qualified to be a Commission licensee, and thus whether her application should be granted?

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

Ex Parte Issue

The date for amendments of right in this proceeding was March 9, 1992. Matchak filed an amendment which was initially date stamped March 10, 1992. After ORA raised this matter in a petition to deny, filed March 26, 1992, the Commission staff changed the stamp date to March 9, 1992. This was at the behest of Matchak and could not have been the result of a mere status inquiry. Such a contact as to a contested matter in a proceeding with mutually exclusive applications violates Section 1.1208 (b)(1). Accord, MM Docket No. 86-225, 2 FCC Rcd 3011, 3023, para. 88 (1987).

The hearing designation order, DA 93-423, at para. 12, and n. 8, appears to rule on this ex parte matter. However, ORA never requested denial of Matchak's application or specification of an issue on this basis. Thus, it is filing this request for specification of an ex parte issue in order to protect and to perfect its appeal rights as to this matter. ORA does not want to take the risk that, on appeal of the designation order (when filing an application for review), the Commission will hold that the ex parte issue is moot because a motion to enlarge the issues was never timely filed.

Accordingly, ORA requests that the Presiding Judge specify the following issue:

> To determine whether Kyong Ja Matchak violated Section 1.1208 of the Commission's Rules by making prohibited ex parte contacts with the Commission as to the merits of her application, and if so whether she is

basically qualified to be a Commission licensee, and thus whether her application should be granted?

If the issue is specified, ORA requests that Matchak produce all documents with respect to her contacts with the Commission staff as to her Westerville application, in the time period from March 9, 1991, until the present.

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

Respectfully submitted,

McNAIR & SANFORD, P.A.

By: _____
John W. Hunter

By: _____
Stephen T. Yelverton
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May 17, 1993

020979.00001 ORA.43

Kyong Ja Matchak
Westerville, Ohio

EXHIBIT 2-A

II. FURTHER RESPONSE TO FCC FORM 301, SECTION V-B, PART 10

The proposed facility will operate with a directional antenna. Exhibit 2-B is the composite horizontal relative field pattern for the proposed pattern. Exhibit 2-C is a tabulation of the composite horizontal relative field pattern.

The antenna will be side-mounted on the support structure as specified by the manufacturer.

The antenna will not be mounted on the top of an antenna tower which includes a top-mounted platform larger than the nominal cross-section area of the tower in the horizontal plane.

No other antennas of any type will be mounted on the same tower level as the proposed directional antenna and no antennas of any type will be mounted within any horizontal or vertical distance specified by the manufacturer as be necessary for proper operation of the proposed directional antenna.

ENGINEERING REPORT

MOFFET, LARSON & JOHNSON, INC.

CONSULTING TELECOMMUNICATIONS ENGINEERS

FALLS CHURCH, VA 22041

Kyong Ja Matchak
Westerville, Ohio

EXHIBIT 3-A

II. FURTHER RESPONSE TO FCC FORM 301, SECTION V-B, PART 13(c)

Exhibit 3-B is an allocation study for the proposed site. As shown on

D. 3

B

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 Matchak" to the following:

The Honorable Walter C. Miller*
Administrative Law Judge
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Washington, D.C. 20554

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Kyong Ja Matchak