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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 19, 1992

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

Re: Shellee F. Davis
BPH-911231MA
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 Shellee F. Davis."

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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FM EXAMINERS

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AUG 19 1992

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re Application of:)
)
SHELLEE F. DAVIS) File No. BPH-911231MA
)
)
Application for Construction)
Permit for a new FM station,)
Channel 280A, Westerville,)
Ohio)

TO: Chief, Audio Services
Division

REPLY TO OPPOSITION OF SHELLEE F. DAVIS

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Sections 1.45(b), 73.3584(b), and 73.3587 of the Commission's Rules, hereby submits this reply to opposition. On July 29, 1992, ORA filed a supplement to petition to deny and dismiss the application of Shellee F. Davis ("Davis"). On August 11, 1992, Davis filed an opposition thereto. In support of its reply to the opposition, ORA submits the following comments.

On March 26, 1996, ORA filed a petition to deny and dismiss the application of Davis. It contended that the application of Davis must be dismissed with prejudice because she proposes a short-spacing of 6.84 km. In a comparative hearing, a short-spaced application cannot be considered where other applicants propose fully-spaced and technically suitable tower sites. See, e.g., North Texas Media, Inc. v. FCC, 778 F.2d 28, 34 (D.C. Cir. 1985). ORA and one other applicant in this proceeding propose such acceptable tower sites and no party has contested their availability and suitability.

In its July 29, 1992, supplement, ORA reported the release of a recent Commission decision reaffirming the policy of dismissal of short-spaced applicants in comparative hearings where fully-spaced and technically suitable tower sites are not shown to be unavailable. Jemez Mountain Broadcasters, 7 FCC Rcd. 4219, 4220, paras. 3 and 12 (1992). Although that case involved a waiver of Section 73.207 and the Commission allows certain short-spaced applicants to be processed under Section 73.213 without the need for a formal waiver under Section 73.207, this does not change the result. In MM Docket No. 88-375, 4 FCC Rcd. 6375, 6382, para. 52 (1989), the Commission 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 tower site must be available.

In her opposition, Davis contends that in MM Docket No. 88-375, 6 FCC Rcd. 3417, 3421, para. 27 (1991), the Commission modified the requirements of Section 73.213(c)(2) so that a station which is not requesting a new tower site need not show the unavailability of fully-spaced sites. However, Davis misstates Commission policy. What the Commission actually stated was that "a showing of non-alternative site availability appears unduly restrictive in the case of stations for which relocation is not practicable." Here, a fully-spaced tower site is practicable and two other applicants in this proceeding have specified such a site. No party has questioned the availability or suitability of this fully-spaced tower site.

Davis' contention that her application can be processed under Section 73.213(c)(1) and not under Section 73.213(c)(2) must be rejected. Davis is proposing an increase in power from 3,000 to

6,000 watts over that of the deleted facilities of Station WBBY-FM.
This power increase requires processing under Section 73.213(c)(2).

WHEREFORE, in view of the foregoing, ORA requests that
the Commission deny and dismiss the application of Davis.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY: 

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August 19, 1992

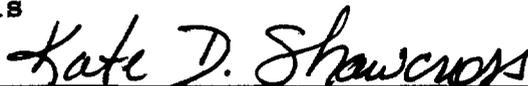
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CERTIFICATE OF SERVICE

I, Kate D. Shawcross, a secretary in the law offices of Maupin Taylor Ellis & Adams, P.C., do hereby certify that on this 19th day of August, 1992, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Reply to Opposition of Shellee F. Davis" 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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