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July 29, 1992

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Federal Communications Commission  
Office of the Secretary

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

RE: Shellee F. Davis  
BPH-911231MA  
Channel 280A  
Westerville, Ohio

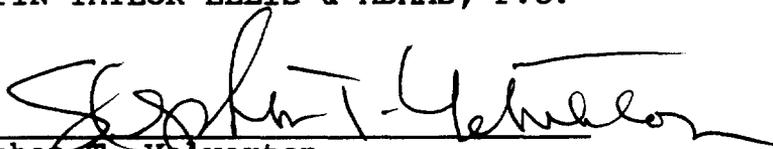
Dear Ms. Searcy:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and four (4) copies of its supplement to petition to deny and dismiss the application 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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JUL 29 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

SUPPLEMENT TO PETITION TO DENY AND DISMISS THE APPLICATION  
OF SHELLEE F. DAVIS

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Sections 73.3584(a) and 73.3587 of the Commission's Rules, hereby submits this supplement to petition to deny and dismiss the application of Shellee F. Davis ("Davis"). On March 26, 1992, ORA filed a petition to deny and dismiss the application of Davis. In support of its supplement, ORA submits the following comments.

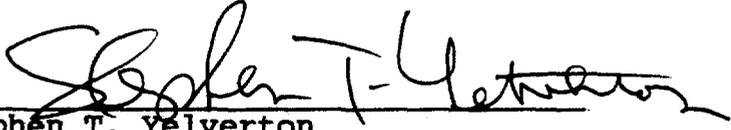
ORA, in its petition to deny and dismiss, contended that the application of Davis must be dismissed with prejudice because she proposes a short-spacing of 6.84 km. In a comparative hearing, a short-spaced application cannot be considered where other applicants propose fully-spaced and technically suitable 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.

ORA submits this supplement to report 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, FCC 92-273, paras. 2 and 12, rel. July 1, 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<sup>1</sup> 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. Here, a fully-spaced site is available and technically suitable.

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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July 29, 1992  
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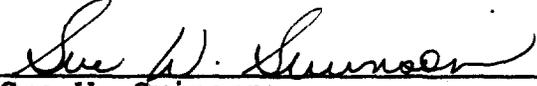
<sup>1</sup>Davis requests processing under Section 73.213.

CERTIFICATE OF SERVICE

I, Sue W. Swinson, a secretary in the law offices of Maupin Taylor Ellis & Adams, P.C., do hereby certify that on this 29th day of July, 1992, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Supplement to Petition to Deny and Dismiss the Application of Shellee F. Davis" to the following:

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

Dan J. Alpert, Esq.  
Ginsburg, Feldman & Bress, Chartered  
1250 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
Counsel for Shellee F. Davis

  
\_\_\_\_\_  
Sue W. Swinson

Hand Delivery\*

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