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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In re Applications of	)	MM DOCKET NO. 93-107
	)	
DAVID A. RINGER	)	File Nos. BPH-911230MA
	)	
et al.	)	**et al.**
	)	
For Construction Permit	)	
Channel 280A	)	
Westerville, Ohio	)	

To: Administrative Law Judge
Walter C. Miller

MASS MEDIA BUREAU'S OPPOSITION TO MOTION TO ENLARGE ISSUES AGAINST DAVIS

1. On May 17, 1993, Ohio Radio Associates, Inc. ("ORA") filed a motion to enlarge issues against Shellee F. Davis ("Davis"). The Mass Media Bureau opposes ORA's motion and submits the following comments.

2. In essence, ORA seeks addition of the following issues:

1. To determine whether Davis violated Section 73.316 of the Commission's Rules.

2. To determine whether Davis violated Section 73.215 of the Commission's Rules.

3. To determine whether Davis proposes a tower site in violation of Section 73.207 of the Commission's Rules.

4. To determine whether Davis violated Section 1.1208 of the Commission's Rules by making a prohibited ex parte contact.

3. ORA alleges that Davis violated Section 73.316(c)(1) of the Commission's Rules by not providing the model number of or otherwise sufficiently describing her directional antenna.

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However, that provision does not specify when the information is to be submitted, and the Bureau's practice is to require such information when a license application (FCC Form 302) is filed. Accordingly, addition of a Section 73.316 issue is not warranted.

4. With respect to the requested Section 73.215 issue, ORA claims that Davis does not state that she will provide protection to short-spaced stations' contours based on their maximum effective radiated power, contrary to Section 73.215(b)(2)(ii). However, Davis sought processing under Section 73.213, not

that no fully-spaced sites are available.

6. ORA is wrong. **On the Beach** affirmed rejection of an amendment which did not comply with Section 73.215(b)(2)(ii), and in the absence of a valid proposal for use of a directional antenna, found that the applicant did not meet the requirements for a waiver of Section 73.207 of the Commission's Rules. Here, Davis' proposal was processed in accordance with Section 73.213(c)(1). Thus, by its own terms, the spacing limitations of Section 73.207 are inapplicable, and there was no need for Davis to seek a waiver of that rule or make the showing necessary for grant of such a waiver. **See** **HDO**, 8 FCC Rcd at 2652, ¶¶ 6, 8, 10.

7. Finally, ORA contends Davis violated Section 1.1208(b)(1) of the Commission's Rules. ORA submits Davis made prohibited ex parte contacts in both December 1991 and March 1992. As ORA recognizes, the **HDO** determined that the contacts made by Davis did not violate the ex parte rules. Because ORA advances nothing beyond that known and discussed in the **HDO**, the Presiding Judge is bound by the **HDO**'s ruling. **See** **Annax Broadcasting Inc.**, **supra**; **Fort Collins Telecasters**, 103 FCC 2d 978, 983-84 (Rev. Bd. 1986).

8. Accordingly, the Bureau opposes ORA's motion to enlarge issues.

Respectfully submitted,
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Chief, Mass Media Bureau

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Chief, Hearing Branch

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June 2, 1993

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass