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OCT 25 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 25, 1993

Mr. William F. Caton
Secretary
Federal Communications Commission
Washington, D.C. 20554

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

Dear Mr. Caton:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and six (6) copies of its "Proposed Findings of Fact and Conclusions of Law."

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

B:CATON.115

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OCT 25 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In re Applications of:	)	
	)	
DAVID A. RINGER	)	MM Docket No. 93-107
	)	
et al.,	)	File Nos. BPH-911230MA
	)	
Applications for Construction	)	through
Permit for a New FM Station,	)	
Channel 280A, Westerville,	)	BPH-911231MB
Ohio	)	

To: Administrative Law Judge
Walter C. Miller

PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Respectfully submitted,

MCNAIR & SANFORD, P.A.

By: _____
John W. Hunter

By: _____
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October 25, 1993

B:CATON.115

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SUMMARY

None of the other applicants in this proceeding are entitled to the award of any integration credit. Therefore, proposed signal coverage becomes the deciding factor in this proceeding. Ohio Radio Associates, Inc. ("ORA") is the preferred applicant under this criteria. It will provide new nighttime service to under-served areas. None of the other applicants would provide such service.

ORA, in any event, challenges the Commission's integration policy as arbitrary, capricious, irrational, and otherwise contrary to the public interest. The superior engineering and signal coverage proposal of ORA, which would provide new service to under-served areas and which would operate non-directionally from a fully-spaced tower site, would further the Commission's comparative hearing policies and the public interest much more than the artificial, unrealistic, and contrived integration proposals of the other applicants.

David A. Ringer is not entitled to any integration credit. He failed to advance a specific and convincing proposal to divest or terminate his current full-time occupation and business as a land developer. The very existence of an outside business interest renders questionable an integration commitment in the absence of additional showings by the applicant as to the reliability of its integration proposal.

ASF Broadcasting Corp. ("ASF") is not entitled to any integration credit. Its integration proposal is inherently incredible and its application was formed in a manner irreconcilable with the exercise of sound business judgment. It is simply unbelievable that an experienced broadcaster and businessman would agree, after a one hour meeting, to give almost two hundred thousand dollars to a virtual stranger, who merely wants to save the jobs of her co-workers, and have no control over the use of his funds and ask no substantive questions about the station in which he would be investing. ASF must also be denied integration credit because no corporate agreements insulate the non-voting stockholder from impermissible involvement in the corporation.

Wilburn Industries, Inc. ("WII") is not entitled to any integration credit. The purported integrated stockholder stated that he intends to retire at age sixty-five, which would be in April 1994. Therefore, his integration pledge has no permanence. Integration credit must also be denied because the purported non-voting stockholder has control over the checking account and the disbursements for the application.

Shellee F. Davis is not entitled to any integration credit. She failed to advance a specific and convincing proposal to divest her current full-time occupation and business. Moreover, it is simply unbelievable that Davis will dispose of a successful and unmortgaged business in order to start a new and mortgaged business which she knows nothing about and had no interest in until the time for filing applications. Integration credit must also be denied because parts of Davis' hearing exhibit are incorrect. Therefore, her integration representations have no credibility.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Sections 1.263 and 1.264 of the Commission's Rules, hereby submits its proposed findings of fact and conclusions of law in this proceeding. In Hearing Designation Order ("HDO"), 8 FCC Rcd 2651 (MMB 1993), 58 Fed. Reg. 21580, pub. April 22, 1993, the Chief, Audio Services Division, acting pursuant to delegated authority, designated the applications of ORA, David A. Ringer ("Ringer"), ASF Broadcasting Corp. ("ASF"), Wilburn Industries, Inc. ("WII"), and Shellee F. Davis ("Davis") for hearing under the standard comparative issue. This issue includes whether a preference should be awarded to one of the applicants as to the areas and populations which it would provide 60 dBu or 1 mV/m service and which it would provide service to under-served areas. HDO, 2653, para. 17.

2. Two other applications which were designated for hearing, Kyong Ja Matchak and Westerville Broadcasting Company, Limited Partnership, were dismissed with prejudice. Memorandum Opinion and Order, FCC 93M-324, rel. June 3, 1993; Memorandum Opinion and Order, FCC 93M-510, rel. August 9, 1993.

3. The pre-hearing conference and exhibit exchange were held on August 16, 1993. The admissions session was held on August 20, 1993. The hearing was held on August 31, 1993. All such conferences, sessions, and hearings were held in Washington, D.C. The record was closed on October 8, 1993. Order, FCC 93M-642, rel. October 8, 1993.

PROPOSED FINDINGS OF FACT

Areas and Population

4. The applicants will provide 60 dBu or 1.0 mV/m service to the areas and population as noted below:

Applicant	Area	Population
ORA	2,476 sq. km.	597,617
Ringer	2,363	604,567
ASF	2,052	607,783
Wilburn	1,828	404,608
Davis	2,319	629,837

These areas and population currently receive five (5) or more daytime broadcast services (Jt. Ex. 1, pp. 2-3; Tr. 40-42).

5. ORA will provide a fourth (4th) new nighttime service to an area of 18 sq. km. with 183 persons and will provide a fifth (5th) new nighttime service to an area of 61 sq. km. with 2,251 persons. None of the other applicants will provide a new nighttime service to under-served areas (Jt. Ex., p. 3; Tr. 40-42).

Ohio Radio Associates, Inc.

Ownership Structure

6. ORA is an Ohio corporation which was incorporated on January 31, 1992. The corporation has four directors and stockholders, who each have a twenty-five per cent equity and voting interest. The Directors and stockholders are Joseph D. Carney, John J. Carney, James A. Carney (who are brothers), and John M. Mino. There are no non-voting stockholders. John J. Carney is the President. Joseph D. Carney is the Secretary and Vice-President. James A. Carney is the Treasurer and Vice President. John M. Mino is the Assistant Secretary, Assistant Treasurer, and Vice President (ORA Ex. 1, p. 1; Tr. 103-106).

Integration

7. ORA does not propose to integrate its owners into management (ORA Ex. 1, p. 1; Tr. 103-106).

Diversification

8. Neither ORA nor its stockholders control or own (including non-voting stock or limited partnership interests), or have any cognizable or attributable interest (management, employment, consultant, trustee, officer, director, etc.) in any AM, FM, TV, or LPTV broadcast stations, cable television systems, newspapers, or other recognized medium of mass communications, other than minor stock interests of less than five (5%) per cent in publicly traded companies which might own mass media interests. ORA and its stockholders have no such non-cognizable or non-attributable interests in the Westerville or Columbus, Ohio, market area (ORA Ex. 1, p. 1; Tr. 103-106).

Auxiliary Power

9. ORA will provide auxiliary power at its studio and tower site (ORA Ex. 1, p. 1; Tr. 103-106).

David A. Ringer

Ownership Structure

10. Ringer is an individual applicant (Ringer Ex. 1, p. 1; Tr. 43-45).

Integration

11. Ringer was born March 20, 1941 (Tr. 137). He proposes to terminate all other employment, relocate to Westerville, and serve as a full-time General Manager of the station. His duties would include overall responsibility for sales, personnel, and implementation of the station's Equal Employment Opportunity (EEO) program (Ringer Ex. 2, p. 1; Tr. 43-45). Ringer's current occupation is land developer. He buys and sells land for development. This is a full-time job (Tr. 143, 157).

12. Ringer is currently a party to a four-year non-compete agreement with AD, Inc., which ends in October 1994. This company is involved in newspaper advertising and publishing free shopper guides. The non-compete agreement covers the entire state of Ohio and prohibits Ringer from competing with AD, Inc. The agreement does not clearly limit itself to newspaper or print competition. Ringer declined to produce a copy of the agreement (Tr. 150-155).

Qualitative Enhancements

13. Ringer makes no claim as to past local residence within the proposed service area (Davis Exs. 4-5; Tr. 276-281). He claims a preference for future local residence in Westerville (Ringer Ex. 2, p. 1; Tr. 43-45). Ringer has never looked at any prospective housing in Westerville, or even visited the facilities of defunct Station WBBY-FM, in Westerville, which he intends to lease. Ringer bought his current residence in Columbus, Ohio, in June 1992 (some six months after filing his FM application) and has made no plans to sell that house, which is a single-family dwelling less than five miles from Westerville (Tr. 138, 141-143, 160).

14. Ringer claims a preference for civic activities through participating as a volunteer for the Salvation Army, Toys for Tots, and the Children's Hospital (Ringer Ex. 2, pp. 1-2; Tr. 43-45). It is not clear whether these activities were within the proposed service area (Tr. 144-145, 166, 276-281). Ringer claims a preference for some five years total past broadcast experience as a news reporter, program director, and station owner (Ringer Ex. 2, p. 2; Tr. 43-45, 159).

Diversification

15. Ringer is currently a twenty-five (25%) per cent owner, officer, and director of Station WYBZ-FM, Crooksville, Ohio. In the event of grant of his Westerville application, Ringer proposes, prior to the commencement of program test authority, to sell his interest, terminate his employment, and any connection he may have with Station WYBZ-FM, and with any other media interest which he may have (Ringer Ex. 4, p. 1; Tr. 44, 47-49, 137, 154-155, 158, 163-164).

16. Station WYBZ-FM is owned by a closely-held corporation which has three other twenty-five (25%) per cent stockholders. Ringer did not approach any of the other owners about buying his interest until October 1992, which was ten months after the filing of the Westerville application. He has no written agreement with the other stockholders as to purchase of his interest (Tr. 145-148).

Auxiliary Power

17. Ringer proposes to provide auxiliary power at his studio and tower site (Ringer Ex. 3, p. 1; Tr. 44, 46-47). Ringer failed to include auxiliary power generators in his cost estimates at the time of filing his application. Such items were not included until after his July 16, 1993, deposition, when this matter was raised by opposing counsel. The station he currently owns, WYBZ-FM, does not have auxiliary power (Tr. 145, 166-167).

ASF Broadcasting Corp.

Ownership Structure

18. ASF is an Ohio corporation which was incorporated in December 1991. Ardeth S. Frizzell owns twenty-five (25%) per cent of the equity and is the President, Secretary, and sole director of the corporation. Seventy-five (75%) per cent of the equity is owned by Thomas J. Beauvais, who is purportedly a non-voting stockholder (ASF Ex. 1; WII Ex. 3; Tr. 50-51, 174-175).

Integration

19. Frizzell was born December 25, 1942. She proposes to be the full-time General Manager of the Westerville station. She proposes to oversee all aspects of station operations, including sales, programming, and personnel. All station personnel would report to her. Any other businesses and employment would be terminated (ASF Ex. 3, pp. 1, 3; Tr. 50-57).

20. Frizzell has spent most of her some twenty year broadcast career in non-management employee positions. The sole exception was serving for about one year as a caretaker General Manager of Station WBBY-FM in Westerville. This was when the license revocation appeal was in its final throes (ASF Ex. 3, pp. 2-3; Tr. 50-57, 243-244). At the time the station lost its appeal and went off-the-air in December 1991, Frizzell made the decision to attempt to obtain the license so that the then existing employees could be re-hired. According to Frizzell, many of the employees were in tears about the prospect of losing their jobs. The situation was very emotional (ASF Ex. 3, p. 3; Tr. 50-57, 178, 227-228).

21. Frizzell knew nothing about how to obtain the license and did not have the financial resources. She went to a friend, Joanne Adams, for help (Tr. 178-179). Adams had previously been an applicant for a new FM construction permit in Delaware, Ohio. She was the voting stockholder of the applicant and owned twenty (20%) per cent of the equity. Beauvais, an experienced broadcaster, was the purported non-voting stockholder and owned eighty (80%) per cent of the equity. Adams was awarded the permit for Delaware, but on appeal settled with the competing applicant because she had a heart condition which purportedly would

prevent her from working at the station. Adams and Beauvais were paid an amount in excess of their expenses to dismiss the Delaware application (ASF Ex. 2; Tr. 50-52, 180, 246-253, 261-263).

22. Adams told Frizzell about Beauvais and to contact him about providing financial support. Frizzell telephoned Beauvais (Tr. 178-181, 251). They then met in Columbus on December 13, 1991, which was two weeks before the filing deadline. This meeting lasted about one hour, including social talk (Tr. 192-193, 251). Frizzell and Beauvais only talked about the division of ownership in the application and generally about his financial backing (Tr. 196-197, 203, 251, 254).

23. Frizzell and Beauvais agreed to use the same shareholders agreement as in the Delaware application (Tr. 194-195, 197-199, 214, 239, 253, 259-261). They did not talk about the specific terms of a shareholders agreement (Tr. 196-197, 205-206); the total amount of money needed for the proposed station (Tr. 198-199, 204-205, 254-255); how the funds Beauvais provided would be used (Tr. 205); the budget for the proposed station (Tr. 199, 254-255); the potential profitability of the proposed station (Tr. 201, 204, 263); a business plan for the proposed station (Tr. 199, 254-255, 265); the format of the proposed station (Tr. 203, 268-269); the chances of winning the construction permit (Tr. 269); the past financial and business history of Station WBBY-FM, which ASF intends to lease (Tr. 203-204); the salary for Frizzell as General Manager (Tr. 203-205, 269); Frizzell's past broadcast experience (Tr. 230, 269); Beauvais' business and broadcast experience and broadcast holdings (Tr. 231, 233, 238, 269); or his relationship with Adams (Tr. 231). Beauvais had never listened to the signal of Station WBBY-FM, or determined the coverage for the proposed station (Tr. 200-201, 265). He has never checked Frizzell's references, other than through Adams (Tr. 265).

24. Frizzell contacted Beauvais' FCC attorney about representing ASF. He was unable to do so because his law firm represented another applicant in the Westerville proceeding (Tr. 270-271). Adams referred Frizzell to a local

attorney to prepare the corporate documents, including the shareholders agreement (Tr. 238). This agreement was signed by Frizzell and Beauvais on December 23, 1991. They had not had any meetings or discussions since the meeting of December 13 (Tr. 184, 192, 240). The shareholders agreement is identical to the one for the Delaware application, except for a slight difference in the division of equity (Tr. 194-195, 198-199, 214, 239).

25. Under the shareholders agreement, Frizzell is to provide twelve thousand ($12,000) dollars in capital contributions to ASF (WII Ex. 3, p. 3; Tr. 182-186, 210). She did not at the time of executing the agreement provide Beauvais with her personal balance sheet, or written documentation of her finances (Tr. 231, 271). Frizzell has less than twenty-five thousand ($25,000) dollars in the bank (Tr. 209-210). Under the shareholders agreement, Beauvais is to provide a total of ninety-six thousand ($96,000) dollars in capital contributions and a loan in the amount of one hundred thousand ($100,000) dollars (WII Ex. 3, p. 3; Tr. 184-185, 187, 191, 210, 214).

26. In addition to the shareholders agreement, a code of regulations was adopted for ASF. Neither the shareholders agreement, nor the code of regulations, prohibits Beauvais from being an employee of ASF or the station, from being an independent contractor, from being an agent, from being involved in the corporation or station, from transacting business for the corporation or station, or from communicating with Frizzell as to the day-to-day business of the corporation or station (WII Ex. 3; Davis Ex. 3; Tr. 184-185, 206-208, 210, 216, 218, 222).

Qualitative Enhancements

27. Frizzell makes no claim for residence within the proposed service area. She claims a preference for civic activities in Westerville through collecting shoes for the homeless in 1990-1991 and through participating in fundraising for TV Discovery Playland and Children's Hospital (ASF Ex. 3, p. 2; Tr. 50-57). Her actual involvement was only talking to people about participating (Tr. 223-224). Frizzell claims a preference for some twenty years

of past broadcast experience. This has been in non-management positions, except for about one year in which she served as a caretaker General Manager of Station WBBY-FM while its license revocation appeal was in its final throes (ASF Ex. 3, pp. 2-3; Tr. 50-57, 243-244).

Diversification

28. Frizzell has no ownership or interest in any medium of mass communications. Beauvais is the fifty (50%) per cent owner of the Patten Corporation, which owns a subsidiary that is the licensee of Station WBTZ, Pinconning, Michigan. Patten is the fifty (50%) per cent non-voting stockholder of a permittee of a new FM station in Trussville, Alabama. Beauvais is also the fifty (50%) per cent owner of GT Leasing, Inc., which has an eighty (80%) per cent ownership interest in Station WFGR-FM, Grand Rapids, Michigan, where he currently serves as General Manager (ASF Ex. 2, p. 1; Tr. 50-52, 175, 246-251).

Auxiliary Power

29. ASF proposes to provide auxiliary power at its studio and tower site (ASF Ex. 4, p. 1; Tr. 51, 58). Frizzell did not budget for auxiliary power generators in ASF's cost estimates and did not know at the time of filing the application how much auxiliary power would cost. She first found out what the cost would be after her deposition on July 13, 1993, when the issue was raised by opposing counsel. Frizzell proposed auxiliary power in ASF's application and hearing exhibit because her FCC counsel thought it was a good idea. At the time she was General Manger of Station WBBY-FM, that station had an auxiliary generator only at the studio. It rarely worked (Tr. 242-244).

Wilburn Industries, Inc.

Ownership Structure

30. WII is an Ohio corporation which was incorporated on December 27, 1991, and reorganized on January 27, 1992. The corporation has no by-laws or minutes, other than one memo. Charles W. Wilburn has been issued three hundred seventy-five (375) shares of voting stock. Bernard P. Wilburn has been issued three hundred seventy-five (375) shares of non-voting stock. Charles represents

that he is the sole officer and director of the corporation. Documents on file with the State of Ohio represent that Bernard is the Secretary of the corporation (WII Ex. 1; Davis Ex. 6; Tr. 59-63, 285, 323-326, 354).

Integration

31. Charles was born April 23, 1929. He proposes to be the full-time General Manager of the Westerville station. He would oversee the day-to-day operations of the station and supervise programming, sales, employment, and administrative matters. Charles proposes to terminate his current law practice and to limit any other business activities which would conflict with his duties at the Westerville station (WII Ex. 2; Tr. 59-63, 284-285). Charles intends to retire at age sixty-five, which would be in April 1994 (Tr. 346).

32. Charles graduated from law school in 1963 and has been practicing general law in Circleville, Ohio, since graduation. He has engaged in or managed no other business, other than acting as a fiduciary, and has never sold advertising. Bernard, his son, joined him as a partner in 1984 (Tr. 286-287, 309, 314, 356). They each work no more than 35-40 hours per week. The law firm is a two-person partnership. They have one secretary, but no paralegal or bookkeeper. Charles and Bernard divide the profits on an equal basis, although Charles owns most of the physical assets of the law firm (Tr. 289-290, 316-318, 357). In 1991 and 1992, each had about seventy-five thousand dollars in income from the law firm. In 1993, each has so far received about two hundred fifty thousand dollars (Tr. 338, 351).

33. Charles and Bernard together prepared and filed the Westerville application (Tr. 292-293, 295, 297-298, 300, 302-303, 322, 345, 373). Bernard signed the certification page (Tr. 363). At the time of preparing and filing the WII application, Charles and Bernard had no FCC counsel (Tr. 292-293). They decided to be equal partners and to share management duties at the station (Tr. 294, 362). Charles intended to be Assistant to the Program Director and Bernard intended to be Assistant to the Programming Director (Tr. 303, 363). They would each work twenty (20) hours at the station and continue spending some thirty-five

to forty (35-40) hours per week practicing law (Tr. 331, 364-365). Nelson Embrey, a friend and experienced broadcaster, would play a significant management role at the station (Tr. 311-313, 315-316, 346, 364, 366).

34. After filing the Westerville application in December 1991, Charles and Bernard retained FCC counsel for WII. They were told by FCC counsel that WII's ownership structure and proposed management was inferior under FCC comparative policies. FCC counsel advised Charles and Bernard to reorganize the corporation to make Charles the sole voting stockholder and to make Bernard a non-voting stockholder. They were also advised that Charles should propose to be the full-time (40 hour per week) General Manager of the station and that Bernard should have no management duties. Charles and Bernard duly complied with the directive of their FCC counsel (Tr. 292-294, 305, 307-308, 361-362). They nevertheless still intend for Embrey to have a significant management role at the station. Charles may actually only serve as an assistant to Embrey, and not as General Manager (Tr. 313, 315-316, 346).

35. Charles, who has a wife, claims that he will entirely give up his law practice and turn it over to Bernard, who would pay no consideration for it (Tr. 288, 300-301, 316, 319-320, 367). Charles would continue to pay half of the rent on the law firm office space (Tr. 318). He would not receive any income from the law firm and would not initially have a salary from the station (Tr. 319, 368).

36. By acquiring Charles' law practice, Bernard would be required to work some eighty hours per week. He would need to hire an attorney to help him. Bernard has made no effort to obtain legal help (Tr. 301, 317, 344, 371). According to Charles, his transition from the law firm to the radio station would be gradual. He has no time frame in mind (Tr. 342-343).

37. Charles claims that he always intended to retire from the practice of law at this time, regardless of whether he went into the radio business as a full-time manager. Bernard contradicted him on this point. According to Bernard, Charles would have continued to practice law under the original part-time management plan (WII Ex. 2; Tr. 59-63, 365).

38. At the time of notifying the State of Ohio on January 27, 1992, of the reorganization, Bernard was the Secretary of the corporation. The State of Ohio has never been notified that Bernard is not the Secretary. Ohio law requires that a corporation have two separate officers to sign certain filings with the state (Davis Ex. 6; Tr. 323-329, 354). Moreover, according to Bernard, because of the fifty/fifty equity division of the corporation, Charles does not have positive control of the corporation and application, only negative control (Tr. 361).

39. WII has no checking account. All funds for the preparation and prosecution of the WII application have come from the law firm partnership account. Bernard is a fifty (50%) per cent general partner of the law firm (Tr. 289, 356, 358-359, 367, 370).

Qualitative Enhancements

40. Charles makes no claim for past residence in the proposed service area. He proposes to move to Westerville, which is some nine miles from his current residence (WII Ex. 2; Tr. 59-63, 285, 321).

Diversification

41. Neither WII, nor its stockholders, have any interest in or connection with any other medium of mass communications (WII Ex. 1; Tr. 59-63).

Auxiliary Power

42. WII does not propose the use of auxiliary power (WII Exs. 1-2; Tr. 59-63).

Shellee F. Davis

Ownership Structure

43. Davis is an individual applicant (Davis Ex. 1, p. 1; Tr. 64-102).

Integration

44. Davis was born April 8, 1956 (Tr. 375). She proposes to be the full-time General Manager of the Westerville station. Her duties would include overseeing and assuming ultimate responsibility for the day-to-day activities at the station. Davis proposes to terminate all other paid employment and sell her

existing business in order to effectuate her integration pledge (Davis Ex. 1, p. 1; Tr. 64-102).

45. Davis is currently the President, manager, and sole owner of Britt Business Systems, Inc. ("Britt"), which is located in Columbus. She has been the owner since 1988 and personally manages the company. Britt is an office equipment dealer. It has dealerships with Panasonic and Xerox. Since 1991, Britt has had gross yearly revenues of over one million ($1,000,000) dollars. It has been named the number one dealer in the Mid-West. Davis attributes the success of Britt to her personal involvement. She is a hands-on manager and personally handles the largest accounts. Britt's customers include Anheuser-Busch, American Electric Power Co., Columbus Public Schools, Ohio State University, State of Ohio, Columbus Bar Assoc., and Baker & Hostetler. Davis' total compensation and profits from Britt in 1992 were about one hundred five thousand ($105,000) dollars (Davis Ex. 1, attach. A; Tr. 64-102, 376-380, 382, 418-420, 422, 425-426, 430, 439).

46. Davis has made no effort to sell Britt. No appraisal has been done as to the fair market value of the company. If Davis could not obtain an acceptable price, she would not sell Britt. The value of Britt as a company includes its right to sell Panasonic and Xerox equipment. These dealerships can not be sold or assigned without the prior written permission of Panasonic and Xerox. Davis has made no inquiry about obtaining such consent. Britt is not encumbered with any bank loans or mortgages. The proposed Westerville station would be encumbered with a bank loan and mortgage (Ringer Exs. 5-6; Tr. 383-384, 386, 388-390, 393-396, 398-400, 420).

47. Davis first learned of the availability of the Westerville frequency in November-December 1991. Prior to that time, she had no interest in owning or operating a radio station. She had considered going into the flower arranging or picture framing business. Reginald Davis, her husband, was previously an applicant for FM construction permits in Indianapolis, Indiana, and in Upper Arlington, Ohio, which is near Columbus and Westerville. He did not have an

actual intent to own and operate a radio station and received a payment in settlement of at least one of the applications. Ben Davis, her brother-in-law, had previously been an applicant for an FM construction permit in Huron, Ohio. He referred Shellee to his FCC counsel for her to use in the Westerville proceeding. Reginald told Shellee to do what her FCC counsel said to do. FCC counsel referred her to an engineer, found her a tower site, prepared cost estimates for her, and prepared a form bank loan letter (Tr. 393, 401-406, 436-437).

48. Davis intends to lease the facilities of defunct Station WBBY-FM. She does not know the past income or operational costs for that station. Davis has never done a market analysis as to a format for her proposed station, has done no research as to its potential profitability, has made no revenue projections, does not actually know how much it would cost to operate a station, does not know the overall radio advertising revenues for the local market, does not know anything about the profitability of FM radio stations in the Columbus area, does not know anything about radio advertising revenues, and does not know anything about the economic state of radio in general. Davis does not know if she will have a salary at the proposed Westerville station (Tr. 381-382, 384-385, 387, 407-408).

49. Since deciding in December 1991 to apply for the Westerville frequency, Davis has done very little to learn about the radio industry. She has read an NAB book about minority enterprises and listens more to radio. In July 1993, at the time of depositions in this proceeding, Davis took a tour of the Station WBBY-FM facilities (Tr. 412, 417).

50. Davis conceded that certain parts of her hearing exhibit were incorrect. In the hearing exhibit, Davis included newspaper articles wherein she represented that Ben Davis, her brother-in-law, was a partner, shareholder, and officer in Britt. Davis gave this information to the newspaper and knew at the time that it was not correct (Davis Ex. 1, attach. B and E; Tr. 64-102, 431-434, 437, 439-445).

Qualitative Enhancements

51. Davis claims a preference for local residence in the proposed service area from 1984 to the present. She claims a preference for numerous civic activities in the proposed service area, which includes the Columbus Chamber of Commerce, Columbus Chapter of Links, United Way, Columbus Speech and Hearing Board, and the New Salem Baptist Church. Davis has no past broadcast experience (Davis Ex. 1, pp. 1-7; Tr. 64-102, 375).

Diversification

52. Davis neither owns nor controls any medium of mass communications (Davis Ex. 1, p. 7; Tr. 64-102).

Auxiliary Power

53. Davis proposes to provide auxiliary power at her station (Davis Ex. 2, p. 1; Tr. 64-103).

PROPOSED CONCLUSIONS OF LAW

Areas and Population

54. ORA is entitled to a preference over WII for providing 60 dBu or 1.0 mV/m service to greater areas and more population. ORA would provide service to approximately fifty (50%) per cent more areas and population than would be provided by WII (findings, para. 4). Because the areas and population are already well-served with five (5) or more existing broadcast services, this preference would be very slight. Barton Broadcasting Co., 104 FCC2d 785, 791, para. 8 (Rev. Bd. 1986).

55. The differences in population to be served by ORA, Ringer, and ASF are less than five (5%) per cent and thus not decisionally significant. Metro Broadcasting, 99 FCC2d 688, 699, para. 18 (1989). However, ORA would serve approximately a twenty (20%) per cent greater land area than would be provided by ASF (para. 4). Thus, ORA would be entitled to a very very slight preference over ASF. Barton Broadcasting Co.

56. Although Davis will provide service to approximately five (5%) per cent more population than ORA, it will provide service to approximately a five

(5%) per cent greater land area than would be provided by Davis (para. 4). Thus, these advantages would effectively cancel out and neither ORA nor Davis is entitled to a preference over the other in this respect. Metro Broadcasting.

57. ORA is entitled to a preference for providing new nighttime service to under-served areas. None of the other applicants would provide such service (para. 5). New service, including nighttime service, to under-served areas is of greater weight than providing service to well-served (5 or more services) areas. Radio Jonesboro, Inc., 96 FCC2d 1106, 1112-1113 (Rev. Bd. 1984); Christian Broadcasting of the Midlands, Inc., 99 FCC2d 578, 582-583, para. 9-10 (Rev. Bd. 1984). Accordingly, ORA is overall the preferred applicant under the areas and population issue.

Ohio Radio Associates, Inc.

58. ORA is entitled to a diversification preference because neither it nor its principals have any other cognizable media interests (para. 8). ORA is entitled to a preference for providing auxiliary power at its studio and tower site (para. 9).

David A. Ringer

59. Ringer is not entitled to any integration credit. He failed to advance a specific and convincing proposal to divest or terminate his current full-time occupation and business as a land developer. Ringer did not propose to sell this business, apparently only to somehow terminate his employment there. It is not known who he would turn over his responsibilities to. It is not known how many employees Ringer supervises, the precise nature of his management responsibilities, or who would assume these responsibilities. Indeed, Ringer failed to even mention in his hearing exhibit his current occupation and business (para. 11).

60. The very existence of an outside business interest renders questionable an integration commitment in the absence of additional showings by the applicant of the reliability of its integration proposal. Blancett Broadcasting Co., 17 FCC2d 227, 230, para. 7 (Rev. Bd. 1969). Applicants have

the burden to establish how they will effectuate their integration proposals. Cuban-American Limited, 5 FCC Rcd 3781, 3785, para. 28 (1990). The proponent of an integration proposal must allay any substantial doubts as to effectuating its integration proposal. Knoxville Broadcasting Corp., 103 FCC2d 669, 687 (Rev. Bd. 1986). To meet this burden, an applicant must present a detailed and convincing plan as to how it will accommodate outside business interests with its integration proposal. Naguabo Broadcasting Co., 6 FCC Rcd 912, 924, n. 63 (Rev. Bd. 1991). In order to receive integration credit, an applicant must advance a specific proposal and must establish a reasonable assurance that it will be carried out. Royce International Broadcasting, 5 FCC Rcd 7063, para. 7 (1990). In situations where an applicant proposing full-time integration has other substantial ongoing business interests, a generalized promise to reduce the time spent on a significant business interest is insufficient. Leininger-Geddes Partnership, 2 FCC Rcd 3199, para. 3 (Rev. Bd. 1987), rev. denied, 3 FCC Rcd 1181 (1988).

61. Ringer is the owner and full-time manager of a land development company, of which the record is virtually silent. He has failed to describe his current responsibilities and to specify the nature of his time commitments. In sum, Ringer's pledge to terminate his business activities is a vague and generalized promise no different than the ones which the Commission has consistently rejected. See, e.g., Pleasure Island Broadcasting, Inc., 6 FCC Rcd 4163, 4165, para. 16 (Rev. Bd. 1991). Accordingly, Ringer must be denied integration credit.

62. Another independent basis to deny Ringer integration credit is that he is a party to a non-compete agreement. This agreement is with a media-related company and covers the entire State of Ohio. Ringer conceded that the agreement does not clearly limit itself to newspaper or print competition. He declined to produce a copy of the agreement (para. 12). Ringer has simply failed to meet his burden of proof as to this issue. Cuban-American Limited, applicants have the burden of proof as to their integration proposal. The fact that Ringer is

currently an owner of Station WYBZ-FM in Ohio is not determinative of whether or not he would be in violation of the non-compete agreement because he is only a minority owner and is not an employee of that station. In contrast, Ringer would be the controlling owner and manager of the proposed Westerville station (para. 15).

63. Ringer must be assessed a diversification demerit. His proposal to divest his interest in Station WYBZ-FM is not credible. Ringer conceded that, at the time he made this proposal in his application, he had not talked to anyone about buying his ownership interest. It was some ten months later that Ringer first talked to the co-owners of Station WYBZ-FM about buying his interest. Even now, Ringer does not have a written purchase agreement (paras. 15-16).

64. Ringer is not entitled to credit for auxiliary power. He failed to include auxiliary power generators in his cost estimates at the time of filing his application. They were not included until after his deposition in July 1993, when this matter was raised by opposing counsel (para. 17). Athens Broadcasting, Inc., 17 FCC2d 452, 461-462, para. 22 (Rev. Bd. 1969), auxiliary power proposal rejected where it was not included in cost estimates at time of filing, cited with approval in Linda U. Kulisky, 8 FCC Rcd 6235, 6238, n. 1 (Rev. Bd. 1993).

ASF Broadcasting Corp.

65. ASF is not entitled to any integration credit. Its integration proposal is inherently incredible. As observed by the U.S. Court of Appeals, the Commission's two-tier ownership policies produce "strange and unnatural" business relationships. Bechtel v. FCC, 957 F.2d 873, 880 (D.C. Cir. 1992). ASF may well be the strangest and the most unnatural of the lot. Frizzell's stated reason for forming ASF and applying for the Westerville frequency is to save the jobs of the employees of now defunct Station WBBY-FM. She was moved by their tears when the station went off-the-air (para. 20).

66. Beauvais, who is Frizzell's financial backer and who is an experienced broadcaster and businessman, was a virtual stranger to her at the time of organizing ASF. He purportedly agreed to provide almost two hundred thousand

dollars for the Westerville application and station after only a one hour meeting, which was mostly social. At this meeting, Beauvais did not inquire about the budget for the proposed station, a business plan for the proposed station, the potential profitability of the proposed station, the format of the proposed station, the signal coverage of the proposed station, the total amount of money needed, how his money would be spent, the past financial and business history of Station WBBY-FM (which would be leased by ASF), the chances of winning the construction permit, Frizzell's financial resources, Frizzell's past broadcast experience and personal background, or Frizzell's proposed salary as General Manager (paras. 22-23).

67. It is simply unbelievable that an experienced broadcaster and businessman would agree, after a one hour meeting, to give almost two hundred thousand dollars to a virtual stranger, who merely wants to save the jobs of her co-workers, and have no control over the use of his funds and ask no substantive questions about the station in which he would be investing (paras. 20-23, 25). Metroplex Communications, Inc., 5 FCC Rcd 5610, 5611-5612, para. 13 (1990), no integration credit awarded where the application is formed in a manner irreconcilable with the exercise of sound business judgment.

68. Perhaps, Beauvais' seemingly irrational conduct can be explained by the fact that he had previously made a profit from financially backing another FM application for a station which was never built. The applicant in that proceeding was a friend of Frizzell's. That person acted as an intermediary in this proceeding for Frizzell and Beauvais and told Frizzell how to go about filing and prosecuting an FM application. That person also gave Frizzell a shareholders agreement to use in this proceeding which was used by Beauvais in the other proceeding (paras. 21, 23-25).

69. Another basis to explain Beauvais' seemingly irrational conduct and another independent basis to deny integration credit to ASF is that Beauvais is not actually insulated from control or management of the proposed Westerville station. No corporate agreement prohibits Beauvais from being an employee of ASF

or the station, from being an independent contractor, from being an agent, from being involved in the corporation or station, or from communicating with Frizzell as to the day-to-day business of the corporation or station (para. 26). Cotton Broadcasting Co., 4 FCC Rcd 1781, 1783, paras. 19-21 (1990).

70. Because of the lack of insulation between Beauvais and ASF, Beauvais' broadcast interests must be attributed to ASF for purposes of diversification. Attribution of Ownership Interests, 97 FCC2d 997 (1984), recon. granted in part, 58 RR2d 604, 619-620, para. 49 (1985), further recon. granted in part, 1 FCC Rcd 802, 803, paras. 5-6 (1986). Beauvais' broadcast interests, in nearby Michigan, which would not be divested, would require the assessment of at least a slight to moderate diversification demerit against ASF. Policy Statement on Comparative Broadcast Hearings, 1 FCC2d 393, 395 (1965), the distance from the community of license determines the weight of the diversification demerit. See also, Christian Broadcasting of the Midlands, Inc., para. 5.

71. ASF is not entitled to credit for auxiliary power. Frizzell failed to include auxiliary power generators in her cost estimates for ASF at the time of filing the application. They were not included until after her July 1993 deposition, when this matter was raised by opposing counsel (para. 29). Athens Broadcasting, Inc.; Linda U. Kulisky.

Wilburn Industries, Inc.

72. WII is not entitled to any integration credit. Charles Wilburn, the purported integrated stockholder, conceded that he intends to retire at age sixty-five. He will be sixty-five in April 1994 (para. 31). Accordingly, WII's integration proposal has no permanence. Policy Statement on Comparative Broadcast Hearings, 395, n. 6; Martin Intermart, Inc., 3 FCC Rcd 1650, 1652, para. 7 (Rev. Bd. 1988), integration credit to be awarded only to those proposals which will be adhered to on a permanent basis.

73. This intended retirement by Charles is further corroborated by the fact that his friend, Nelson Embrey, an experienced broadcaster, will admittedly play a significant role at the proposed Westerville station (para. 33). Another

fact corroborating that Charles would retire soon after commencing his duties as General Manager is that he has never managed a broadcast station (para. 32).

74. Another independent basis to reject WII's integration proposal is that it is inherently incredible. Charles claims that, in order to effectuate his integration proposal, he will give his law practice to his son, Bernard, a purported non-voting stockholder in WII, for no monetary consideration. Yet, Charles would continue to pay half the rent for the law firm office, although receiving no income from the law firm and initially have no salary from the station (para. 35). Atlantic City Community Broadcasting, Inc., 6 FCC Rcd 925, 932, para. 22 (Rev. Bd. 1991), aff'd, 8 FCC Rcd 4520, 4523, para. 17 (1993), integration proposal which is not well-thought out or well-conceived must be rejected.

75. Further evidence that WII's integration proposal is not well-thought out or well-conceived is the fact that Charles is married and there is no record evidence as to whether his wife has agreed to this peculiar arrangement which would adversely impact her financial well-being (para. 35). Moreover, in order for Charles to implement his integration proposal, Bernard would be required to either work some eighty hours per week to maintain the law practice of the firm, or to hire another attorney. Bernard has made no effort to obtain such legal help. Charles is also vague about how long it would take for him to phase out of the law firm (para. 36).

76. WII's integration proposal is incredible and unreliable in view of the manner in which it was conceived. At the time of filing the Westerville application, WII was not represented by FCC counsel. At that time, Charles and Bernard agreed that each would be an equal fifty (50%) per cent owner, each would work part-time at the station in nominal management positions, each would still continue practicing law, and a friend, Embrey, who is an experienced broadcaster, would play a significant role at the station. Bernard substantially participated in preparing and filing the application, including signing the certification page (paras. 33, 37). After filing the application, FCC counsel was retained. He