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Before the  
Federal Communications Commission  
Washington, D.C. 20554

FCC MAIL SECTION

NOV 10 3 10 PM '93

MM Docket No. 93-107

DISPATCHED BY

In re Applications of

- DAVID A. RINGER File No. BPH-911230MA
- ASF BROADCASTING CORPORATION File No. BPH-911230MB
- WILBURN INDUSTRIES, INC. File No. BPH-911230MC
- SHELLEE F. DAVIS File No. BPH-911231MA
- OHIO RADIO ASSOCIATES, INC. File No. BPH-911231MC

For Construction Permit for  
an FM Station on Channel 280A,  
in Westerville, Ohio

**APPEARANCES**

*Arthur V. Belenduk and Shaun A. Maher* behalf of David A. Ringer; *James A. Koerner* on behalf of ASF Broadcasting Corporation; *Eric C. Kravetz and Marjorie K. Conner* on behalf of Wilburn Industries; *Dan J. Alpert* on behalf of Shellee F. Davis; *Stephen Yelverton and John Hunter* on behalf of Ohio Radio Associates Inc.; *James Shook and Norman Goldstein* on behalf of Chief, Mass Media Bureau.

**INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE  
WALTER C. MILLER**

Issued: November 8, 1993; Released: November 18, 1993

1. Five mutually-exclusive applicants remain in this contest for an FM station in Westerville, Ohio, on Channel 280A. They are: (1) David A. Ringer; (2) ASF Broadcasting Corporation; (3) Wilburn Industries, Inc.; (4) Shellee F. Davis; and (5) Ohio Radio Associates, Inc.

2. After both the prehearing and posthearing interlocutory pleading cycles had run their course, we only had to take evidence on one factual issue, the standard comparative issue.<sup>1</sup> That issue, along with the ultimate issue, remain to be resolved:

- (1) To determine which proposal would, on a comparative basis, best serve the public interest; and
- (2) To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

3. The Chief, Audio Services also indicated that there was a significant difference in the size of the areas and populations that would receive service from the proposals. So he called for comparative coverage evidence. See 58 F.R. 21580 published April 22, 1993 at para. 17.

4. We held the Prehearing Conference on August 16, 1993, the Evidentiary Admission Session on August 20, 1993, and the Hearing on August 31, 1993. However, at the close of the hearing there were still nine petitions to enlarge pending. So we were unable to close the evidentiary record until October 8, 1993 (See FCC 93M-642).

5. The five applicants and the Mass Media Bureau<sup>2</sup> filed their Proposed Findings of Fact and Conclusions of Law on October 25, 1993. The five applicants (sans Bureau) filed Reply Findings on November 4, 1993.

**Issue 1: The Standard Comparative Issue Description of the Applicants**

6. *David A. Ringer* and *Shellee F. Davis* have each applied as individual applicants.

7. *ASF Broadcasting Corporation*, an Ohio two-tiered corporation, has two stockholders. Thomas J. Beauvais owns 75% of the corporate equity; i.e., all of ASF's 750 non-voting shares of stock.

8. *Ardeth S. Frizzell* owns the remaining 25% of the equity; i.e., all of ASF's 250 voting shares of stock.

9. *Wilburn Industries, Inc.*, an Ohio two-tiered corporation, has two stockholders. Charles W. Wilburn, the President, Secretary, Treasurer and sole Director owns 50% of the corporate equity; i.e., all 375 shares of the voting stock. His son, Bernard P. Wilburn owns the other 50% of the corporate equity; i.e., all 375 shares of the non-voting stock. Bernard Wilburn is neither an officer nor director.

10. *Ohio Radio Associates, Inc.* has four director-stockholders. Each stockholder owns 25% of the equity and a 25% voting interest. The four are John Carney, President; Joseph D. Carney, Secretary and Vice-President; James A. Carney, Treasurer and Vice-President; and John M. Mino, Assistant Secretary, Assistant Treasurer and Vice President. There are no non-voting stockholders.

**Diversification of Mass Media**

11. *David A. Ringer* presently owns 25% of, and is Treasurer, Secretary and Director of the licensee of Station WYBZ(FM), Crooksville, Ohio. However, he has pledged

<sup>1</sup> The air hazard issue that the Chief, Audio Services Division designated against the then applicant Westerville Broadcasting company Limited Partnership (WBC) was resolved in WBC's favor. See FCC 93M-275 released May 18, 1993. At their request

WBC's application was later dismissed. See FCC 93M-510 released August 9, 1993.

<sup>2</sup> As is their custom the Mass Media has only addressed the comparative coverage question. See Finding 3 *supra*.

to sell his interest and terminate any connection he has with WYBZ(FM) if his application is granted. So Ringer will not be assessed a comparative diversification demerit.

12. *ASF Broadcasting Corporation's* voting stockholder, and 25% owner, Ardeth Frizzell, has no interest in any medium of mass communications. However, ASF's 75% owner, Thomas J. Beauvais, has other media interests.

13. Beauvais owns 50% of the Patten Corporation. Patten owns the licensee of station WBTZ, Pinconning, Michigan. Patten also owns 50% of an FM permittee in Trussville, Alabama. The Trussville equity is non-voting stock.

14. Beauvais also owns 50% of GTE Leasing, Inc. GTE owns 80% of WFGR-FM, Grand Rapids, Michigan. He is currently WFGR-FM's General Manager.

15. Even though Beauvais holds himself out as an ASF non-voting stockholder, his 75% ASF ownership when combined with his other nearby holdings and his active role as WFGR-FM, Grand Rapids's General Manager warrants a substantial diversification demerit.

16. Neither *Wilburn Industries Inc.* nor its two shareholders have any connection with any other medium of mass communications.

17. *Shellee Davis* has no connection with any other medium of mass communications.

18. Neither *Ohio Radio Associates* nor any of its four stockholders have any connection with any other medium of mass communications other than minor stock interests (less than 5%) in publicly traded companies which might own mass media interests. Moreover, none of these noncognizable or nonattributable interests are located in either the Westerville or Columbus, Ohio market areas. So ORA also escapes any diversification demerit.

19. *Intermediate Diversification Findings.* Neither Ringer, Wilburn, Davis nor ORA will be assessed any diversification demerit. None of them have any cognizable or attributable interests in any medium of mass communications. Only ASF suffers a diversification demerit, but that demerit is substantial. Thomas J. Beauvais, ASF's 75% owner has substantial broadcast interests in two nearby Michigan stations; i.e., in Pinconning and Grand Rapids, Michigan. that warrants a substantial (but not decisional) diversification demerit. So ASF comparatively trails the field at this early juncture.

**Best Practicable Service  
Comparative Coverage**

20. The following chart portrays the total areas and populations within each applicants proposed 1 mV/m contour:

Total Areas and Populations Served

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

21. All proposed service areas receive at least five other daytime aural services. At night, ORA will provide a fourth aural service to 19 square kilometers and 183 people, and a fifth aural service to 61 square kilometers and 2,251 people. No other applicant would bring nighttime service to an underserved area.

22. *Intermediate Coverage Findings.* Davis, ASF, Ringer and ORA would serve between 193,009 (48%) and 225,229 (56%) more people than Wilburn. So they will receive a very slight preference relative to Wilburn for overall service superiority. The differences between Davis, ASF, Ringer and ORA are too insubstantial to warrant any preference vis-a-vis each other.

23. With their fourth and fifth nighttime service to 183 and 2,251 people ORA merits a *very slight* preference over Davis, ASF and Ringer. ORA merits a *slight* preference over Wilburn because of their overall coverage advantage as well as this underserved area advantage.

24. All-in-all, only Wilburn loses any ground under the comparative coverage criterion, and not a great deal at that.

**Integration of Ownership With Management  
Quantitative Claim**

25. *David A. Ringer.* Based on his sole proprietorship, David Ringer claims 100% quantitative integration. He intends to serve full-time as General Manager of his proposed facility. He will take overall responsibility for sales and personnel, and will implement the proposed station's EEO program.

26. David A. Ringer was born on March 20, 1941. He will terminate all other employment, relocate to Westerville, and serve as full-time General Manager of the station. Ringer is presently a full-time land developer.

27. Originally Ringer laid claim to substantial *local residence*. He represented that "... except from 1978 to 1986 when he resided at ... Chillicothe, Ohio and during his time at Miami University in Oxford, Ohio from June 1961 to June 1962. . . he had "... resided in the service area of the proposed station his entire life. . ." <sup>3</sup> See the Integration and Diversification Statement Ringer filed on May 10, 1993.

28. That representation soon started unraveling. After he was deposed Ringer substantially modified that claim. It was discovered that several of his past residences were not inside the service area of his proposed station. So Ringer amended his application. See FCC 93M-587 released September 15, 1993.

29. A little later, at the hearing, it developed that the rest of Ringer's past residences were also outside his proposed service area. See Davis Ex.5; Tr. 276-277, 278-281. Thus Ringer's representation that he had "... resided in the service area of the proposed station his entire life" turned out to be totally false. Consequently he'll be given no credit for that criterion.

30. Ringer has pledged (for what it's worth) to relocate to Westerville if his application is granted.

<sup>3</sup> From April, 1992 to the present Ringer has resided in 417 West Sixth Avenue, Columbus, Ohio. He cannot receive credit

for this searchlight residence; i.e., one he moved to after he filed his application on December 30, 1991.

31. Similarly, Ringer will not receive any comparative credit for his claimed *civic activities*. He concedes that some of those activities occurred outside his proposed 1 mV/m contour. And he has failed to demonstrate that the other claimed activities took place within that contour.

32. Ringer lays claim and will be credited with some *past broadcast experience*. From 1961-1962 when he was a student at Miami University he was a News Reporter for WMUB(FM); from 1961-1972 he was a full-time disk jockey and production person, and the afternoon and weekend Program Director at WLNO(FM), London, Ohio; and from 1990 to the present he has been Secretary, Treasurer and Director of WYBZ(FM), Crooksville, Ohio. He is not employed by Station WYBZ. But he visits the station about one day per week; i.e., 8 hours per week. He pays the station's bills and does some production work.

33. Being a White non-Hispanic Ringer claims no *minority enhancement*. If his application is granted he will install *auxiliary power generators* at both his proposed studio and transmitter.

34. *ASF Broadcasting Corporation*. ASF claims 100% quantitative integration. They intend to integrate their sole voting stockholder, Ardeth Frizzell, into the station's day-to-day operation. Although Ms. Frizzell only owns 25% of the station's equity (Thomas J. Beauvais owns the other 75%), she intends to be the station's full-time General Manager. She will terminate all other business or employment if ASF's application is granted. She will be in full charge of both personnel and operations.

35. Ardeth Frizzell is 51 years old. She was born in and still resides in Columbus, Ohio, outside the 1 mV/m contour of her proposed station. So she'll receive no credit for *local residence*. In fact Ms. Frizzell doesn't propose to move to Westerville even if her application is granted.

36. Ms. Frizzell started in broadcasting back in 1973. She started as a research assistant for WCOL and WXGT. In 1976 she became a promotion assistant; in 1978 she was promoted to assistant bookkeeper; and from 1982-1985 she was computer coordinator/traffic assistant.

37. In 1985 Ms. Frizzell began working at station WBBY, Westerville, Ohio, the station ASF now seeks to activate. She started as traffic manager. Later she became business manager. In 1990 she became general manager of the station, and held that position until the station went off the air on December 31, 1991. As General Manager she supervised a staff of 25 people. She was responsible for virtually all day-to-day operations.

38. Since February 1992, Ms. Frizzell has been business and traffic manager at station WCKX, London, Ohio.

39. Based on the foregoing (Paras. 37-38 *supra.*), and assuming that 75% equity holder Thomas J. Beauvais (See Paras. 16-17 *supra.*) doesn't preempt her as General Manager,<sup>4</sup> Ardeth Frizzell is entitled to and will be credited with substantial *past broadcast experience*.

40. Ms. Frizzell claims *civic participation* based on work she performed while employed at Station WBBY, Westerville. See para. 37 *supra.* She says she participated in

drives to collect shoes for homeless in 1990 and 1991, and helped raise funds for TV Discovery Playground and for Children's Hospital. However, at her deposition, she admitted that her only participation in the station's fund-raising efforts was to ". . . talk to the people [from Discovery and the Hospital] and [she] talked to the public service director and seen what she needed to do finish implementing [the promotion] . . . that's all [she] did."

41. Since we don't know the nature of her "participation" and "help"; since we don't know how much time she spent participating in those activities; and since we don't know whether the organizations allegedly benefitted were inside or outside ASF's proposed 1 mV/m contour, Frizzell's speculative claim for civic participation credit will be denied.

42. Being a White non-Hispanic, Ardeth Frizzell seeks no *minority enhancement*. ASF intends to install *auxiliary power generators* at both their studio and the transmitter.

43. *Wilburn Industries, Inc.* Wilburn claims 100% quantitative integration. They will integrate their President, Secretary, Treasurer and sole Director Charles Wilburn into the proposed station's day-to-day operations. Charles Wilburn, who owns 50% of the corporation's equity, would serve as the station's full-time General Manager. He will oversee the station's day-to-day operations, supervise its programming, its sales, its promotional and its internal activities. He will hire, promote, and terminate the station's employees, and will see to it that the station's EEO program is implemented.

44. Born on April 23, 1929, Charles Wilburn lives in Upper Arlington, Ohio. He has practiced law in Circleville, Ohio, since 1964. Currently he is in a general practice firm with his son Bernard. To fulfill his full-time integration pledge Charles Wilburn will retire from his legal practice and turn over his legal business to his son Bernard. After he does that, Charles Wilburn will not receive any of the fee income from the firm.

45. Neither Upper Arlington nor Circleville are within the station's proposed 1 mV/m contour. So Wilburn can claim no comparative credit for either *local residence* or *civic participation*. However, Charles Wilburn pledges to move to Westerville if Wilburn's application is granted.

46. Charles Wilburn has no *past broadcast experience*, and Wilburn does not seek *auxiliary power credit*. Since he is a non-Hispanic White, Charles Wilburn can lay no claim to minority enhancement.

47. *Shellee Davis*. As a sole proprietor Shellee Davis claims 100% quantitative integration. She will put in a minimum of 40 hours a week as the station's General Manager. She will oversee and assume ultimate responsibility for the station's day-to-day activities, and supervise the sales, on-the-air, and general office departments. She will hire and fire and will manage the Public File. She will oversee the Equal Employment Opportunity Program and all commercial production.

<sup>4</sup> The Shareholders Agreement between Frizzell and Beauvais provides that he alone will provide the funds to construct and operate ASF's proposed station. Ms. Frizzell has already contributed her \$12,000, the only amount required of her. So, as a practical matter, Beauvais will bear the entire cost of prosecuting the ASF application from the hearing session onward. The

signed Shareholder's Agreement contains no restrictions on Beauvais' future employment at the station, on his serving as an independent contractor or agent, on his ability to transact business in the name of the corporation or about his communicating his wishes on the day-to-day station operation.

48. Born on April 18, 1956, Shellee Davis lives at 463 Jessing Trail, Worthington, Ohio, within her proposed service area. She *has resided* within her proposed service area since 1984. Moreover, if her application is granted she will relocate to Westerville.

49. After earning a bachelor's degree in sociology from Wright State University and a master's degree in criminal justice from Rutgers University, Ms. Davis founded her own business in 1988. She is presently President of and owns Britt Business Systems. Britt distributes office equipment for Panasonic Industrial Company and the Xerox Corporation.

50. A hands-on manager Davis has turned Britt into a highly successful operation.<sup>5</sup> However, to effectuate her full-time integration pledge, Ms. Davis will sell Britt and terminate all other paid employment.<sup>6</sup>

51. Shellee Davis claims and is entitled to substantial comparative credit for *civic participation*. From 1988 to the present she has been an active member of the Columbus Chamber of Commerce; for the last four years she has belonged to the Columbus chapter of Links (a National Women's civic organization). She has chaired various committees in Links.

52. She participated in the United Way program called Project Diversity in 1990-1991; she has been a member of the Columbus Speech and Hearing board from 1991 to the present; and she was a member of the New Salem Baptist Church Business Development Board.

53. Ms. Davis assisted in the fundraising efforts for the King Center annual Campaign Chair for Black Owned business in 1991-1992; she was a Center for New Directions Panelist in 1991; she was a Member of the United Way business Development Committee in 1991; and she was a Linden-McKinley High School Presenter in 1991.

54. She has been an Ohio State University's Young black Scholarship Program participant from 1987 to the present, a Red Cross Neighborhood volunteer in 1990, a Columbus Chamber of Commerce Project Future Mentor in 1991, and a member of the Columbus Regional Minority Supplier Development Council's Input Committee.

55. Shellee Davis makes no claim for *past broadcast experience*. But since she is of American-Afro decent she claims qualitative *minority comparative* enhancement. Ms. Davis will install *auxiliary power* generators at her station.

56. *Ohio Radio Associates*. ORA does not propose to integrate its owners into the day-to-day management of its station, and does not claim any *quantitative credit* for integration.

57. Since it makes no quantitative claim, it will receive no *local residence* credit, no *civic participation* credit, no *broadcast experience* credit, and no *minority enhancement*. ORA will, however, provide *auxiliary power* generating equipment at its studio and transmitter.

## CONCLUSIONS OF LAW

1. Five mutually-exclusive applicants remain in the running for FM Channel 280A in Westerville, Ohio: (1) David A. Ringer; (2) ASF Broadcasting Corporation; (3) Wilburn Industries, Inc.; (4) Shellee Davis; and (5) Ohio Radio Associates. We have held our hearing, and the parties have submitted their evidence under the standard comparative issue.

2. We will examine all five under the criteria set out in the *Commission's 1965 Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 as modified by subsequent Review Board and Commission decisions.

3. Our evidentiary analysis will address the Commission's two *primary* objectives; (1) selecting the applicant that will offer the greatest diffusion of control of mass communications media; and (2) selecting the applicant that will offer the best practicable service to the public.

4. *Diversification of mass media*. Neither Ringer, Wilburn, Davis nor ORA have any attributable interest in any other medium of mass communications. So none of the four suffer any diversification demerits. However, the fifth applicant ASF will be assessed a substantial (but not decisionally significant) comparative demerit under the diversification criterion.

5. Thomas J. Beauvais, who holds 75% of ASF's equity, also owns substantial interests in two nearby stations in the state of Michigan; i.e., WBTZ in Pinconning, Michigan, and WFGR(FM), Grand Rapids, Michigan. So as between Ringer, Wilburn, Davis, and ORA on the one hand, and ASF on the other hand, Ringer, Wilburn, Davis and ORA will offer the greatest diffusion of control of mass communications media. They will be accorded a substantial comparative advantage over ASF.

6. *The Best Practicable Service*. We turn now to the Commission's second primary objective. In deciding which applicant will offer the best practicable service, we will decide whether any applicant should be preferred because of the superior area and population their proposal will serve (comparative coverage); (2) we will look at the extent each will integrate their ownership into the day-to-day management of the station (Quantitative Integration); (3) We will then evaluate the attributes that each integrated owner will bring to that day-to-day management (Qualitative integration); and (4) We will consider the extent to which the quantitative and qualitative integration is enhanced by minority status.

7. In evaluating the third criterion, qualitative management, we will analyze such factors as local residence, participation in civic affairs, past education and business experience, past broadcast experience, and auxiliary power.

8. *Criterion 1: Comparative Coverage* Davis, ASF, Ringer and ORA would serve between 193,009 (48%) and 225,229 (56%) more people than Wilburn. So they are given a *very slight* preference relative to Wilburn for overall service superiority.

<sup>5</sup> Davis personally services the largest accounts. Britt, which she owns free and clear of any mortgage, had gross revenues of \$1,200,000 in 1991 and \$1,400,000 in 1992.

<sup>6</sup> The Trial Judge will credit this representation. But if there is a flaw in Davis' integration proposal this is it. It's hard to envision Ms. Davis leaving a highly-successful, unmortgaged business for a mortgaged, untried, FM operation for which she has no experience. Doubts arise when one realizes that her husband, Reginald Davis, has unsuccessfully tried to obtain FM

permits twice in the past; i.e., in Indianapolis, Indiana and Upper Arlington, Ohio. Query: is Shellee Davis simply attempting to obtain an FM CP she can turn over to her husband? The Trial Judge has answered this question in the negative. There simply has been no evidence developed that would sustain the conclusion that Shellee Davis is fronting for her husband.

<sup>7</sup> Absent the basic disqualification of its four opponents (a condition not present here) ORA is a preordained comparative loser.

9. With their fourth and fifth nighttime service to 183 and 2,251 people, ORA merits a *very slight* preference over Davis, ASF and Ringer. ORA deserves a *slight* preference over Wilburn because of their overall coverage as well as their undeserved area advantage.

10. On balance, only Wilburn loses any comparative ground, and no significant amount of that.

11. *Criterion 2: Quantitative Integration.* Ringer, ASF, Wilburn and Davis all claim and will be credited with 100% quantitative integration. Despite assertions to the contrary all four have demonstrated that they are *bona fide* applicants. They therefore are entitled to have their qualitative attributes fully considered in determining which applicant will offer the best practicable service to the public.

12. Only ORA suffers under this criterion. ORA has elected not to integrate any of their owners into the day-to-day management of the station. They will therefore be assigned 0% quantitative integration. And it follows, as the night to day, that they will receive no qualitative credit for local residence, civic participation, broadcast experience, and minority enhancement.<sup>8</sup> Stated another way, ORA's quantitative election has effectively removed it from further comparative consideration.

13. *Criterion 3: Qualitative Integration.* With ORA eliminated from any further consideration, we'll examine the qualitative attributes of Ringer, ASF, Wilburn and Davis. Turning first to the *local residence* factor, Shellee Davis not only has resided within her proposed service area since 1984, she will relocate to Westerville if her application is granted. David Ringer, Ardeth Frizzell of Wilburn, and Charles Wilburn have all continuously resided outside their proposed service area. While David Ringer and Charles Wilburn have pledged to relocate to Westerville if their application is granted, Ardeth Frizzell has made no such pledge. All-in-all Davis is entitled to a substantial local residence advantage over Ringer and Wilburn and very substantial advantage over ASF.

14. Davis' *civic participation* advantage is even stronger. She has been extremely active in civic activities in organizations within her proposed service area (see Findings 51-54 *supra.*). Neither Ringer (Finding 31 *supra.*), Ms. Frizzell (findings 40-41 *supra.*), nor Charles Wilburn (Findings 46 *supra.*) have earned any credit for civic participation.

15. *Past broadcast experience* is another matter however. Neither Shellee Davis nor Charles Wilburn can claim any past broadcast experience (Findings 46, 55 *supra.*). Ringer is entitled to some past broadcast experience, although his recent role as Treasurer of WYBZ (FM), Crooksville, Ohio is not as beneficial as his earlier vintage 1969-1972 work at WMUB (Finding 32 *supra.*).

16. Ardeth Frizzell's past broadcast experience dates back to 1973. Between 1985 and December 31, 1991, she was traffic manager, business manager, and ultimately the general manager of station WBBY in Westerville (Findings 36-39 *supra.*). This past broadcast experience in the very market under consideration here entitles ASF to a substantial comparative advantage over Wilburn and Davis, and an above average advantage over Ringer. Ringer in turn, is entitled to an average comparative advantage over Wilburn and Davis.

17. Under the qualitative integration criterion we must also look at the *auxiliary power* factor. Here again Davis, Ringer, and ASF are all entitled to a substantial comparative advantage over Wilburn. Davis, Ringer and ASF have pledged to install auxiliary power generators at both their studios and transmitters. Wilburn has made no such pledge. Accordingly they (Wilburn) will be assessed a comparative demerit vis-a-vis the other three. (Findings 33, 42, 46, and 55 *supra.*).

18. Finally, we must determine whether the quantitative and qualitative integration we have just discussed (Paras. 11-17 *supra.*) will be enhanced by *minority status*. Only one such applicant is entitled to such enhancement. Ringer, Frizzell of ASF, and Charles Wilburn are all White, non-Asian, non-Hispanics. Shellee Davis is Black and is entitled to the enhancement due that minority.

19. *The Ultimate Issue - Issue 2.* Under Issue 2 we must determine, in the light of the evidence adduced under Issue 1, which of the applications should be granted.

20. The clear comparative winner is Shellee Davis. Her significant comparative superiority over David Ringer in the areas of *local residence* and *civic participation* far outweighs the *past broadcast experience* advantage that Ringer has garnered. And when you enhance Davis' qualitative advantages with her *minority status* the end result is clear. As between Davis and Ringer, Shellee Davis will offer the best practicable service to the public.

21. Turning to ASF, note first that Ms. Davis enjoys a substantial comparative advantage over ASF under the first of the Commission's two primary objectives (Paras. 12 - 15 and 17 *supra.*). As between the two there is no question that Ms. Davis will offer the *greater diffusion of control of mass communications media*.

22. In addition, Shellee Davis' significant comparative superiority over ASF in the areas of *local residence* and *civic participation* far outweighs the *past broadcast experience* advantage that ASF's Ardeth Frizzell has accrued. And when you enhance Davis' qualitative advantages with her *minority status* the end result is obvious. As between Davis and ASF, Shellee Davis will offer the best practicable service to the public. so Shellee Davis is comparatively superior to ASF on *both* the Commission's primary allocation objectives.

23. Turning to Wilburn Industries, it first must be concluded that under the *comparative coverage* criterion, Shellee Davis is entitled to a very slight preference over Wilburn. When that advantage is combined with Davis' significant comparative superiority over Wilburn in the areas of *local residence*, *civic participation*, and *auxiliary power*, the result is obvious. And when you enhance Davis' qualitative advantages with her *minority status*, the end result is overwhelming. As between Davis and Wilburn Industries, Shellee Davis will offer the best practicable service to the public.

24. In sum, Shellee Davis is comparatively superior to David A. Ringer, ASF Broadcasting Corp., Wilburn Industries, Inc. and Ohio Radio Associates. Since she will offer the best practicable service to the public, her application will be granted.

<sup>8</sup> ORA does intend to provide auxiliary power at its studio and transmitter. See Finding 57 *supra.* However, that would have no

impact on the comparative decision in this case.

SO, unless an appeal is taken from this Initial Decision or the Commission reviews it on their own motion, David A. Ringer's application (BPH-911230MA), ASF Broadcasting Corporation's application (BPH-911230MB), Wilburn Industries, Inc's application (BPH-911230MC) and Ohio Radio Associates, Inc's application (BPH-911231MC) ARE DENIED; and

Shellee Davis' application (BPH-911231MA) IS GRANTED.<sup>9</sup>

FEDERAL COMMUNICATIONS COMMISSION

Walter C. Miller  
Administrative Law Judge

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<sup>9</sup> If exceptions aren't filed within 30 days, or the Commission doesn't review the case on its own motion, this Initial Decision

will become effective 50 days after its public release. See 47 CFR 1.276(d).