

JAN 31 1994

Before the
Federal Communications Commission
Washington, DC

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 93-107
)	
DAVID A. RINGER)	File No. BPH-911230MA
)	
ASF BROADCASTING CORP.)	File No. BPH-911230MB
)	
WILBURN INDUSTRIES, INC.)	File No. BPH-911230MC
)	
SHELLEE F. DAVIS)	File No. BPH-911231MA
)	
OHIO RADIO ASSOCIATES)	File No. BPH-911231MC

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

To: The Review Board

OPPOSITION TO MOTION TO STRIKE

Shellee F. Davis ("Davis"), by her attorney, hereby submits her opposition to the
"Motion to Strike" filed by Ohio Radio Associates, Inc. ("ORA") on January 24, 1994.

With respect thereto, the following is stated:

1. ORA misstates the Commission's Rules. Section 1.49(a) of the Commission's
Rule requires that all pleadings and documents "shall be type-written or prepared by
mechanical processing methods, in 10- or 12- point type..." 47 C.F.R. § 1.49(a). As
confirmed in Attachment 1, Davis' brief was indeed in 10-point type.¹ See also

¹ In fact, Davis' reply brief utilizes the same type size as both ORA's exceptions, reply,
and its own Motion to Strike. ORA's pleadings technically violate the Commission's Rule
insofar as its left-hand margin is only one inch. Section 1.49(a) states "[t]he left-hand margin
shall not be less than 4 cm (1.5 in) wide. Since ORA's Exceptions contained an "overage" of
one-half inch on each of its 25 pages, its Exceptions were slightly more than 2 pages over the

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Handwritten initials/signature

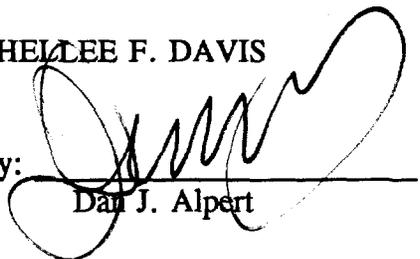
Attachment 2 (print-out of words processing codes used for the document). This type size was used in order to comply (not "abuse") the Commission's rules. Finally, utilizing single-spaced footnotes does not violate the Commission's Rules. See WWLE, Inc., 48 R.R.2d 1499, 1511 n.39 (1981). As to footnotes, the Commission has recognized that single spaced footnotes are appropriate. Footnotes are a stylistic device sometimes used to allow for the discussion of facts and issues collateral to the principal arguments contained in the main body of the text, or are used to provide supporting citations or materials which would otherwise intrude upon the flow of the main body of the text. That is exactly the discretion counsel used here. No "circumvention" of the Commission's rules is involved.

WHEREFORE, for the reasons stated above, the "Motion to Strike" filed by Ohio Radio Associates, Inc. should be denied.

Respectfully requested,

SHELLEE F. DAVIS

By:


Dan J. Alpert

1250 Connecticut Ave.
7th Floor
Washington, DC 20036
(202) 637-9158

January 27, 1994

ATTACHMENT 1

DECLARATION

I, Donna Michaliga, hereby state under penalty of perjury as follows:

1. I am an Assistant Administrator at Ginsburg, Feldman & Bress, and an Honors Graduate of the Washington School for Secretaries.

2. I have examined the "Reply of Shellee F. Davis to Exceptions" and can confirm that it is printed in 10-point type. A statement issued by the Commission that 10-point type is "by definition" 10 characters per inch is incorrect. Letters measured by "point" are proportionately spaced, and therefore the number of letters per inch depends on the particular letters of the alphabet that have been typed. On the other hand, 10 "pitch" type refers to mono-spaced fonts where all letters and spaces are uniformly positioned, and consequently 10 "pitch" type always results in 10 letters or spaces per inch, and 12 "pitch" type always results in 12 letters or spaces per inch. The follows examples are illustrative:

This is 10-point type

This is 12-point type

This is 10 "pitch" type

This is 12 "pitch" type


Donna Michaliga

Signed and dated this 3rd day of January, 1994

ATTACHMENT 2

TABLE OF AUTHORITIES

A.P. Walter, Jr., 6 FCC Rcd 875 (Rev. Bd. 1991)

Adlai E. Stevenson, 5 FCC Rcd 1588 (Rev. Bd. 1990).

Anchor Broadcasting Limited Partnership, 6 FCC Rcd 721 (1991), aff'd in
in part, Susan Bechtel v. FCC, 957 F.2d 873 (D.C. Cir. 1992), r
remand, 7 FCC Rcd 4566 (1992), recon. granted in part, denied i
8 FCC Rcd 1674 (1993), remanded, Susan M. Bechtel v. FCC, Case

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[UND]A.P. Walter, Jr.[und], 6 FCC Rcd 875 (Rev. Bd. 1991)[Flsh Rgt]4, 11[HRT]
[HRT]
[UND]Adlai E. Stevenson[und], 5 FCC Rcd 1588 (Rev. Bd. 1990)[Flsh Rgt]22[HRT]
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[UND]Anchor Broadcasting Limited Partnership[und], 6 FCC Rcd 721 (1991), [UND]af
f'd[und] [UND]in[und] [UND]part[und], [UND]remanded[und][HRT]

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CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that foregoing document was served on January 31, 1994 upon the following parties by First Class Mail, postage prepaid, or by Hand:

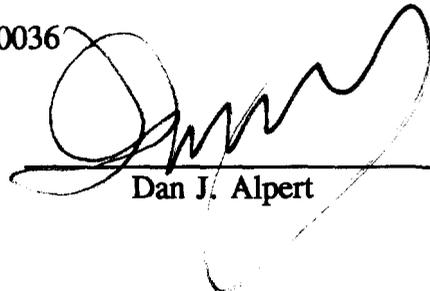
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