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

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APR 13 1994

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 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 New FM Radio Station at
Westerville, Ohio

To: The Review Board

PETITION FOR LEAVE TO AMEND

Wilburn Industries, Inc. ("Wilburn"), by its attorneys, hereby submits its Petition for Leave to Amend its above-referenced application to report the loss of the transmitter site initially proposed in its application and to specify a new site. The circumstances surrounding the loss of the initial site and the obtaining of a replacement site also are described in the amendment.

The attached amendment is required by Section 1.65 of the Commission's rules, which requires an applicant to submit an amendment when there has been a significant change in the

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information set forth in its application. Moreover, the information in the amendment shows that such change was not due to Wilburn's voluntary action, that it has been filed with due diligence, and that no other party will be unfairly prejudiced by the acceptance thereof. Accordingly, it is respectfully submitted that the attached amendment should be accepted.

WILBURN INDUSTRIES, INC.

By: 
Eric S. Kravetz

Brown, Nietert & Kaufman
1920 N Street, N.W.
Suite 660
Washington, D.C. 20036
(202) 887-0600

Its Attorneys

Dated: April 13, 1994

**AMENDMENT
RE: TOWER SITE
APRIL 11, 1994**

On December 30, 1991, Wilburn Industries Inc. applied to the FCC for construction permit and broadcast license for the WBBY-FM frequency (103.9) in Westerville, Ohio. In its application Wilburn Industries Inc. proposed to broadcast from the same site previously operated by WBBY-FM, and to that end secured a written assurance of site availability from the owner of the site, Mid-Ohio Communications, Inc., (Mid-Ohio) and authority from the site owner to specify such site in its application. (See Exhibit 2 of Wilburn Industries, Inc. Application).

On March 7, 1994 Wilburn Industries, Inc. received a letter from Carl Fry, attorney for Mid-Ohio advising that the site and Tower and equipment had been sold to Spirit Communications, Inc. (Copy of letter of Attorney Fry is attached hereto). Wilburn Industries, Inc. then contacted John Shumate, agent for and president of Spirit Communications, Inc. to inquire regarding continued site availability. Mr. Shumate advised Charles W. Wilburn that he would probably make the site available to all applicants including Wilburn Industries Inc. after he had consulted with his FCC counsel.

Charles W. Wilburn made inquiries as to the availability of other tower sites for broadcasting including one of Mrs. Dolores Buell of Sunbury, Ohio. Mrs. Dolores Buell provided Wilburn Industries Inc. with written assurance of a tower site located on Route 37 in Licking County, Ohio; North Latitude 40 degrees, 11

minutes, 33 seconds, West Longitude 82 degrees, 45 minutes, 07 seconds. (See letter of Mrs. Buell dated March 31, 1994).

On March 28, 1994, Mr. Shumate advised by telephone that the WBBY-FM site was available for Wilburn Industries, Inc. on the same terms and conditions as set forth in former owner, Mid-Ohio's letter of intent, and that Mr. Shumate would be sending a letter to Wilburn Industries, Inc. to that effect. Mr. Shumate authorized Wilburn Industries Inc. to specify the site in its FCC application.

On March 31, 1994 Charles W. Wilburn prepared and sent instructions to FCC counsel, Eric Kravetz to amend the application of Wilburn Industries Inc. to reflect the site's new ownership and assurance of continued availability. (See March 31, 1994 communique).

On April 8, 1994 Mr. Shumate advised Wilburn Industries, Inc. by telephone that he was retracting his previous assurance of site availability; that no written assurance had been given to any other applicant, and that none would be forthcoming.

Wilburn Industries Inc. now amends its application to show the site specified in the Buell letter of March 31, 1994 as the new tower site location. Wilburn Industries, Inc. will amend the engineering and financial data in its application as soon as such data can be accurately prepared.

WILBURN INDUSTRIES, INC.

By:


President 4-11-94

MID-OHIO COMMUNICATIONS, INC.

Post Office Box 14
Westerville, Ohio 43081

December 24, 1991

Charles W. Wilburn
Attorney at Law
210 S. Court Street
Circleville, OH 431131

WILBURN INDUSTRIES, INC.
"Exhibit 2"

RE: Mid-Ohio Communications, Inc./WBBY-FM/Lease of Assets

Dear Mr. Wilburn:

This correspondence is in regard to your recent inquiry pertaining to the lease of certain real property and personal property owned by Mid-Ohio Communications, Inc. or affiliated companies which is utilized in regard to the broadcast operation of WBBY-FM. You have indicated that you are planning to apply for the broadcast license of WBBY-FM, Westerville, Ohio, and this correspondence is to confirm that should the Federal Communications Commission award you the construction permit, Mid-Ohio Communications, Inc., the former licensee of WBBY-FM, is willing to negotiate appropriate leases with you for certain real property and personal property owned by Mid-Ohio Communications, Inc. or affiliated companies in the amount of Six Thousand Dollars (\$6,000.00) per month.

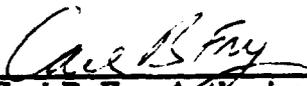
The real estate lease and equipment lease which would commence upon the FCC granting your construction permit would include the use of the tower site (tower and building) located at State Route 37, Sunbury, Ohio 43074; studio facilities located at 14 Dorchester Court, Westerville, Ohio 43081; and equipment utilized in the operation of the station. The equipment would include some or perhaps all of the equipment itemized in the inventory accompanying this correspondence. Failure to lease all of the equipment listed in the inventory will not result in a reduced lease package price. This correspondence conveys an intent to negotiate terms of lease agreements and does not in and of itself constitute lease agreements. Although it is contemplated that mutually acceptable terms will be negotiated in regard to the various leases, there is no guarantee of that occurrence.

Within sixty (60) days of the date of this letter, you must provide Mid-Ohio Communications, Inc. with a showing of financial qualifications satisfactory to Mid-Ohio Communications, Inc. for it to enter into the above-referenced leases. Mid-Ohio Communications, Inc. reserves the right to cancel this letter within sixty (60) days of receipt of your financial information. Notwithstanding the above, at the time you receive the construction permit, Mid-Ohio Communications, Inc. reserves the right to again review your financial condition to determine if you then have financial qualifications satisfactory to Mid-Ohio Communications, Inc. to enter into the above-referenced leases. In regard to a showing of financial strength, if the lessee is a corporation, the principals of lessee will have to personally sign unconditional guarantees in regard to the lease obligations.

Mid-Ohio Communications, Inc. hereby grants you the authority to specify WBBY-FM's transmitter location in your FCC application. We wish you the best of luck in your application for licensure being prepared for filing with the Federal Communications Commission.

Sincerely,

MID-OHIO COMMUNICATIONS, INC.

By: 

Carl B. Fry, Authorized Representative

Attachment

Fry & Waller Co., L.P.A.

Attorneys and Counsellors at Law

35 EAST LIVINGSTON AVENUE, COLUMBUS, OHIO 43215-5762

TELEPHONE 614/228-2300

FAX NO. 614/228-6680

CARL B. FRY
BARRY A. WALLER
GEORGE R. McCANN

ROBERT H. GRIFFIN, JR.
BRYAN L. JEFFRIES

OF COUNSEL:
DAVID M. BUDA

March 2, 1994

Charles W. Wilburn, Esq.
210 S. Court Street
Circleville, OH 43113

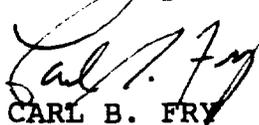
RE: Mid-Ohio Communications, Inc. / WBBY-FM / Lease of Assets

Dear Mr. Wilburn:

This correspondence is to advise you that all of the real estate and personal property owned by Mid-Ohio Communications, Inc. or affiliated companies which was utilized in regard to the broadcast operation of WBBY-FM has been sold to Spirit Communications, Inc. As you are aware, it has been over two years since the previous owner advised you that if you were awarded the construction permit for the frequency that the previous owner would be willing to negotiate with you regarding the possible lease of the real estate and/or personal property previously involved with the operation of the station. The previous owner has never been advised by you or anyone that a new constructive permit has been issued in regard to the frequency, and the real estate and personal property has now been sold. I am unaware of the new owner's intent in regard to the real estate or the personal property and if you wish to discuss the matter with the new owner, please contact Mr. John Shumate, Spirit Communications, Inc., 114 Dorchester Square, Westerville, Ohio 43081.

Since the real estate and personal property are no longer available for lease by Mid-Ohio Communications, Inc., or affiliated companies, you need to make appropriate arrangements as you deem necessary or as may be legally required in regard to your Application filed with the FCC. If you have any questions regarding this correspondence, please feel free to contact me.

Sincerely,



CARL B. FRY

/lt

DOLORIS BUELL
16910 East State Route 37
Sunbury, Ohio 43074

March 31, 1994

Wilburn Industries, Inc.
c/o Charles W. Wilburn
210 South Court Street
Circleville, Ohio 43113

Re: Lease of Certain Real Property

Dear Mr. Wilburn:

This letter is in regard to your recent inquiry pertaining to the lease of certain real property, in an area comprising five (5) acres more or less, the approximate center point of which would be approximately 600 meters northeast of the intersection of State Route 37 and County Line Road in Licking County, Ohio; North Latitude 40 degrees, 11 minutes, 33 seconds and West Longitude 82 degrees, 45 minutes, 07 seconds. I represent that I am the owner of the real estate and that I am the personal representative of the estate of Hugh Buell, my late husband, and that I have full authority to enter into a lease agreement. You have indicated that Wilburn Industries, Inc. has applied for the broadcast license of WBBY-FM, Westerville, Ohio, and this letter is to confirm that should the Federal Communications Commission award Wilburn Industries, Inc. or any of its successors or assigns the constructions permit, that I have a present and firm intention to lease to Wilburn Industries, Inc. this real property for purposes of constructing a 300 to 400 foot tower (as determined by the FCC) with antennas, lights, fencing (and such other equipment as required by the FCC, FAA, or other federal, state or local authorities) including related equipment and a related equipment building for what is necessary to the proper operation of the equipment at the site. Although this is not a binding lease agreement we have previously discussed a lease rate of FIFTEEN THOUSAND Dollars per year, payable quarterly and an initial term of 7 years with four (4) seven (7) year renewals at your option, provided that upon renewal, the lease payments will be adjusted by a cost of living factor. These terms would be subject to renegotiation by either party, taking into consideration market conditions at the time of the FCC should award the construction permit.

The real estate lease would commence upon the FCC awarding Wilburn Industries, Inc. the construction permit, or as soon as practicable thereafter. This letter conveys my present firm intention to lease to Wilburn Industries, Inc. the referenced real property; however, this letter does not in and of itself constitute

a lease agreement, nor is it a binding legal lease or agreement on either party. Upon award of the FCC construction permit we will further negotiate the terms of the lease as are appropriate.

I have reviewed the financial qualifications of Wilburn Industries, Inc. and of its principals, and determined that such financial qualifications are satisfactory to me to enter into a lease agreement.

Therefore in consideration of one dollar and other valuable consideration, receipt of which is hereby acknowledged, I hereby authorize Wilburn Industries, Inc. to specify the referenced real property as its transmitter location in its FCC application. I also give Wilburn Industries, Inc. assurance of my present firm intention that this tower site will be available to it and its successors or assigns subject to the conditions set forth above. I wish you the best of luck in pursuing you application for licensure with the FCC.

Sincerely,


Dolores Buell
Dolores Buell


Dolores Buell
Estate of Hugh Buell,
Dolores Buell, Executor

March 31, 1994

Re: Wilburn Industries, Inc.

Please amend the application of Wilburn Industries, Inc. ("Wilburn") to construct a new FM Station at Westerville, Ohio, to show that the site and equipment to be used by Wilburn have been sold to a third party. Wilburn was first advised of this by letter received on March 7, 1994. A copy of the letter is attached. The new owner has advised Wilburn that such site and equipment will remain available to Wilburn under the same terms and conditions specified by the former owner. This assurance was repeated orally; the new owner has stated a letter confirming this assurance will be issued in the near future.

The representative of the owner who has provided this reasonable assurance to Wilburn is John Shumate. His telephone number is (614) 764-7410.

Date: March 31, 1994

By: Charles A. Wilburn
President

CERTIFICATE OF SERVICE

I, Tracy A. Holden, a secretary in the law firm of Brown, Nietert & Kaufman, Chartered, do hereby certify that on this 13th day of April, 1994, I caused copies of the foregoing "Petition for Leave to Amend" to be delivered by first class mail, postage prepaid, to the person named below:

Arthur V. Belenduik, Esquire
Smithwick & Belenduik, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036
Counsel for David A. Ringer

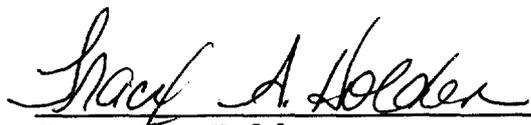
Dan J. Alpert, Esquire
Ginsburg, Feldman & Bress,
Chartered
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for Shellee F. Davis

James A. Koerner, Esquire
Baraff, Koerner, Olender &
Hochberg, P.C.
5335 Wisconsin Avenue, N.W.
Suite 300
Washington, D.C. 20015-2003
Counsel for ASF Broadcasting
Corp.

James Shook, esq.
Hearing Branch
Federal Communications
Commission
2025 M Street, N.W.
Washington, DC 20554

Stephen T. Yelverton
McNair & Sanford
1155 15th Street, N.W.
Suite 400
Washington, D.C. 20005
Counsel for Ohio Radio
Associates, Inc.

Chief, Data Management Staff
Mass Media Bureau
Federal Communications
Commission
1919 M Street, N.W.
Washington, DC 20554


Tracy A. Holden