

Before the
Federal Communications Commission
Washington, DC

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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

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JUL 20 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PROGRESS REPORT

Shellee F. Davis ("Davis"), by her attorney, hereby submits a Progress Report with respect to the submission of an amendment to her application to specify a new transmitter site in this proceeding. With respect thereto, the following is stated:

1. As Davis reported in her "Opposition to Motion to Dismiss," since learning that the transmitter currently designated in her application no longer is available, Davis has been seeking assurances concerning the designation of a new site. As will be stated in more detail along with her amendment, in early-May 1994, Ms. Davis visited, verbally learned of the possible availability of, and believed she had reached an agreement in principle with, the owner of a new site, Mrs. Dolores Buell. The site was the same site designated by Ohio Radio Associates (and which now has been specified by Wilburn Industries, Inc.). Since the time ORA ostensibly obtained assurances

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concerning the site, the person with whom ORA apparently negotiated, Mr. Hugh Buell, has passed away. All dealings with respect to the site consequently have been with Mr. Buell's Executor, his widow, Mrs. Dolores Buell. Insofar as Mrs. Buell apparently is not familiar dealing with business matters, all documents, including proposed letters of assurance, have had to be cleared with Mrs. Buell's local attorney, Thomas Whitney, Esq. Consequently, Ms. Davis was required to await formalization of that tentative approval until after Mrs. Buell consulted with her attorney.

2. In preparing draft documentation for Mrs. Buell's signature which would memorialize the availability of the site for Ms. Davis' proposed use, it was learned from Mrs. Buell that the site already is leased, for non-broadcast purposes, to a farmer. That farmer reportedly has been the lessee of the land for many years. It initially was believed that the release of the tenant either already had been received or was forthcoming. Discussions with Mrs. Buell (and later, her attorney) subsequently established otherwise. Specifically, the draft letter for Mrs. Buell's execution originally was going to have Mrs. Buell confirm that she had authority to lease the land. Upon learning of the existence of the tenant, on May 18, 1994 the letter was instead drafted to reflect Ms. Davis' understanding that the tenant was aware of the proposed tower, and in fact had no objections to Mrs. Buell's proposed use of the land. Ms. Davis met with Mrs. Buell on May 18, 1994, at which time the letter was presented to Mrs. Buell for signature, along with a \$500 payment for her proposed use of the site that Mrs. Buell was now requiring from all persons wishing to designate her site. Mrs. Buell stated that the letter had to be reviewed by her attorney.

3. The letter Mrs. Buell sent back in response, in late May 1994, however, instead indicated a quite different state of affairs than that which had been believed initially to exist, insofar as the letter stated "the land is leased to a tenant. Any lease negotiated with Ms. Davis will be subject to the present tenant's release of the specified parcel and agreement with specifications for use of the land," and contained no reflection that the tenant can or would be contacted. Further telephone conferences were held, and it was believed based upon those telephone calls with Mrs. Buell that an adequate accommodation could be reached which would allow for the land ultimately to be legally specified in an amendment. Consequently, the services of an engineer were engaged shortly after June 8, 1994, and the engineering portion of the amendment specifying the Buell site was prepared for Ms. Davis in June 1994. That engineering was completed on June 27, 1994, and is ready for filing. A call between legal counsel for Davis and legal counsel for Mrs. Buell on June 21, 1994 further seemed to indicate that the uncertainty concerning the status of the land could be worked out. It therefore was expected that the amendment could be filed with the Commission during the week of July 4, 1994.

4. Subsequent discussions with Mrs. Buell, however, have been unavailing. Although Mrs. Buell apparently "thinks" that the tenant would be willing to allow the site to be used also as the site of a broadcast tower, Ms. Buell nevertheless is unwilling formally to ask the tenant for permission to lease the site to any applicant for Channel 280A, Westerville, Ohio. Moreover, she has requested that the tenant not be contacted.

5. Attempts have been made for the past four weeks to discuss the matter further

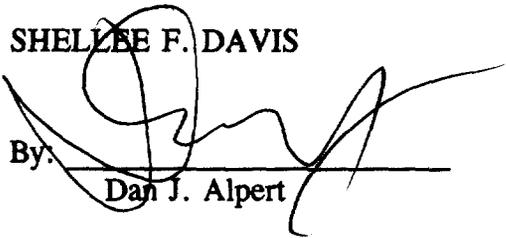
with Mrs. Buell's local attorney, Mr. Thomas Whitney. Mr. Whitney was unavailable to take telephone calls during the remainder of the week of June 20 and the week of June 27, and was on vacation during the weeks of July 4 and July 11.

6. At the present time, "reasonable assurance" of the availability of the ORA/WII site is not available. As of July 15, 1994, however, assurances now have been obtained for an alternative site. In the event arrangements cannot be made to make the Buell site available very shortly, Ms. Davis intends to specify the alternative site. Operations from the alternative site would not permit service over as wide a region as would service from the ORA/WII/Buell site (or service as favorable as Davis' original WBBY-FM site). Therefore, since the public interest would favor utilization of the Buell site, one last attempt to acquire assurances sufficient to satisfy the Commission's standards will be made.

Further information will be provided to the Commission as necessary or warranted.

Respectfully requested,

SHELLE F. DAVIS

By: 

Dan J. Alpert

Her Attorney

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July 19, 1994

CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that foregoing document was served on July 20, 1994 upon the following parties by First Class Mail, postage prepaid, or by Hand:

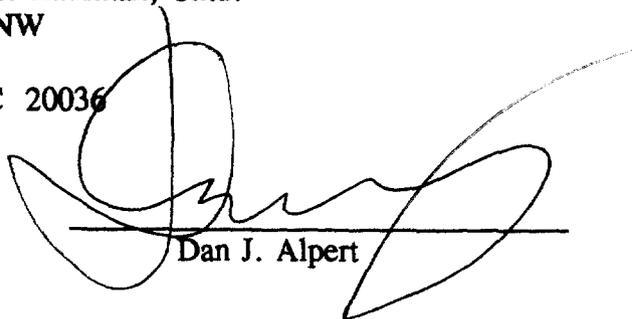
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