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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re Applications of	)	MM DOCKET NO. 93-107
	)	
DAVID A. RINGER	)	File No. BPH-911230MA
	)	through
et al.	)	File No. BPH-911231MC
	)	
For Construction Permit	)	
Channel 280A	)	
Westerville, Ohio	)	

To: The Review Board

MASS MEDIA BUREAU'S COMMENTS ON  
PETITION FOR LEAVE TO AMEND

1. On July 15, 1994, Wilburn Industries, Inc. ("Wilburn") filed a petition for leave to amend. The Mass Media Bureau submits the following comments.

2. Wilburn seeks to amend its engineering and financial<sup>1</sup> proposals. Wilburn references its petition for leave to amend filed on April 13, 1994, in which it informed the Commission that its originally specified site was sold; that the new owner refused to give assurance to Wilburn that it could use the site if its application were granted; and that Wilburn had therefore obtained assurance regarding a new site. Wilburn also set forth the steps it had taken to secure a new site, and when it learned of the sale of its original site and the refusal of the new owner to give it the requisite assurance. In the instant amendment, Wilburn relates that, because of the changes to its engineering

<sup>1</sup> The Bureau's comments are limited to the amending of Wilburn's engineering proposal.

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submission relative to its new proposed site, it had to refigure its costs and obtain a new financing commitment for its additional proposed expenditures.

3. The engineering staff of the Bureau has reviewed Wilburn's technical proposal. Except for the fact that Wilburn has not yet received approval from the Federal Aviation Administration ("FAA"), the Bureau has determined that Wilburn's technical proposal is in compliance with the Commission's Rules. Until Wilburn receives approval from the FAA, Wilburn cannot demonstrate good cause for acceptance of its amendment. See Erwin O'Conner Broadcasting Co., Inc., 22 FCC 2d 140 (Rev. Bd. 1970).<sup>2</sup> In this regard, acceptance of the amendment would warrant the addition of an air hazard issue and addition of the FAA as a party.

4. Accordingly, the Bureau submits that Wilburn's petition for leave to amend should be denied or held in abeyance pending a decision from the FAA as to whether Wilburn's tower is a hazard to air navigation. If the FAA ultimately determines that Wilburn's tower will not pose a hazard to air navigation, then Wilburn's petition for leave to amend can be granted and its

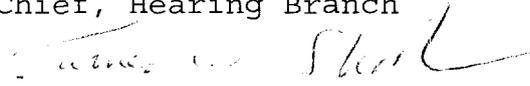
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<sup>2</sup> Wilburn has met the other good cause criteria. The three month period between the loss of Wilburn's site and the submission of the instant petition for leave to amend is not excessive in view of the need to prepare new engineering and financial proposals. See Mableton Broadcasting Company, Inc., 5 FCC Rcd 6314, 6320-21 (Rev. Bd. 1990).

amendment accepted assuming that Wilburn's new financial proposal is acceptable. However, as recognized by Wilburn, it may not improve its comparative position as a result of the amendment. See Women's Broadcasting Coalition, Inc., 59 RR 2d 730, 733 (1986).

Respectfully submitted,  
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July 26, 1994

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, hereby certifies that she has on this 26th day of July, 1994, sent by regular U.S. mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Comments on Petition for Leave to Amend" to:

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