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AUG 24 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

August 24, 1994

Mr. William F. Caton
Secretary
Federal Communications Commission
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: MM Docket No. 93-107
Channel 280A
Westerville, Ohio

Dear Mr. Caton:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and eleven (11) copies of its opposition to a petition of leave to amend and related amendment filed by Shellee F. Davis on August 15, 1994.

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

MCNAIR & SANFORD, P.A.

By: 
Stephen T. Yelverton

Enclosure

B:CATON.156

No. of Copies rec'd 0+11
List ABCDF.

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

RECEIVED

AUG 24 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of:)
)
DAVID A. RINGER) MM Docket No. 93-107
)
 et al.) File Nos. BPH-911230MA
)
Applications for Construction) through
Permit for a New FM Station,)
Channel 280A, Westerville,) BPH-911231MB
Ohio)

To: The Review Board

DOCKET FILE COPY ORIGINAL

OPPOSITION TO DAVIS PETITION
FOR LEAVE TO AMEND

Respectfully submitted,

MCNAIR & SANFORD, P.A.

By: _____

Stephen T. Yelverton
Attorneys for Ohio Radio
Associates, Inc.
1155 15th Street, N.W.
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August 24, 1994

B:CATON.156

OPPOSITION TO DAVIS PETITION FOR LEAVE TO AMEND

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Section 1.294 (b) of the Commission's Rules, hereby submits this opposition to petition for leave to amend. On August 15, 1994, Shellee F. Davis ("Davis") filed a "Petition for Leave to Amend" and related amendment. In opposition, ORA offers the following comments.

Short-Spacing

In her petition for leave to amend, Davis seeks to amend her application to specify a new tower site and to provide the required engineering data. The engineering data submitted by Davis acknowledges that the new tower site is short-spaced to both Station WTTF(FM), Tiffin, Ohio, and Station WPAY(FM), Portsmouth, Ohio. Davis seeks to justify the short-spacing to Station WTTF by reliance upon Section 73.213 (c)(1) and to justify the short-spacing to Station WPAY by reliance upon Section 73.215.

However, Davis mistakenly relies upon Section 73.213 (c)(1). That provision is limited to facilities with no more than 3,000 watts ERP. Davis proposes operation at 6,000 watts ERP. She can not evade this provision by limiting power to 3,000 watts in the lobe toward Station WTTF. Section 73.213 (c)(1) explicitly states that it applies to Class A stations with no more than 3,000 watts. It does not state that it applies to 6,000 watt stations which reduce their power to 3,000 watts in one or several lobes.

The applicable provision is Section 73.213 (c)(2) which governs stations with facilities, such as proposed by Davis, operating at greater than 3,000 watts. That provision requires an exhibit demonstrating the consent of the licensee which is short-spaced. However, Davis fails to include such an exhibit from Station WTTF. Accordingly, her amendment is fatally flawed and must therefore be rejected.

In any event, it would be unlikely that Davis could obtain the required consent from Station WTTF. As noted in the engineering exhibit attached hereto, Davis' proposed contours would overlap those of Station WTTF. See, attachment 1 (although this exhibit refers to the proposed contours for ASF Broadcasting Corp., Davis acknowledges at p. 4, para. 4, of her petition that her coverage proposal is virtually the same).

Section 73.213 (c)(2) also requires that, if the short-spaced station is not a Class A facility (which is the case with Station WTTF), then the applicant must demonstrate that no fully-spaced tower sites are available. However, Davis fails to make such a showing. Accordingly, her amendment is fatally flawed on this basis alone and must therefore be rejected.

ORA's application specifies a fully-spaced tower site. The application of Wilburn Industries, Inc. ("WII") was recently amended to specify the same fully-spaced tower site. Thus, Davis could not make a showing that no fully-spaced tower sites are available.

In an opposition to the WII amendment, filed July 22, 1994, Davis attempted for the first time to raise questions about the availability of the ORA and WII tower site. Davis contends that, because their proposed tower site is located on farm land which is being leased to a tenant farmer for cultivating crops, the site may not be available to ORA and WII. However, Davis failed to provide any information from the tenant farmer about the availability of the proposed tower site.

In a pleading filed on August 2, 1994, WII submitted a letter from the tenant farmer, Fred Hendren, dated July 26, 1994. He cultivates 700 acres of farm land owned by the person who gave ORA and WII "reasonable assurance" of a 5 acre tract for a proposed

tower site. Hendren states that he has no objection to the 5 acre tract being used for a tower. See, attachment 2.

In her August 15, 1994, petition for leave to amend, Davis does not dispute Hendren's letter or directly contend that the ORA and WII tower site is unavailable. Rather, Davis claims that it would take too much time and be too much trouble to deal with the owner of the site. Accordingly, with this implicit concession that a fully-spaced tower site is available, Davis' amendment which proposes a short-spaced tower site is required to be rejected, pursuant to Section 73.213 (c)(2).

Davis' amendment must also be rejected because of the proposed short-spacing to Station WPAY. This short-spacing is newly proposed and would not be "grandfathered" pursuant to Section 73.213.

Commission policy proscribes an applicant in a comparative hearing from proposing a short-spaced tower site if a fully-spaced tower site is available. North Texas Media, Inc. v. FCC, 778 F.2d 28, 34 (D.C. Cir. 1985). As previously noted, a fully-spaced tower site is available for use.

Davis' reliance upon Section 73.215 to justify the short-spacing to Station WPAY is woefully misplaced. Although that provision permits the use of directional antennas for short-spaced tower sites, their use is explicitly prohibited if a fully-spaced tower site is available. MM Docket No. 87-121, 6 FCC Rcd 5356, 5360, para. 27 (1991). As previously noted, a fully-spaced site is available for use.

Lack of Due Diligence

In an amendment, dated March 29, 1994, Davis reported that the tower site initially specified in her application had been sold. However, Davis never informed the Commission when the site was sold. Because of the refusal of Davis to provide this essential information, ORA conducted a search of the local land records. Attached hereto is a deed for the tower site in question, which is dated January 6, 1994. See, attachment 3. Accordingly, a substantial and material question of fact is raised that Davis knew of the sale before being formally notified by the site owner on March 2, 1994.

Moreover, in view of the January 6, 1994, sale date, a substantial and material question of fact is raised as to whether Davis has acted with "due diligence" in obtaining "reasonable assurance" for the new tower site. Imagists, 8 FCC Rcd 2763, 2765, para. 14 (1993), applicants should submit curative amendments no more than 30 days after they learn or should have learned of the need for an amendment and should explain and document any delays beyond 30 days.

Davis claims, in her petition, at pp. 1-2, and in her attached declaration, dated August 10, 1994, at p. 1, para. 2, that she first learned of the sale of her proposed tower site on March 2, 1994, and immediately proceeded to obtain "reasonable assurance" from the new owner of the site. She then claims that she learned, through a pleading filed by WII on April 13, 1994, that the new owner had "possibly" changed his mind.

Because the new owner had not informed her of any change of intention, Davis' attorney contacted him directly to ascertain that the site was not available. In view of this admission by Davis that the new owner never initiated a response indicating that he had

changed his mind, a substantial and material question of fact is raised that he never gave her "reasonable assurance" in the first instance.

Even assuming that Davis' claims are true, she has not adequately explained why she could not have submitted an amendment for a new tower site by May 9, 1994, or shortly thereafter. David A. Ringer ("Ringer"), another applicant in this proceeding, filed such an amendment on May 9, 1994, specifying the same site which Davis specified in her August 15, 1994, amendment.

Ringer is in the same situation as Davis. Both initially specified the same site in their application and both received letters on or about March 2, 1994, informing them that the site had been sold. Both Ringer and Davis were purportedly under some illusion in late March and early April 1994 that the new owner would make the existing site available.

However, after this illusion was shattered, Ringer then expeditiously proceeded to specify a new tower site on May 9, 1994. On the other hand, Davis procrastinated. See, Neil I. Saunders, 102 FCC2d 865 (Rev. Bd. 1985), rejection of amendment is required where it is shown that applicant procrastinated in taking steps to amend.

Davis' claim that she was unable to obtain "reasonable assurance" of the tower site specified by ORA and WII is not believable. In a declaration, dated August 10, 1994, at p. 2, para. 5, Davis concedes that she received on June 3, 1994, a letter from the owner of the ORA and WII tower site stating that the site would also be available to her. This letter, dated May 25, 1994, does indicate that such a lease would be subject to release of the tower site from a farm lease. See, attachment 4. However, as previously noted, the tenant farmer has no objection to use of the site for a tower. See, attachment 2.

Accordingly, Davis' claim that availability of the site is clouded with uncertainty and could not be timely worked out because the land in question is being farmed, must be rejected as not credible. Even if there was an appearance of a possible problem with the site, it took WII only four days to contact the tenant farmer to satisfactorily resolve this matter. See, attachment 2.

Davis received "reasonable assurance" of the ORA and WII tower site on May 26, 1994, but decided that she did not want it. Accordingly, any delay after that date in filing an amendment for the ORA and WII tower site can not be justified. Although Davis may have the prerogative to choose whatever tower site she desires, such fickleness and procrastination in choosing a site to specify undermines any claim of "due diligence."

Davis' claims as to "due diligence" are so incredible on their face that they raise substantial and material questions of fact as to misrepresentation and lack of candor. Under Commission precedent, a post-designation amendment can not be accepted if it would require the specification of new issues and require additional hearings. See, Section 73.3522 (b); Erwin O'Connor Broadcasting Co., 22 FCC2d 142, 143 (Rev. Bd. 1970).

Davis, at n. 3, of her petition, contends that the requirement of "due diligence" has been relaxed by the Commission in view of the "freeze" on comparative proceedings. She points in particular to Public Notice, FCC 94-204, rel. August 4, 1994, and contends that it states that the filing of pleadings will be held in abeyance. However, Davis misrepresents Commission policy in this respect. The Public Notice, at p. 2, only stated that the filing of motions to enlarge the issues would be held in abeyance and did not mention amendments.

In Public Notice, FCC 94-41, rel. February 25, 1994, which first announced the freeze, applicants were instructed to continue to timely file required amendments.

Accordingly, Davis has utterly failed to show "due diligence." Thus, she can not demonstrate "good cause." See, Capitol City Broadcasting Co., 7 FCC Rcd 2629, para. 4, n. 2 (1992), amendment rejected where applicant failed to document claim of "good cause." If the amendment of Davis is rejected, her application is subject to dismissal with prejudice from this proceeding. See, Shablom Broadcasting, Inc., 93 FCC2d 1027, 53 RR2d 1203 (Rev. Bd. 1983), aff'd mem. sub nom., Royce International Broadcasting v. FCC, 762 F.2d 138 (D.C. Cir. 1985), cert. denied, 474 U.S. 945 (1985).

Availability of the Former Tower Site

The amendment of Davis must be rejected on another basis. The March 2, 1994, letter from the former tower site owner indicates that Davis never had "reasonable assurance" of that site. See, ORA's April 21, 1994, motion to enlarge the issues against Davis. The March 2, 1994, letter states in pertinent part that the site owner had only been "willing to negotiate" with Davis a "possible" lease of the tower site. However, a mere possibility that a site will be available is not sufficient. William F. and Anne K. Wallace, 49 FCC2d 1424, 1427 (Rev. Bd. 1974); National Communications Industries, 6 FCC Rcd 1978, 1979, para. 9 (Rev. Bd. 1991), aff'd, 7 FCC Rcd 1703 (1992). More than a vague "willingness to deal" is needed to constitute "reasonable assurance." Progressive Communications, Inc., 3 FCC Rcd 5758, 5759, para. 9 (Rev. Bd. 1988). See also, ORA's exceptions, paras. 82-84, filed December 20, 1993.

It is axiomatic that an applicant must have "reasonable assurance" of the availability of its proposed tower site at the time of initially filing its application. Rem Malloy, 6 FCC Rcd 5843, 5846, para. 15 (Rev. Bd. 1991); Adlai E. Stevenson IV, 5 FCC Rcd 1588, 1589, para. 7 (Rev. Bd. 1990); Radio Delaware Inc., 4 FCC Rcd 8630, 8631, para. 9 (Rev. Bd. 1989). Accordingly, unless Davis demonstrates that she had "reasonable assurance" of her former proposed tower site at the time of initially filing her application, a new tower site can not be approved. Colorado Television, Inc., 98 FCC2d 513, 518, n. 6, 56 RR2d 1080 (Rev. Bd. 1984), rejection of initially specified tower site requires rejection of amended tower site because the chain of "good cause" has long been broken.

Availability of the New Tower Site

Davis' amendment must also be rejected because she does not have "reasonable assurance" of the new proposed tower site. In a letter, dated July 13, 1994, the tower site owner only expressed a willingness to enter into negotiations. As noted above, this does not meet Commission requirements. Progressive Communications, Inc., more than a vague "willingness to deal" in the future is needed to constitute "reasonable assurance."

The July 13, 1994, letter is defective in another respect. The tower site owner limits and conditions use of the site to a 5 kw transmitter. This is apparently because of use of other transmitters at the site. Davis proposes in her amendment the use of a 6 kw transmitter. However, she fails to explain the conflict between the tower site letter and her engineering proposal. Accordingly, this conflict prevents the effectuation of Davis' engineering proposal and thus requires the rejection of her amendment.

Comparative Upgrading of Signal Coverage

If the amendment of Davis is accepted, her application must be frozen as to her initially proposed signal coverage. See, Nugget Broadcasting Co., 8 FCC Rcd 7121, para. 3 (1993).

Conclusions

The petition for leave to amend of Davis must be denied and her amendment rejected based upon multiple independent factors. She is proposing a short-spaced tower site which on its face fails to comply with either Section 73.213 or 73.215. Her engineering proposal is nothing more than a "Rube Goldberg" contrivance designed to evade and to eviscerate the Commission's spacing requirements at the expense of the public interest.

The petition for leave to amend must also be denied and the amendment rejected because Davis has utterly failed to demonstrate "due diligence." Another applicant in this proceeding, Ringer, who was in the exact same situation as Davis, specified a new tower site on May 9, 1994. It then took Davis, over three months, until August 15, 1994, to file a "copy-cat" amendment.

Davis' excuse that she was looking at another tower site which had problems as to its availability is simply incredible on its face. Another applicant in this proceeding, WII, who was in the exact same situation as Davis specified that site on July 14, 1994. Whatever apparent problem there may have been with the tenant farmer who is cultivating the land surrounding the specified tower site was resolved by WII within four days of first being notified of the purported problem. If WII could expeditiously resolve this matter, there is no reason why Davis could not do the same. Moreover, Davis' explanation with respect to

her claims of "due diligence" raises such substantial and material questions of fact as to misrepresentation and lack of candor that a hearing would be required.

The petition for leave to amend must be denied and the amendment rejected because there are substantial and material questions of fact as to whether Davis had "reasonable assurance" of the tower site initially proposed in her application. Finally, there are substantial and material questions of fact as to the availability of the tower site specified in Davis' amendment. This includes the fact that Davis proposes the use of a transmitter which exceeds limitations imposed by the site owner.

WHEREFORE, in view of the foregoing, the Review Board is requested to deny the petition for leave to amend filed by Davis and to reject her tower site amendment.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By: 

Stephen T. Yelverton
Attorneys for Ohio Radio
Associates, Inc.
1155 15th St., N.W.
Suite 400
Washington, D.C. 20005
202-659-3900

August 24, 1994

020970.00001
ORA.824

Attachment 1

TECHNICAL EXHIBIT
OHIO RADIO ASSOCIATES, INC.
WESTERVILLE, OHIO

Technical Statement

This technical statement and accompanying figures have been prepared on behalf of Ohio Radio Associates, Inc. (herein "Ohio"), applicant for a new FM station on channel 280A, to serve Westerville, Ohio. At Ohio's request, this firm was asked to determine whether, under the criteria of section 73.215 of the Federal Communication Commission's Rules, prohibited contour overlap would be caused to existing station WTTF-FM, channel 279B, Tiffin, Ohio by the proposed Westerville, Ohio, channel 280A facility of ASF Broadcasting Corporation (herein "ASF") as amended in June 1994.¹

The attached Figure 1 is a map showing the protected and interfering contours (based on §73.215) for WTTF-FM and the proposed ASF facility. A maximum class B facility with 50 kilowatts effective radiated power and an antenna height of 150 meters above average terrain was assumed for WTTF-FM. As can be seen from the map, there is predicted overlap of the ASF proposed 48 dBu [F(50,10)] interfering contour and the WTTF-FM 54 dBu [F(50,50)] protected contour. The extent of the contours was determined using the method of §73.313 of the FCC Rules based on the stations' effective radiated powers, antenna heights above mean sea level and transmitter site

¹The FCC File Number assigned to ASF's application is BPH-911230MB.

Page 2
Westerville, Ohio

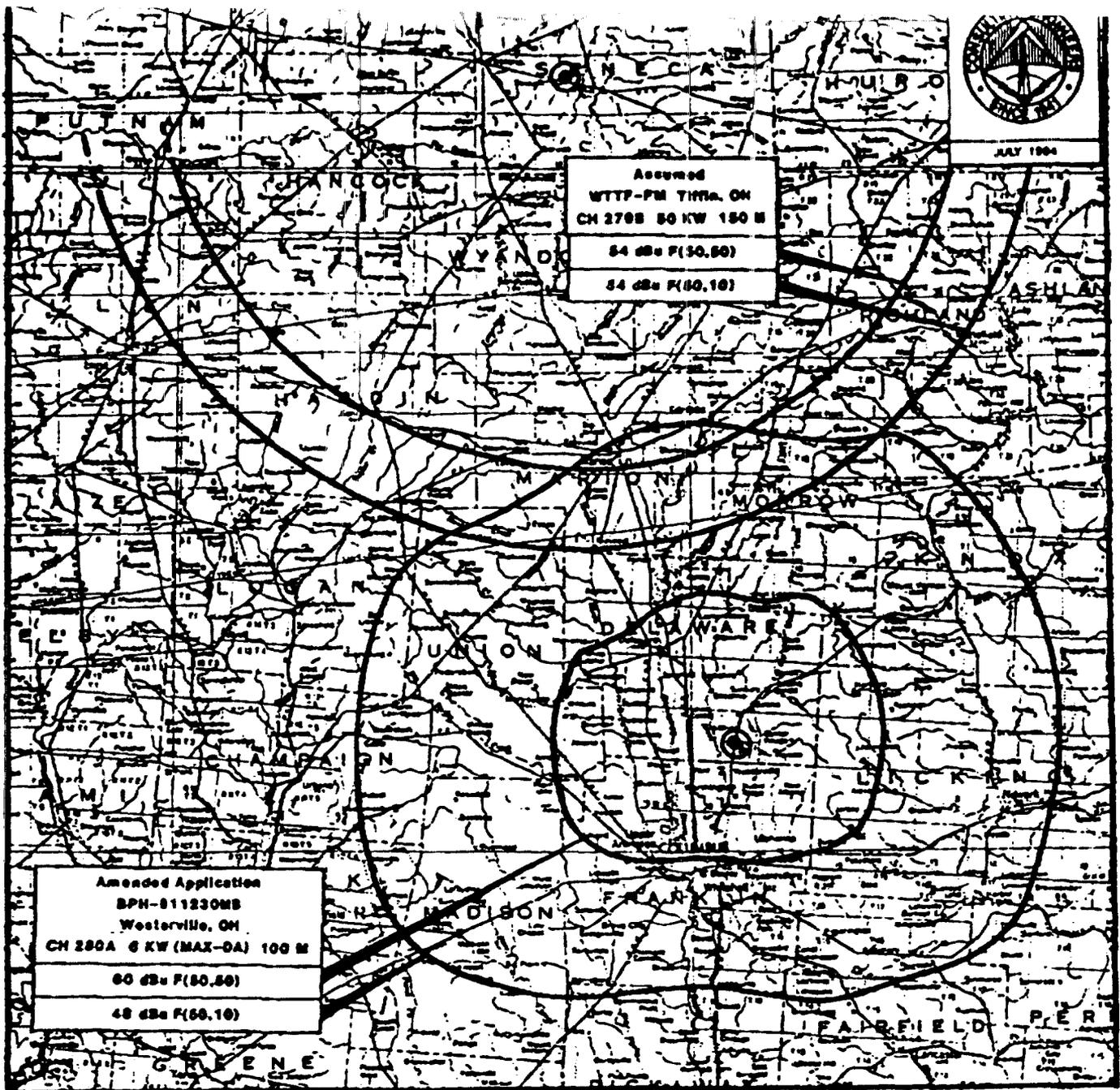
locations as found in the FCC records for the stations and tabulated in the attached Figure 2. Distances to the contours for WTTF-FM were determined along the standard eight radials (every 45° of azimuth beginning a 0° True North) and along the direct bearing toward the proposed ASF facility. Distances to the ASF contours were determined along 36 evenly spaced radials (every 10° of azimuth beginning at 0° True North) taking into account the effective radiated power in each radial direction determined from the ASF directional antenna pattern on file with the FCC. Terrain elevation data were obtained from the N.G.D.C. 30-second terrain database.

David E. Dickmann

David E. Dickmann

du Treil, Lundin & Rackley, Inc.
240 N. Washington Blvd., Ste. 700
Sarasota, Florida 34236
(813) 366-2611

July 28, 1994



CONTOUR PROTECTION STUDY

Prepared for

OHIO RADIO ASSOCIATES, INC.

WESTERVILLE, OHIO

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

TECHNICAL EXHIBIT
OHIO RADIO ASSOCIATES, INC.
WESTERVILLE, OHIO

K. 4

Tabulation of Station Facilities and Site Coordinates

<u>Station</u>	<u>ERP/RC-AMSL*</u>	<u>Site Coordinates</u>
Assumed WTF-FM, CH 279B Tiffin, OH	50 kW, 383 m	41° 08' 20" North 83° 14' 45" West
Proposed, CH 280A BPH-911230MB (Amended June, 1994) Westerville, OH	6 kW (Max-DA), 383 m	40° 09' 33" North 82° 55' 21" West

*ERP is effective radiated power. RC-AMSL is height of the antenna radiation center above mean sea level.

Attachment 1

FRED HENDREN
3925 Beech Road
Johnstown, Ohio 43031
July 26, 1994

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

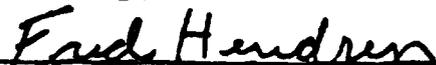
Dear Mr. Wilburn:

This letter is in response to your inquiries regarding a certain five acres of real estate which I farm for Delores Buell. I currently farm land belonging to Delores Buell of about 700 acres, which land includes a certain 5 acre tract the center point of which is approximately 600 meters northeast of the intersection of 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 am aware that Mrs. Delores Buell has expressed her firm and present intention to lease such land to Wilburn Industries, Inc. in the event that the FCC should award to it a construction permit for radio tower and transmitter site, and I have read and I concur in Mrs. Buell's letter of March 31, 1994 to Wilburn Industries, Inc. 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 construction permit, that I have a present and firm intention to release any interest I may have in such real estate or in crops growing thereon at the time that Wilburn Industries, Inc. enters into a lease with Mrs. Buell for the subject premises.

This letter does not constitute a lease, or sublease agreement. At the time Wilburn Industries, Inc. enters a lease for the subject real estate with Delores Buell or her successors or assigns, the amount to be paid to me by Wilburn Industries, Inc. for damages to any growing crops or any other damages I might incur will be negotiated between me and Wilburn Industries, Inc.

In consideration of one dollar and other valuable consideration 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 your application for licensure with the FCC.

Sincerely,


Fred Hendren

GENERAL WARRANTY DEED

QNP CORPORATION, aka QNP CORP., an Ohio corporation, for valuable consideration paid, grants with general warranty covenants to SPIRIT COMMUNICATIONS, INC., an Ohio corporation, whose tax mailing address is: 114 Dorchester Square, Westerville, Ohio 43081, the following real property situated in the County of Delaware, in the State of Ohio, and in the Township of Trenton, and bounded and described as follows:

SEE "EXHIBIT A" ATTACHED HERETO AND INCORPORATED HEREBIN.

Last Instrument Reference: Deed Book 449, page 193, Recorder's Office, Delaware County, Ohio.

Also known as: 12951 East State Route 37, Sunbury, Ohio

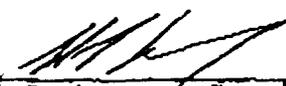
This conveyance is subject to all covenants, restrictions, easements, and taxes accrued through the date of closing, if any, of record. The grantors do further hereby remise, release and forever quit-claim to the said Spirit Communications, Inc., its successors and assigns forever, that certain*

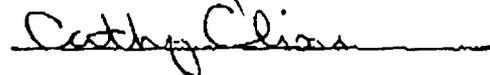
IN WITNESS WHEREOF, the Grantors have caused this Deed to be executed this 6th day of JANUARY, 1994.

Signed and Acknowledged in the Presence of:

QNP CORPORATION, aka QNP CORP.



By: 
Carl C. Nourse, President

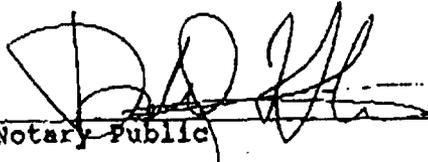


STATE OF OHIO,
COUNTY OF FRANKLIN, SS:

BE IT REMEMBERED, that on this 6th day of January, 1994, before me the subscriber, a Notary Public in and for said county and state, personally appeared the above-named QNP CORPORATION, aka QNP CORP., through its President, Carl C. Nourse, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed and the free act and deed of QNP CORPORATION.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, on the day and year aforesaid.

Provisions contained in any deed or other instrument for the conveyance of a dwelling which restrict the sale, rental or use of the property because of race or color are invalid under federal law and are unenforceable.


Notary Public



This Instrument Prepared By:

Carl B. Fry, Esq.
FRY & WALLER CO., LPA
35 East Livingston Avenue
Columbus, Ohio 43215
614 / 228-2300

DONALD L. SHAW
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES JUNE 20, 1996

Idem
913
Auct 14
22

*radio transmission

515
1120
1915
Mile Bill
State At

*radio transmission tower along with all attachments, guy wires, appurtenances, and other paraphernalia necessary for the operation thereof.

714

P. 2

Delaware County
The Grantor has complied with
Section 319.202 of the R.C.
Date 1-10-94 Transfer Tax Paid 66.00
TRANSFERRED OR TRANSFER NOT NECESSARY
Jon M. Peterson, Auditor By G. Walker

DELAWARE COUNTY, OHIO	
FILED FOR RECORD	JAN 10 1994
203	CHILDS P
RECORDED	Dec 19 1994
VOL	567
523	523
Ray C. Cobble	
FEE \$	22.00
	COUNTY RECORDER
	PC

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P. 3

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JAN 07 1994 09:59 BISCHOFF & ASSOC

P. 2/3
VOL 0567 PAGE 524

BISCHOFF & ASSOCIATES, INC.
Consulting Engineers

Principal
Edward P. Bischoff, F.E., P.S.
John L. Green, F.E.
Allen D. Robinson, F.E.

Associates
J. Scott Seppi, P.E.
Mark E. Crawford, F.E.
B. James Potts, F.E.

EXHIBIT "A"

Project No. 10300
January 3, 1994

**DESCRIPTION OF 3.000 ACRES
OF A TOWER SITE FOR
QNP CORPORATION**

Situated in the State of Ohio, County of Delaware, Township of Trenton and being part of Lot Twenty-nine (29), Section Three (3), Township Four (4) North, Range Sixteen (16) West, United States Military Lands and being conveyed by deed to QNP Corporation as recorded in Deed Book 419, Page 772, Recorder's Office, Delaware County, Ohio and being more particularly described as follows:

Beginning at a (found) 16 inch diameter stump with a F.K. Nail (set), at the northeast corner of the above described 3.000 acre tract, said stump and F.K. Nail being at the Southeast corner of a 16.21 acre tract owned by Thomas J. and Jane M. Hard (Deed Book 0320, Page 208) and also being in the west line of a 146.0 acre tract owned by Henry D. Wilson Jr., et al. (Deed Book 413, Page 525) all being of the Recorder's Office, Delaware County, said (found) stump and F.K. Nail (set) being the TRUE PLACE OF BEGINNING of this description;

Thence South 00 Degrees, 00 Minutes, 00 Seconds West, along the west line of the 146.0 acre Wilson tract, a distance of 630.00 feet to a Railroad Spike (set) in the centerline of Old State Route 37 and passing a (found) 3/4 inch iron pin (1.63 feet west) at 4.11 feet and passing a (found) 3/4 inch iron pin (0.14 feet East) at 513.50 feet;

Thence North 90 Degrees, 00 Minutes, 00 Seconds West, along the centerline of Old State Route 37, a distance of 193.00 feet to a Railroad Spike (set) in said centerline;

Thence North 00 Degrees, 00 Minutes, 00 Seconds East, along the easterly line of a 7.25 acre tract owned by David E. & Curtis J. Cuddehill (Deed Book 438, Page 223), a distance of 660.00 feet to a (found) 3/4 inch iron pin (up 0.3'), in the southerly line of the aforesaid 16.21 acre Hard tract, and passing a (found) 3/4 inch pin (flush) at 45.34 feet and passing a (found) 3/4 inch iron pin (up 0.3') at 656.13 feet;

Thence South 90 Degrees, 00 Minutes, 00 Seconds East, along the southerly line of the said 16.21 acre Hard tract, a distance of 198.00 feet returning to the TRUE PLACE OF BEGINNING and containing 3.000 acres more or less and being subject to all easements-of-way, easements and restrictions of record.

APPROVED
FOR THE ENGINEER
JOHN L. GREEN
Professional Engineer

P-Y

16148751316

JAN 07 '94 09:59 BISCHOFF & ASSOC

P.3/3

Project No. 10300
January 3, 1994
Page Two (2)

BASIS OF BEARINGS:

Bearings were based on the previous deed for this tract and the east line as being South 00 Degrees, 00 Minutes, 00 Seconds West.

NOTE: As per the Previous Deed of Record (Deed Book 449, Page 773). The Grantors do further hereby remise, release and forever quit-claim to the said QNP Corporation, its successors and assigns forever, that certain radio transmission tower along with all attachments, guy wires, appurtenances, and other paraphernalia necessary for the operation thereof.

The above description was prepared based on an Actual Field Survey by Bischoff & Associates, Inc. on December 30, 1993 and January 3, 1994 and from Records on file at the Recorder's Office, Delaware County, Ohio.

B. James Forth
B. James Forth
Registered Surveyor No. S-7416

04 Jan. 94
Date

h:36293/ease/misc/QNP.des



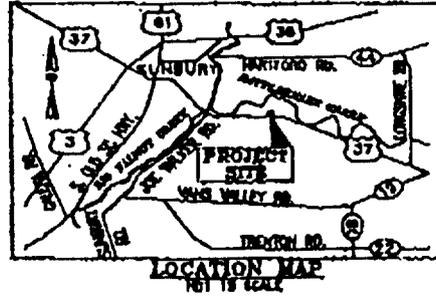
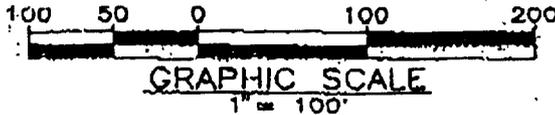
16140751346
JAN 07 '94 10:00 BISCHOFF & ASSOC

P. 4/3

SURVEY PLAT OF 3.000 ACRES

VOL 0567 PAGE 526

SITUATED IN THE STATE OF OHIO, COUNTY OF DELAWARE, TOWNSHIP OF TRENTON,
BEING PART OF LOT NO. 29, SECTION 3, TOWNSHIP 4 NORTH,
RANGE 16 WEST, OF THE UNITED STATES MILITARY LANDS.

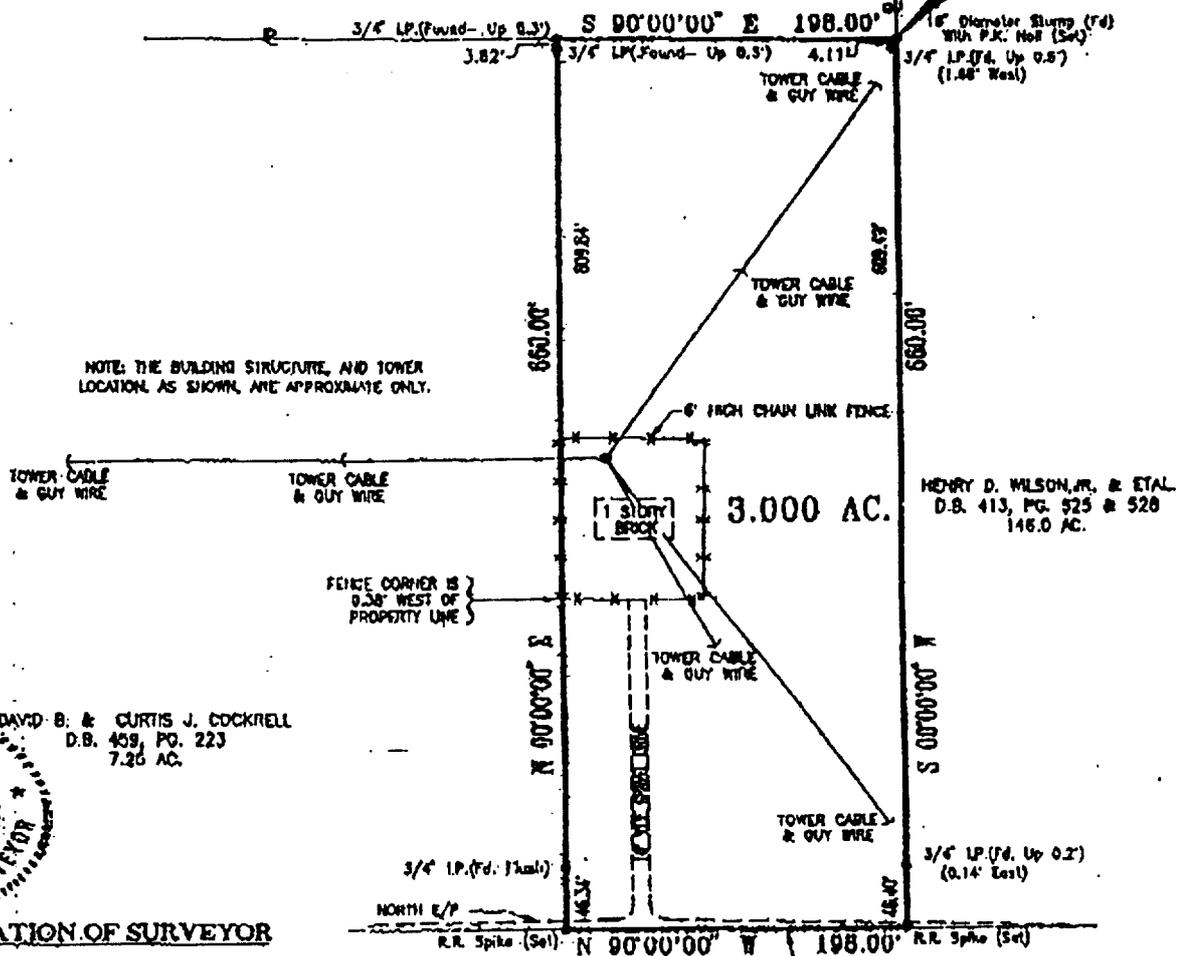


BASIS OF BEARINGS

BEARINGS WERE BASED ON THE PREVIOUS DEED FOR THIS TRACT, AND THE EAST LINE AS BEING S 00°00'00" W.

THOMAS & JUNE HARD
D.B. 520, PG. 238
16.21 AC.

TRUE PLACE
OF BEGINNING



NOTE: THE BUILDING STRUCTURE AND TOWER LOCATION AS SHOWN, ARE APPROXIMATE ONLY.

DAVID B. & CURTIS J. COCKRELL
D.B. 459, PG. 223
7.26 AC.

HENRY D. WILSON, JR. & ETAL
D.B. 413, PG. 525 & 528
146.0 AC.



CERTIFICATION OF SURVEYOR

I HEREBY CERTIFY TO STAR BANK AND TO HUMMEL TITLE AGENCY INC., THAT BISCHOFF AND ASSOCIATES, INC. MADE AN ACTUAL FIELD SURVEY OF THE PREMISES AS SHOWN ON DECEMBER 30, 1993, & JANUARY 3, 1994 AND THAT SAID PLAT IS A CORRECT REPRESENTATION AS DETERMINED BY SAID SURVEY. ALL DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF. NOTE: ALL IRON PINS(SET) ARE 3/8" REBAR, 30 INCHES LONG WITH A YELLOW CAP BEARING "FORTH-S-7418".

David B. & Curtis J. Cockrell
DATE

BISCHOFF & ASSOCIATES, INC.
Consulting Engineers
1110 Chambers Road
Columbus, Ohio 43212

OLD S.R. 37

Attachment 4

May 25, 1994
Dolores Buell
16910 East State Route 37
Sunbury, Ohio 43074

Shellee F. Davis
7040 Cloverdale Lane
Worthington, Ohio 43235

Dear Ms. Davis:

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; the exact location to be agreed upon at the time of lease negotiation.

I represent that I am owner of the real estate and that I am the personal representative of the estate of Hugh Buell, my late husband, and that the land is currently 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.

You have indicated that you, Shellee F. Davis, have applied for the broadcast license of WBBY-FM, Westerville, Ohio, and this letter is to confirm that should the Federal Communications Commission award Shellee F. Davis or any of its successors or assigns the construction permit, that I have a present and firm intention to negotiate a lease with Shellee F. Davis 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 FCC, FAA, or other federal, state or local authorities) including related equipment and a related equipment building for what is necessary to proper operation of the equipment at the site. Although this is not a lease agreement we have previously discussed a lease rate of fifteen thousand dollars per year, payable quarterly and an initial term of 4 years with seven (7), four(4) 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 the FCC should award the construction permit.

This letter conveys my present and firm intention to lease to Shellee F. Davis 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. Any lease terms that are negotiated between us will be subject to the approval of my attorney.

Page 2
May 25, 1994

p. 2

Any final lease agreement will be subject to complete and thorough financial review of the qualifications of Shelley F. Davis and subject to determining that those qualifications are adequate to entering into a long-term lease agreement. Therefore, in consideration of one dollar and other valuable consideration, receipt of which is hereby acknowledged, I hereby assure Shelley F. Davis of my firm intention to negotiate a lease for a tower site if and when she is awarded a license. This letter is intended to be a letter of intent and is not assignable.

Sincerely,

Dolores Buell *Dolores J. Buell*

Estate of Hugh Buell,
Dolores J. Buell, Executor *Dolores J. Buell Executor*

CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney in the law firm of McNair & Sanford, P.A., do hereby certify that on this 24th day of August, 1994, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Opposition to Davis Petition for Leave to Amend" to the following:

Joseph A. Marino, Chairman*
Review Board
Federal Communications Commission
Room 211
2000 L Street, N.W.
Washington, D.C. 20554

James Shook, Esquire
Hearing Branch
Federal Communications Commission
Room 7212
2025 M Street, N.W.
Washington, D.C. 20554

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

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.

Eric S. Kravetz, Esquire
Brown, Finn & Nietert, Chartered
1920 N Street, N.W.
Suite 660
Washington, D.C. 20036
Counsel for Wilburn Industries, Inc.