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October 5, 1994

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION

Re: MM Docket No. 93-107

Dear Mr. Caton:

On behalf of ASF Broadcasting Corp., an applicant in the above-referenced proceeding, there are transmitted herewith an original and 11 copies of its Opposition to the Petition to Intervene filed September 23, 1994 by WPAY/WPFB, Inc.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,



James A. Koerner
Counsel for
ASF Broadcasting Corporation

JAK:pk
Enclosures

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Before the
Federal Communications Commission
Washington, D.C. 20554

OCT - 5 1994

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20540

In re Applications of)	MM Docket No. 93-107
)	
DAVID A. RINGER, <u>et al.</u>)	File No. BPH-91123OMA
)	through
For Construction Permit)	File No. BPH-911231MC
Channel 280A)	
Westerville, Ohio)	

To: The Review Board

OPPOSITION TO PETITION TO INTERVENE

ASF Broadcasting Corp. ("ASF"), by its attorneys, hereby opposes the "Petition to Intervene" petition filed by WPAY/WPFB, Inc., licensee of Radio Station WPAY-FM ("WPAY"). In response thereto, the following is submitted:

WPAY clearly cannot petition pursuant to Sections 1.223(a) or (b) of the Rules. Accordingly, it is required to comply with the stringent requirements of Section 1.223(c). WPAY has utterly failed to comply.

The first requirement is that the petition set forth the interests of the petitioner in the proceeding. WPAY merely alleges that the amendment filed by ASF specifying a new transmitter site specifies a location which is short spaced to WPAY, and that WPAY "may" be precluded from changing its own site, and "may" suffer injury. Far from demonstrating the interest of the petitioner, WPAY has done nothing more than speculate. Nowhere in this petition does WPAY acknowledge that ASF has requested processing pursuant to Section 73.215 of the Rules. An earlier-filed opposition by WPAY to the ASF

amendment relied upon cases which are wholly inapposite in that they involved applicants seeking a waiver of Section 73.207, and not processing under Section 73.215. As the ASF amendment has demonstrated, and the Commission's Mass Media Bureau has acknowledged, ASF has complied with all of the engineering requirements. WPAY has been fully protected, and is no more precluded from making changes than it would be were the sites fully spaced pursuant to Section 73.207.

The second requirement is a demonstration of how Petitioner's participation will assist the Commission in the determination of the issues in question. At the present time, the only issues are comparative. In any event, WPAY has not, as required by Section 1.223(c), set forth any proposed issues in addition to those already designated.

WPAY's participation in this proceeding is neither necessary nor appropriate. ASF (and the other applicants proposing the same site) have fully protected WPAY to the extent required by the Commission's Rules. This Petition to Intervene should be denied.

Respectfully submitted,

ASF BROADCASTING CORPORATION

By:



James A. Koerner
Its Attorney

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CERTIFICATE OF SERVICE

I, Pamela J. Kidwell, a secretary in the law offices of Baraff, Koerner, Olender & Hochberg, P.C., do hereby certify that copies of the foregoing "OPPOSITION OF PETITION TO INTERVENE" were sent this 5th day of October, 1994, via first class mail, postage prepaid to the following:

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