

Before the
Federal Communications Commission
Washington, DC

RECEIVED
FEB 27 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

PARTIAL OPPOSITION TO MOTION TO EXPEDITE PROCEEDING

Shellee F. Davis ("Davis"), by her attorney, hereby submits her partial opposition to the "Motion to Expedite Proceeding" ("Motion") filed by Ohio Radio Associates on February 21, 1995 in this proceeding.

Davis is in favor of review being expedited in this proceeding. However, it must be recognized that the FCC unfortunately has placed a freeze on comparative hearings, and also, unfortunately, the case cited by ORA would not serve to successfully avoid the freeze.

When reviewing the case cited by ORA, the FCC recognized that a remand for consideration of basic qualifying issues against certain applicant would be appropriate where it was clear that designation of basic issues were warranted against those applicants, and where all other applicants but one had already been disqualified. Rem Malloy Broadcasting, FCC 94-335 (1995). Here, however, no other applicant has been disqualified, and even with respect to the

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issues raised against, for example, Davis, Davis has shown that contrary to the parties' divergent views, she was initially and continues to be financially qualified (Attachment 1¹), had initially and has today reasonable assurance of a transmitter site (Attachment 2), and has had and continues to have a technically acceptable transmitter site (see David A. Ringer, 8 FCC Rcd 2651 (Chief, Audio Services Div. 1993) and "Mass Media Bureau's Comments on Petition for Leave to Amend" dated August 24, 1994). Thus, the fact of the matter is that even regardless of what the Board may find to be the appropriate disposition with regard to various basic qualifying matters that are up on initial consideration or appeal with regard to ASF, Ringer or Wilburn, a "comparative consideration" unquestionably still would be necessary with regard to Davis and ORA, thus negating the availability of the Rem Malloy "exception" to the freeze.²

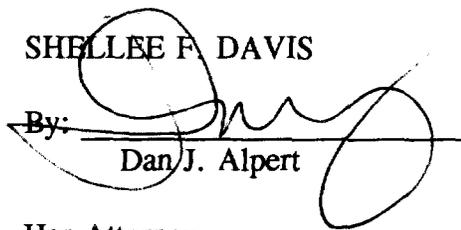
¹ The FCC will not second-guess the willingness of a financial institution to make a loan. Harrison County Broadcasting Co., 6 FCC Rcd 5819, 5821 ¶ 14 (Rev. Bd. 1991).

² The existence of the freeze is especially unfortunate in this case, seeing as how Davis is the only applicant of minority-group heritage, and is the only applicant that lives locally or who has been involved in cognizable civic activities -- all factors the FCC is contemplating to continue to consider in its revised comparative analysis. To Davis' best knowledge, ORA, in contrast, would not be entitled to any comparative credit under any of the factors for which the FCC has awarded credit in the past or for which it presumably is considering to award credit in the future.

WHEREFORE, based on the foregoing, it will be necessary for ORA's "Motion for Expedited consideration" to be denied.

Respectfully submitted,

SHELLÉE F. DAVIS

By: 

Dan J. Alpert

Her Attorney

*The Law Office of Dan J. Alpert
1250 Connecticut Ave., N.W.
7th Floor
Washington, DC 20036*

February 27, 1995

ATTACHMENT 1

The Huntington National Bank
41 South High Street
P.O. Box 1558
Columbus Ohio 43260



Ralph K. Frasier
Executive Vice President
General Counsel and Secretary
614 483 4847

DECLARATION

I, Ralph K. Frasier, hereby state as follows:

I am an Executive Vice President, General Counsel, Secretary and Cashier of The Huntington National Bank, a national banking association chartered under the laws of the United States with its principal office located in Columbus, Ohio, and banking offices throughout the state of Ohio ("Huntington"). Total assets at June 30, 1993, exceeded \$10 billion.

I am an "Executive Officer" of Huntington as that term is defined and customarily applied in banking law and practice. Under general corporate law and, specifically, under the terms of the Bylaws and Board authorizations of Huntington, I have authority to enter into binding commitments on behalf of Huntington. For more than twenty-five years I have held management and executive positions in the banking industry. During that time I have made hundreds of promises, representations and commitments on behalf of my bank employer. I have never failed to carry out such commitments. To suggest otherwise is offensive.

I have issued a "soft" commitment to Ms. Davis because a firm commitment would be impractical. Indeed, the Commission's processing and procedures make it impractical to issue binding commitments. These proceedings have been underway for almost two years, and with Petitions to Enlarge Issues and other challenges, it is impossible to predict when, if ever, a customer will obtain regulatory clearance. In the interim, the economy, markets, business plans, financial conditions, interests and appetite may change. It is, therefore, unreasonable to expect either the Huntington or its customer to be locked into obligations to be executed far into the future.

I was first approached in December, 1991, by Shellee Davis concerning the application she was intending to submit for former Station WBBY (FM) in Westerville, and the availability of funding from Huntington to finance that project. Ms. Davis and her husband, Reginald Davis, have banked with this institution for a number of years. I personally am well acquainted with Ms. Davis' finances, the success of her past business and her track record in running a successful business, and her standing and reputation

in the community. I also am familiar generally with what had been the stature and stability of Station WBBY in the Columbus community during the period it was operating. As I indicated in the letter that I wrote to Ms. Davis, this institution has been anxious to provide financing to Ms. Davis for her personal and business endeavors. The Davis proposal was all the more interesting and attractive in light of the recent history of a prior operator having successfully operated in the same facility, on the same frequency and in much of the same market.

In order to verify the ability of Huntington to provide the funding that was being requested, at the time of her request, I requested that Ms. Davis provide information to me concerning the level of financing she would need and information concerning her current finances in the form of a current balance sheet. That information all was provided. In addition, Ms. Davis and I discussed the project and some of her plans for the station. As a Senior Officer with Huntington, I am very familiar with the institution's lending criteria. Moreover, Ms. Davis' proposal and financial information was reviewed with a seasoned loan officer. Based upon that evaluation, it was the determination at the time that inquiry was made, and remains the understanding of the Huntington today, that funding can and will be provided in accordance with the level of financing requested in the December 27, 1991, letter, and in fact can be provided at the level of financing stated in the March 9, 1992 letter (see attachments). This decision was made with the understanding that Ms. Davis intends, if possible, to lease a large portion of the equipment for the station (which may reduce the amount of loan that will be needed), and that the FCC license may not permissibly be subject to a security interest by this institution. Ms. Davis has kept me informed of the progress of the application, and as I repeatedly have assured her at all times since her request was approved, the anticipated availability of funding has remained in place.

As the letters state, the bank's ability to proceed forward with the proposed loan will be contingent upon Ms. Davis' acquisition of the permit for the station from the FCC, confirmation at the time the loan is to be extended that the Davis' financial condition has not materially changed from that reviewed previously, that all reasonable and ordinary credit criteria are met and a commitment from her to operate the station with appropriate staffing. It is anticipated that funding will be provided at two points above the prime lending rate as may exist at the time of each advance on the loan, and the loan will likely have a five year repayment period with a 6-12 month moratorium on repayment of the principal. We would require that the loan be secured by whatever equipment is purchased by the

station, the intangible assets for the station (i.e., the accounts receivable), and we additionally would require the Davis' secured personal commitment.

The attached letters correctly reflect intentions of this institution to provide funding to Ms. Davis under the conditions stated therein. This institution has not in the past, nor will it in the future, issue any documents which are false, or which fail to accurately reflect the intentions of this institution. I resent any inference to the contrary.

I declare under penalty of perjury that the foregoing is true and correct.


Ralph K. Frasier
Executive Vice President,
General Counsel,
Secretary and Cashier
The Huntington National Bank



The Huntington National Bank
41 South High Street
P.O. Box 1558
Columbus Ohio 43260

Ralph K. Frasier
Executive Vice President
General Counsel and Secretary
614 463 4647

December 27, 1991

Mrs. Shellee F. Davis
415 East Broad Street
Suite 100
Columbus, Ohio 43215

Dear Shellee:

Thank you for your recent inquiry regarding our interest in providing financing of a venture for you.

Shellee, you know we have been interested for some time in increasing the level of business done with you. With that thrust still in mind, based upon our knowledge of you and your personal finances, and our understanding concerning the value of the project, we believe that we will be able to provide financing in the amount of \$250,000 to finance your project.

We have not had an opportunity to verify the accuracy of the financial information you have provided to us, so obviously, we are not prepared to make a binding loan commitment -- but if the following conditions are met, we believe that a mutually satisfactory arrangement will be secured:

1. You are successful in obtaining approval from the Federal Communications Commission to control and operate a commercial broadcast station in the Columbus, Ohio market.
2. All reasonable and ordinary credit criteria of The Huntington National Bank are met at such time as you have A) Received a construction permit for the station and B) Received from The Huntington National Bank a formal lending commitment; and
3. Appropriate management and staff are acquired to run the station.

Although this does not represent a commitment, this letter reflects the present belief that this Bank will be able to pursue the loan with you to a mutually satisfactory conclusion. The pricing and terms of amortization of any loan commitment will, of course, be contingent upon credit conditions and criteria prevailing at the time of such commitment. However, we contemplate calculating interest on any loan made at a rate not to exceed two percent above the prime lending rate of this Bank at the time of each advance (for your information the current prime lending rate of this Bank is 6-1/2 percent); and, the loan will be for a five year period, and any loan made would be repaid after a 6-12 month moratorium on principal as necessary, in quarterly installments or as otherwise reasonable and consistent with accepted financial projections received at time of borrowing.

Collateral for the loan would be the physical and intangible assets of the station and would include your secured personal commitment.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ray K. Fisher", with a large, stylized flourish at the end.

RKF/gs

The Huntington National Bank
41 South High Street
P.O. Box 1558
Columbus Ohio 43260



Ralph K. Frasier
Executive Vice President
General Counsel and Secretary
614 463 4647

March 9, 1992

Mrs. Shellee F. Davis
415 East Broad Street
Suite 100
Columbus, Ohio 43215

Dear Shellee:

Thank you for your recent inquiry regarding our interest in providing financing of a venture for you.

Shellee, you know we have been interested for some time in increasing the level of business done with you. With that thrust still in mind, based upon our knowledge of you and your personal finances and our understanding concerning the value of the project, we believe that we will be able to provide financing in the amount of \$350,000 to finance your project.

We have not had an opportunity to verify the accuracy of the financial information you have provided to us, so obviously we are not prepared to make a binding loan commitment -- but if the following conditions are met, we believe that a mutually satisfactory arrangement will be secured:

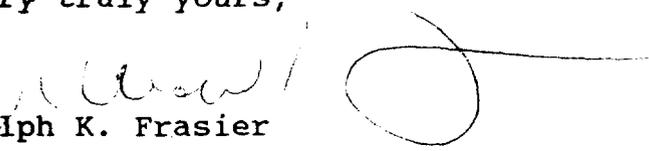
1. You are successful in obtaining approval from the Federal Communications Commission to control and operate a commercial broadcast station in the Columbus, Ohio market.
2. All reasonable and ordinary credit criteria of The Huntington National Bank are met at such time as you have (a) received a construction permit for the station and (b) received from The Huntington National Bank a formal lending commitment; and
3. Appropriate management and staff are acquired to run the station.

Mrs. Shellee F. Davis
Page 2
March 9, 1992

Although this does not represent a commitment, this letter reflects the present belief that this bank will be able to pursue the loan with you to a mutually satisfactory conclusion. The pricing and terms of amortization of any loan commitment will, of course, be contingent upon credit conditions and criteria prevailing at the time of such commitment. However, we contemplate calculating interest on any loan made at a rate not to exceed two percent above the prime lending rate of this bank at the time of each advance (for your information the current prime lending rate of this bank is 6-1/2 percent); the loan will be for a five year period, and any loan made would be repaid after a 6-12 month moratorium on principal as necessary, in quarterly installments or as otherwise reasonable and consistent with accepted financial projections received at time of borrowing.

Collateral for the loan would be the physical and intangible assets of the station and would include your secured personal commitment.

Very truly yours,


Ralph K. Frasier

RKF/nth
cc: Paul B. Brawner

L19Davis

The Huntington National Bank
3400 Huntington Center
41 South High Street
Columbus, Ohio 43287

Ralph K. Frasier
Executive Vice President
General Counsel, Secretary and Cashier
614 480 4647
614 480 5485 - Fax



DECLARATION

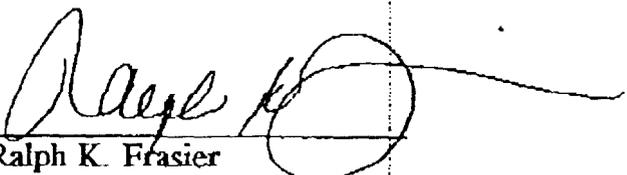
I, Ralph K. Frasier, hereby state as follows:

1. I am an Executive Vice President, General Counsel, Secretary and Cashier of The Huntington National Bank. As I previously have confirmed, The Huntington National Bank has at all times since December 1991 provided assurances to Ms. Shellee F. Davis that this institution is willing, based upon my familiarity with her proposal, her assets, her past business expertise, her reputation in the community, and the existence of past operations of WBBY-FM in the Westerville market, to provide financing to Ms. Davis up to \$350,000.

2. I am aware of the fact that Ms. Davis has been awarded the construction permit for the station, and that that decision is on appeal. I also have recently been informed that rather than renting equipment and a transmitter site from the former owner of WBBY-FM, that Ms. Davis instead intends to purchase equipment to operate at a new transmitter site.

3. This is to confirm that the assurance of The Huntington National Bank to provide funding to Ms. Davis remain in place, and at all times have remained in place, under the terms and conditions contained in my December 27, 1991 and March 9, 1992 letters to Ms. Davis.

I declare under penalty of perjury that the foregoing is true and correct.


Ralph K. Frasier

Signed and dated this 15th day of August, 1994.

ATTACHMENT 2

MID-OHIO COMMUNICATION
Post Office Box 14
Westerville, Ohio 43081

December 23, 1991

Shelley F. Davis, Pres.
BRITY BUSINESS SYSTEMS, INC.
415 E. Broad Street, Suite 100
Columbus, Ohio 43215

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

Dear Ms. Davis:

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
Carl B. Fry, Authorized Representative

Attachment

MID-OHIO COMMUNICATIONS, INC.

Post Office Box 14
Westerville, Ohio 43081

June 7, 1993

Shallee F. Davis, Pres.
BRITT BUSINESS SYSTEMS, INC.
415 E. Broad Street, Suite 100
Columbus, OH 43215

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

Dear Ms. Davis:

This correspondence is to follow-up your most recent inquiry pertaining to the lease of certain real property and personal property owned by Mid-Ohio Communications, Inc. or affiliated companies which was utilized in regard to the broadcast operation of WBBY-FM. You have indicated that you are still among those being considered by the Federal Communications Commission for the broadcast license and pursuant to your request, 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.

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 which was utilized in the operation of the station. The equipment would include some or perhaps all of the equipment itemized in the inventory which accompanied my correspondence to you of December 23, 1991. Failure to lease all of the equipment listed in the inventory will not result in a reduced lease package price. As was the case with the previous correspondence to you, 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.

As previously indicated to you, 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 contemplated 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 guaranties in regard to the personal obligations.

My records reflect that pursuant to my correspondence of December 23, 1991, you provided my client with a showing of financial qualifications prior to the 60 day deadline referred to in my correspondence, and my client found your financial qualifications satisfactory. As such, the December 23, 1991 commitment remains in force.

Mid-Ohio Communications, Inc. hereby reconfirms that it grants you the authority to continue to specify WBBY-FM's transmitter location in the FCC application proceedings. We continue to wish you the best of luck in your application for licensure being processed by the Federal Communications Commission.

Sincerely,

MID-OHIO COMMUNICATIONS, INC.

By: 
Carl B. Fry, Authorized Representative



The Ohio State University
Public Broadcasting Stations

WOSU-AM-FM-TV
2400 Olentangy River Road
Columbus, Ohio 43210-1027
Phone 614-292-9678

July 13, 1994

Shelley F. Davis
7030 Cloverdale Lane
Worthington, Ohio 43235

Dear Ms. Davis:

This letter will confirm our discussions concerning the availability of space on the broadcasting tower owned by WOSU-TV/The Ohio State University at 6680 State Route 3, in Delaware County, north of Westerville, Ohio, to accommodate a 2-3 bay FM antenna, and a 1-5/8 inch transmission line, and in one of the WOSU-TV transmitter buildings sufficient space to accommodate a 5 kilowatt transmitter and various related auxiliary equipment.

Space on the tower is currently being used by commercial broadcasters. Space to accommodate this project on the tower and in one of the buildings currently is available. Therefore, in the event you are willing to proceed, based upon present conditions, subject to the negotiation of a mutually-agreeable lease agreement, and in the event you are granted the construction permit for FM Channel 280A at Westerville, Ohio, by the Federal Communications Commission, we are willing to make available to you space upon the WOSU-TV tower and space in one of the WOSU-TV transmitter buildings sufficient to accommodate the equipment specified above. Based upon present loading of the tower, we would require that the antenna be mounted on the tower at a height so that the center of radiation would be no more than 500 feet above the ground. Although it may be a number of years before you obtain FCC authorization to build the station and begin operations, based upon present conditions, if the lease were entered into today, we are renting space on the tower for \$3.00 per foot per month, and floor space approximately the size of your need is being made available at a rate of \$200 per month. Costs for electric power would be billed extra, on an as-used basis. If the antenna proposed to be used were to be located 350 feet up on our tower, based upon present prices, the total monthly cost to you would be \$1,250 per month, plus costs for electricity.

Shellee F. Davis
July 13, 1994
Page 2 of 2

This is not a binding agreement, and can be revoked by either party at any time. Insofar as I understand that it is your intention to designate this site in an application to the Federal Communications Commission, I will attempt to keep you posted concerning the continued availability of tower space in the future.

Sincerely,



Dale K. Ozts
General Manager

DKO/pjw

CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that foregoing document was served on February 27, 1995 upon the following parties by First Class Mail, postage prepaid, or by Hand:

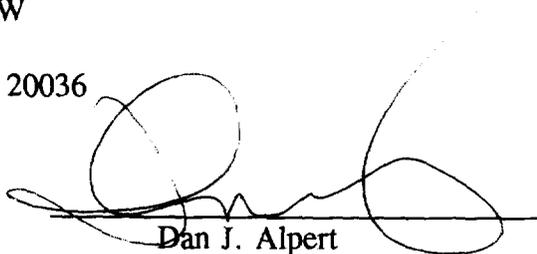
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Washington, DC 20554

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Washington, DC 20005

Eric S. Kravetz, Esq.
Brown, Nietert & Kaufman, Chtd.
1920 N Street, NW
Suite 660
Washington, DC 20036


Dan J. Alpert