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AUDIO SERVICES
DIVISION

September 2, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 -12th Street, SW
Washington, DC 20554

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SEP 22 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: File No. BPH-20021107AAD
Radio Station WPAT-FM
Paterson, New Jersey
Facility ID No. 51663

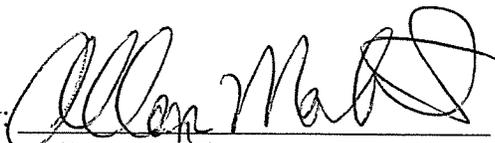
Dear Ms. Dortch:

On behalf of WPAT Licensing, Inc., licensee of Radio Station WPAT-FM, Paterson, New Jersey, we are herewith filing an original and four copies of its "Reply to Opposition" with respect to the above-referenced application.

Should any questions arise with respect to this matter, please contact the undersigned counsel.

Respectfully submitted,

KAYE SCHOLER LLP

By: 
Bruce A. Eisen

Enclosure

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of)
)
Application of)
WPAT Licensing, Inc.)
)
WPAT(FM), Paterson, New Jersey)
(Facility ID No. 51663))
)
)
For Modification of Facilities)

File No. BPH-20021107AAD

To: Chief, Media Bureau

REPLY TO OPPOSITION

WPAT Licensing, Inc., ("WLI") licensee of Radio Station WPAT-FM, Paterson, New Jersey, by its attorney, hereby replies to the "Opposition to Petition for Reconsideration" filed on September 4, 2003 by Clear Channel Communications, Inc. ("Clear Channel") which opposed WLI's August 21, 2003 "Petition for Reconsideration" of the FCC Staff's July 28, 2003 letter denying WLI's Request for Waiver of Section 73.213(a) of the Commission's Rules and dismissing the above-captioned application.¹

In support thereof the following is respectfully shown:

1. The Commission's Staff denied WPAT's Request for Waiver and dismissed the instant application because the proposed site relocation increased an existing short-spacing to

¹ Clear Channel correctly notes that WLI inadvertently failed to serve Clear Channel with the initial application as required by Section 73.213. During the preparation of the "Petition for Reconsideration", undesigned counsel realized the error and immediately notified counsel for Clear Channel and duly served counsel with the "Petition for Reconsideration".

WHYŃ-FM, Springfield, Massachusetts, licensed to Clear Channel. Clear Channel's opposition is based on its belief that "the FM spacing rules are well-founded and should be waived only sparingly" and that the Commission should not waive the rules based on the Longley-Rice Irregular Terrain model as proposed by WPAT. Further, Clear Channel notes the rule should not be waived where WPAT has available to it a "viable alternative - - operation from the proposed site at 4.9 kw . . ." which would comply with the rules and provide Clear Channel with the requisite interference protection. Finally, Clear Channel notes that WPAT-FM still has not cited to any case where a waiver of this magnitude has been granted.

2. While WPAT-FM respects Clear Channel's wish to maintain the requisite, theoretical interference protection, its opposition is unfounded. First, WLI agrees that the Commission's spacing rules should be waived only sparingly. The reason WLI has not cited any case where a waiver of Section 73.213(a) of this magnitude has been granted is because WLI has not discovered ANY case where Section 73.213(a) has been waived since the rules' reinstatement. If it is going to be waived at all, let alone sparingly, this is the case to do it.

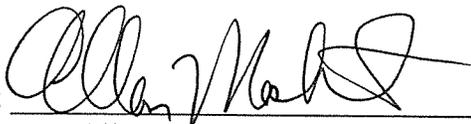
3. To reiterate, WPAT-FM's licensed transmitter site was destroyed along with the World Trade Center on September 11, 2001. After a lengthy and detailed site search, the licensee determined that the proposed site at the Empire State Building is the least short-spaced site available, would best replicate WPAT-FM's coverage and beneficially decreases the predicted amount of interference caused to WMMR(FM), Philadelphia, Pennsylvania by 155 square kilometers and 24,704 persons. Moreover, the Berkshire Mountain Range and other mountains actually block WPAT-FM's signal towards WHYŃ-FM and, utilizing the Longley-Rice prediction method, new interference is predicted to occur to only a 128 persons; i.e., a de minimis amount. The Staff's decision to limit WPAT-FM to 4.9 kw and constrict its coverage

will be exacerbated if and when WPAT-FM attempts to move back to a site at the World Trade Center and will needlessly punish WPAT-FM. Finally, WLI's requested waiver would create no precedent as it will be exceedingly difficult, if not impossible, for any applicant to cite the exceptional circumstances of this case to support a similar waiver. Consequently, if as Clear Channel states, the Commission's FM's spacing rules "should be waived only sparingly" then this is the case to do it.

THEREFORE, WPAT-FM Licensing, Inc. respectfully requests that the Chief, Media Bureau, reconsider his staff's July 28, 2003 letter decision denying the licensee's request for waiver and dismissal of the above-referenced application, reinstate the above-referenced application and grant the requested waiver and application.

Respectfully submitted,

WPAT LICENSING, INC.

By: 
Allan G. Moskowitz

9/22/03
Dated

CERTIFICATE OF SERVICE

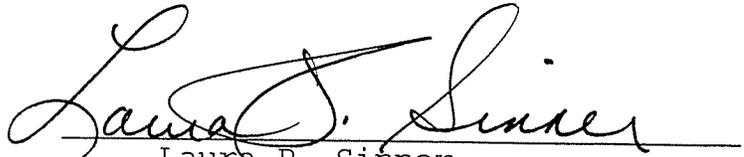
I, Laura P. Sinner, Secretary at the law firm of Kaye Scholer LLP, hereby certifies that a copy of the foregoing **Reply To Opposition** was delivered by hand, this 22nd day of September, 2003 to the following:

Peter Doyle
Chief, Audio Division
Media Bureau
Room 2-A267
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

Barbara Kreisman, Esq.
Chief, TV Branch
Media Bureau
Room 2-A666
Federal Communications Commission
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and sent by first-class mail to:

Kenneth Wyker, Esq.
c/o
Doran Bunkin, Esq.
Wiley Rein & Felding
1776 K Street, NW
Washington, DC 20006


Laura P. Sinner