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**FEDERAL COMMUNICATIONS COMMISSION**  
**445 TWELFTH STREET SW**  
**WASHINGTON DC 20554**

**MEDIA BUREAU / OFFICE OF BROADCAST LICENSE POLICY**  
**AUDIO DIVISION**  
**APPLICATION STATUS:** (202) 418-2730  
**HOME PAGE:** [www.fcc.gov/mb/audio/](http://www.fcc.gov/mb/audio/)

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April 8, 2004

Allan G. Moskowitz, Esq.  
Kaye Scholer LLP  
901 Fifteenth Street NW  
Washington, D.C. 20005

Re: WPAT-FM, Paterson, New Jersey  
Facility Identification Number: 51663  
WPAT Licensing, Inc.  
Special Temporary Authorization

Dear Counsel:

This is in reference to your letter dated March 25, 2004, filed on behalf of WPAT Licensing, Inc. (WLI). WLI requests modification and further extension of the special temporary authority (STA) originally granted on March 7, 2003, to operate Station WPAT-FM with temporary facilities.<sup>1</sup> As is discussed herein, the request is granted in part and denied in part.

In support of the request, WLI states that, following the destruction of the main WPAT-FM facilities on September 11, 2001, the station had been operating from Four times Square, but was forced to relocate to the Empire State Building ("ESB"). WLI states that its Application BPH-20021107AAD, for operation from the ESB with 6 kilowatts effective radiated power ("ERP") was dismissed by the staff on July 28, 2003, and that the staff's letter indicated that WLI's proposal would comply with the Commission's rules if the ERP were reduced to 4.9 kilowatts. WLI states that it has filed a Petition for Reconsideration of the dismissal, which remains pending. WLI, "in light of the fact that the Commission has apparently countenanced operation with 4.9 kilowatts ERP..." requests modification of its STA to specify 4.9 kilowatts ERP. WLI acknowledges that the requested ERP would result in extension of the proposed 60 dBu contour beyond the licensed contour, and requests an exception to the Audio Division's STA policy which prohibits such extension of the 60 dBu contour.

After careful review of WLI's proposal, we are unable to grant the requested exception to our STA policies. The proposed extension of the WPAT-FM 60 dBu contour beyond the licensed contour falls within a portion of the same area of existing overlap which is at the heart of WLI's ongoing appeal of the staff's dismissal of its application. Section 309(f) of the Communications Act of 1934, as amended, authorizes the Commission to grant STA in cases of "extraordinary circumstances requiring temporary authorizations in the public interest and when delay in the institution of the temporary operations would seriously prejudice the public interest." However, Section 309(f) is not a means by which a licensee/permittee may circumvent established processing procedures which require the filing of an application, nor is it a means by which a broadcaster may enhance his facility or make operation more convenient for the broadcaster.

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<sup>1</sup> Station WPAT-FM is licensed for operation on Channel 226B (93.1 MHz) with effective radiated power (ERP) of 5.4 kilowatts (H&V), and antenna height above average terrain (HAAT) of 433 meters.

While our public interest analysis, carried out within the context of a waiver request in the construction permit application process with its attendant public notice and comment procedures, frequently requires a balancing of interference gain and loss areas and populations, it is inappropriate to contravene those procedures via STA.

Even so, we are not unsympathetic to WLI's interest in maintaining the best possible service to the public pending the reestablishment of permanent, licensed facilities for Station WPAT-FM. We have carefully scrutinized the existing STA operation, and have determined that WLI's request can be granted to some extent. In particular, the ERP can be increased to 4 kilowatts without extension of the 60 dBu contour beyond the licensed contour. The STA will be modified to specify ERP of 4 kilowatts. We further find that WLI has been prevented from restoring licensed operation to Station WPAT-FM due to causes beyond its control; thus extension of STA is warranted.

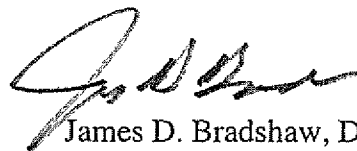
Accordingly, WLI's request for modification and further extension of STA IS HEREBY GRANTED to the extent indicated herein and in all other respects IS DENIED. Station WPAT-FM may operate with the following facilities:

Geographic coordinates:	40° 44' 54 ' NL, 73° 59' 10" WL (NAD 1927)
Channel	226 (93.1 MHz)
Effective radiated power:	not to exceed <b>4.0 kilowatts</b> (H&V)
Antenna height above average terrain:	415 meters

WLI must use whatever means are necessary to protect workers and the public from exposure to radio frequency radiation in excess of the Commission's exposure guidelines. *See* 47 CFR § 1.1310. The authority granted herein is without prejudice as to the Commission's final action on Application BPH-20021107AAD. Any construction undertaken pursuant to this authority is entirely at WLI's own risk.

This authority expires on **October 8, 2004**.

Sincerely,



James D. Bradshaw, Deputy Chief  
Audio Division  
Office of Broadcast License Policy  
Media Bureau

cc: WPAT Licensing, Inc.