

FCC Form 340
Radio Station WELH, Channel 201A,
Providence, Rhode Island
FCC Facility ID No. 66656
September 2007

STATEMENT RE CHANNEL-6 PROTECTION

1. The application to which this Statement is an Exhibit proposes to improve the licensed facilities of Noncommercial Educational Radio Station WELH(NCE-FM), Channel 201A, Providence, Rhode Island (the *Station*). The Station's licensed facilities are 150 watts ERP at 30 Meters Antenna HAAT... close to minimal Class A parameters, which are 100 watts ERP at 30 Meters Antenna HAAT. The existence of an analog Channel-6 Television Station in the Providence Market — WLNE-TV, New Bedford, Massachusetts, FCC Facility ID No. 22591 — severely constrain any ability to improve the Station's licensed facilities, due to the provisions of § 73.525 of the Commission's Rules.

2. The technical parameters that this application specifies are in excess of those allowable under § 73.525. However, pursuant to an Act of Congress — the Digital Television and Public Safety Act of 2005, Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006)(*codified* at 47 U.S.C. §§ 309(j)(14) and 337(e) — analog television broadcast transmissions must cease no late than February 17, 2009... approximately 17 months from now. Under these unique circumstances, the Applicant respectfully submits that this application is technically acceptable for filing and can be promptly granted, with an appropriate condition to

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protect station WLNE-TV's remaining tenure on Channel 6.¹

3. The FCC issues Broadcast Radio Construction Permits for 36-month terms. Thus, because station WLNE-TV must cease Channel-6 operations in less than half of that period, there will be more than adequate time for the Applicant to construct the facilities proposed herein and to commence broadcast service with them, and to file an application for a license to cover the Construction Permit within the term of same. Indeed, the Applicant intends to construct the proposed facility such that the Applicant will be able to place the facility into broadcast operation at the earliest possible moment.... i.e., as soon as WLNE-TV ceases operation on Channel 6. This will result in a far more expeditious expansion of the Station's service area than would be the case if the Applicant were to wait until Channel 6 sunsets, and then file its improvement application.

4. The Applicant submits that no waiver of the Commission's Rules is necessary to the acceptance for filing and grant of this application. The application is not a contingent one, within the sense of § 73.3517 of the Rules, because it is not dependent upon the grant of any other application. Further, the imposition of a protective condition for the benefit of Channel 6 will

¹WLNE-TV's Digital Channel is Channel 49. See Appendix B to the Seventh Report And Order And Eighth Further Notice Of Proposed Rule Making in MB Docket No. 87-268, FCC 07-138 (rel. August 6, 2007), at p. 22.

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ensure that no actual interference results. Section 73.3592(a) of the Commission's Rules expressly allows the conditional grant of even one of several mutually exclusive applications where, among other things, the public interest requires the prompt establishment of broadcast service in a particular community or area. Section 73.3592(b) allows a grant to a consortium of mutually exclusive applicants where such grant will serve the public interest. While the subject application is not, to the Applicant's knowledge, mutually exclusive with any other application, the Applicant respectfully submits that the same rationale warrants a conditional grant here.

5. Because of the presence of a Channel 6 television station in the Providence market, NCE-FM service has long been constrained. As the Technical Statement which accompanies this application indicates, not one person in the city of Providence receives a $70\text{-dB}\mu_{f(50,50)}$ signal on a full-time basis from any NCE-FM facility. The improved WELH(NCE-FM) facility proposed in this application, however, will provide $70\text{-dB}\mu_{f(50,50)}$ service to nearly every resident of the city. The population receiving $60\text{-dB}\mu_{f(50,50)}$ service will increase by 463% to more than 420,000, and the service area will increase by 307% to 304 km^2 . This great increase in spectral efficiency is compelling justification for prompt acceptance and conditional grant of this application. Spectral efficiency is of "paramount" concern under § 307(b) of the Act. Endicott, New York, 51 FCC 2d 50, 51 (1975).

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6. The issuance of Construction Permits with conditions that prevent the authorized facilities from signing on until other stations have vacated the channels they presently occupy is a matter of routine in the Media Bureau. See, e.g., Special Operation Condition No. 7 to FCC File No. BPH-20040422ABN, a copy of which is Annex I hereto. Exactly the same type of condition is useful here.

7. If the Commission determines that acceptance of this application requires a temporary waiver of § 73.525, the Applicant hereby requests the same. The unique circumstances and the Applicant's willingness to accept a Construction permit with a protective condition for Channel 6's benefit converge to ensure that a waiver will not undercut the public-interest considerations underlying § 73.525. Further, as shown above, the waiver will serve the public interest by allowing the expeditious expansion of NCE-FM service to a deserving city. Accordingly, any waiver that the Commission deems to be required is fully warranted. WAIT Radio v. FCC, 418 F.2d 1153, 1156-7 (D.C. Cir. 1969).

ANNEX I

United States of America
FEDERAL COMMUNICATIONS COMMISSION
FM BROADCAST STATION CONSTRUCTION PERMIT

Authorizing Official:

Official Mailing Address:

NPR PHOENIX, LLC
SUITE 265
7434 EAST STETSON DRIVE
SCOTTSDALE AZ 85251

Rodolfo F. Bonacci
Supervisory Engineer
Audio Division
Media Bureau

Facility ID: 54944

Grant Date: August 02, 2004

Call Sign: KEDJ

This permit expires 3:00 a.m.
local time, 36 months after the
grant date specified above.

Permit File Number: BPH-20040422ABN

Subject to the provisions of the Communications Act of 1934, as amended, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this permit, the permittee is hereby authorized to construct the radio transmitting apparatus herein described. Installation and adjustment of equipment not specifically set forth herein shall be in accordance with representations contained in the permittee's application for construction permit except for such modifications as are presently permitted, without application, by the Commission's Rules.

Commission rules which became effective on February 16, 1999, have a bearing on this construction permit. See Report & Order, Streamlining of Mass Media Applications, MM Docket No. 98-43, 13 FCC RCD 23056, Para. 77-90 (November 25, 1998); 63 Fed. Reg. 70039 (December 18, 1998). Pursuant to these rules, this construction permit will be subject to automatic forfeiture unless construction is complete and an application for license to cover is filed prior to expiration. See Section 73.3598.

Equipment and program tests shall be conducted only pursuant to Sections 73.1610 and 73.1620 of the Commission's Rules.

Name of Permittee: NPR PHOENIX, LLC

Station Location: AZ-GILBERT

Frequency (MHz): 103.9

Channel: 280

Class: C1

Hours of Operation: Unlimited

Transmitter: Type Accepted. See Sections 73.1660, 73.1665 and 73.1670 of the Commission's Rules.

Transmitter output power: As required to achieve authorized ERP.

Antenna type: Directional

Antenna Coordinates: North Latitude: 33 deg 14 min 50 sec
 West Longitude: 111 deg 31 min 49 sec

	Horizontally Polarized Antenna	Vertically Polarized Antenna
Effective radiated power in the Horizontal Plane (kW):	100	100
Maximum effective radiated power (kW):	100	100
Height of radiation center above ground (Meters):	203	203
Height of radiation center above mean sea level (Meters):	665	665
Height of radiation center above average terrain (Meters):	189	189

Antenna structure registration number: 1015427

Overall height of antenna structure above ground (including obstruction lighting if any) see the registration for this antenna structure.

Special operating conditions or restrictions:

- 1 BEFORE PROGRAM TESTS ARE AUTHORIZED, permittee shall submit the results of a complete proof-of-performance to establish the horizontal plane radiation patterns for both the horizontally and vertically polarized radiation components. This proof-of-performance may be accomplished using the complete full size antenna, or individual bays therefrom, mounted on a supporting structure of identical dimensions and configuration as the proposed structure, including all braces, ladders, conduits, coaxial lines, and other appurtenances; or using a carefully manufactured scale model of the entire antenna, or individual bays therefrom, mounted on an equally scaled model of the proposed supporting structure, including all appurtenances. Engineering exhibits should include a description of the antenna testing facilities and equipment employed, including appropriate photographs or sketches and a description of the testing procedures, including scale factor, measurements frequency, and equipment calibration.
- 2 BEFORE PROGRAM TESTS ARE AUTHORIZED, permittee shall submit an affidavit from a licensed surveyor to establish that the directional antenna has been oriented at the proper azimuth.
- 3 BEFORE PROGRAM TESTS ARE AUTHORIZED, permittee/licensee shall submit an affidavit that the installation of the directional antenna system was overseen by a qualified engineer. This affidavit shall include a certification by the engineer that the antenna was installed pursuant to the manufacturer's instructions and list the qualifications of the certifying engineer.

Special operating conditions or restrictions:

4 The relative field strength of neither the measured horizontally nor vertically polarized radiation component shall exceed at any azimuth the value indicated on the composite radiation pattern authorized by this construction permit.

A relative field strength of 1.0 on the composite radiation pattern herein authorized corresponds to the following effective radiated power:

100 kilowatts.

Principal minima and their associated field strength limits:

160 degrees True: 25.0 kilowatts

5 ***** This is a Section 73.215 contour protection grant *****
***** as requested by this applicant *****

6 The permittee/licensee in coordination with other users of the site must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines.

7 PROGRAM TESTS FOR KEDJ (FACILITY ID# 54944) WILL NOT COMMENCE ON CHANNEL 280C1 UNTIL PROGRAM TESTS FOR KFPB (FACILITY ID# 109) COMMENCE ON CHANNEL 232 AND A LICENSE WILL NOT BE GRANTED FOR KEDJ ON CHANNEL 280C1 UNTIL A LICENSE IS GRANTED FOR KFPB ON CHANNEL 232.

8 The permittee shall submit a copy of the vertical plane radiation pattern for the beam tilt antenna with the FCC Form 302-FM Application for License.

*** END OF AUTHORIZATION ***