

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
University of Delaware)	LMS File No. 0000161751
)	
Application for Modification of Station)	
Authorization for WVUD(FM), Newark, DE)	

INFORMAL OBJECTION OF WPVI TELEVISION (PHILADELPHIA), LLC

Pursuant to section 73.3587 of the rules of the Federal Communications Commission (“Commission”),¹ WPVI Television (Philadelphia), LLC, licensee of full-power digital television station WPVI-TV, channel 6, Philadelphia, Pennsylvania (“WPVI”), hereby objects to the above-captioned application of the University of Delaware (“Applicant”), licensee of non-commercial educational (“NCE”) FM radio station WVUD(FM), Newark, DE (Facility ID No. 69439) (“Station”).² Despite Applicant’s certifications to the contrary, the Application does not comply with the Commission’s rules. The Commission should therefore deny the Application.

Section 73.525 of the Commission’s rules specifies that its requirements “apply to all applications for construction permits for new or modified facilities for a NCE-FM station on Channels 200-220 unless the application is accompanied by a written agreement between the NCE-FM applicant and each affected TV Channel 6 broadcast station concurring with the proposed NCE-FM facilities.”³ The Station operates on channel 217, such that it is obligated to

¹ 47 C.F.R. § 73.3587.

² University of Delaware, Application for Minor Modification of a Licensed Facility, LMS File No. 0000161751 (filed Sep. 30, 2021) (“Application”).

³ 47 C.F.R. § 73.525.

comply with the requirements of Section 73.525 with respect to any affected TV Channel 6 station within 174 kilometers of the Station's facilities.⁴ As demonstrated in the attached Engineering Statement, the Station's proposed facility is 58.9 kilometers from WPVI's licensed transmitter, and 59.1 kilometers from the WPVI transmitter site for which Commission authorization is sought in WPVI's pending modification application.⁵ These distances fall well within the 174-kilometer boundary established in the Commission's rules, and WPVI thus constitutes an affected TV Channel 6 station with respect to which the Station must comply with the Section 73.525 protection requirements.

The Applicant did not submit with the Application a written agreement with WPVI reflecting WPVI's concurrence with the proposed modified facilities, such that the Section 73.525 protections would not apply; no such agreement exists, and WPVI does not concur with the proposed facilities. The Applicant did not provide WPVI, as an affected TV Channel 6 station, "early written notice of the proposed modification."⁶ Nor did the Applicant submit the requisite technical showings regarding the impact of its proposed modification on interference to WPVI.⁷ These failures to comply with the clear requirements of Section 73.525 notwithstanding, the Applicant nonetheless certified that its proposed facility complies with the applicable engineering standards and technical requirements of the Commission's rules, with specific reference to Section 73.525.⁸

⁴ *Id.* § 73.525(a).

⁵ *See* Attachment A, Engineering Statement at 1.

⁶ 47 C.F.R. § 73.525(b)(4).

⁷ *Id.* §§ 73.525(b)(2), (e).

⁸ *See* Application, Technical Certifications.

In fact, contrary to this certification, the Application includes an engineering narrative attachment that plainly admits no effort was made to comply with the requirements of Section 73.525, stating “it is note [*sic*] that TV CH 6 stations are not addressed as the FCC terminated analog CH 6 operation on July 13, 2021.”⁹ This misstates the import of the sunset of analog low-power TV and TV translator operations on July 13, 2021,¹⁰ which has absolutely zero effect on the Station’s obligations to protect WPVI, a full-power TV station, as an affected TV Channel 6 station under Section 73.525. Put another way, as explained in the attached Engineering Statement, NCE-FM stations’ obligation to protect TV Channel 6 stations is in full force and effect today, the Commission having recently and expressly retained such protection requirements.¹¹ Although the Commission contemplated that it would consider requests for waiver of the TV Channel 6 station protection requirements if the applicant demonstrated no interference to potentially affected TV Channel 6 stations, the Applicant here has requested no such waiver, and made no such demonstration.¹²

In sum, the Applicant is required to comply with Section 73.525, has made no effort to demonstrate that its proposed facilities are compliant with the rule’s requirements, has not requested relief from the rule’s requirements, and has offered no justification for any such relief even if requested.

⁹ Application, Attachment at 2.

¹⁰ See 47 C.F.R. § 74.431(m).

¹¹ Attachment A, Engineering Statement at 2-3 (citing *Amendments of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules; Modernization of Media Regulation Initiative*, Report and Order, MB Docket Nos. 19-193, 17-105, FCC 20-53, at ¶¶ 34-35 (2020) (“2020 Technical Order”).

¹² 2020 Technical Order at ¶ 35.

Because the Application plainly contravenes the Commission's rules, the Commission should deny the Application.

Respectfully submitted,

/s/ Susan L. Fox

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October 20, 2021

ATTACHMENT A

ENGINEERING STATEMENT



**STATEMENT OF WILLIAM J. GETZ
IN SUPPORT OF AN INFORMAL OBJECTION
TO AN APPLICATION FOR CONSTRUCTION PERMIT
LMS FILE NO. 0000161751
WVUD(FM), NEWARK, DELAWARE
LIC: Ch. 217B1, 0.79 kW (H) 6.8 kW (V) ERP, 37 m (H) 41 m (V) HAAT
APP: Ch. 217B1, 6.1 kW (H & V) ERP, 52 m HAAT
FACILITY I.D. 69439
OCTOBER, 2021**

I am a Radio Engineer, an employee in the firm of Carl T. Jones Corporation, with offices located in Springfield, Virginia. My education and experience are a matter of record with the Federal Communications Commission.

This office has been authorized by WPVI Television (Philadelphia), LLC, licensee of full-service DTV Channel 6 station WPVI-TV, Philadelphia, PA, to prepare this statement in support of an Informal Objection to the above-referenced application for a minor change in NCE-FM station WVUD(FM), Newark, DE. As demonstrated herein, the WVUD(FM) application fails to protect affected TV Channel Six station WPVI-TV, Philadelphia, as required by Section 73.525 of the FCC Rules.

The transmitter site proposed in the WVUD(FM) application is located 58.87 kilometers from the licensed WPVI-TV transmitter site (FCC File No. BLDT-20111019ACJ) and 59.11 km from the transmitter site proposed in the pending WPVI-TV application (LMS File No. 0000035671). Because both of these distances are less than 174 kilometers as set forth in Section 73.525(a) of the FCC Rules, WPVI-TV is considered an affected TV Channel Six station with respect to WVUD(FM).



Radio station WVUD(FM) currently operates with a minimal horizontal Effective Radiated Power (790 watts) specifically to protect WPVI-TV pursuant to Section 73.525 of the FCC Rules. The pending WVUD(FM) application requests circular polarization and an increase in its horizontal ERP to 6,100 watts, an 8.87 dB increase in the WVUD(FM) horizontally polarized ERP. The Engineering Narrative attached to the pending WVUD(FM) application (“WVUD Engineering”) affords no consideration to affected television channel six station WPVI-TV and offers no Section 73.525 compliance study. Nonetheless, the Applicant certifies compliance with Section 73.525 of the FCC Rules.¹

The WVUD(FM) Engineering does contain the following statement on Page 1 of the narrative: *“It is note [sic] that TV CH 6 stations are not addressed as the FCC terminated analog CH 6 operation on July 13, 2021.”*

It is emphasized herein that Section 73.525 is in full force and effect today, contrary to the statement quoted above. The Commission very recently affirmed the ongoing need for NCE-FM stations to protect affected television channel six stations in accordance with Section 73.525. On April 23, 2020, the Commission released the *LPFM Technical Order*, which adopted certain changes to the LPFM technical rules.² The new rules became effective on July 13, 2020.

In the *LPFM Technical Order* the Commission specifically deferred action on its proposal to eliminate the channel six protection criteria.³ As explained in Paragraph 35 of the *LPFM*

¹ See LMS File No. 0000161751, FCC Form 2100, Schedule 340, Technical Certifications, Broadcast Facility Section.

² See *Amendments of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules; Modernization of Media Regulation Initiative*, Report and Order, MB Docket Nos. 19-193, 17-105, FCC 20-53 (rel. Apr. 23, 2020) (*LPFM Technical Order*).

³ See *LPFM Technical Oder*, Paragraph 34.

Technical Order, the Commission decided it would “be in a better position to reach an informed decision by addressing TV6 issues in a separate proceeding with a more developed record on this issue. Until such a decision, and consistent with the interim approach proposed in the NPRM, the staff will consider waiver requests to use FM spectrum that is short-spaced to TV6, and grant such requests if it determines that the FM applicant demonstrates no interference”.

The WVUD(FM) application does not contain a waiver request, or a Section 73.525 study, or a demonstration of no interference or an agreement indicating the concurrence of all potentially affected TV6 stations. Rather, the WVUD(FM) Engineering simply ignored affected television channel six station WPVI-TV.

This statement was prepared by me or under my direct supervision and is believed to be true and correct.

DATED: October 11, 2021



William J. Getz