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August 3, 2009

AUG - 3 2009

Federal Communications Commission
Office of the Secretary

Our File No. 20838-500-65

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: **New Hampshire Public Radio, Incorporated**
NEW(FM), Holderness, New Hampshire
Facility ID No. 174186
FCC File No. BNPED-20071019ALH

Wentworth Baptist Church
NEW(FM), Plymouth, New Hampshire
Facility ID No. 175347
FCC File No. BNPED-20071017ADV

SUBJECT: Reply to Opposition to Application For Review

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AUDIO SERVICES DIVISION

Dear Ms. Dortch:

On behalf of New Hampshire Public Radio, Incorporated ("NHPR"), applicant for new noncommercial educational FM broadcast facilities to serve Holderness, New Hampshire, I transmit herewith the original and four copies of its Reply to Opposition concerning the above-referenced applications.

Kindly communicate any questions directly to this office.

Respectfully submitted,

John Wells King

Enclosures



G A R V E Y S C H U B E R T B A R E R

Marlene H. Dortch, Secretary
Federal Communications
Commission
August 3, 2009
Page 2

cc: Matthew H. McCormick, Esquire
Wentworth Baptist Church
Rachelle G. Arcoite
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Lee G. Petro, Esquire
Counsel for Northeast Gospel Broadcasting, Inc.
N.W. Hutchings
Southwest Radio Church of the Air, Inc.
John Crigler, Esquire
Counsel for Vermont Public Radio

Before The
Federal Communications Commission
Washington, D.C. 20554

In re Applications of)	
)	
NEW HAMPSHIRE PUBLIC RADIO,)	FCC File No. BNPED-20071019ALH
INCORPORATED)	
NEW(FM); Holderness NH)	Facility ID #174186
Channel 214, 90.7 MHz)	
)	
WENTWORTH BAPTIST CHURCH)	FCC File No. BNPED-20071017ADV
NEW(FM); Plymouth NH)	Facility ID #175347
Channel 214, 90.7 MHz)	
)	
For Construction Permit)	
To: The Commission		

Reply to Opposition

New Hampshire Public Radio, Incorporated (“NHPR”), through counsel and pursuant to Section 1.115 of the Commission’s Rules, hereby respectfully submits its Reply to the Opposition to Application for Review filed July 27, 2009, by Wentworth Baptist Church (“Wentworth”), and for its Reply, states as follows:

By merely correcting a typographical error in its application, NHPR did not create a conflict where none existed before. Wentworth quotes the Commission’s 1985 Report and Order adopting a window processing system for the proposition that to accept such an amendment “harms the public interest in expedition of service and processing certainty that the window processing system seeks to

accomplish.”¹ The policy proposition is inapposite and inapplicable, for three reasons.

First, in 1985 “expedition of service” meant action on an application without the extreme burden of holding a comparative hearing, a process that could take years. The Commission’s 21st century experience with the point system for noncommercial applicants has clearly mooted the concern for delay in authorizing new service, and has materially hastened the decisional process.²

Second, the prohibition on conflict-producing amendments is plainly directed to an amendment that proposes a technical change in facilities. Such a change would “prejudice the private interests of the applicants . . . who sought in good faith to initiate service to the public.”³ NHPR did not propose any such change. Indeed, its application specifies operation from the very same antenna supporting structure specified in the Wentworth application. Just like Wentworth

¹ Opposition at 3, citing *Processing of FM and TV Broadcast Applications*, 58 P&F Rad.Reg.2d 776, 785 (1985).

² Within one year of the October 2007 NCE filing window, the Commission announced it had disposed of approximately 1,230 of some 3,600 applications, and had identified substantially all of the mutually exclusive groups to undergo point system evaluation. *Public Notice*, “Media Bureau Identifies Groups Of Mutually Exclusive Applications Submitted In The October 2007 Filing Window For Noncommercial Educational Fm Stations,” DA 08-2259, released October 8, 2008.

³ *Processing of FM and TV Broadcast Applications*, *supra*.

and thousands of other applicants in the October 2007 filing window, NHPR “sought in good faith to initiate service to the public.”

Third, the Commission in the 1985 Report and Order took care to point out that its window processing system was designed to prevent processing flaws and prejudices that the Court faulted in *James River Broadcasting v. FCC*, 399 F.2d 581 (DC Cir. 1968). The Commission explained that under the new window processing system, “the limitation on perfecting amendments that create a conflict with prior applicants results not in foreclosure but simply in site restriction.”⁴ Yet the staff’s refusal to accept the NHPR corrective amendment does indeed, as was the case in *James River*, result in foreclosure, to the decisive prejudice of the amending applicant. The staff thus reached the wrong result for the wrong reason.

Wentworth cites the Commission’s 1998 Report and Order adopting the tech box mechanism for construction permit applications for the proposition that the tech box prevails in the event of any discrepancy with data submitted elsewhere in the application.⁵ But the Report and Order is silent with respect to a discrepancy within the four corners of the tech box itself.

⁴ *Id.*

⁵ Opposition, at 3, citing *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes*, 13 FCC Rcd 23056, 23081 (1998).

The geographic coordinates and the Antenna Structure Registration (ASR) specified by NHPR are both tech box parameters. They did not agree in the application as originally filed. Therefore, the staff should have been alerted to the typographical error, and can and should have resolved the discrepancy. That this is so is underscored by the very fact that Wentworth specified the identical ASR as NHPR.⁶

Wentworth asserts that the *1998 Streamlining Order* overruled substantial case and Commission precedent regarding the correction of typographical errors in applications and corrective amendments.⁷ This is simply not true. The order was silent with respect to that precedent. The Commission having adopted the tech box concept, there is no legal or policy basis now to exempt an intra-tech box discrepancy from the impact and obligation of that precedent.

Contrary to Wentworth's assertion, Opposition at 5, NHPR has demonstrated substantial legal and policy bases for reversal of the staff ruling. NHPR established that the public interest standard imposes upon the Commission the essential obligation to afford itself the best choice among the greatest number

⁶ The cruel irony is that Wentworth was permitted to amend its application *to correct geographic coordinates* for the very same transmitter site that NHPR proposes.

⁷ Opposition at 4.

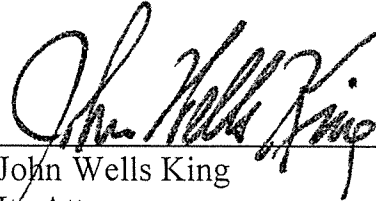
of applicants. Denial of NHPR's requests for relief deprived the Commission of that opportunity.

As a result, the public has been denied the benefits that flow from it.

Accordingly, NHPR respectfully renews its requests that the Commission grant this application for review, and ultimately, grant the NHPR Application.

Respectfully submitted,

NEW HAMPSHIRE PUBLIC RADIO, INCORPORATED

By: 
John Wells King
Its Attorney

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August 3, 2009

CERTIFICATE OF SERVICE

I, Yvette J. Graves, hereby certify that on this 3d day of August 2009, copies of the foregoing "Reply to Opposition" have been served by first class U.S. mail, postage prepaid or *by hand delivery to the following:

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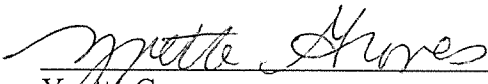
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