

WBRU, Providence, RI

File No. BPH-20161216AAF

Additional Information in Support of Waiver Request

WBRU's present tower lease has come to an end, with no further renewal options. The tower has a new owner, which appears to be preparing to repurpose it. No new lease negotiations are in progress. Therefore, relocation is necessary.

No fully-spaced site exists, regardless of whether it would be "available" if it did exist. The proposed new site is the least short-spaced site that is available.

A grant would be in the public interest, because given that WBRU must move, the proposal in this application is the best overall solution.¹

The circumstances of WBRU are unique, because of the number and severity of grandfathered short-spacings and the fact that after upgrades that have been completed by other stations, only WBRU remains at sub-par facilities among a group of seven short-spaced stations. Therefore, as the Commission found in approving a similar site change for WBRU in 1992 that was never implemented, a grant of this application will not establish a precedent on which other stations requesting waivers will be able to rely.

1. The current site is no longer suitable.

WBRU shares a common antenna with station WHJY, Facility ID 72298, on tower ASRN 1022392. This arrangement has been in place since 1976. The original lease expired, and a new lease was signed in on August 4, 1997. The new lease was for a five-year term with three renewals, for a total of 20 years. It thus expires on August 3, 2017. WBRU has no further right of renewal.

The lessor was originally the licensee of WHJY, and the lease was passed along from one owner to the next, as the licensee of WHJY changed over the years. More recently, the tower was sold to Vertical Bridge, a professional tower owner/manager that does not own or operate, and is not an affiliate of, WHJY. WHJY and WBRU are thus both now tenants on the tower.

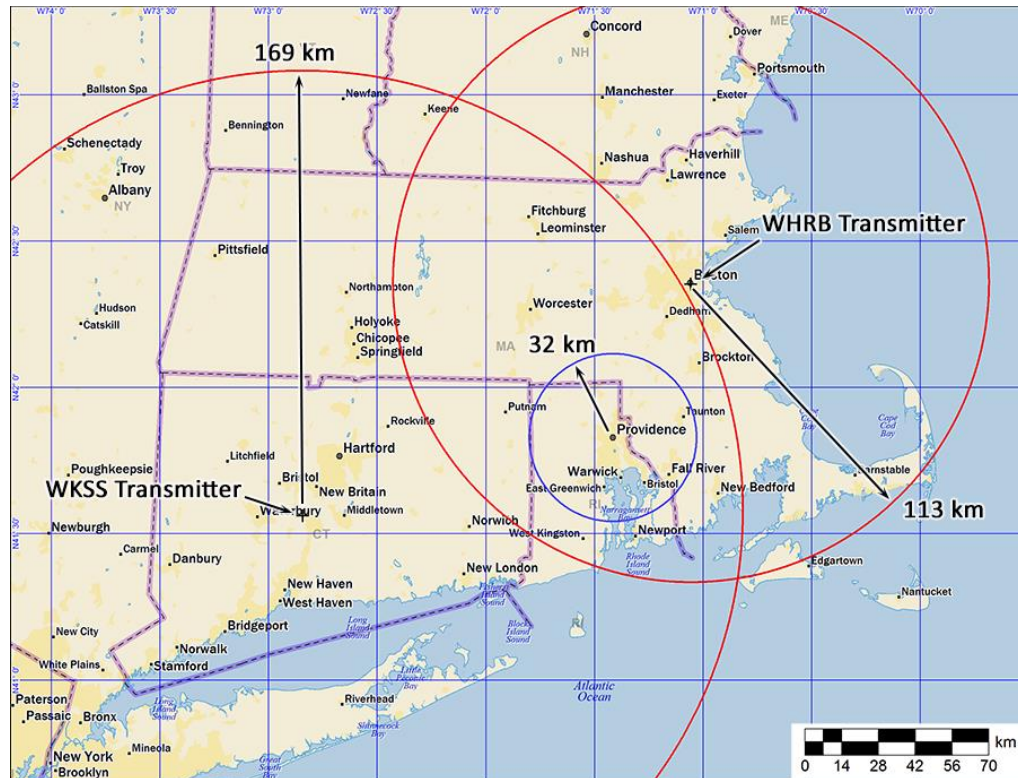
Vertical Bridge has declined to negotiate reasonable terms for a new lease and, as discussed below appears to be preparing to use the tower primarily for wireless service. Accordingly, the lease will expire five months from now, and WBRU will have to vacate the premises. WBRU is one of the very few commercially licensed stations in the country managed by university students, primarily students at Brown University, and is entirely self-supported through its own advertising sales. As a stand-alone station with relatively inexperienced managers, it must have a stable long term tower lease to survive.

¹ The foregoing three required threshold showings to support a waiver request are set forth in *1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, 13 FCC Rcd 14849 (1998), at ¶ 24.

Recently filed FM translator applications indicate Vertical Bridge plans to allow FM translator antennas to be added to the tower, a wireless data antenna was recently installed, and an FM broadcast auxiliary antenna was recently mounted on the tower. This recent activity at the site suggests that Vertical Bridge is preparing for the departure of its full power FM broadcast tenants. The tower is old with limited weight capacity that precludes any significant additional loading; this limitation has for the past 40 years prevented WBRU from mounting its own antenna separate from WHJY. WBRU has no assurance that WHJY will remain at the site during the term of any new lease, and WHJY is the sole owner of the shared antenna. Vertical Bridge has made no recent proposal for a new lease, and no negotiations are scheduled. As a practical matter then, the present site will become unavailable to WBRU only a few months from now.

WBRU has already constructed and licensed an auxiliary facility at the site proposed in the instant application and has now filed to move its main antenna there, in anticipation of loss of its present main site. It must have a new main site to remain on the air.

2. No fully-spaced site exists.



Assuming flat earth, the 70 dBu contour of a Class B station falls at 27 km from the transmitter. Allowing 5 km additional for terrain effects that might increase the distance to the contour, the maximum distance from which WBRU could serve Providence with the required 70 dBu might be as much as 32 km. This is shown as a blue circle, centered on Providence.

That area is completely enclosed by the minimum distance circles from WKSS (169 km) and WHRB (113 km).

Therefore, there is no fully-spaced site from which to serve Providence with the required 70 dBu f(50,50) contour, under any circumstances, and without regard to cost or any other availability factors.

3. The proposed new site is the least short-spaced available.

WBRU cannot move in any direction without worsening at least one short-spacing or creating a new one. It also must use an existing tower. Even if it could afford to construct a new tower, which it cannot, it would face serious environmental issues. Moreover, it attempted once before to obtain local zoning to build a new tower but was unable to succeed. It is highly unlikely that any new tower construction of meaningful height for an FM broadcast station will be permitted in the Providence area.

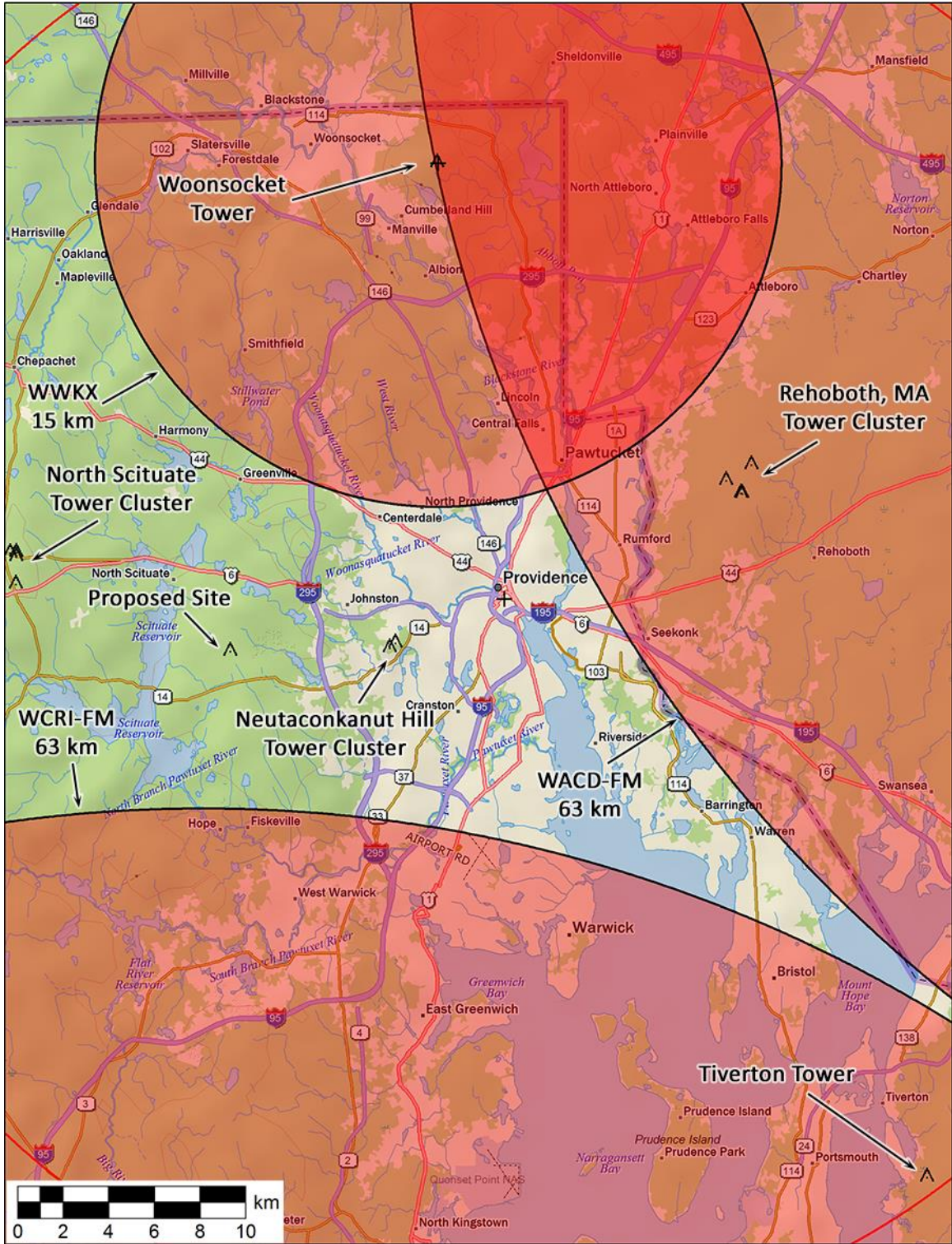
The worst short spacing is to WHRB: 64 km actual vs 113 km required, a 49 km short-spacing. The proposal in the instant application would reduce that short-spacing to 39 km, a 10 km improvement.

The only towers of suitable height in the area are:

- A tower in Woonsocket, RI, north of Providence, ASRN 1020861. This tower is the location of IF-separated WWKX, and is eliminated for that reason.
- A cluster of towers in Rehoboth, MA, including ASRNs 1005123, 1021703, and 1028321, all of which are about 7 km closer to WHRB, and below the minimum 63 km separation required by §73.215 from WATD-FM; so they are also eliminated.
- A tower in Tiverton, RI, ASRN 1023324. This tower is closer to WCRI-FM than the §73.215 minimum 63 km separation, and is eliminated for that reason.
- Two towers on Neutaconkanut Hill, southwest of Providence, ASRNs 1021870 and 1060764. These towers are owned by a radio broadcast competitor of WBRU, which has not returned WBRU's repeated telephone calls; so they are not available to WBRU.
- The tower proposed in the instant application, west of Providence.
- A cluster of towers in North Scituate, RI, including ASRNs 1028055 and 1037033.

The proposed directional antenna pattern has a maximum null depth of 14 dB to the west, primarily to protect WKSS. These towers are significantly closer to WKSS than the proposed site, and would require a directional antenna with a null depth greater than 15 dB to mitigate interference to WKSS; so they also must be eliminated.

These towers are plotted on the map on the next page.



Conclusion: The proposed tower is the only suitable site for the relocation of WBRU.

4. **Grant of the application would not establish a precedent on which other stations might rely.**

WBRU has been on the air since the 1950s. It was built under pre-1964 rules, and it has been continuously short-spaced to several other stations since then. WBRU is currently short-spaced to six other stations.² Mutual upgrade agreements exist between WBRU and three of these stations. With the exception of WYJB, which as far as we know was always at full power, all of the short-spaced stations have increased power and/or antenna height to the maximum for their station class, leaving WBRU as the last station to upgrade.³ WBRU has been diligently trying to upgrade, but it has always been stymied by a variety of factors including zoning issues, forced relocation to an off-campus location due to interference with laboratory equipment on the Brown University campus, and, currently, mechanical limitations on the existing licensed tower which prevent installation of a directional antenna or a separate antenna of any kind for WBRU.

Now, added to the above factors, WBRU is on the verge of losing access to its licensed main antenna site. It already has a licensed auxiliary antenna at the proposed new main site. This combination of facts is highly unlikely ever to be reproduced in any other case.

The Commission approved a site change and power increase to 50 kW ERP with a directional antenna for WBRU in BPH-19871106IU, at a site further to the east and closer to WHRB than the site proposed in this application; but after years of unsuccessful attempts to obtaining local land use approval to construct a new tower, WBRU finally had to abandon the project. In granting BPH-19871106IU, the Chief of the Audio Services Division agreed that Brown's proposal would not establish a precedent on which other stations might rely:⁴

"It is a unique conversion of factors and events here, not likely to be seen again, which provides the backdrop justifying a grant of Brown's waiver request and application. First, the overall situation resulted from a combination of the establishment of many stations in the New England area prior to the 1964 adoption of the FM Table of Allotments, the spacing requirements set forth in Section 73.207(b) of the Commission's Rules, and the Commission's action in Docket 80-90 increasing the mileage separations for second and third adjacent channel situations. Second, Brown's particular situation is also unique. Specifically, barring future Commission rule making action in the nature of those taken in Dockets 80-90 and 86-144, it is virtually impossible to have another applicant-licensee

² WBRU is short-spaced to the following stations: Co-Channel WYJB, FID 836, Channel 238B, Albany, NY; first-adjacent WHRB, FID 26341, Channel 237A, Cambridge, MA, WKSS, FID 53384, Channel 239B, Hartford-Meriden, CT, and WZID, FID 58850, Channel 239B, Manchester, NH; second-adjacent WATD-FM, FID 40468, Channel 240A, Marshfield, MA; and third-adjacent WSRS, FID 35225, Channel 241B, Worcester, MA.

³ Even extremely short-spaced WHRB was permitted to upgrade unilaterally, based on its mutual agreement with WBRU, notwithstanding an objection filed by WBRU on the basis that the consent was valid for only a bilateral power increase.

⁴ Letter to Peter Tannenwald, Esq. from Chief, Audio Services Division, Ref. 8920-JR, dated November 23, 1992.

in Brown's situation.... the uniqueness of Brown's situation means that no precedent undermining the integrity of the Commission's Rules or policies will be established.”⁵

It is respectfully submitted that WBRU has demonstrated the uniqueness of its situation, with an impending loss of WBRU’s transmitter site with no available alternatives; improvement in several short-spacing situations, including a significant improvement with respect to extremely short-spaced WHRB; the large number of short-spacings involved and WBRU’s being the only station not operating at full facilities for its class; the Commission’s recognition of WBRU’s difficult situation in Docket 86-144; and the fact that WBRU is a student-operated facility that must have a stable transmitter site.

⁵ In that same letter, the Audio Services Division noted that WBRU had petitioned for reconsideration in Docket No. 86-144, and that “presents, perhaps, the most compelling reason to approve the instant proposal and to consider the waiver request on its merits.” In seeking reconsideration, Brown asked that grandfathered short-spaced stations be permitted to apply for predicted coverage to either (1) the maximum predicted coverages possible under the old rule or (2) the maximum predicted coverage from fully spaced sites. The Commission denied WBRU’s reconsideration petition but expressed concern about the impact of the new rule on grandfathered stations and suggested that relief would be more appropriately considered in the context of a waiver request. The Commission invited WBRU to file a request for the kind of waiver that was granted in BPH-19871106IU and is being requested again now because it could not be implemented in 1992 and because WBRU is now facing loss of its authorized transmitter site and must move.