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**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-0506

March 24, 2015

Mr. Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12th Street Southwest  
Washington, D.C. 20554

Received & Inspected  
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**RE: California State University-Sacramento / KXPR (BMPED-2014007ABG)**

Dear Chairman Wheeler:

I write in regards to Capital Public Radio's ("CPR"), an auxiliary of California State University-Sacramento ("CSU-S") that operates several non-commercial educational stations licensed to CSU-S, and their efforts to build a new broadcast tower in the County of Sacramento (the "County"). The Federal Communications Commission ("FCC") granted a construction permit to CSU-S which is set to expire August 16, 2015. By way of background, in an effort to increase the coverage of KXPR, to Sacramento, its community of license, CPR has devoted the past eight years and a major amount of its very limited resources in the pursuit of an improved location for KXPR's tower. The investigation included no fewer than ten sites, the details of which CPR would be pleased to supply. Ultimately, the site specified in the above-captioned construction permit was selected due to its geographic attributes, including a significant improvement in its signal over Sacramento, and other factors, including non-interference with other Commission licensees, limited environmental and wildlife issues, and a lack of historical preservation issues. The selected site is owned by the County which is supportive of CPR's efforts to build the tower.

However, one portion of the tower, a guy anchor, would be located on an adjacent piece of property which is also owned by the County, but subject to environmental mitigation rights held by Wildlands, Inc. ("Wildlands"). CPR initially filed its construction permit application based on informal representations that Wildlands would waive its rights in regards to the tower, considering that the anchor will minimally disturb the soils at the site and that it takes up a miniscule portion of the total parcel. Unfortunately, CPR has been unable to obtain the needed clearance from Wildlands despite its best efforts over the past 31 months.

Recently, my office has become engaged in this matter and I am pleased to say that we have been successful in facilitating the discussions. It has become clear that a solution is near and all parties are working aggressively to resolve the final issues that have stalled progress up until this point. Nevertheless, it is unlikely construction of the tower can even begin, much less

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be completed, by August 16 for a number of reasons, including the federally protected Swainson's Hawk nesting season that runs annually from March to August.

Considering the diligence exercised by CPR, I respectfully request that the FCC work with CPR to allow them to keep their existing permit active. If an extension were granted for a reasonable length, I am confident that the tower could get built and the citizens of Sacramento would enjoy a much improved non-commercial educational signal.

Thank you for your thoughtful review and consideration of this request. Enclosed you will find additional information about the project from CPR. Please do not hesitate to contact me at (202) 225-7163 with any questions or concerns about this matter. Additionally, Rick Eytcheson, CPR's President and General Manager can be reached at (916) 278-8901.

Sincerely,



DORIS O. MATSUI  
Member of Congress

DOM:nd  
Enclosure

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Accepted / Filed

MAR 20 2015

Federal Communications Commission  
Office of the Secretary

March 20, 2015

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

Re: Waiver Request--BPED20110713AAF, as modified (the "Construction Permit")

Dear Ms. Dortch:

On behalf of California State University-Sacramento ("CSU-S"), licensee of noncommercial FM radio station KXPR, this is to request a waiver of the three-year period required to complete construction under the Construction Permit pursuant to Rule 73.3598(a).<sup>1</sup>

This notification applies to the following construction permit, including station call signs, frequencies, communities of license, and grant and expiration dates:

Construction Permit No.	BPED-20110713AAF (as modified by BMPED-20121129AQU and BMPED-20141007ABG)
Station Call Sign:	KXPR-FM
Community of License:	Sacramento, California
Grant Date:	August 16, 2012
Expiration Date:	August 16, 2015

<sup>1</sup> "...each original construction permit...to make changes in...existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed." 47 C.F.R. § 73.3598(a) (2004).

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In support of this notification, CSU-S submits the following:

**A. Summary**

The construction permit listed above authorizes construction of a 500-foot tower and antenna facility in Sacramento, California on land owned by the County of Sacramento (the "County"). One of the guy anchors for the proposed tower is located on land owned by the County but that land is subject to environmental remediation rights held by Wildlands, Inc., a third-party, non-profit entity ("Wildlands"). Also, construction at the proposed tower site is affected by the federally-protected, Swainson's Hawk nesting season, which precludes construction between March and August annually. The proposed facility would accommodate a relocation of the current KXPR-FM broadcast facilities from a site located in a flood plain to a superior location above the flood plain.

Zoning approval for construction of the new tower has been contingent on the resolution of environmental issues raised by Wildlands (related to the creation of a future Army Corps of Engineers approved mitigation bank). CSU-S' position, along with the County and the Army Corps of Engineers, is that the environmental issues do not impact the small part of the property where the guy anchor would be located and, accordingly, Wildlands should waive its environmental remediation rights related to the guy anchor, allowing the County to approve the construction of the tower. Progress has been made towards resolving this issue and CSU-S is optimistic that in the coming weeks it will be resolved. However, even if that occurs, CSU-S will not be able to construct the tower by August 16, 2015 due to the Swainson's Hawk nesting season – which is in effect until the end of August 2015.

**B. Factual Background**

In 1991, CSU-S placed KXPR on the air from a transmitter site in Walnut Grove, California - approximately 25 miles from its city of license. This was done because the NCE-FM station, operating on FM channel 205, was required to be co-located with KVIE-TV, channel 6. It became immediately apparent that the FM station's coverage was inadequate due to its distance from Sacramento, but this location was necessary in order to avoid interference to KVIE. KXPR listeners struggled with this arrangement, but the Commission's criteria for non-interference between the NCFM and the channel 6 allocation was maintained.

In 2006, the Commission mandated that television stations cease analog transmission in favor of new digital transmission standards. At that time many television stations, including KVIE, changed channels as well as transmission formats. KVIE now operates on television channel 9.

The move to channel 9 by KVIE prompted California State University to seek a new transmitter location for KXPR: one that would be considerably closer to its city of license and thereby provide much better coverage to its listeners, as well as one that would not be subject to flooding and related operating costs. The task of finding a site that would improve the KXPR

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signal and satisfy all technical and zoning requirements became a daunting one. Between 2006 and the present, ten sites were evaluated as possibilities for relocating the KXPR transmission equipment. After a number of attempts at locating a site, it became evident that the myriad of restrictions based on zoning, environmental, aviation, and other factors seriously limited the available land that could be used to provide a new and more advantageous site for KXPR. A number of consultants were employed to help locate a site.

After nine attempts at a site location, the one specified in the construction permit modification application BMPED-20121129AQU in 2012 became the best alternative. The site was chosen because it satisfied all the following requirements:

- Local Zoning. The site is adjacent to a landfill.
- The site is not located in a flood plain.
- The site has no historic significance.
- The site is without other indigenous value.
- The site appeared to meet environmental requirements.
- The site met FAA requirements.
- The site complied with FCC requirements for non-interference.
- And the site is sufficiently removed from residential areas.

As discussed earlier, the site is owned by the County and is used as a buffer around an active landfill site used by the County. CSU-S obtained approval from the County for the use of this site for the requested tower and transmitter building.

For the reason explained below, waiver of the construction period of the above-referenced constructions permit is clearly warranted.

### C. Discussion

The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>2</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>3</sup> However, waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.<sup>4</sup> Consistent with these requirements, the Commission has stated

<sup>2</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("Northeast Cellular").

<sup>3</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1972), *cert. denied*, 93 S.Ct. 461 (1972); *Northeast Cellular*, 897 F.2d at 1166.

<sup>4</sup> *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) ("NetworkIP"); *Northeast Cellular*, 897 F.2d at 1166.

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that waivers of broadcast construction deadlines are appropriate when construction has been prevented by "rare and exceptional circumstances" beyond the permittee's control.<sup>5</sup>

The construction permit referenced herein qualifies for waiver of to Rule 73.3598(a) as the delays imposed by Wildlands are well beyond the control of CSU-S. For the past 31 months, CSU-S has repeatedly contacted Wildlands to move the process forward but, until recently, did not receive a response. We understand that requests for meetings by the County was also ignored. Recently, the staff of U.S. Congresswoman Doris Matsui facilitated a meeting between all parties and Wildlands has now become responsive. All parties expect a resolution in the near future. However, due to the 31 month delay as well as the prohibition on construction between March and August due to Swainson's Hawk's nesting season, CSU-S – even if it received approval from the County to begin construction today – would not be able to complete construction of the tower prior to August 16, 2015. As such, CSU-S requests a waiver of the three-year construction period as the construction has been prevented by rare and exceptional circumstances beyond its control.

Furthermore, construction of the tower is in the public interest. The current location of KXPR is located at 2 feet above sea level, near the Sacramento River in an area protected by weak levees and could flood in a major storm. This area in California's Central Valley, particularly near this part of Sacramento, are subject to some of the highest risk of flooding in the nation. The potential for flooding requires CSU-S to devote human and capital resources to the operation of the station to ensure it stays on the air, thus increasing the operating costs of CSU-S. The move to the new location, which is located 132 feet above sea level, will require less maintenance by CSU-S and allow CSU-S to devote its resources to other causes. Additionally, CSU-S is considering having the new location serve as a back-up location to KXJZ – whose broadcast facilities are located at 34 feet above sea level and has flooded in the past.

Accordingly, for the foregoing reasons good cause exists to grant this waiver request of the construction period referenced above pending resolution of the Wildlands environmental issue and the passing of this year's Swainson's Hawk nesting season.

Please note that supporting materials for any statement made in this request will be made available to the Commission upon request.

Very truly yours,



Reid Avett

RA:rld

<sup>5</sup> 1998 Biennial Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17541 (1999).