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# WBNH-LP

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## Programming Agreement

*Policies and Procedures  
Second Edition  
Effective September 13, 2017*

### **REVISIONS**

**FIRST EDITION ADOPTED BY TOWN COUNCIL MARCH 2, 2016**

**SECOND EDITION ADOPTED BY TOWN COUNCIL SEPTEMBER 13, 2017\***

*\*Changes to reflect appendices – compliance form and violations*

# WBNH-LP, BEDFORD, NEW HAMPSHIRE

## PROGRAMMING AGREEMENT

1. **WBNH-LP DESCRIPTION**, WBNH-LP 105.1, Facility Id. No. 193211 (the “Station”) is a low power FM radio station that is owned, licensed to and operated by the Town of Bedford, New Hampshire (“Licensee”). WBNH-LP provides timely and accurate safety and emergency information, and provides programming that is entertaining and educational for the benefit of people living, working and visiting in Bedford. The Town of Bedford, as owner and licensee of WBNH-LP, determines, in its sole discretion, appropriate content for broadcast in accordance with FCC Rules and Regulations and WBNH-LP Rules and Procedures established by the WBNH-LP Board of Overseers. Operation of WBNH-LP is conducted under the supervision of the Station Manager.
2. **Programmer and Programming**. The Town of Bedford (“Licensee”) and Programmer (as that term is defined on Schedule 1) hereby enter into this Programming Agreement (the “Agreement”) pursuant to which Licensee agrees to make available certain broadcast time on WBNH-LP for noncommercial use. Programmer agrees to provide programming as more fully described on Schedule 1 (the “Programming”). Nothing in this Agreement shall be construed or interpreted as the Licensee or the Station being a public forum, limited public forum or common carrier.
3. **Term**. This Agreement shall commence and terminate as set forth in Schedule 1 (the “Term”).
4. **Access and Use of Broadcast Facilities**. Programmer’s access and use of studio facilities, air time, broadcast, and/or transmission facilities shall be in the complete and sole discretion of Licensee. Programmer must also sign a “Statement of Compliance” (Appendix A), acknowledging that their program is in compliance with the policies, rules and standards established by the Licensee. Violation of rules and procedures can result in suspensions as outlined in “Violation and Penalties” (Appendix B). Programmer shall not delegate or assign any privileges granted under the terms of this Programming Agreement. Programmer acknowledges and agrees that Licensee, in Licensee’s sole discretion, may reject programming for broadcast; and Programmer shall have no right or interest under this Agreement in law, equity or otherwise, in Licensee’s studio facilities, air time and/or transmission facilities.
5. **Revenue**. Programmer shall not sell any underwriting announcements during Programming, nor solicit any financial consideration or remuneration as part of the Programming.
6. **Copyrighted Material**. Unlicensed use of copyrighted materials is prohibited.
7. **Programming and the Public Interest**. Station is a noncommercial low power FM station; and Programmer shall provide Programming that complies with the policies of the Licensee as described in this Programming Agreement and Schedule 2 and the rules, regulations and policies of the FCC.

(b) Programmer will provide Licensee promptly with all documents Programmer receives which are required to be placed in the Station’s public inspection files. Programmer will, upon reasonable request by Licensee, provide Licensee with information

with respect to programs and public service announcements broadcast on the Station which are responsive to the problems, needs and issues facing the residents of the Station's service area, so as to assist Licensee in the preparation of programming reports, and will assist Licensee upon request in compiling such other information which is reasonably necessary to enable Licensee to prepare other records and reports required by the FCC or other government agencies. Programmer shall furnish to Licensee upon request any other information that is reasonably necessary to enable Licensee to prepare any records or reports required by the FCC or other governmental entities.

(c) Licensee will have the full and unrestricted right to reject, delete and not broadcast any material contained in any part of the Programming which Licensee determines would be contrary to law, the public interest or the standards set forth in this Programming Agreement and Schedule 2. Licensee may modify the standards set forth in this Programming Agreement and Schedule 2 which modifications shall be effective upon delivery, as specified in the Notice paragraph below, of the modified Programming Agreement and Schedule 2 to Programmer. Programmer hereby covenants, warrants and represents that with regard to the Station it will, at all times during the Term, comply in all material respects with such standards for acceptance of programming material and underwriting announcements.

8. **Special Programs**, Licensee reserves the right to preempt Programming to broadcast special programs. Licensee will use reasonable efforts to give Programmer reasonable notice of Licensee's intention to preempt Programmer if circumstances allow.
9. **Political or Issue-Oriented Programming**. Programmer shall not broadcast any political advertisements or issue-oriented advertisements. The only political programming allowed will be candidate interview type programs that were produced at Bedford Community Television with the assistance of the BCTV staff as outlined in Section 2.10.4 of the BCTV policies and procedures. The BCTV staff will provide the audio track to WBNH for broadcast. No other political programs are allowed. Any WBNH "News Programs" must also adhere to the broadcast guidelines regarding political coverage as stated in the "Program Standards, Schedule 2, Paragraph II. In addition, no "News Programs" shall include any coverage of political campaigning, advertising of candidate appearances, speeches and/or demonstrations.

Nothing in this section shall prevent any Town governing body, Board, Commission or Committee from utilizing the WBNH facilities, staff or air time to the degree that they may deem appropriate, as long as the elected or appointed official is representing the majority opinion of their respective governing body, board, commission or committee. This section may be superseded by any 'Town Media Policy'.

10. **Payola and Conflicts of Interest** Programmer agrees not to cause the broadcast of commercial programs and/or commercial matter on the Station. Programmer shall not accept any consideration, compensation, gift or gratuity of any kind for the production or broadcast of Programming unless the payor or donor is identified in the broadcast for which the consideration, compensation, gift or gratuity is provided in accordance with Sections 317 and 507 of the Communications Act [47 U.S.C. §§ 317 and 508] and the FCC's rules and published policies. Programmer agrees to execute, a payola/conflict of interest affidavit in the form of the attached Schedule

3, and Programmer agrees to deliver the originals of all such affidavits to Licensee as expeditiously as possible following their execution and prior to broadcast

**11. Programmer's Compliance with Law**, Programmer agrees that, throughout the Term, Programmer will comply with all laws, rules, regulations and policies applicable to the functions performed by it in connection with the Station (collectively, "Applicable Government Regulations"), including meeting equal employment opportunity requirements with respect to Programmer's employees performing duties in connection with the Station. Programmer knows of no fact or circumstance that would, under the federal antitrust laws, the Communications Act of 1936, as amended (the "Communications Act"), the FCC's rules and published policies or otherwise, disqualify or preclude Programmer from entering into this Agreement, and Programmer agrees that it will comply with all laws, including but not limited to, federal antitrust laws, the Communications Act and the FCC's rules and published policies, in connection with its operation of the Station pursuant to this Agreement.

**12. Programmer's Indemnification of Licensee**. Programmer will indemnify and hold Licensee and Licensee's employees, agents and contractors harmless, including, without limitation, in respect of reasonable attorney's fees, from and against all liability, claims, damages and causes of action ("Losses") arising out of or resulting from acts or omissions of Programmer involving: (i) libel and slander; (ii) infringement of trademarks, service marks or trade names; (iii) violations of law, rules or regulations (including the FCC's rules and published policies); (iv) invasion of rights of privacy or infringement of copyrights or other proprietary rights; (v) the broadcast of Programming, (vi) breaches of this Agreement; or (vii) Programmer's sale of underwriting announcements and the operation of Programmer's business relating to the Station. Programmer's obligation to indemnify and hold Licensee and Licensee's employees, agents and contractors harmless against the Losses specified above will survive any termination of this Agreement.

**13. Right of Termination by Licensee**.

(a) In addition to other remedies available at law or equity, but subject to the requirements and limitations set forth herein, this Agreement may be terminated as set forth below:

(i) By Licensee by written notice to the Programmer upon the default by Programmer in the observance or performance of any material covenant or agreement contained herein in any material respect;

(ii) This Agreement is declared invalid or illegal in whole or substantial part by an order or decree of an administrative agency or court of competent jurisdiction and such order or decree has become final and no longer subject to further administrative or judicial review;

(iii) The mutual consent of all parties; or

(iv) There has been a material change in FCC rules, policies or precedent that would cause this Agreement to be in violation thereof and such change is in effect and not the subject of a timely appeal or further administrative review.

(b) Upon termination of this Agreement for any reason. Programmer shall be responsible for all liabilities, debts and obligations of Programmer regarding the Programming on the Station.

**14. Notices.** All notices, demands and requests required or permitted to be given under the provisions of this Agreement will be (a) in writing, (b) delivered to the recipient in person or sent by commercial delivery service or registered or certified mail, postage prepaid and return receipt requested, (c) deemed to have been given on the date received by the recipient (if delivered in person) on the date set forth in the records of the delivery sendee (if delivered by commercial delivery service) or on the date of receipt (if delivered by certified mail) and (d) addressed as follows:

If to Licensee, to:

WBNH-LP 105.1  
Town of Bedford  
10 Meetinghouse Road  
Bedford, NH 03110  
Attn: Harry Kozlowski  
(Tel): (603) 472-5242, ext. 293  
(e-mail): [hkozlowski@bedfordnh.org](mailto:hkozlowski@bedfordnh.org)

If to Programmer, to:

**15. Survival.** Anything to the contrary contained in this Agreement notwithstanding, all obligations under this Agreement accrued or arising prior to or by reason of the termination of this Agreement shall survive such termination and the following provisions shall also survive any such termination.

**16. Modification and Waiver.** No amendment, supplement or modification of any provision of this Agreement will be effective unless the same will be in writing and signed by the party against whom enforcement of any such amendment, supplement or modification is sought. and then such amendment, supplement or modification will be effective only in the specific instance and for the purpose for which given.

**17. Construction.** This Agreement will be governed by and construed in accordance with the laws of the State of New Hampshire.

**18. Headings, Interpretation.** The headings in this Agreement are included for ease of reference only and will not control or affect the meaning or construction of the provisions of this Agreement. As used in this Agreement, “including,” “includes” and the like are not intended to confer any limitation.

**19. Assignment.** This Agreement may not be assigned by Programmer.

**20. Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signature(s) on each such counterpart were upon the same instrument. This Agreement will be effective as of the date first above written.

**21. Entire Agreement.** This Agreement and the documents referred to herein contain the entire agreement between the parties with respect to the subject matter of this Agreement, and supersede any prior understandings, agreements or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way.

**22. Electronic Notices, Signatures or Records.** For purposes of providing notices required or permitted by this Agreement, waiving any right under this Agreement, or amending any term of this Agreement and notwithstanding any law recognizing electronic signatures or records, “a writing signed,” “in writing” and words of similar meaning, shall mean only a writing in a tangible form bearing an actual “wet” signature in ink manually applied by the person authorized by the respective party, unless both parties agree otherwise by making a specific reference to this Section.

**23. No Partnership or Joint Venture Created.** Nothing in this Agreement will be construed to create a partnership or joint venture between Licensee and Programmer or to afford any rights to any third party other than as expressly provided herein. Neither Licensee nor Programmer will have any authority to create or assume in the name or on behalf of the other party any obligation, express or implied, or to act or purport to act as the agent or legally empowered representative of the other party hereto for any purpose.

**24. Severability.** Whenever possible each provision of this Agreement will be interpreted so as to be effective and valid under applicable law. If any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating or otherwise affecting the remainder of such provision or the remaining provisions of this Agreement.

**25. Legal Effect.** This Agreement will be binding upon and will inure to the benefit of the parties hereto, their heirs, executors, personal representatives, successors and assigns.

**26. No Party Deemed Drafter.** No party will be deemed the drafter of this Agreement; and if this Agreement is construed by a court of law, such court should not construe this Agreement or any provision against any party as its drafter.

**27. Jurisdiction.** Any litigation arising out of or in connection with this Programming Agreement shall be submitted to a court of competent jurisdiction exclusively in the State of New Hampshire.

[Remainder of Page Intentionally Left Blank]

**LICENSEE:**

**TOWN OF BEDFORD, NEW HAMPSHIRE**

Harry Kozlowski  
WBNH-LP Radio Station Manager

**PROGRAMMER:**

**Name:**

**Title:**

Date:

## Schedule 2

### **Programming Standards**

Programmer agrees to cooperate with Licensee in the broadcasting of programs of the highest possible standard of excellence and for this purpose to observe the following regulations in the preparation, writing and broadcasting of its programs:

- I. Religious Programming. WBNH-LP does not engage in religious programming.
- II. Political Candidates/Issues. Programming shall not be used as a forum about political candidates or political issues.
- III. Conduct. Programming shall be reasonably balanced with no attacks on the honesty, integrity, or personal qualities of any person or group of persons.
- IV. No Plugola or Payola. The mention of any business activity or “plug” for any commercial, professional, or other related endeavor is prohibited. Programming shall not contain any commercial messages (“plugs”), announcements or references to any business venture, profit making activity, or other interest (other than noncommercial announcements for bona fide public interest or public service events or activities) in which Programmer is directly or indirectly interested without the same having been approved in advance by Licensee and such broadcast being announced and logged as sponsored.
- V. No Lottery, Contest or Gaming Announcements. No announcements or promotions prohibited by federal or state law or regulation of any lottery, contest or game shall be made over the Station. Announcements or promotions over the Station of any lottery, contest or game permitted by federal or state law or regulation, or the presentation of any lottery, contest or game federal or state law or regulation, must be fully described and explained in advance to Licensee, which reserves the right in its sole discretion to reject the announcement, promotion or presentation of any lottery, contest or game over the station.
- VI. Required Announcements. Programmer shall broadcast (a) an announcement in a form satisfactory to Licensee at the beginning of each hour to identify the Station, (b) an announcement at the beginning and end of each broadcast day (or, if the Station broadcasts 24 hours per day, once in the morning and once at night) to indicate that program time has been purchased by Programmer, and (c) any other announcement that may be required by law, regulation, or the policy of the Station.
- VII. Licensee’s Discretion Paramount. In accordance with Licensee’s responsibility under the Communications Act of 1934, as amended, and the rules and published policies of the Federal Communications Commission, Licensee reserves the right to reject or terminate any Programming proposed to be presented or being presented over the Station which is in conflict with the policy of the Station or which in the reasonable judgment of Licensee would not serve the public interest.
- VIII. Programming in Which Programmer has a Financial Interest. Programmer shall advise the Licensee with respect to any programming concerning property, goods or services in which

Programmer has a material financial interest. Any announcements for such property, goods or services shall clearly identify the Programmer's financial interest.

IX. Programming Prohibitions. The following are prohibited from all broadcasts and/or announcements:

- A. ***False Claims***. False or unwarranted claims for any product or service.
- B. ***Copyrighted Material***. Unlicensed use of copyrighted materials.
- C. ***Unfair Imitation***. Infringement of rights through plagiarism or unfair imitation or either program idea or copy, or any other unfair competition.
- D. ***Commercial Disparagement***. Any disparagement of competitors or competitive goods.
- E. ***Indecency***. Any programs or announcements that are indecent, profane, vulgar, repulsive or offensive, either in theme or treatment or audio or visual content.
- F. ***Defamation***. Any programs or announcements that are slanderous, libelous or defamatory in nature, including in theme, treatment or audio content.
- G. ***Price Disclosure***. Any price mentions except with the advance written permission of Licensee.
- H. ***Unauthenticated Testimonials***. Any testimonials which cannot be authenticated.
- I. ***Descriptions of Bodily Functions***. Any content which describes in a repellent manner internal bodily functions, symptomatic results, or internal disturbances, and reference to matters which are not considered acceptable topics in in the sole discretion of Licensee.
- J. ***Conflict Announcements***. Any programming or announcements determined in the sole discretion of Licensee, to be injurious or prejudicial to the interests of the public, the Station, or the Town of Bedford.
- K. ***Fraudulent or Misleading Statements***. Any statement, announcement, or claim which Programmer knows to be fraudulent, misleading, or untrue.

Licensee may waive any of the foregoing prohibitions in specific instances if, in its reasonable opinion, good broadcasting in the public interest will be served thereby.

In any case where questions of policy or interpretation arise, Programmer shall submit the same to Licensee for decision before making any commitments in connection therewith.

Adopted:

Town Council Approved:

Amended - Town Council Approved:

March 2, 2016

September 13, 2017

**APPENDIX A**  
**WBNH-LP Radio**  
**Bedford Public Safety Radio...And More**  
Telephone 603-472-5242 x293.

**Statement of Compliance**

Programmer \_\_\_\_\_ Program \_\_\_\_\_

Address \_\_\_\_\_ Email Address \_\_\_\_\_

Phone \_\_\_\_\_

**I have read and agree to the WBNH-LP Radio Programming Agreement and Fully Understand the WBNH-LP Programming Standards, Schedule 2 and will abide by the WBNH-LP Policies**

**Additionally:**

I am familiar with the nature of this program and accept full responsibility for its content

I understand the following material is prohibited and that I alone am responsible; not WBNH, to make sure the program complies with the WBNH Programming Agreement; Programming Standards Schedule 2 and the following:

**Advertising material designed to promote the sale of commercial products or services, or material which identifies any product, service, trademark, or brand name on the program.**

**Commercial programming which in whole or in part depicts, demonstrates, or discusses products, services, or business with the intent or substantial effect of benefiting or enhancing a profit-making enterprise.**

**The direct solicitation or appeals for funds or other things of value for any and all purposes except for non-profit organizations.**

**Material which is obscene as defined in New Hampshire RSA Chapter 650**

**Any programming that constitutes or promotes any lottery, contest, or gambling enterprise that is in violation of any federal, state or local laws.**

**Material which constitutes libel, slander, invasion of privacy or publicity rights, unfair competition, violation of trademark or copyright, or which may violate any local, state, or federal law.**

**Material that has a reasonable probability of creating an immediate danger or damage to property, injury to persons, or creating a public nuisance.**

**Material that has a reasonable probability of causing the substantial obstruction of law enforcement or other governmental functions or services.**

**Campaign Advertising.**

I have obtained all the clearances, releases, and permissions, from any and all organizations, individuals and groups that are necessary to legally tape and broadcast this program.

In recognition of the fact that neither WBNH-LP, nor representatives of the Town of Bedford are censoring the content of this program, I understand and agree to indemnify and hold harmless WBNH-LP Radio Employees, Volunteers and Contractors associated with WBNH-LP and the Town of Bedford, from any liability or other injury (including reasonable costs of the defending claims or litigations) arising from or in connection with claims for failure to comply with any applicable laws, FCC rules, regulations, or other requirements of local, state and/or federal authorities; for claims of libel, slander, invasion of privacy, or infringement of common or statutory copyright for unauthorized use of trademark, trade name, or service mark; for breach of contractual or other obligation owing third parties by company; and for any other injury or damage in law or equity which claims result from the Programmer's use of WBNH-LP Radio.

Signature:

Date:

Print

Name:

# WBNH-LP, BEDFORD, NEW HAMPSHIRE

## APPENDIX B

### Violations and Penalties

In order for the policies of WBNH-LP to be effective, and to keep operations running smoothly, a penalty system has been instituted. There are two (2) types of violations that can result in restrictions on a Programmer. The Station Manager or Program Director are authorized to issue warnings and suspensions of use of equipment and use of facilities as defined below.

#### Minor Violations

**Minor violations include but are not limited to:**

- Disregarding WBNH-LP's policies and/or procedures – First Offense\*
- Failure to lock and arm the building when producer / volunteer are the sole occupant(s) – First Offense\*
- No more than 4 (four) individuals allowed in Radio Recording Booth at one time
- Eating, or smoking in restricted areas
- Failure to return facilities to normal operating standards and or / clean-up after use of facilities

**Minor violations will result in the following series of actions:**

First violation – written warning.

Second violation - Fourteen (14) day suspension

Third violation - Thirty (30) day suspension

Fourth violation - permanent suspension.

*\*Second offense becomes a Major Violation and will follow Major Violation actions*

#### Major Violations

**Major violations will result in suspensions of facility and equipment use. Examples of major violations include but are not limited to:**

- Unauthorized use of facilities or equipment (to include sharing your building access code with other individuals)
- Failure to lock and arm the building when producer / volunteer are the sole occupant(s) – Second Offense
- Disregarding WBNH-LP's policies and/or procedures – Second Offense
- Using off-limits / restricted equipment
- Harassment of personnel and/or volunteers
- Falsifying forms including the WBNH-LP Statement of Compliance
- Use of equipment without staff permission
- Abuse of equipment, including attempted repair, and/or reconfiguration of or changing wiring
- Providing false statements and/or false information regarding WBNH-LP and its programming to press or other electronic media
- Tampering with or modifying another producer's program.

**The length of major violation suspensions will be at the discretion of the station manager and will be based on the severity of the violation. Suspensions can be (Thirty) 30, (Sixty) 60, (Ninety) 90 days as well as permanent.**

Programmers are encouraged to resolve difficulties on the staff level. Any Programmer wishing to appeal an action of the staff may request an appeal to the WBNH-LP Radio Board of Overseers.