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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

AUDIO DIVISION

In the matter of:

Educational Media Foundation

Minor Change in Licensed Facility  
W290AS, Bainbridge, Georgia

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File No. BMPFT-20160728AFT

Facility ID No. 139418

**Accepted / Filed**

To: The Office of the Secretary  
Attn: Chief, Media Bureau (Audio Division)

AUG 22 2016

Federal Communications Commission  
Office of the Secretary

**PETITION FOR RECONSIDERATION**

Educational Media Foundation, by its attorneys, hereby requests reconsideration of the dismissal of the application of the above-captioned application for the modification of the construction permit for W290AS, Bainbridge, Georgia (the "Modification Application"). The Modification Application was dismissed by a letter signed by James Bradshaw, dated August 15, 2016. In the dismissal letter, the Commission misconstrued this Modification Application as a second application using the 250 mile waiver allowed by the AM Revitalization Order.<sup>1</sup> In fact, as detailed below, the application is merely an amendment to the initially granted construction permit (the "Construction Permit").<sup>2</sup> The amendment was intended to address the issues raised in a Petition for Reconsideration filed by Radio Training Network, Inc. ("RTN") claiming that the initial Construction Permit should not have been granted as the facilities set out in that permit will interfere with numerous listeners' reception of RTN's station WVFJ-FM. As this Modification Application resolves the interference issues raised by RTN, and eliminates the

<sup>1</sup> Revitalization of the AM Radio Service, 30 FCC Rcd 12145 (2015).

<sup>2</sup> FCC File No. BPFT-20160129AVQ.

potential need for the Commission to (1) act on RTN's Petition, (2) dismiss the original Construction Permit application and (3) force EMF to refile the application *nunc pro tunc* specifying the facilities set out in the Modification Application, in the interests of administrative efficiency, the FCC should reconsider its dismissal of the Modification Application and allow that application to be processed and granted.

EMF is simultaneously filing a Request to Dismiss the Petition for Reconsideration as Moot (the "Request to Dismiss"), asking that the FCC dismiss the RTN Petition as moot given the filing and expected grant of the Modification Application. The Modification Application is in reality merely an amendment of the initial Construction Permit. The Modification Application specifies the use of the same translator by the same primary station, but proposes to operate the translator in a location and on a channel that resolves alleged interference issues with WVFJ. The Modification Application is not a second application for the same primary station, but instead merely a corrective amendment to the existing application designed to address RTN's issues. The Modification Application is an amendment to an application that has not become final, as the Construction Permit's grant is still subject to RTN's Petition.<sup>3</sup> This proposed change in facilities had to be filed as a "modification" of the initial permit as the Construction Permit had already been granted, as the FCC's CDBS filing system does not routinely allow for the amendment of an already granted construction permit. The Modification Application, being an application involving the same primary station and the same translator, is not prohibited by the Public Notice setting out the processing policy for the 250 mile waiver window.<sup>4</sup>

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<sup>3</sup> See, e.g., Section 1.65(a) of the Rules, "an application is 'pending' before the Commission from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or review by any Court."

<sup>4</sup> Public Notice, *Media Bureau Announces Filing Dates and Procedures for AM Station Filing Window for FM Translator Modifications*, DA 1491 (released Dec.23, 2015)(the "Public

As set forth in the Request to Dismiss, in a recent letter decision, *Letter to Marnie Sarver, et. al.* (Ref. 1800B#-ATS), released October 22, 2014, the Commission determined that the submission of a curative amendment to a translator application filed to resolve an interference issue was acceptable for purposes of processing efficiency, as if the application had been dismissed, the applicant would have been allowed to specify the facilities set out in its amendment by filing a petition for reconsideration of the dismissal and an amendment seeking acceptance of the application *nunc pro tunc*. Not requiring the extra steps of a dismissal and the filing of a Petition for Reconsideration seeking *nunc pro tunc* acceptance of a modified application was seen as being an administratively efficient way of processing the application. In that case, the petitioner did not object, and we assume that the petitioner in this case will likewise not object to this change in proposed facilities, as it resolves the interference issues with WVFJ. There is no reason that the Modification Application here should be treated any differently, as the grant of the facilities changes resolves the issues raised by RTN in an administratively efficient manner.<sup>5</sup>

Moreover, under the rules of this 250-mile waiver window, the Modified Application would be acceptable as a *nunc pro tunc* refiling of the original application, as a channel change such as that proposed in the Modification Application can be made during this window. Under the rules of the window, any channel change is a minor amendment. The Public Notice outlining the rules for this window specifically encourages engineering solutions to resolve mutually

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Notice”), states that “Only one application may be filed by/on behalf of each AM station, i.e., an AM station may be listed as the primary station on only one application filed in one (but not both) of the Modification Windows.” This Modification Application is nothing more than an amendment to the still-pending Construction Permit application, so it is not a second application for the same primary station but an amendment to the original application to resolve the technical issues raised in RTN’s Petition.

<sup>5</sup> EMF is filing an amendment to the Modification Application to make clear that this is the purpose of that application.

exclusive applications. There is no reason that allowing an engineering amendment like the one proposed in the Modification Application should not similarly be accepted where it seeks to resolve a potentially disqualifying defect in the initial application – i.e. the allegations that the facilities specified in the initial Construction Permit would create prohibited interference to identified listeners of RTN’s stations outside of the station’s protected contour – listeners that could not have been anticipated by EMF before the filing of its initial application any more than could a translator applicant anticipate the filing of a mutually exclusive applicant.

In fact, the FCC specifically states, in the Public Notice’s Question and Answer section, that “amendments to move to any rule-complaint channel will be accepted.” Pursuant to that statement, the FCC has accepted and granted applications amended to non-adjacent channels during this window in order to resolve technical issues. *See, e.g., Application of Salem Media of Massachusetts for W254BR* (Facility ID 145583), File Number BPFT-20160129AXJ (amended from channel 291 to channel 262); *Application of Gois Broadcasting Boston LLC for W234AL* (Facility ID 139030), File Number BPFT-20160129AXE (amended from channel 255 to channel 236). EMF should similarly be able to amend its initial application to resolve a technical issue while that application is still technically pending at the FCC, given the filing of the RTN Petition for Reconsideration.<sup>6</sup>

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<sup>6</sup> While the Public Notice also states that, if dismissed, an application cannot be refiled, the initial application reflected in the Construction Permit was not dismissed – it was instead granted. This Modification, which as noted above is in reality an amendment to the initial application, thus does not represent a re-filing of a dismissed application. Moreover, this information about re-filing was provided in response to a question dealing with a re-filing of “a second modification application specifying a *different* translator.” (Emphasis added). As made clear above, this application deals with the same primary station and the *same* translator, thus the re-filing statement in the Public Notice does not apply to facts of this case.

For these reasons, the dismissal of the Modification Application must be reconsidered, and the application reinstated and granted so that the issues raised in RTN's Petition for Reconsideration can be mooted.

Respectfully submitted,

**EDUCATIONAL MEDIA FOUNDATION**

By: 

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Dated: August 22, 2016

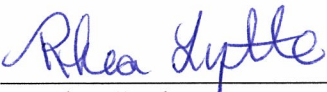
**CERTIFICATE OF SERVICE**

I, Rhea Lytle, hereby certify that this 22<sup>nd</sup> day of August, 2016, I sent via First Class US mail, postage prepaid, a copy of the foregoing **“PETITION FOR RECONSIDERATION”** to the following:

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By:   
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