

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|                                     |   |                         |
|-------------------------------------|---|-------------------------|
| In re Application of                | ) |                         |
|                                     | ) |                         |
| WGBH EDUCATIONAL FOUNDATION         | ) | LMS File No. 0000125291 |
|                                     | ) | Facility ID No. 27093   |
| For Construction Permit for Station | ) |                         |
| W247DO, Beacon Hill, Massachusetts  | ) |                         |
|                                     | ) |                         |

To: Office of the Secretary  
Attn: Audio Division, Media Bureau

**INFORMAL OBJECTION**

Beanpot License Corp. ("Beanpot"), the licensee of FM Translator Station W243DC, Needham, Massachusetts (FIN No. 148707) ("Beanpot Station"), by its attorneys, hereby objects to the above-referenced application ("November Application") of WGBH Educational Foundation ("WGBH") requesting a modification of license for its FM Translator Station W247DO, Beacon Hill, Massachusetts (the "Station").<sup>1</sup> In support thereof, Beanpot states as follows.

This is the second time, within the past six months, that WGBH has sought to modify the license of the Station. In LMS No. 0000115764 ("June Application"), which was favorably acted upon on June 26, 2020 (*Public Notice*, Report No. PN-2-200626-01, released June 26, 2020), the Commission granted WGBH's application to modify its license through a channel substitution to provide for its operation on Output Channel 247 in place of Output Channel 242.

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<sup>1</sup> WGBH uses the former call sign, W242AA. Beanpot, in this pleading, is making use of the call sign utilized by the Commission in its official LMS database as of this date, W247DO.

That application remains in granted state.<sup>2</sup> Consistent with WGBH's commitment to change its output channel, Beanpot, in turn, in LMS No. 0000116539 (the "Beanpot Application"), requested a modification of its license, providing for additional and improved service to its listening public, as a result of the elimination of any further need on the part of the Beanpot Station to protect the Station. The granted Beanpot Application, which WGBH did not object to, is now both final and non-reviewable. *Public Notice*, Report No. PN-2-200720-01, released July 20, 2020.

By the November Application, WGBH now seeks another alteration to its license for the Station, involving a modification on the former output channel that it previously sought a substitution of channel for. The November Application, as will be evidenced herein, is both procedurally and substantively defective and, therefore, must be dismissed or denied.

Initially, the November Application violates Commission rules governing the submission of multiple applications by a single licensee. Section 73.3520 of the Commission's Rules provides:

Where there is one application for new or additional facilities pending, no other application for new or additional facilities for a station of the same class to serve the same community may be filed by the same applicant, or successor or assignee, or on behalf of, or for the benefit of the original parties in interest. Multiple applications may not be filed simultaneously.

In this instance, the Commission is confronted with the granted June Application and another request, the November Application, to modify the same Station facility that is serving the same community, though on different proposed output channels. Section 73.3520 specifically prohibits the filing of two separate applications for modification of

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<sup>2</sup> WGBH, on August 18, 2020, advised the Commission that it was proposing to surrender for cancellation the construction permit granted in response to the June Application (the "Opposition"). Beanpot, acting on August 24, 2020, has opposed WGBH's surrender for cancellation request. This dispute over the granted June Application remains pending before the Commission.

the same broadcast station and, consequently, the November Application must be dismissed or denied as a multiple application. *See Venton Corp.*, 51 RR 2d 1208 n. 9 (1982). There is simply no alternative to such a result.<sup>3</sup>

Even assuming, *arguendo*, that Section 73.3520 is not applicable hereto, there is a further procedural disqualification of the November Application that also requires its dismissal or denial. As Beanpot has argued into its Opposition, WGBH, through the submission of the June Application, committed to the modification of its output channel, from Channel 242 to 247, and there is no option, once an application is granted, to return to a formerly occupied channel. In fact, the Station's status is that it is operating on an implied STA basis, and not a licensed basis, on Channel 242, pending completion of construction of its Channel 247 facility. *Letter to Mark N. Lipp, Esq.*, 31 FCC Rcd 8916 (MB 2016). Thus, WGBH is not in a position to request and the Commission has no authority to grant the Station any construction permit that allows the Station to operate permanently on any channel but Channel 247.

Turning to the substance of the November Application, WGBH fails to describe its proposal in a full and accurate manner. As discussed in the WGBH Engineering Exhibit, the WGBH plan is to utilize Channel 242 premised on the argument that such usage will not create additional interference compared to what that Station already causes, in the form of interference, to the Beanpot Station. What is not acknowledged is that the increased power for the Beanpot Station, resulting from the Beanpot Application,

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<sup>3</sup> Interestingly, at the time that the Beanpot Application was filed, Beanpot had another granted modification application, in File No. BMPFT-20190806AAB. In compliance with Section 73.3520, Beanpot dismissed that permit simultaneously with the submission of the Beanpot Application.

was only made possible by the grant of the June Application and the change in output channel of the Station.

Beanpot also objects to the statement, at p. 3 of the Engineering Exhibit, dealing with whether the Beanpot Station is required to protect the Station. In making that representation in the Beanpot Application, Beanpot was taking into consideration that WGBH was proposing to substitute output channels for the Station. Consistent with the FCC's channel substitution policies, as described in the *Lipp* decision, Beanpot was committing that it would protect the Station while it operated under its implied STA on Channel 242. However, as *Lipp* also teaches us, the protection of any Station substituting channels is limited to the pendency of the implied STA and would certainly not apply to any further license modification on its former channel.

What WGBH is seeking here is to continue and slightly alter what is already a first adjacent channel overlap with the Beanpot Station, under the operating parameters of the final and non-reviewable construction permit that Beanpot holds. Applicable precedent informs us that WGBH should now be pursuing construction under its valid construction permit for Channel 247 and it is not entitled, under its implied STA, to seek any modification of the Channel 242 service that it has already committed to terminate as part of its granted channel substitution proposal.

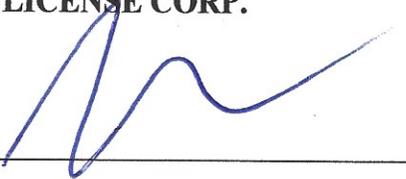
Whether it likes it or not, WGBH is subject to the Commission's standard for applicants that: "implicit in the filing of any facility application is that the applicant stands 'ready, willing, and able' to construct and operate as proposed." *Pathfinder Communications Corp.*, 18 FCC Rcd 9272, 9279 (2003). That commitment applies to the granted June Application and there is no basis upon which WGBH can now impose impermissible interference to Beanpot's final and non-reviewable granted Beanpot

Application as all that WGBH has, in the way of operating authority on Channel 242, is an implied STA. Simply put, the only form of application that WGBH can now submit is one that involves Channel 247. WGBH needs to accept this as the result of its actions and not attempt to return to an output channel it has no more than an implied STA to operate on.

WHEREFORE, Beanpot License Corp., the licensee of Station W243DC, Needham, Massachusetts, respectfully requests that the Commission dismiss or deny the application of WGBH Educational Foundation requesting modification of license for Station W247DO, Beacon Hill, Massachusetts.

Respectfully submitted,

**BEANPOT LICENSE CORP.**

By: 

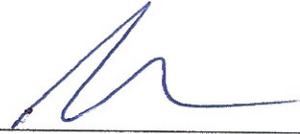
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Dated: November 3, 2020

**CERTIFICATE OF SERVICE**

I, Barry A. Friedman, hereby certify that I have served on this 3rd day of November, 2020, a copy of the foregoing **Informal Objection** on the following party by first class mail, postage prepaid:

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Barry A. Friedman