

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

In the Matter of the Application of)	
)	
WGBH Educational Foundation)	LMS File No. 0000125291
)	Facility ID No. 27093
For Construction Permit for Station)	
W242AA, Beacon Hill, Massachusetts)	
)	

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

OPPOSITION TO INFORMAL OBJECTION

WGBH Educational Foundation (“WGBH”), licensee of FM Translator Station W242AA, Beacon Hill, Massachusetts, hereby submits this Opposition to Beanpot License Corp.’s (“Beanpot”) November 3, 2020 Informal Objection¹ to WGBH’s above-captioned application (the “Application”) seeking a minor modification of its license.

To preserve its existing service, WGBH in the Application seeks a construction permit to facilitate the relocation of its FM translator station, W242AA, to an adjacent building. The Application fully and accurately describes WGBH’s proposal for this relocation, which merely involves a reduction in power and slight change in coordinates for the W242AA station. Beanpot’s Informal Objection raises no legitimate challenge to the validity of this application for the simple reason that no grounds for such a challenge exist—there is nothing to object to here. Instead, Beanpot makes a variety of unrelated and unsubstantiated claims that the Commission should reject outright.

¹ See Informal Objection of Beanpot License Corp., LMS File No. 0000125291 (filed Nov. 3, 2020) (“Beanpot Informal Objection”).

INTRODUCTION

WGBH's FM translator station, W242AA, which has operated on channel 242 for 28 years, currently transmits from the top of a building that the Massachusetts Institute of Technology plans to demolish by the end of 2020. WGBH accordingly must move its transmitting antenna to an adjacent building, also owned by the university. To provide required protection to other licensed services, at this new site W242AA's power must be decreased from its current effective radiated power of 5 watts to 3 watts. WGBH accordingly filed a request for construction permit on November 2, 2020 to specify the parameters of the new location and decrease the power level to meet the Commission's interference criteria. The construction permit would not create any new interference to any licensed service, and it would not increase W242AA's service area in any direction. In short, the request fully complies with all applicable rules and regulations.

Nevertheless, Beanpot, the licensee of W243DC, an FM translator station, has filed an informal objection to WGBH's straightforward request for a reduction in power of its existing, licensed facilities. In effect, Beanpot attempts to launch a collateral attack on WGBH's appropriate decision to remain on channel 242 after learning that a briefly planned move to channel 247 raised harmful interference concerns with respect to a full-power FM station. That decision by WGBH is not before the Commission in the instant application, and, in any event, Beanpot's attacks on the merits of WGBH's decision to remain on channel 242 are baseless. The Commission should promptly dismiss Beanpot's objection and grant WGBH's application.

DISCUSSION

Rather than address the substance of WGBH's application, Beanpot's Informal Objection focuses on the unfounded and inaccurate claim that WGBH is required to build out a surrendered

construction permit that WGBH held for less than two months. WGBH briefly considered moving to channel 247 as part of the relocation of its facilities, but it surrendered this permit on August 18, 2020 after learning that operation of the translator on channel 247 raised harmful interference concerns with respect to a full-power FM station.² In response to this decision—and every other pleading related to WGBH’s translator station—Beanpot has submitted filing after filing seeking to force WGBH to move to channel 247. Beanpot’s Informal Objection is the latest in this string of filings, all of which are meritless.

I. WGBH’s Application Fully and Accurately Describes the Proposed Operations for FM Translator W242AA

In the application before the Commission, WGBH clearly explains that it seeks a modification for W242AA to transmit at a lower power while remaining on channel 242, the same channel it has operated on for 28 years. The application specifies the relevant parameters for the new location and comprehensively details how the construction permit would neither increase W242AA’s service area in any direction nor create any new interference with any licensed service, including Beanpot’s. Beanpot does not identify any substantive issues with WGBH’s request and instead attempts to distract with unrelated arguments concerning its own recent license modification. The Commission should ignore these claims.

First, Beanpot alleges some unspecified substantive defect with WGBH’s request because the Application does not address an application Beanpot filed June 25, 2020 to increase the power level of its W243DC FM translator station. Beanpot’s argument on this point is difficult to follow, as it offers no evidence to suggest that the instant request for a decrease in

² Letter from Matthew S. DelNero, Counsel to WGBH Educational Foundation, to Robert Gates, Audio Division, Media Bureau, FCC, LMS File No. 0000115764 (filed Aug. 18, 2020) (“WGBH Aug. 18, 2020 Letter”).

power of W242AA would have any effect on the field strength contours of W243DC. Indeed, as the Application demonstrates, the power reduction sought by WGBH would actually *decrease* W242AA's existing overlap towards the W243DC facility.

Second, regardless of the impacts on any desired increase in W243DC's power, Beanpot expressly acknowledged in its underlying construction permit that it is required to protect W242AA. Beanpot argues that in making this representation it was taking into consideration that WGBH had briefly planned to move from channel 242 to channel 247.³ But Beanpot's motivation for this representation is irrelevant—it is not released from its commitment simply because Beanpot did not think it would have to follow through. Likewise, Beanpot's commitment is no less binding because Beanpot erroneously believed WGBH would continue operating on channel 242 under an “implied STA.”⁴

Beanpot's vague reference to *Pathfinder Communications Corp.*⁵ also has no bearing on the instant application. The Commission indeed stated in *Pathfinder* that the filing of a facility application implies that the “the applicant stands ‘ready, willing, and able’ to construct and operate as proposed,” but it made this distinction in rejecting “hypothetical technical proposals” that would create burdens on other licensees.⁶ WGBH's application does not reflect the sort of hypothetical proposal the Commission referenced in *Pathfinder*, and it certainly would not result

³ Beanpot Informal Objection at 4.

⁴ *Id.* As discussed herein, Beanpot's reference to “implied STAs” is misplaced. The concept of “implied STAs” applies to incumbent full-power stations relocated through rulemaking proceedings amending the FM Table of Allotments, not translator stations. *See infra* Section II n.12.

⁵ 18 FCC Rcd 9272 (2003).

⁶ *Id.* at 9279.

in any significant burdens to other licensees. To the contrary, the Application will actually *decrease* W242AA’s existing overlap towards Beanpot’s W243DC translator.

II. Beanpot’s Remaining Arguments Are Unrelated to the Validity of WGBH’s Application

The bulk of the arguments in Beanpot’s Informal Objection are variants on the same baseless claim that WGBH is required to build out the construction permit it surrendered almost three months ago. These arguments clearly are intended to distract from the fact that Beanpot has no legitimate grounds for contesting WGBH’s application. However, in any event, these arguments do not withstand even the lightest of scrutiny.

Beanpot first argues that Section 73.3520 of the Commission’s rules precludes the consideration of the Application because the Commission on June 24, 2020 granted a separate WGBH application concerning the W242AA translator. This is incorrect. Section 73.3520 clearly states that it bars the filing of additional applications only “[w]here there is one application for new or additional facilities *pending*.”⁷ WGBH has no other applications currently pending before the Commission and has no outstanding construction permit—it surrendered the previously granted construction permit nearly three months ago.⁸ Moreover, even Beanpot admits that dismissing a previously granted construction permit prior to, or simultaneously with,

⁷ 47 C.F.R. § 73.3520 (emphasis added). The single authority Beanpot cites in support of its claims similarly is inapplicable to the instant Application. *See Venton Corp.*, Memorandum Opinion and Order, 90 F.C.C.2d 307, 310 (1982) (noting that Section 73.3520 barred a television application amendment because the rejection of a joint dismissal request by competing applicants subject to a merger agreement gave one applicant an interest in two mutually exclusive, pending applications).

⁸ *See* WGBH Aug. 18, 2020 Letter.

the filing of a modification application is “[i]n compliance with Section 73.3520.”⁹ That is precisely what WGBH did prior to filing the instant application.¹⁰

In the alternative, Beanpot argues that even if Section 73.3520 does not bar WGBH’s application, WGBH must relocate to channel 247 because “it committed to the modification of its output channel” in its now-surrendered construction permit.¹¹ Beanpot goes on to argue, “there is no option, once an application is granted, to return to a formerly occupied channel.”¹² Beanpot cites no authority for this claim, which would effectively force a licensee to change its output channel after exploring a voluntary minor modification of its license.

Beanpot’s argument is especially unreasonable given that WGBH elected against moving to channel 247 only after learning that a full-power, co-channel station asserted that operation on

⁹ Beanpot Informal Objection at 3 n.3 (noting that, “[i]n compliance with Section 73.3520,” Beanpot dismissed a previously granted modification simultaneously with the submission of its June application).

¹⁰ On August 24, 2020, Beanpot filed a self-styled “Opposition” to WGBH’s August 18 decision to surrender its construction permit. *See* Letter from Barry A. Friedman, Counsel to Beanpot License Corp., to Marlene H. Dortch, Secretary, FCC, LMS File No. 0000115764 (filed Aug. 24, 2020). As WGBH has previously explained, Beanpot failed to cite any authority that would allow it to intervene in such circumstances and it not clear that any exists. *See* Letter from Matthew S. DelNero, Counsel to WGBH Educational Foundation, to Marlene H. Dortch, Secretary, FCC, LMS File No. 0000115764 (filed Sept. 4, 2020). Regardless of the posture of Beanpot’s “Opposition,” it certainly did not bar WGBH from filing the instant Application.

¹¹ Beanpot Informal Objection at 3.

¹² *Id.* (citing *Mark N. Lipp, Esq.*, Letter, 31 FCC Rcd 8916 (MB 2016)). The Media Bureau decision Beanpot cites as support involved the involuntary relocation of a full-power station. *See Mark N. Lipp*, 31 FCC Rcd at 8920–21. These circumstances are clearly distinguishable from WGBH’s recent applications, which sought a voluntary channel relocation of an FM translator, not a full-power station. Moreover, *Mark N. Lipp* discusses the modification of a station’s community of license through a rulemaking amending the FM Table of Allotments. *Id.* (citing *Brian M. Madden, Esq.*, Letter, 25 FCC Rcd 4765, 4767 (MB 2010)). This process applies only to full-power stations, not FM translators. *See Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, First Report and Order, 14 FCC Rcd 5272, 5278 n.23 (1999) (citing 47 C.F.R. § 74.1233) (“FM translators, as a secondary service, are exempted from local service obligations and, therefore, may request community of license changes as minor changes.”).

that channel would cause objectionable interference. Upon learning of this concern, WGBH took the responsible step of surrendering the construction permit for channel 247 operations and made clear its intent to remain on channel 242. Indeed, WGBH surrendered the construction permit for channel 247 on August 18, 2020, less than two months after the permit was granted. In contrast, WGBH has operated on channel 242 continuously for 28 years. There is no merit to Beanpot's contention that WGBH should be forced to build out an unsustainable facility on channel 247 based on a construction permit that WGBH held for less than two months.

Put simply, none of the arguments Beanpot raises concerning WGBH's surrendered construction permit has anything to do with the application currently before the Commission. These arguments are meritless, and the Commission should disregard them entirely.

CONCLUSION

WGBH merely seeks the right to reduce the existing power levels of its W242AA translator station and relocate its antenna from a building scheduled for demolition by the end of 2020. The construction permit would not create any new interference to Beanpot or any other licensed service, and WGBH's application thoroughly describes how its request is in full compliance with the Commission's rules. Beanpot's Informal Objection raises no legitimate arguments concerning the validity of WGBH's request and includes only collateral attacks on a decision that is not relevant to the application. The Commission accordingly should dismiss Beanpot's baseless objection and grant WGBH's application.

Respectfully submitted,



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Dated: November 13, 2020

CERTIFICATE OF SERVICE

I, Corey Walker, hereby certify that on this 13th day of November, 2020, I caused a copy of the foregoing Opposition to be served on the following:

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