

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

In re Application of)	
)	
WGBH EDUCATIONAL FOUNDATION)	LMS File No. 0000115764
)	Facility ID No. 27093
For Cover Construction Permit for Station)	
W247DO, Beacon Hill, Massachusetts)	
)	

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

OPPOSITION TO PETITION FOR RECONSIDERATION

Beanpot License Corp. ("Beanpot"), the licensee of FM Translator Station W243DC, Needham, Massachusetts (FIN No. 148707) ("Beanpot Station"), by its attorneys, hereby opposes the Petition for Reconsideration ("Petition"), filed by WJFD-FM, Inc. ("Objector"), the licensee of Station WJFD-FM, New Bedford, Massachusetts ("Station"), of the Commission's grant of an application filed by WGBH Educational Foundation ("WGBH"), the licensee of FM Translator Station W242AA, Beacon Hill, Massachusetts ("WGBH Station").¹ In its Petition, Objector seeks rescission of the Media Bureau's recent action granting the above-referenced uncontested application for modification of the licensed facilities of the WGBH Station in LMS File No. 0000115764 (the "Application"), thereby enabling it to operate on FM Channel 247 with the call sign of W247DO. Objector's Petition is procedurally defective and substantively

¹ Beanpot is entitled to file the instant pleading as there are no standing requirements applicable to oppositions to Commission submissions. Even were there a standing requirement, Beanpot has standing as the Beanpot Station is on a first adjacent channel to the WGBH Station and any changes in the operations of the WGBH Station have an impact on the Beanpot Station's ability to operate or modify its own license. In addition, Section 73.3587 of the Commission's Rules permits the filing of informal pleadings in broadcast-related proceedings.

without merit and, consequently, must be dismissed or denied. In support thereof, Beanpot states as follows.

Initially, the Petition is procedurally defective as a result of Objector having failed to satisfy the Commission's threshold requirements for the filing of a valid petition for reconsideration. While Objector, at this late point, seeks reconsideration of the Bureau's grant of the Application, Objector failed to weigh in against the Application while the Application was being initially considered by the Audio Division. Section 1.106(b)(1) of the Commission's Rules teaches that when a petition for reconsideration is filed by a person who was not a party to the proceeding below, the petition "shall state with particularity the manner in which the person's interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding."² Further, Section 1.106(c) of the Commission's Rules provides as follows:

A petition for reconsideration which relies on facts not previously presented to the Commission or to the designated authority may be granted only under the following circumstances:

- (1) The facts fall within one or more of the categories set forth in §1.106(b)(2); or
- (2) The Commission or the designated authority determines that consideration of the facts relied on is required in the public interest.³

Objector's Petition fails under both subsections (b) and (c) of Section 1.106 of the Commission's Rules. With respect to Section 1.106(b)(1), Objector has not shown "good reason" why it was unable to participate in the proceeding below. The Commission notified the public of its acceptance of the Application through a Public Notice released on June 5, 2020 ("Application Acceptance Notice").⁴ Despite the issuance of the Public

² 47 C.F.R. § 1.106(b)(1).

³ 47 C.F.R. § 1.106(c)(1)-(2).

⁴ See *Public Notice*, Report No. PN-1-200605-01, rel. June 5, 2020.

Notice, Objector states that it failed to oppose the Application below, during its pendency, because of the “recent migration” of FM translator applications from the CDBS system to the LMS system. This claim is wide of the mark.

Under longstanding Commission precedent, the fact that Objector was previously unaware or otherwise uninterested in the Application cannot excuse its failure to participate in a proceeding that fully complied with the Commission's public notice requirements.⁵ Objector's excuse for not doing so is without merit. It claims that both it and its unnamed “outside engineering firm” failed to take note of the Application because of the “recent migration” of FM translator applications to the LMS system. However, the migration was not recent when the Application was filed; the migration had been in effect for nearly nine months by the time the Application was filed.⁶ There is probably not an engineer or attorney who regularly handles radio station work that was not familiar with the migration in June 2020, let alone in September 2019. This fatal defect, in Objector ignoring a Public Notice, which Objector has failed to overcome with its simplistic and meritless excuse, warrants prompt dismissal of the Petition.

Similarly, as for Section 1.106(c), through the exercise of ordinary diligence, Objector clearly should have been aware of the Application based upon the Application Acceptance Notice.⁷ Further, no facts, events or circumstances have arisen or changed that justify Objector's intervention in the proceeding at this stage. Section 1.106(b)(2) plainly states that the “petition” must rely on facts which relate to events or circumstances that have changed since the

⁵ See, e.g., *Antilles Wireless, LLC*, 24 FCC 4696 (WTB 2009) (dismissing petition for reconsideration under Section 1.106(b) and (c) where Commission issued public notice of proceeding below and petitioner's lack of awareness of proceeding thus could not justify petitioner's failure to participate).

⁶ The migration occurred on September 25, 2019. *Public Notice*, Report No. DA 19-891, released September 10, 2019 (“*Order*”).

⁷ See 47 C.F.R. 1.106(b)(2)(ii), *supra*.

proceeding below.⁸ All of the facts relied upon in Objector's Petition have remained unchanged since WGBH filed the Application on June 3, 2020; no events or circumstances have arisen in the intervening period would alter the substance of Objector's arguments one iota, nor has Objector even attempted to present any. In other words, Objector could have put forward the same arguments against the Application in timely fashion, if it had only exercised ordinary diligence. To get around these determinative facts, Objector argues that it could have waited for construction to have occurred and then filed a complaint of actual interference. However, the plain language of Section 1.106(b) does not permit this as an excuse and, more importantly, there may well be no interference suffered once the WGBH Station is turned on. Objector must not be allowed to rewrite the Commission's procedural rules to suit Objector's own needs at the expense of both the Commission's and the other parties' time and resources. Objector's Petition cannot meet any, let alone all, of the threshold requirements of Section 1.106, and must therefore be dismissed forthwith.⁹

Objector's substantive arguments are similarly defective and without merit. The claim is that the Application will result in the WGBH Station causing impermissible interference to the Station. In connection therewith, Objector is restricted in what it can argue by the standards prescribed by the Commission in its rules governing the translator interference complaint process.¹⁰ As is evidenced herein, Objector has not complied with the requirements of Section 74.1204(f) of the Commission's Rules and is, therefore, not entitled to the relief requested.

⁸ See 47 C.F.R. 1.106(b)(2)(i), *supra*.

⁹ See, e.g., *Letter to Mr. David Levandusky, et al.*, DA 10-1921, released October 6, 2010; *Antilles Wireless, LLC, supra*; *Wahpeton School District*, Order on Reconsideration, 25 FCC Rcd 5806 (MB 2010) (dismissing petition for reconsideration under Section 1.106(b) and (c)); *JRZ Associates*, 24 FCC Rcd 8074 (WTB 2009) (rejecting petition for reconsideration under Section 1.106(c)); *School Board of Palm Beach County, Florida*, 22 FCC Rcd 1328 (WTB 2007)..

¹⁰ *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, 34 FCC Rcd 3457 (2019).

Initially, Section 74.1204(f) requires a complainant to have “used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution” and to evidence that it “is operating within its licensed parameters.” There is no reference in the unsworn Statement of Henry Arruda that the Objector made a single effort to contact WGBH in order to inform it of the potential interference and undertake private resolution and that the Station is operating within its licensed parameters. Objector’s counsel testifies to a “call to WGBH’s counsel,” but fails to describe whether there was a conversation held and the substance of what transpired was. Having not established that these two critical conditions precedent were met, Objector’s complaint fails and under the strict standards for considering such complaints it must be dismissed forthwith. *Order* at 3483.

Even assuming, *arguendo*, that the Petition and its underlying arguments should be considered, it is further deficient and must be denied on the merits. Among the relevant criteria applicable to Section 74.1204(f) is the one mandating that each of the required number of individual complaints contain a “clear, concise, and accurate description of the location where the interference is alleged to occur.” *Order* at 3466. In this regard, the Commission has prescribed that the complaints state (*id.* at n. 65):

Appropriate descriptions including map coordinates, street addresses, street intersections, or other descriptions as ‘along Route XX near mile marker XX’ or ‘between Exits 1 and 2 on Route XX.’ Unacceptable descriptions would include ‘on my way to work’ or ‘downtown,’ as they do not inform the complaining station of whether the location is within its 45 dBu contour or provide the translator information with sufficient information to resolve the complaint.

A number of the individual complaints submitted by Objector fail to provide the required appropriate descriptions. For example, the complaint from Antonio Soares speaks to listening between exits 28 and 8, between exits 18 and 23-24-25 in three areas of Massachusetts. The complaints of Dina Ferren, Michael Mello, and Jose Avila are duplicative of the Antonio Soares

complaint. The complaint of Paulo Pinto lacks specificity as it states that he listens when he is “on my drives.” While there are more problems with the individual complaints that Beanpot could identify, the errors involving the complaints described herein reduce the number of other individual complaints below the threshold number of 25 required of Objector. Once again, the Petition’s deficiencies and defects render it subject to immediate dismissal or denial.

Finally, the Technical Exhibit fails to confirm that all of the complaints evidence locations within the 45 dBu contour as required by the *Order*. The deficiencies include that several of the locations plotted are outside the contour and others lie at what appears to be locations situated upon the edge of the roughly plotted contour. In that compliance is strict, a higher level of precision in the exhibit is required. Finally, when one turns to the Complainant Chart, one is not provided with specifics as to the locations used so that an engineering consultant can determine if the location lies within the 45 dBu contour. The majority of the locations are specified between different locations on roads and without specific locations on those roads, the exact signal strength cannot be determined in order to reach a finding of 45 dBu signal strength.

In sum, Objector has failed, on both procedural and substantive counts, to come close to setting out an acceptable complaint. The Petition is both untimely and without a meritorious basis for delay, as a number of the required elements of a qualified complaint are missing and there are an inadequate number of valid individual complaints. Owing to these problems, the Technical Exhibit then fails to provide the necessary supporting evidence. Considering these defects, the Petition must be dismissed or denied, allowing the requested facilities to be constructed. Beanpot fully expects that there will be no impermissible interference to the Station and the exercise we have gone through will be proven to have been no more than a waste of time and resources.

WHEREFORE, Beanpot License Corp., the licensee of Station W243C, Needham, Massachusetts, respectfully requests that the Commission dismiss or deny the Petition for Reconsideration filed by WJFD-FM, Inc. seeking rescission of the Media Bureau's action granting the application of WGBH Educational Foundation for modification of license for Station W247DO, Beacon Hill, Massachusetts.

Respectfully submitted,

BEANPOT LICENSE CORP.

By:  _____

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Dated: August 6, 2020

CERTIFICATE OF SERVICE

I, Barry A. Friedman, hereby certify that I have served on this 6th day of August, 2020, a copy of the foregoing **Opposition to Petition for Reconsideration** on the following parties by first class mail, postage prepaid:

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