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WGBH Educational Foundation
125 Western Avenue
Boston, MA 02134

In re: WCAI(FM), Woods Hole, MA
WGBH Educational Foundation ("WGBH")
Facility ID # 8566
BPED-20070905ACR

Dear Applicant:

This refers to the above-captioned minor change application to modify the antenna height, class, and effective radiated power. WCAI also requests waiver of 47 C.F.R. § 73.525. For the reasons stated below, we deny WGBH's waiver request and dismiss the application.

An engineering study reveals that the application fails to comply with Section 73.525¹ of the Commission's Rules (the "Rules") with respect to Channel 6 TV Station, WLNE-TV, New Bedford, MA. To address this issue, WGBH requests waiver of the Rules or a grant conditioned on WCAI operating with the proposed facilities until WLNE-TV has commenced digital operations and is no longer operating on Channel 6. In support of the requested waiver, WGBH states that grant of the application would allow it to improve reception for the 31,000 listeners within the station's present 60 dBu service area. In addition, WGBH argues that by allowing WCAI to increase power after February 17, 2009, the Commission will serve the three goals established when Section 73.525 was adopted. We conclude that neither Section 73.525 nor established precedent provides a basis for a conditional grant or the grant of the requested waiver.² Accordingly, we will deny the request for waiver and dismiss the referenced application.

A waiver of the Commission's contingent application rule would also be necessary to grant WGBH's application. The proposed facility cannot become operational unless WLNE-TV implements certain changes in its technical operations based on certain future events. With the exception of certain narrowly defined filings, the Commission's rules prohibit generally the filing of contingent applications.³ Such proposals can frustrate the introduction of new and improved

¹ 47 C.F.R. § 73.525.

² See Family Life Educational Foundation, Letter, DA 08-626 (MB, rel. March 21, 2008).

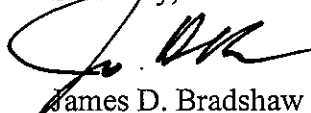
³ See *id.* at § 73.3517.

services. Processing such applications also can result in the expenditure of limited staff resources on proposals that may never be implemented. WGBH has not demonstrated that it has cleared the high hurdle for the required waiver.⁴ We conclude that a waiver in the instant circumstances would be contrary to the public interest.

In this case, WGBH has sought, albeit prematurely, to take advantage of the expected termination of WLNE-TV analog Channel 6 operations in order to improve its facilities and to gain cut-off protection from all applications filed several weeks later in the October 2007 NCE FM window. Accepting this application – or any application that relies on a similar contingent consent agreement from a potentially impacted Channel 6 station – could foreclose filing opportunities of other potential applicants and licensees that desire to file new station and modification applications based on the forthcoming vacation of analog Channel 6 allotments but have deferred such filings based on the recognition that it is not presently possible to file rule-compliant proposals. Accordingly, we find that acceptance of the WGBH application in these circumstances would be fundamentally unfair to those applicants that have filed applications that complied with Section 73.525⁵ and to those potential applicants that deferred their filings as a result of Channel 6 protection requirement issues. The public interest is better served by dismissing the WGBH application.

In light of the foregoing, the request for waiver or conditional grant IS HEREBY DENIED. Accordingly, Application BPED-20070905ACR is unacceptable for filing and IS HEREBY DISMISSED pursuant to Section 73.3566(a)⁶ of the Rules. This action is taken pursuant to Section 0.283⁷ of the Rules.

Sincerely,



James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau

cc: William H. Fitz, Esq.

⁴ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *aff'd* 459 F.2d 1103 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

⁵ For example, acceptance of an NCE new station application filed in the October 2007 window that includes a contingent agreement with a Channel 6 station could unfairly skew the “fair distribution” analysis to the detriment of mutually exclusive applications that filed rule-compliant proposals.

⁶ 47 C.F.R. § 73.3566(a).

⁷ *Id.* at § 0.283.