

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In re: Application of	)	
	)	
Park Public Radio, Inc.	)	
	)	FCC File No. 0000142335
For Construction Permit for a Minor	)	Facility ID No. 196131
Modification of License for	)	
Low Power FM Station KPPS-LP	)	
	)	
	)	
In re: Application of	)	
	)	
Central Baptist Theological Seminary of	)	
Minneapolis	)	FCC File No. 0000142489
	)	Facility ID No. 202408
For Minor Change to FM Translator Station	)	
K250BY, Plymouth, MN	)	
	)	
	)	

To: Office of the Secretary

**OPPOSITION TO PARK PUBLIC RADIO, INC.’S REQUEST FOR LEAVE TO FILE  
SUPPLEMENT TO APPLICATION FOR REVIEW**

Central Baptist Theological Seminary of Minneapolis (“Central Baptist”), by its attorneys, and pursuant to Section 1.115 of the Federal Communications Commission’s (“FCC” or “Commission”) Rules, hereby files this Opposition to the Request for Leave to File Supplement to Application for Review filed by Park Public Radio (“PPR”) in the above captioned files.<sup>1</sup> As described below, the Request fails to demonstrate that the items are relevant to the instant

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<sup>1</sup> 47 C.F.R. § 1.115.

proceeding, were timely presented to the Commission, or that consideration of the items is in the public interest.

## **I. BACKGROUND**

This proceeding has been pending for nearly three years now. Central Baptist is the licensee of FM Translator Station K250BY in Plymouth, Minnesota. On April 1, 2021, Central Baptist filed an application for minor modification, requesting that it be permitted to relocate K250BY to a location in downtown Minneapolis after the license of a mutually-exclusive low power FM station (KQEP-LP) had expired. Prior to the date of expiration of KQEP-LP's license, PPR, licensee of KPPS-LP, filed an application for minor modification, mutually-exclusive with KQEP-LP, on March 31, 2021, seeking to relocate its transmitter and change frequency. On July 5, 2022, after full consideration of the numerous pleadings in this case, the Media Bureau ("Bureau") issued a letter decision ("Letter Decision") granting Central Baptist's application and denying PPR's application, finding PPR's application was both procedurally deficient, as it was filed prior to the expiration of KQEP-LP's license, and that it violated the Commission's minimum spacing requirements.

On August 4, 2022, PPR filed a Petition for Reconsideration with the Bureau, which the Bureau denied on February 6, 2023 in a second letter decision ("Reconsideration Decision"). The Bureau found that the Petition for Reconsideration had largely reiterated previously rejected arguments, warranting dismissal of the Petition, and that the new arguments and evidence PPR presented were untimely and insufficient to warrant reconsideration.

On March 10, 2023, PPR filed an Application for Review ("AFR") with the Commission. Central Baptist timely opposed the AFR on March 17, 2023, and on March 27, 2023, PPR filed a

reply. Now, nearly a year after the pleading cycle closed, PPR has sought leave to file a supplement. The Commission should deny this request.

## II. DISCUSSION

PPR's Request fails to demonstrate that the allegedly new material is relevant to the proceeding, was unavailable prior to the filing of the Request, or that consideration of the materials is necessary to protect the public interest. Pursuant to section 1.115(d) of the Commission's rules, an "application for review *and any supplemental thereto* shall be filed within 30 days of public notice of [any action taken pursuant to delegated authority]."<sup>2</sup> Generally, the Commission denies consideration of late-filed pleadings that raise arguments and facts that could have been presented within the 30-day deadline.<sup>3</sup> The Commission will also decline to review supplements that raise new questions of law or fact that were not presented to the Bureau.<sup>4</sup> Overall, the Commission only exercises its discretion to grant late filed pleadings where "equities so require and no party would be prejudiced thereby."<sup>5</sup> No such circumstances are present here.

### A. The Supplement Primarily Relies on Caselaw That is Over 20 Years Old

First, the Supplement primarily relies on caselaw that is over 20 years old. While the Request alleges the Supplement is timely filed because it was filed within 30 days of the release

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<sup>2</sup> 47 C.F.R. § 1.115(d) (emphasis added).

<sup>3</sup> See, e.g., *Alpine PCS, Inc.*, Memorandum Opinion and Order, 25 FCC Rcd 469, 479-80, para. 16 (2010) (dismissing untimely filed supplements that sought to raise new questions of law not previously presented); see also *21st Century Telesis Joint Venture v. Fed. Commc'ns Comm'n*, 318 F.3d 192, 199-200, 355 U.S. App. D.C. 1 (D.C. Cir. 2003) (affirming the FCC's decision to deny consideration of late-filed supplements when the petitioner failed to offer a reasonable explanation for why its supplemental arguments were not presented in its initial petition).

<sup>4</sup> *Alpine PCS*, 25 FCC Rcd at 479-80, para 16.

<sup>5</sup> *Blanca Tel. Co.*, Memorandum Opinion and Order and Order on Reconsideration, 32 FCC Rcd. 10594, 10603, para. 26 (2017).

of the *Electron Benders* decision,<sup>6</sup> the Supplement is actually relying on a case PPR discovered in a footnote in *Electron Benders*; a 2003 decision, *WKVE*.<sup>7</sup> Since *WKVE* was released in 2003, PPR could have easily discovered *WKVE* prior to filing the AFR. PPR provides no justification for why it could not have discovered *WKVE* prior to the filing of the supplement. Filing the supplement at this time simply serves to further delay the proceeding, harming both parties to the proceeding and the public interest. Thus, leave to file the Supplement is clearly not warranted here.

Even if *WKVE* were timely discovered, it is irrelevant to the issues in this case. *WKVE* concerns whether the Bureau properly extended a construction permit and whether the subsequent assignment of that construction permit was appropriate. While there is some discussion on whether a modification application must be denied because it was unacceptable at the time of filing but came into compliance at a later date,<sup>8</sup> that is inapplicable to the facts in this case. PPR's application was found to be deficient at the time that the Bureau acted on the application. Moreover, the principle for which *WKVE* is cited, that an application need not be returned when it comes into compliance with the Commission's *technical rules* prior to the decision on that application, is easily distinguished from the case here, where PPR was not in compliance with the Commission's *procedural rules*, which if extended as PPR suggests, would create a chaotic free for all situation of speculative filing. Thus, the *WKVE* decision is easily distinguished from and does not alter the Bureau's decision in this case. Were it relevant to this case, it was available to the staff when rendering its prior decisions.

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<sup>6</sup> *Electron Benders*, Letter Decision, DA 23-1205, (MB rel. Dec. 22, 2023).

<sup>7</sup> *WKVE*, Memorandum Opinion and Order and Notice of Apparent Liability, 18 FCC Rcd 23411 (2003).

<sup>8</sup> *Id.* at para. 26.

Finally, PPR attempts to allege that it should have been provided with a deficiency letter, as was suggested in *WKVE*.<sup>9</sup> Pursuant to the FCC's rules, deficiency letters are appropriate where the application was found to have minor defects as to completeness or deficiencies in the tender and/or acceptance information.<sup>10</sup> PPR's application was denied because its proposal did not comply with the FCC's procedural *and* technical rules, not because of a minor defect or tender problem. Thus, a deficiency letter would not have been appropriate or proper.

B. *Electron Benders is Neither Binding Precedent nor Relevant*

Second, PPR alleges that its supplement is timely filed because it was filed within thirty days of release of *Electron Benders*.<sup>11</sup> *Electron Benders*, however, is neither binding precedent nor relevant to the facts in this case. First, *Electron Benders* is an unpublished letter decision, which is not binding precedent on parties outside the decision.<sup>12</sup> Further, Bureau decisions are not binding upon the Commission.<sup>13</sup> Thus, despite the fact that this decision was only released in December, the release of *Electron Benders* does not justify leave to file a Supplement.

Even assuming, for the sake of argument, that *Electron Benders* was a precedential decision, the decision is irrelevant to the issues before the Commission. *Electron Benders* dealt with two parties that filed applications to modify their facilities on the same day after an application to surrender was filed. That is not the case here. Here, PPR filed during the existing license term of another station, which is not permitted under the FCC's rules (as was thoroughly explained in the Letter Decisions by the Bureau), while Central Baptist filed on the day and after the time that

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<sup>9</sup> *Id.*

<sup>10</sup> 47 C.F.R. § 73.3564(a).

<sup>11</sup> *See, Electron Benders*, Letter Decision, DA 23-1205, (MB rel. Dec. 22, 2023).

<sup>12</sup> 47 C.F.R. § 0.445(f); *See also, Fla. Cmty. Radio, Inc.*, 34 FCC Rcd 10278, 10281, n.29 (2019).

<sup>13</sup> *See Comcast Corp. v. FCC*, 526 F.3d 763, 796 (D.C. Cir. 2008).

the license expired. This is different from *Electron Benders*, where both parties had reasonable notice of the potential for spectrum, and filed on the same day.

In addition, as stated above, *Electron Benders* does not rely on new precedent or policies and does not overturn existing precedents or policies. It relies upon established policies and precedent that could have easily been discovered or cited before with diligent research. Thus, *Electron Benders* is irrelevant to the issues before the Commission in this case and does not justify granting leave to file a supplement.<sup>14</sup>

C. *The Equities of This Case Do Not Favor Granting Leave to File a Supplement*

Finally, the equities of this case do not favor granting leave to file a supplement. The issues in this case have now been pending for nearly three years. The AFR has been pending before the Commission for over ten months. Delaying the decision in this case further to consider an argument previously made and considered is inappropriate, particularly considering one of the identified decisions could have been presented earlier and the other is irrelevant to the issues at hand.

Further, there has been ample opportunity for argument and consideration of all factual and legal issues in this case. There were numerous pleadings and filings made before the Bureau, and PPR took advantage of the opportunity to raise the same issues raised in the Supplement. PPR's arguments were fully considered under the comprehensive precedent of the Bureau and Commission and were ultimately rejected. Thus, denying PPR's Request does not prejudice PPR's

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<sup>14</sup> Even assuming *Electron Benders* were factually similar with respect to the timing of the filing of applications, PPR also ignores the fact that the Bureau concluded that its application was incurably deficient. The Bureau explained that PPR's application violated several Commission rules and that waiver of those rules was not appropriate in this circumstance. Thus, even if the Commission had deemed PPR's application timely, it would have been dismissed for alternative reasons.

right here to a full review of the issues. Granting the request simply serves to add additional delay to the resolution of these issues and this case, which, in turn, delays improved service to the public and runs contrary to the public interest.

### **III. CONCLUSION**

As explained above, the PPR Request for Leave to File Supplement to Application for Review fails to demonstrate that consideration of the Supplement is appropriate or in the public interest. Accordingly, Central Baptist respectfully requests that PPR's Request be denied and that the Commission move on to a decision on the Application for Review.

Respectfully submitted,

CENTRAL BAPTIST THEOLOGICAL SEMINARY  
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Dated: January 31, 2024

**CERTIFICATE OF SERVICE**

I, Gregg P. Skall, with the law firm of Telecommunications Law Professionals PLLC, do hereby certify that a true and correct copy of the foregoing “Opposition to Request for Leave to File Supplement to Application for Review” was served by U.S. mail, first class, postage-prepaid on the 31<sup>st</sup> day of January, 2024, on the following individuals:

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