

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

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Facility ID No. 196131

PETITION TO DENY

FACTS

In 2017, New Culture Center in the Midwest (“NCC”) was granted a Low Power FM License to operate KQEP-LP in Saint Paul, Minnesota. NCC’s license term expired on April 1, 2021, at 3:00 AM. Despite the term not expiring until April 1, Park Public Radio (“PPR”), licensee of KPPS-LP, a station that currently operates in one of Minneapolis’ suburbs, filed an application

for minor modification on March 31, 2021, seeking to relocate its transmitter and change frequency. In the interest of respecting the licensee and the Commission's rules, Central Baptist, licensee of K250BY, filed its minor modification application on April 1, 2021, after KQEP-LP's license term had expired. These two applications are mutually exclusive, Central Baptist is thus an interested party in the proceeding.

STANDARD OF REVIEW

Any party with an interest in an application may file a petition to deny. *See* 47 C.F.R. § 1.939(a). Petitions must set forth specific allegations of fact to make a *prima facie* showing that the petitioner is a party in interest and that granting the application "would be inconsistent with the public interest, convenience and necessity." 47 C.F.R. § 1.939(d).

ARGUMENT

PPR's application for minor modification should be denied because it is not in the public interest, convenience, or necessity. 47 C.F.R. § 1.939. First, PPR's application was unacceptable for filing on March 31, 2021 as it was mutually exclusive with then existing low power FM radio station KQEP-LP, Fac. Id. 196883, licensed to NCC. As admitted in the Engineering Exhibit accompanying PPR's application, KQEP-LP's license did not expire until 3:00 AM on April 1, 2021.¹ Accordingly any application filed prior to that date and time was unacceptable for filing because it remained mutually exclusive and was therefore patently not in accordance with the FCC rules and requirements; even if an application were inadvertently accepted for filing, it must be dismissed.² KPPS's application contained no request for waiver of the mutual exclusivity rule and

¹ The expiration of the KQEP-LP license without a renewal application on file resulted in the cancellation of its license and deletion of its call sign on April 2, 2021. *See* FCC Broadcast Actions Report No. 49962, released April 7, 2021 at page 3.

² 47 C.F.R. §73.3566

offered only a feeble justification for jumping the proper filing date by alleging, without satisfactory proof, that KQEP's license had been cancelled because the station had not been broadcasting for 12 consecutive months. PPR's application, however, provides no specific dates that KQEP was off air, instead relying only on casual observations that at times KQEP was off air and providing only vague explanations for the times between observations. For example, PPR's engineering statement merely states that the station had been observed as off air but does not offer proof that KQEP was off air for a *consecutive* 12-month period.³ In addition, it is well established that a license is only cancelled "after [the Media Bureau] has issued a letter, public notice, or both, affirmatively stating that [a] license has been cancelled." *In re Atlantic City Board of Education and Press Communications, LLC*, Memorandum Opinion and Order, 31 FCC Rcd. 9380, 9383 (Aug. 9, 2016); *see also In re Chinese Voice of Golden City DKQLS-LP*, Memorandum Opinion and Order, 35 FCC Rcd. 13638, 13643-44 (Nov. 25, 2020) (discussing that a LPFM license was cancelled by the Media Bureau after the Bureau issued a notice that the station had been off air for the prior twelve months). Mere observations are insufficient to demonstrate that KQEP-LP's license was cancelled, and thus justify jumping the proper filing date. At the time of PPR's application, KQEP-LP's license was still in effect, and PPR could not demonstrate compliance with the Commission's rules on this matter. Accordingly, PPR's application should be denied and dismissed.

Second, the public interest does not weigh in favor of granting PPR's application. One of the fundamental charges of the Commission is to ensure that all qualified applicants are afforded the opportunity to apply for the ability to put scarce resources to the best possible use. The only

³ It is noteworthy that the KQEP-LP license, BNPL-20131115ADR, was for "Hours of Operation Limited – Time Shared" with specific days and times for its operation. PPR makes no attempt to correlate its observations with KQEP's limited days and times of licensed operation.

possible motive PPR could have for filing on March 31, rather than after expiration of the KQEP license, was to attempt to gain an unfair advantage over any other applicant who properly waited to file its application at the earliest proper time. Knowing that minor modification applications are processed on a “first come/first served” basis and are treated as simultaneously tendered if filed on the same day⁴, the only way PPR could attempt to pre-empt any simultaneous filers would be to file early. But this is fundamentally unfair and an abuse of process.

Allowing interested individuals to act as PPR has done and file applications that conflict with un-expired licenses sets a precedent that would result in chaos and completely undermines the Commission’s goals in two separate manners. First, it creates uncertainty and confusion about when applications should be filed, which will prevent qualified applicants from being fairly considered. Under the Commission’s current rules, applications are processed in the order they are received. *See, e.g.* 47 C.F.R. § 73.870(a). Allowing applicants to file applications that overlap with existing licensees will create the incentive to file applications in the middle of license terms in an attempt to ensure that, should that license expire or be cancelled, their application is the first in line, excluding others. This will result in qualified applicants, who may put this scarce resource to better use, from being fairly considered, merely because they did not guess when, during the license term, they should file their application. Moreover, this would encourage applicants to file applications at odds with the Commission’s contingent applications rules, in attempts to ensure they receive fair consideration.⁵ In order to maintain the integrity of the Commission’s selection process, the Commission must ensure that all applicants have an equal opportunity for

⁴ §73.3564(e) 47 C.F.R §73.3564(e)

⁵ See §73.3517 47 C.F.R. §73.3515 “Contingent applications for . . . changes in facilities of existing stations are not acceptable for filing.

consideration through clear filing deadlines and rules. Allowing applications in the middle of a license term, does not ensure fair and equal opportunity.

Second, a licensee has the right to the benefit of their license for its *entire* term and they should not be required to fend off competing applications at every turn. When the Commission grants a license, it is after careful consideration and review to determine which applicants are the best option. Those licensees should then be permitted to utilize their license as permitted by the Commission. Continually defending against applications that encroach on their license would not serve the purpose of the Commission, to ensure that licenses are used efficiently. Thus, the public interest is not served by allowing PPR's application to proceed. Rewarding one applicant for filing early and punishing another for respecting the existing licensee and Commission's rules is not in the public interest and eliminates qualified and otherwise timely applicants from receiving fair consideration under the Commission's rules.

Finally, were the Commission to accept the principle that a party can gain an advantage over another by simply jumping the filing date, it would shred seventy-five years of precedent by carving an exception to the hallowed Ashbacker doctrine, that mutually exclusive applicants are entitled to simultaneous consideration.⁶ Here, however, PPR forfeited its Ashbacker rights by filing an early and therefore unacceptable application. Any attempt to cure its defect must now bear a filing date subsequent to Central Baptist's and therefore may succeed only if Central Baptist does not.

ADJACENT CHANNEL DEFECTS

Presently, KPPR-LP is short to K250BY by 1.88 km. PPR's application would place KPPR-LP 1.86 km short-spaced to the W250BY license, which PPR claims is acceptable due to

⁶ *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945).

grandfathered short spacing rights. However, its argument overlooks the fact that it also proposes a channel change moving it from a 2nd adjacent to 1st adjacent channel. That change invalidates any grandfathered rights and seeks a new and impermissible short spacing. See the Engineering Statement of Skywaves Consulting Attached as Exhibit “A”. A second adjacent short-spacing such as exists now is much less critical than a first-adjacent short spacing such as that proposed by PPR. But that is not the end of PPR’s short spacing defects. Even with the change from co-channel to first adjacent channel short spacing, the PPR application remains impermissibly short spaced to W248CU by 6.96 km. Here too, requesting a channel change invalidates any grandfathering.

Section 73.807(d) of the Commission’s rules permits relocation of short-spaced LPFM stations provided that the separation to any short-spaced translator is not reduced.⁷ The attached engineering report demonstrates that PPR cannot demonstrate compliance with this rule and therefore justify its claim of grandfathered rights. Nor is a waiver available for its proposed first-adjacent short-spacing to K250BY and W248CU. The Low Power FM Sixth Report and Order beginning at paragraph 72 specifically describes waiver standards for 2nd adjacent short spacing cases, and at paragraph 80 states: “*We remind potential LPFM applicants that the LCRA permits the Commission to grant waivers only of second-adjacent, and not co- and first-adjacent, spacing requirements.*”⁸ The LCRA itself provides a waiver standard and interference remediation requirements for second adjacent short-spacing cases, *but includes no such provisions for co-*

⁷ 47 C.F.R. §73.807(d) “Existing LPFM stations which do not meet the separations in paragraphs (a) through (c) of this section may be relocated provided that the separation to any short-spaced station is not reduced.” Further, the Commission has concluded that Section 5(3) of the Local Community Radio Act of 2010 prioritizes pending FM translator applications over later-filed LPFM applications. See: *Center for International Media Action* 33 FCC Rcd. 5394, (2018)

⁸ *In The Matter of Creation Of A Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd. 15402, (2012) at ¶80

channel and first adjacent short-spacing cases. In short, there is no provision for waiving first-adjacent short spacing requirements as proposed by KPPS-LP.

KPPS-LP ANTENNA SITE

PPR claims its present licensed transmission site will be unavailable within the next 12-18 months. This unsubstantiated, vague claim is offered as justification for its channel change as well as its proposed site change. PPR offers no substantiation, however, for the claim that it will lose its transmission site, nor does it explain why its only solution is to move to a channel that is both first and second adjacent to operating and licensed FM radio translators.


In fact, KPPS-LP currently operates from a residential rooftop in St. Louis Park, MN, surrounded by many other residential rooftops and only a block away from large apartment buildings and what appears to be a water tower. See Exhibit “B”. Two ASR registered towers are nearby: ASR 1277637 and 1206121. See Exhibit “C”. Despite the plethora of seemingly appropriate sites, for PPR’s station, PPR fails to demonstrate that these locations are insufficient for KPPS-LP. PPR’s argument that it will be off the air if the Commission fails to grant its application should be disregarded, as KPPS-LP has failed to demonstrate it has considered the multitude of alternative options for continued operations. In short, neither can the alleged need to move KPPS-LP support the impermissible short spacing or a waiver of that rule.

CONCLUSION

WHEREFORE, for the reasons stated above, the application of Park Public Radio, Inc for a minor modification is and was not acceptable for filing, violates the rules and policies of the Commission respecting protection of pre-existing FM translators and must be denied and dismissed.

Respectfully submitted,

CENTRAL BAPTIST THEOLOGICAL SEMINARY
OF MINNEAPOLIS

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Dated: April 12, 2021

Exhibit “A”



Engineering Statement

Prepared on Behalf of

Central Baptist Theological Seminary of Minneapolis

This statement is provided as an Exhibit to the petition to deny the application of Park Public Radio, Inc. ("PPR") to modify its KPPS-LP, FCC Facility ID # 196131, File Number 0000142335. As explained in the petition, PPR filed its application while the license for KQEP-LP was still in force. As shown in the following table⁹, the PPS application (highlighted in yellow) was short-spaced to KQEP-LP, a violation the Commission's Rule 73.807:

KQEP-LP License															
Latitude	44	58	0.0	N											
Longitude	93	12	20.6	W											
facid	adj	chan	lpclass	status	call	st	city	kW	da	haat	brg	km	req	Δ	eval
196131	1	249L1	L1	APP	KPPS-LP	MN	ST. LOUIS PARK	0.1	N	28.8	248	5.45	14	-8.55	SHORT
202408	0	250D	T2	LICEN	K250BY	MN	PLYMOUTH	0.25	Y	16.5	278	17.62	26	-8.38	SHORT
138656	2	248D	T1	LICEN	W248CU	MN	MINNEAPOLIS	0.25	Y	101.4	105	9.26	14	-4.74	SHORT
195268	1	251L1	L1	LICEN	KENL-LP	MN	ST. PAUL	0.1	N	-3.0	123	15.47	14	1.47	NO INT
73145	1	251C0	C0	LICEN	WWJO	MN	ST. CLOUD	100	N	305.0	326	114.10	111	3.10	INT-OK
192323	0	250L1	L1	LICEN	KEFE-LP	MN	LAKEVILLE	0.1	N	29.4	184	27.83	24	3.83	NO INT
196131	2	248L1	L1	LICEN	KPPS-LP	MN	ST. LOUIS PARK	0.1	N	15.2	259	14.20	0	14.20	NO INT
141741	1	249D	T0	LICEN	K249ED	MN	ALBERTVILLE	0.25	N	303.0	341	43.65	28	15.65	NO INT
63344	1	249D	T2	LICEN	W249DK	MN	HASTINGS	0.25	N	13.6	131	39.24	15	24.24	NO INT

The separation between the KPPS-LP application and the still-valid KQEP-LP license is 5.45 km, with a requirement in 73.807 that they be 14 km apart. Thus, the application violated the requirements of 73.807 by 8.55 km. This new short-spacing came about because of the frequency change proposed by PPS from second adjacent to KQEP-LP to first adjacent. There are no spacing requirements between LPFM stations on the second and third adjacent channels. Therefore, the PPS proposal represents a new and impermissible first-adjacent short-spacing.

⁹ Because KQEP-LP has been deleted, it does not appear in studies. This table is constructed from the viewpoint of KQEP-LP based on its licensed coordinates. It does not matter which record the study is centered on, the results are the same with respect to the relationship between KQEP-LP and KPPS-LP.

Further, in the section of its “Engineering Exhibit” labelled “Interference to K250BY,” PPS acknowledges that “Short-spacing is allowed when the short-spacing is preexisting and the short-spacing distance [is] not increased.”

As shown in the tables below, the location proposed by PPS in its application is 1.86 km short-spaced to the K250BY license. The present KPPS-LP license is 1.88 km short-spaced to the K250BY license. Thus, the proposed short-spacing is increased by 0.02 km, and the proposal does not satisfy the requirement that the short spacing not be increased.

Current KPPS-LP License																
Latitude	44	56	33.8	N												
Longitude	93	22	56.8	W												
facid	adj	chan	lpclass	status	call	st	city	kW	da	haat	brg	km	req	Δ	eval	
10142	2	246C	C	LICEN	KTCZ-FM	MN	MINNEAPOLIS	100	N	315.0	58	24.06	93	-68.94	SHORT	
196131	0	248L1	L1	LICEN	KPPS-LP	MN	ST. LOUIS PARK	0.1	N	15.2	0	0.00	24	-24.00	STUDY	
138656	0	248D	T1	LICEN	W248CU	MN	MINNEAPOLIS	0.25	Y	101.4	89	22.91	32	-9.09	SHORT	
196131	1	249L1	L1	APP	KPPS-LP	MN	ST. LOUIS PARK	0.1	N	28.8	86	8.90	14	-5.10	STUDY	
202408	2	250D	T2	LICEN	K250BY	MN	PLYMOUTH	0.25	Y	16.5	325	6.12	8	-1.88	SHORT	
68823	0	248C	C	LICEN	KNXR	MN	ROCHESTER	100	N	317.0	140	130.03	130	0.03	INT-OK	
141741	1	249D	T0	LICEN	K249ED	MN	ALBERTVILLE	0.25	N	303.0	359	43.78	28	15.78	NO INT	

KPPS-LP Application																
Latitude	44	56	55.0	N												
Longitude	93	16	12.0	W												
facid	adj	chan	lpclass	status	call	st	city	kW	da	haat	brg	km	req	Δ	eval	
196131	0	249L1	L1	APP	KPPS-LP	MN	ST. LOUIS PARK	0.1	N	28.8	0	0.00	24	-24.00	STUDY	
138656	1	248D	T1	LICEN	W248CU	MN	MINNEAPOLIS	0.25	Y	101.4	91	14.04	21	-6.96	SHORT	
196131	1	248L1	L1	LICEN	KPPS-LP	MN	ST. LOUIS PARK	0.1	N	15.2	266	8.90	14	-5.10	STUDY	
202408	1	250D	T2	LICEN	K250BY	MN	PLYMOUTH	0.25	Y	16.5	289	13.14	15	-1.86	SHORT	
68823	1	248C	C	LICEN	KNXR	MN	ROCHESTER	100	N	317.0	144	125.05	120	5.05	INT-OK	
141741	0	249D	T0	LICEN	K249ED	MN	ALBERTVILLE	0.25	N	303.0	348	44.18	39	5.18	INT-OK	
192323	1	250L1	L1	LICEN	KEFE-LP	MN	LAKEVILLE	0.1	N	29.4	173	25.97	14	11.97	NO INT	
63344	0	249D	T2	LICEN	W249DK	MN	HASTINGS	0.25	N	13.6	124	42.08	26	16.08	NO INT	
195268	2	251L1	L1	LICEN	KENL-LP	MN	ST. PAUL	0.1	N	-3.0	109	19.19	0	19.19	NO INT	

The above is true and correct to be the best of knowledge and belief.

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Exhibit "B"

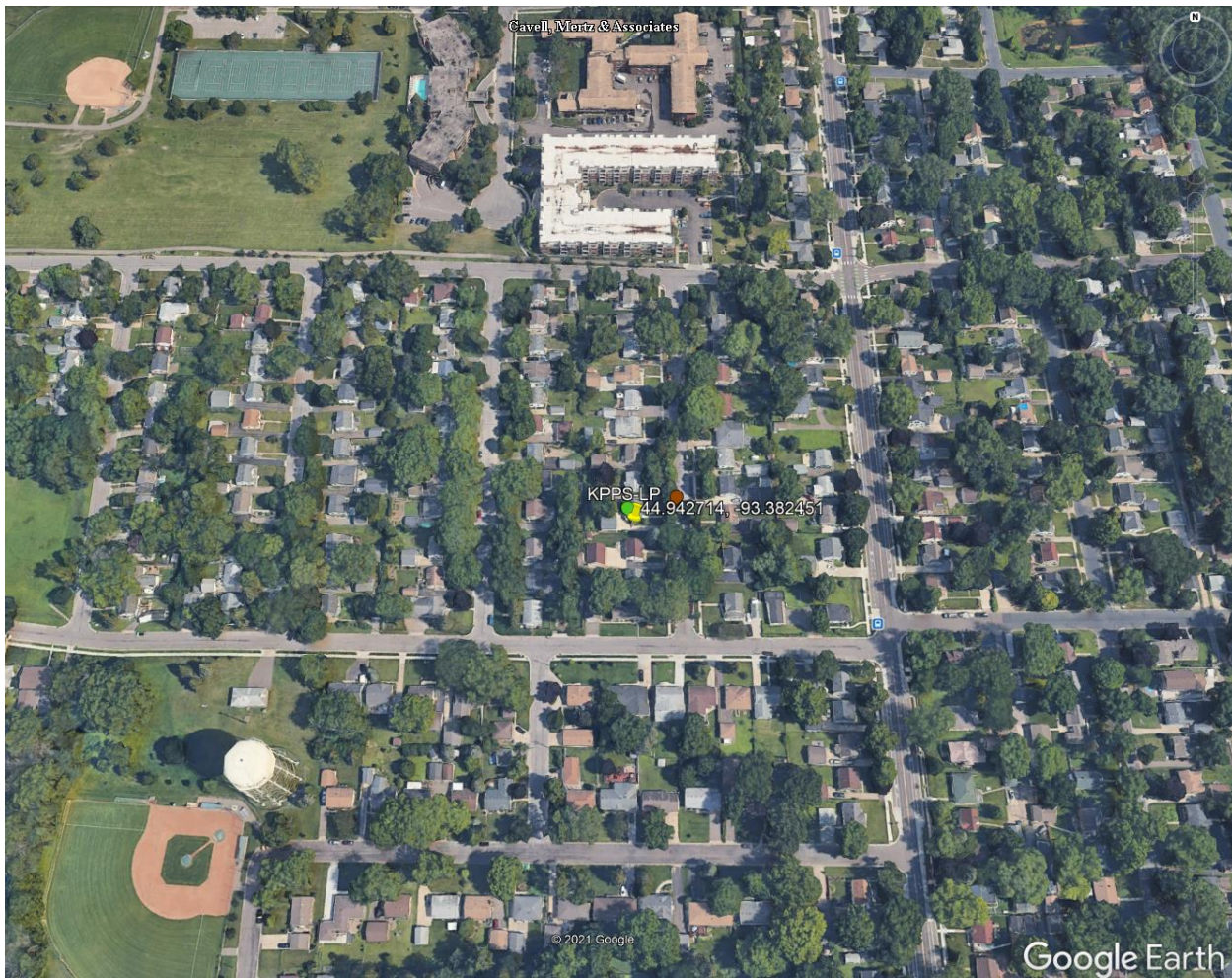
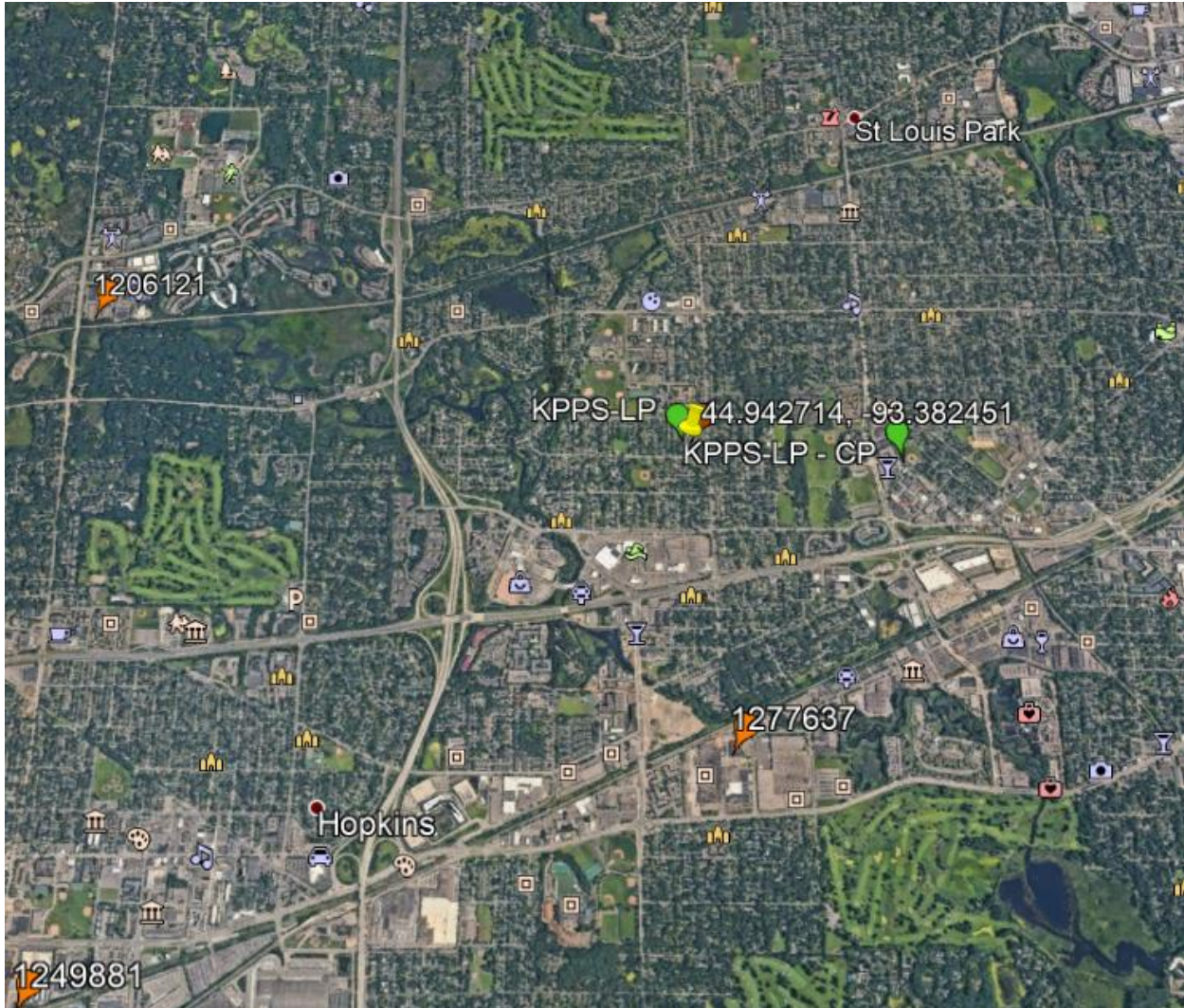


Exhibit "C"



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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 "Petition to Deny" was served by U.S. mail, first class, postage-prepaid on the 12th day of April, 2021, on the following individuals:

Christopher Clark, Esq. *
Federal Communications Commission
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* Indicates E-Mail Delivery

A handwritten signature in blue ink, reading "Gregg P. Skall", is positioned above a horizontal line.