

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In Application of)
)
)
Park Public Radio, Inc.) File no. 0000142335
) Fac. no. 19613
For Minor Change to)
LPFM Station)
KPPS-LP, St. Louis Park, MN)
)

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

May 3, 2021

OPPOSITION TO PETITION TO DENY

Park Public Radio, Inc (PPR) hereby opposes the Petition to Deny (Petition) filed by Central Baptist Theological Seminary of Minneapolis (CTS) with respect to the above-referenced application for minor change in the facility of Low Power FM station KPPS-LP (the “PPR Application”).

CTS also filed an application for minor change in the facility of FM Translator station K250BY (the “CTS Application”) one day after the filing of the PPR Application. CTS alleges that the PPR Application was unacceptable for filing, has short-spacing concerns, and raises concerns about potential other sites available for PPR on channel 248.

As set forth below, the arguments in the CTS Petition are procedurally improper, misguided, and do not show any violation of Commission policy or rules. Because the CTS Petition does not show how the PPR Application violates the FCC rules, policies, or precedent, the Petition must be denied and the PPR Application granted.

Table of Contents

I.	The Petition is procedurally improper	3
II.	CTS incorrectly suggests that the PPR Application was unacceptable for filing	3
III.	Short-Spacing considerations	5
IV.	Site considerations	6
V.	CTS has another viable option it has rejected	7
VI.	Conclusion	8
VII.	Certification and Certificate of Service	9

I. The Petition is procedurally improper

Although CTS has submitted its pleading as a Petition to Deny, Petitions to Deny do not lie against an application for minor change in the facilities of an authorized station¹. The Petition to Deny must therefore be dismissed.

II. CTS incorrectly suggests that the PPR Application was unacceptable for filing

CTS believes that the PPR Application should not have been accepted for filing based on the date and time the PPR Application was submitted in the Commission's filing system with respect to the expiration of the license for former LPFM station KQEP-LP (now DKQEP-LP).

As an initial matter, it should be noted that the KQEP-LP license expired midnight the night of April 1, 2021 per the FCC's March 11, 2021 Public Notice². KQEP-LP's operator still had an opportunity until Midnight on April 1, 2021 to file a renewal application to avoid expiration of its license, which it ultimately did not do. KQEP-LP's license was therefore formally canceled and deleted on April 2, 2021³. Although CTS argues that the PPR Application is unacceptable for filing based merely upon its filing date, rather than acceptance date, CTS inconveniently overlooks the fact it used the same filing tactics as PPR just a few hours later. CTS has undermined its central argument.

Acceptability is not determined by filing date, it is instead determined when an application for minor change to a licensed facility receives its initial review by Commission staff and is placed on public notice. Section 73.870, 73.3564, and 73.3573 specifies the processing and acceptability criteria for FM Broadcast applications⁴.

1 See 47 U.S.C. §309(c)(2)(A)

2 See <https://docs.fcc.gov/public/attachments/DA-21-295A1.pdf>

3 See <https://docs.fcc.gov/public/attachments/DOC-371377A1.pdf>

4 CTS repeatedly makes reference to acceptability of an application. It should be noted that while the rule sections 73.3564 and 73.3573 are not cross-referenced in 73.801, it does not appear the term acceptance or acceptability is defined within the LPFM subpart, including 73.870, and therefore the Full Power acceptability criteria has been used in this context as no other context is available. Regardless, there is no rule specifying that acceptability criteria for LPFM stations occurs before FCC review or has any different meaning in practice for an LPFM than a Full Power station.

Section 73.3564(b) states, in part:

“Acceptance of an application for filing merely means that it has been the subject of a preliminary review by the FCC's administrative staff as to completeness”

Section 73.3573(f) states, in part:

“The FCC will periodically release a Public Notice listing those applications accepted for filing. Processing of these applications will be on a “first come/first serve” basis with the first acceptable application cutting off the filing rights of subsequent applicants”

The PPR Application was reviewed by the Commission and placed on public notice on April 2⁵, by which time the license for KQEP-LP had formally expired and the KQEP-LP license was deleted and canceled in the Commissions databases for failure to file a renewal application.

The CTS Application was reviewed by Commission Staff and placed on public notice April 5⁶. CTS likewise states in the CTS Application that the KQEP-LP license had expired and also requested that the KQEP-LP license no longer be considered, although as discussed above, the KQEP-LP license had not formally expired when the CTS Application was filed, nor deleted in the Commission Databases until the following day.

It is clear that the PPR application was both filed and accepted prior to the CTS application, so the PPR application would cut off the filing rights of the CTS application. The applications would not be Mutually Exclusive (MX) because the CTS Application was both filed and accepted one day later by the Commission.

Because the KQEP-LP license has now formally expired and has been deleted, further protection of KQEP-LP's license in the PPR Application is unnecessary.

5 See <https://docs.fcc.gov/public/attachments/DOC-371301A1.pdf>

6 See <https://docs.fcc.gov/public/attachments/DOC-371332A1.pdf>

III. Short-Spacing considerations

Many LPFM stations become short-spaced due to subsequent applications by Full Power and FM Translators due to a difference in interference regulations between the different FM services. Future LPFM applications need not specify a fully spaced site as long as any existing short-spacing is maintained or reduced. This is very important because without an allowance for maintaining such short-spacing, many LPFM stations would be unable to change locations as there may no longer be any fully spaced locations that exist. Many stations with preexisting short-spacing have been allowed to relocate while maintaining or reducing this existing short-spacing. Such applications are routinely granted by the Commission, indeed the spacing rules contained within 73.807 account for such short-spacing situations.

CTS suggests that by moving from one channel to another, KPPS-LP must specify a fully spaced facility and can no longer maintain short-spaced conditions, even to stations it already has preexisting short-spacing with. However, the Commission has previously found that an LPFM can move to a first adjacent channel and continue to enjoy short-spacing protections towards stations that it already has such existing short-spacing to.

As an example, in the case of Wimberly Valley Radio's (WVR) minor change application for LPFM station KVVH-LP (Fac. ID 192509, LMS Application File 0000094151), WVR proposed moving KVVH-LP one channel from 231 to 232 and reducing short-spacing towards KTFM from 17 km to 6 km. The application was granted December 30, 2019. The Commission found no concern about KVVH-LP moving from one channel to another while continuing to cause (but reduce) short-spacing towards KTFM by 11 km. WVR was not required to specify a fully-spaced site towards KTFM, but rather was able to specify a location that continued to be short-spaced but did not increase the short-spacing.

The PPR Application likewise proposes a very similar situation. It proposes to move KPPS-LP one channel from 248 to 249, and maintain or reduce short-spacing towards K250BY and W248CU. There is no fundamental difference between the two applications. PPR went one step further in the PPR Application to show that no proposed contour overlap will occur to K250BY, or in the case of W248CU the existing overlap will be reduced, even though such a showing is not required for an LPFM station. It should be clear that the proposed location and frequency will maintain or reduce all interference concerns and would therefore result in a favorable interference situation.

CTS and its engineer (David Doherty at Skywave Technologies) acknowledges in the CTS Petition that the Present KPPS-LP license is 1.88 km short-spaced to the K250BY license while the PPR Application proposes a 1.86 km short-spacing, a slight reduction in short-spacing. Standard FCC practice and 73.208(c)(8)⁷ would round this to the nearest km. The difference between 1.86 km and 1.88 km is de minimus and short-spacing per 73.208 remains exactly the same. It is clear in the CTS Petition that CTS acknowledges and agrees with PPR that there is existing short-spacing of 1.88 km towards K250BY and that the PPR Application does not increase this short-spacing. PPR has met the requirement to maintain or reduce short-spacing from KPPS-LP towards K250BY.

IV. Site considerations

CTS suggests several commercial towers and other locations that it believes would work on channel 248 instead of the site PPR selected site on 249, however this argument is irrelevant. PPR has specified a rule compliant site which maintains or reduces its existing short-spacing. The proposed site is only available on channel 249. The Commission does not require an applicant to provide a list of alternate sites, nor provide reasons why it chose one site over another to best meet its needs. PPR is also not required to further elaborate on the reasons for its relocation.

⁷ 73.208(c) is cross-referenced by 73.808 which is the applicable LPFM section. 73.208(c)(8) states explicitly: “Round the distance to the nearest kilometer”

V. CTS has another viable option

In late January I brought to the attention of WCTS station manager Steve Davis an alternate frequency, 104.9 MHz (Channel 285) which would meet all spacing criteria for FM Translator station K250BY and would quadruple the coverage area of the station⁸. I also explained to Mr. Davis the need for KPPS-LP to find a new home and was hoping that CTS would consider such a move which would mutually benefit both stations. We even offered to provide assistance if CTS required it. They rejected this option at the time.

CTS did confirm via email that during the AM Revitalization window they intended to file for channel 285 in Window 4, but another broadcaster filed for that Channel during Window 3. CTS instead chose Channel 250 as an alternative. Following the expiration of the Channel 285 Construction Permit by the other broadcaster, Channel 285 is once again open for CTS to use.

We are hoping to avoid continuing a legal battle that CTS started. We are hoping that CTS would reconsider the use of channel 285 which would be available to CTS as a minor change application under recently revised FM translator processing rules. This would allow K250BY the ability to move to channel 285 in order to avoid interference that would be caused if both the PPR and CTS Applications were granted⁹. We are hopeful that the Commission would consider expeditiously granting such an application, should one be tendered, which will further eliminate the burden on Commission staff for having to further act on the CTS Petition. KPPS-LP is unable to use channel 285 due to 73.807 spacing tables which require a 20 km buffer towards WGVX, but FM Translator stations such as K250BY do not have this limitation.

8 K250BY's licensed facility uses a highly directional antenna and covers an area of approximately 45 square km. On channel 285, it could operate from the same building, 10 meters higher height, and similar power level but with a non-directional antenna and meet all contour clearances, serving an area of approximately 180 sq km. If utilizing a directional antenna or a different site, the coverage could be further expanded West, North, and/or Northwest.

9 "...we adopt the NPRM's proposal to allow FM translator stations to remediate interference either caused to or received from another broadcast station by changing channels to any available same-band frequency as a minor change." Paragraph 5, Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference, Report and Order, 34 FCC Rcd 3457

VI. Conclusion

CTS presents weak and conflicting arguments for why the PPR Application should be dismissed. The PPR Application was correctly accepted for filing and placed on notice after the expiration of the KQEP-LP license, met all legal and technical rules including the maintenance or reduction of pre-existing short-spacing towards K250BY and W248CU, and the PPR Application is in the public interest. Since the CTS Application was filed after the PPR Application, the CTS Application should be dismissed and the PPR Application should be granted under the Commission's first come, first served acceptance rules. The public interest will be served through the dismissal of this petition to deny, the expeditious grant of the PPR Application, and the dismissal of the CTS Application. CTS will continue to have an option to substantially improve its service on channel 285 should it choose to tender an application for that channel.

Certification and Service

I, Jeffrey Sibert, hereby certify under penalty of perjury that the statements made in this document are accurate to the best of my knowledge and I comply with the requirements outlined in Section 1.52.

I certify that simultaneously with the filing of this petition through LMS I will send a copy of this petition to the Attorney for Central Baptist Theological Seminary of Minneapolis, Mr. Gregg Skall, via first class mail. An electronic copy is also being sent to Mr. Skall via email.

Respectfully submitted,

/s/

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