

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

Applications of)	
)	
Park Public Radio, Inc.)	File no. 0000142335
For Minor Change to)	Fac. no. 19613
KPPS-LP, St. Louis Park, MN)	
)	
and)	
)	
Central Baptist Theological)	
Seminary of Minneapolis)	File no. 0000142489
For Minor Change to)	Fac. no. 202408
K250BY, Plymouth, MN)	

To: Office of the Secretary

SUPPLEMENT TO APPLICATION FOR REVIEW

1. Park Public Radio, Inc (PPR) licensee of Low Power FM broadcast station KPPS-LP St. Louis Park, MN (“*KPPS-LP*”), files this Supplement to its pending Application for Review due to the release of a new Media Bureau Letter Decision, dated December 22, 2023 in the conflict between Electron Benders, Licensee of Low Power FM station KOKT-LP, and Broken Arrow Catholic Radio, Licensee of Low Power FM station KPIM-LP (“*Electron Benders*”)². The release of *Electron Benders* introduce new facts and circumstances that are pertinent to the pending Application for Review of the Application for KPPS-LP and this supplement should be considered in light of new precedent created in this decision. This supplement is being timely filed within 30 days of the release of *Electron Benders*.

² See *Electron Benders*, DA-23-1205, released December 22, 2023.

I. Background on the Electron Benders Decision:

2. *Electron Benders* compared the applications of two mutually exclusive applications to modify the facilities of licensed LPFM stations following the cancellation of LPFM station KJZT-LP. Both applications were simultaneously filed and therefore mutually exclusive³. The Commission recognized that “both applications were defective when filed because they failed to protect KJZT-LP” as both applications were filed prior to the Commission action canceling the KJZT-LP license.⁴ This supplement specifically will center around this question of acceptability and application timing in this decision as it relates to the similarly situated and pending KPPS-LP and K250BY application conflict.

II. Acceptability of applications

3. The similarities between *Electron Benders* and the KPPS-LP and K250BY application conflict are striking. Both involve competing applications for spectrum vacated by the cancellation of a different LPFM license⁵. Both involve applications that were deemed to have been filed prematurely or were otherwise deemed unacceptable for filing based on their filing date. However, the similarities end here in terms of how the two applications were treated by Media Bureau staff. In the case of KPPS-LP, our application was dismissed for being unacceptable for filing as it was deemed to be filed too early⁶. In the case of K250BY it’s application was granted despite also being “technically premature”⁷ and despite also being filed prior to the formal cancellation of the KQEP-LP license⁸. This is in contrast to the actions taken in *Electron Benders*.

3 *Electron Benders* at 5

4 *Electron Benders* n.3

5 In the case of *Electron Benders*, KJZT-LP requested cancellation of its license. In the case of KPPS-LP and K250BY conflict, the license of KQEP-LP expired for failure to file a license renewal application.

6 See Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, to Gregg P. Skall, Esq., and Jeffrey Sibert, Application File Nos. 0000142489 and 0000142335 (dated July 5, 2022)

7 id.

8 Cancellation of KQEP-LP occurred on April 2, 2021, one day after the filing of the K250BY modification application

4. Here the Media Bureau takes two very diverging paths to deciding the fate of both conflicts despite the very similar circumstances. In *Electron Benders*, the Commission relies upon the WKVE decision⁹ to state that both applications were defective and unacceptable for filing¹⁰. To our knowledge, FCC staff has not used WKVE in the context of the filing of a conflicting LPFM application as it pertains to the cancellation of another LPFM station, previous decisions appear to only involve application of WKVE in the context of a full service station. As such, *Electron Benders* appears to provide new precedent for such an action to be used in the LPFM service, and bring WKVE squarely within the realm of the KPPS-LP and K250BY conflict.
5. The Commission further provides the following statement in the subnote 3 in *Electron Benders* admitting that KOKT-LP and KPIM-LP were both defective because they did not protect the licensed facility of KJZT-LP when filed, but subsequent action by Commission staff canceling the KJZT-LP license no longer had any bearing on the KOKT-LP and KPIM-LP applications.

“Although both applications were defective when filed because they failed to protect KJZT-LP, this defect was cured by the time the applications were acted upon. See WKVE... (upholding the grant of a full service FM station modification application that failed to protect the licensed facilities of another station at the time of filing but where the short-spacing had been eliminated before staff acted on the application and explaining that “[o]ur broadcast licensing procedures do not require the return of applications that were unacceptable at the time of filing but which came into compliance with our technical rules prior to the deadline for corrective amendments. We will not take adverse action on [an application] based solely on its acceptability as filed, when subsequent events prior to staff review resulted in a fully acceptable application.”).

6. It is important to note that the Commission specifically spells out that applications that were deemed defective and unacceptable at the time of filing due to failure to protect another license (in this case KJZT-LP) can nevertheless be grantable when Commission staff process the applications. The Media Bureau chose not to dismiss the applications of KOKT-LP and KPIM-

9 WKVE, Semora, Memorandum Opinion and Order and Notice of Apparent Liability, 18 FCC Rcd 23411 (2003). (WKVE)

10 WKVE at 26. “For the reasons stated above, the acceptability of the WKVE upgrade on the date of filing was contingent on the grant of the WEND downgrade. Thus, we agree with Piedmont that the Upgrade Application was unacceptable at the time of filing.”

LP despite specifically stating they were defective and unacceptable at the time of filing, but this defect was cured by the time the applications were acted upon as KJZT-LP had already been canceled by subsequent Commission action. The Commission specifically stated in this subnote that it will not take adverse action on an application when subsequent actions cured this acceptability defect.

7. PPR made a similar argument at multiple times in its pleadings¹¹, including its objection to petition to deny and its subsequent pleadings, that the application was acceptable as KQEP-LP was formally canceled, despite the Commission rejecting such argument at that time¹². It is a surprise therefore that the Commission has now stated that *WKVE* holds precedent for the application of premature LPFM applications filed prior to the cancellation of an LPFM station.
8. It is clear that the Media Bureau should have applied *WKVE* in the context of the conflict between KPPS-LP and K250BY as it did in *Electron Benders*. The license of KQEP-LP was long cancelled by the time the Commission acted on the applications of KPPS-LP and K250BY, and should have no longer been a consideration as the short-spacing to KQEP-LP was eliminated prior to the action of Commission staff. These arguments of PPR were rejected by Commission staff in its prior pleadings, yet the Commission stated otherwise in its arguments in *Electron Benders*.
9. In addition, *WKVE* also spells out that the Commission should have issued a deficiency letter prior to denying an application that did not fully comply with its technical rules before dismissal.¹³ Such letter would have addressed Commission's unwillingness to continue to waive the pre-existing short-spacing towards K250BY and W248CU so that PPR would have been

11 See for example Opposition to Petition to Deny, filed May 3, 2021 p. 3-4. "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." Similar arguments were made in subsequent pleadings.

12 Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, to Gregg P. Skall, Esq., and Jeffrey Sibert, Application File Nos. 0000142489 and 0000142335 (dated July 5, 2022)

13 *WKVE* at 26. "Had the staff first considered the Upgrade Application, it would have issued a deficiency letter. At that point, Southern would have been required to amend its proposal and would have been given a date certain by which such an amendment was due."

able to amend its application nunc pro tunc to specify an alternate site. PPR was never issued a deficiency letter explaining the spacing concern and was denied the ability to file an application nunc pro tunc following its dismissal. PPR was therefore deprived of the ability to compete with the application of K250BY for spectrum vacated by the cancellation KQEP-LP in violation of precedent set in *WKVE*.

III. Conclusion

10. Commission staff should have applied precedent in *WKVE* towards the competing applications of KPPS-LP and K250BY in a manner similar to *Electron Benders* by accepting both applications for filing as Commission review of both applications occurred months after staff action to cancel the license of KQEP-LP. Based on the applications of KOKT-LP and KPIM-LP in *Electron Benders*, and the statements in footnote 3, applications of KOKT-LP, KPIM-LP, KPPS-LP, and K250BY would all have been defective and unacceptable for filing at the time their applications were received, however staff action occurring after the cancellation of KQEP-LP and KJZT-LP should have made all the applications acceptable for filing, but only KPPS-LP was singled out and dismissed. The Commission needs to clear up this apparent abrupt change in policy.
11. In order for Commission staff to have correctly applied the precedent of *WKVE* similarly to *Electron Benders* in the context of the KPPS-LP and K250BY application conflict, Commission staff should have no longer taken into account the long expired and canceled KQEP-LP license. Doing so would have made both applications acceptable for filing and comparable. As KPPS-LP was the first filed application, the Commission should have first studied the KPPS-LP modification application and issued a deficiency letter stating that Commission staff would not allow the short-spacing towards the licensed K250BY facility, and possibly also the W248CU facility. PPR would have then been able to file an amendment to resolve the K250BY and

W248CU spacing issues as PPR has previously shown it intended to do. The Commission would then be able to compare both applications and either grant the KPPS-LP application as first in line, or compare the two applications as simultaneously filed¹⁴.

12. The Commission should reverse its decision granting the K250BY application and dismissing the KPPS-LP application, and simultaneously return both K250BY and KPPS-LP applications to pending status. PPR can then file its amendment clearing up any remaining spacing concerns towards K250BY. Media Bureau staff can then compare the two applications and issue a permit to the application that succeeds on further comparative grounds.

Respectfully submitted,

/Jeffrey Sibert/

Jeffrey Sibert

President

Park Public Radio, Inc.

3340 Utah Ave S.

St. Louis Park, MN 55426

612-791-2806

jeff@parkpublicradio.org

January 22, 2024

¹⁴ PPR has previously argued in its Opposition to Petition to Deny that KPPS-LP was filed first and should be subject to the first come first served filing procedures. Although the Commission has dismissed this reasoning, in light of *Electron Benders* and the Commission now explicitly extending *WKVE* to LPFM application conflicts, we now reassert our original contention that KPPS-LP was filed first and should receive cutoff protection. Even if the Commission disagrees, KPPS-LP should at a minimum be compared to the K250BY Application as simultaneously filed and not dismissed as they are otherwise comparable.

CERTIFICATE OF SERVICE

I, Jeffrey Sibert, President of Park Public Radio, Inc., hereby certify under penalty of perjury that the statements made in this document are accurate to the best of my knowledge and comply with all Commission rules and regulations.

I further certify that true copies of the Application for Review were mailed first class, postage prepaid, this 22 day of January, 2024 to:

Greg Skall, Esq.
Counsel to Central Baptist Theological Seminary of Minneapolis
Telecommunications Law Professionals PLLC
1025 Connecticut Ave, NW Suite 1011
Washington, DC 20036

And served by email on:

Albert Shuldiner, Esq., Division Chief,
Audio Division, Media Bureau
Federal Communications Commission

James Bradshaw
Senior Deputy Division Chief, Audio Division, Media Bureau
Federal Communications Commission