

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
WHKA FM 87.7 Inc.)
)
Application for a Construction Permit for a) Application File No. 233185
New Low Power FM Station at) Facility ID No. 788033
Storrs-Mansfield, Connecticut)

MEMORANDUM OPINION AND ORDER

Adopted: May 18, 2026

Released: May 19, 2026

By the Commission:

I. INTRODUCTION

1. We have before us an application for review (Application for Review) filed by WHKA FM 87.7 Inc. (WHKA) on June 27, 2025. WHKA seeks Commission review of a letter decision on reconsideration issued by the Audio Division, Media Bureau (Bureau) on May 23, 2025. The Reconsideration Letter upheld the March 10, 2025, dismissal of the above-captioned application for a new low power FM (LPMF) station in Storrs-Mansfield, Connecticut (Application). For the reasons stated below, we deny the Application for Review.

II. BACKGROUND

2. WHKA filed the Application on December 15, 2023, during the 2023 new LPMF filing window. In the Application, in lieu of an authorized FM band frequency, WHKA specified an operating frequency of 87.7 MHz, which is within the 6 MHz frequency band allocated to broadcast television

1 Pleading File No. 274386.

2 WHKA FM 87.7 Inc., Letter Decision, Ref. No. 1800B3-CEG, Application File No. 233185 (MB May 23, 2025) (Reconsideration Letter).

3 WHKA FM 87.7 Inc., Letter Decision, Ref. No. 1800B3-CEG, Application File No. 233185 (MB March 10, 2025) (Dismissal Letter).

4 See generally Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window, Public Notice, 38 FCC Rcd 6660 (MB 2023) (Procedures Public Notice). Based on a request from LPMF advocates, the Bureau subsequently delayed the window until December 6, 2023. Media Bureau Announces Revised Dates for LPMF New Station Application Filing Window, Public Notice, 38 FCC Rcd 9589 (MB 2023). The Bureau subsequently extended the close of the window until December 15, 2023. Media Bureau Announces Extension of LPMF New Station Application Filing Window, Public Notice, 38 FCC Rcd 11882 (MB 2023). In the Procedures Public Notice, the Bureau announced that it would accept LPMF applications for the entire FM band (Channels 201-300) during the filing window. See also 47 CFR § 73.805 (providing that all of the frequencies in 47 CFR § 73.201 are available for LPMF stations).

Channel 6 (TV6 Band).⁵ WHKA requested a waiver (Waiver Request) to operate within the TV6 Band.⁶ WHKA justified the Waiver Request on the bases that: (1) there are no available FM band frequencies in its local area;⁷ (2) its proposed LPFM station would not cause interference;⁸ and (3) other FM service uses of the TV6 Band indicate that use of this spectrum by another FM service would be in the public interest.⁹ Specifically, WHKA notes that the Commission has authorized low power television Channel 6 (LPTV FM6) licensees that were already broadcasting FM signals on Channel 199 (87.75 MHz) to continue to do so, with certain restrictions.¹⁰ In addition, WHKA observes that certain Class D noncommercial educational (NCE) FM stations may be authorized to operate on Channel 200 (87.9 MHz) within the TV6 Band if no other commercial frequencies are available.¹¹

3. On March 10, 2025, the Bureau dismissed the Application for failure to specify a valid FM broadcast radio operating channel and denied the Waiver Request, finding that WHKA had not demonstrated special circumstances that would justify a waiver of the Commission's frequency allocation rules. In the *Dismissal Letter*, the Bureau observed that the local unavailability of FM band frequencies and the overall public interest benefits of the LPFM service are not specific to WHKA.¹² Given the potentially broad applicability of such a waiver, the Bureau expressed concerns that the proposal could lead to interference with other stations and compromise the integrity of the Commission's frequency allocations framework.¹³ It distinguished WHKA's proposal from the two previously authorized FM broadcast operations in the TV6 band, explaining that these other uses had been authorized through

⁵ WHKA specified an operating frequency of 87.7 MHz, which it also refers to as "Channel 199." Waiver Request at 1. The FM broadcast radio band is the band of frequencies extending from 88.1 MHz to and including 107.9 MHz and the TV6 frequency band is 82-88 MHz. See 47 CFR §§ 73.310(a)(10)-(11); 73.603.

⁶ See Application, attachment entitled "WHKA FM 87.7 – Requests for Waiver of Rule.pdf" (uploaded Dec. 6, 2023) (Waiver Request). In the Application for Review, WHKA states that its proposed operation would require waiver of the following rules: 47 CFR §§ 73.310, 73.805, 73.201, 73.501, 73.512, 73.825, and 74.1205. Application for Review at 3. WHKA also requested waiver of the distance separation rules, which the Bureau declined to consider because it dismissed the application on other grounds. See *Dismissal Letter* at 1, n.2, *Reconsideration Letter* at 5, n.34.

⁷ Waiver Request at 1.

⁸ *Id.*

⁹ *Id.* (referring to: (1) stations using FM channel 200 (87.9 MHz) under rules applicable to Class D stations at 47 CFR § 73.512 and (2) LPTV FM 6 operations).

¹⁰ *Id.*; see generally, *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Fifth Report and Order, 38 FCC Rcd 6975, 6980, para. 8 (2023) (*Fifth LPTV Order*) (permitting existing FM6 LPTV stations to continue to provide FM6 operations); 47 CFR § 74.790(o) (setting forth certain conditions for LPTV stations that provide FM6 radio service).

¹¹ Channel 200 is available only for use of existing Class D stations required to change frequency. 47 CFR § 73.501(a) n1. Such operation is not allowed if the proposed Class D NCE station would be within 250 miles of the Canadian border or would cause interference to a TV6 station or an FM station operating on FM channels 201, 202, or 203. 47 CFR § 73.512(a)(2)).

¹² *Dismissal Letter* at 2-4 (citing *Birmingham Christian Radio, Inc. and Radio South Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 7909, 7915, para. 19 (2003) (finding that market definitions are more appropriately addressed in a rulemaking proceeding); *Sunburst Media LP and Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 1366, 1368, para. 6 (2002) ("[I]t has long been Commission practice to make decisions that alter fundamental components of broadly applicable regulatory schemes in the context of rulemaking proceedings, not adjudications"); *Great Empire Broadcasting, Inc.* 14 FCC Rcd 11145, 11148, para. 8 (1999) ("It is generally inappropriate to address arguments for a change in rules where third parties, including those with substantial stakes in the outcome, have had no opportunity to participate, and in which we, as a result, have not had the benefit of a full and well-counseled record.") (internal citations omitted)).

¹³ *Dismissal Letter* at 2-3.

notice-and-comment rulemakings, were subject to strict eligibility limitations, and intended to preserve existing service that would otherwise have been lost due to regulatory changes.¹⁴ For these reasons, the Bureau denied the Waiver Request and dismissed the Application for failure to specify a valid FM broadcast radio operating channel.¹⁵

4. On April 3, 2025, WHKA filed a petition for reconsideration (Petition)¹⁶ of the *Dismissal Letter*, reiterating that: (1) there are no available FM band channels in its local area;¹⁷ (2) the proposed station would not cause interference to any other broadcast station and satisfies the Commission’s rules regarding interference protection for LPFM stations to adjacent FM channels, translator and booster inputs, as well as ‘co-channel’ Channel 6 TV stations;¹⁸ and (3) the two existing FM operations on the TV6 Band (Class D NCE and LPTV FM6) demonstrate that that spectrum is available for use by FM stations and that an LPFM station should be allowed in the TV6 Band because it is functionally equivalent to a Class D or LPTV FM6 station.¹⁹

5. On May 23, 2025, the Bureau denied the Petition for failure to demonstrate a material error in the *Dismissal Letter* or to raise additional facts not known or existing at the time of its last opportunity to present such matters.²⁰ The Bureau affirmed that WHKA had failed to present special circumstances justifying waiver of the authorized use of the TV6 Band. It reiterated that lack of local channel availability is not a special circumstance—many LPFM applicants in densely populated areas could similarly have difficulty locating an available FM frequency.²¹ Although harmful interference in this situation is not defined in the rules (because LPFM stations are not authorized to operate in the TV6 Band), the Bureau found that WHKA’s claim of non-interference could be made by other LPFM stations and therefore did not demonstrate special circumstances.²² Finally, the Bureau found that the LPFM stations are not technically, functionally, or statutorily equivalent to LPTV FM6 operations or Class D NCE stations, such that the rules or policy considerations applicable to one service should extend by analogy to the other—in fact, such reasoning would effectively eviscerate the distinct regulatory regimes applicable to these different types of FM service.²³ The Bureau emphasized that when the Commission

¹⁴ *Dismissal Letter* at 3 (referring to LPTV FM6 operations and Class D NCE stations).

¹⁵ *Id.*

¹⁶ Pleading File No. 268930.

¹⁷ Petition at 2, 8.

¹⁸ *Id.* at 2, 4, 7. WHKA also argued that it satisfies the requirements of the *U.S. – Canada Working Arrangement* regarding operation within 250 miles of the Canadian border. Petition at 5-6 (citing *Working Arrangement for the Allotment and Assignment of FM Broadcasting Channels under the Agreement between the Government of Canada and the Government of the United States of America Relating to the FM Broadcasting Service*, available at <https://www.fcc.gov/broadcast-agreements-canada> (executed in 1991, amended in 1997) (*U.S. – Canada Working Arrangement*)).

¹⁹ *Id.* at 6-7. WHKA also argued that its proposed LPFM station was “statutorily equivalent” to the one Class D translator operating on Channel 200, K200AA, Sun Valley, Nevada, which rebroadcasts NCE Class C0 station KAWZ, Twin Falls, Idaho, and therefore must be treated the same. *Id.* at 6 (citing Local Radio Community Act of 2010 (LCRA), Pub. L. No. 111-371, 124 Stat. 4072 (2011) (providing that LPFM and FM translator stations are both secondary services and are “equal in status”)).

²⁰ *Reconsideration Letter* at 4 (citing 47 CFR § 1.106(c); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964)).

²¹ *Reconsideration Letter* at 5.

²² *Id.* at 5.

²³ *Id.* at 4-5 (noting that, to the extent that WHKA argues that it should be allowed to operate in the TV6 band because there is a single FM translator licensed in that band, LCRA’s “equal in status” requirement does not

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authorized certain LPTV FM6 operations and Class D NCE operations in the TV6 Band, it placed stringent limits on these uses and expressly rejected the idea of further expansion of FM radio service in this spectrum beyond these limited categories.²⁴ Moreover, it noted that WHKA's arguments regarding other existing FM radio operations in the TV6 Band apply equally to all LPFM applicants, not just to WHKA, and therefore should form the subject of a rulemaking, not an individual waiver in a licensing proceeding.²⁵ For these reasons, the Bureau concluded that none of the factors presented by WHKA warranted a waiver of the Commission's core allocation rules.²⁶

6. In the Application for Review, WHKA contends that special circumstances justifying waiver exist whenever "the strict application of a rule would preclude service despite no technical barrier, and where the public interest would be better served."²⁷ It argues again that the unavailability of an operating channel in its area is a special circumstance warranting waiver, and that by finding otherwise the Bureau "attempt[ed] to diminish the significant technical, logistical, and legal burdens" involved in locating an available frequency.²⁸ WHKA also likens its difficulty finding an available channel to the "special circumstances" of a Class D NCE station unable to find an operating frequency and thus permitted by section 73.512(a)(2) to operate on Channel 200.²⁹ It reiterates its claim that its proposed operation would not cause harmful interference to any other broadcast station—either because the proposed station would meet spacing and contour overlap provisions established for other services or frequencies or would be eligible for a waiver of such requirements.³⁰ Finally, WHKA urges that LPFM stations should be permitted to operate in the TV6 Band because the two authorized FM uses of this band establish that Channels 199 and 200 are "bona fide frequencies in the FM broadcast band" and that FM stations using these frequencies has already been shown to be in the public interest.³¹ According to WHKA, LPFM service is functionally equivalent to Class D NCE and LPTV FM6 operations due to: (1)

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mandate identical licensing procedures for LPFM and FM translator stations and citing *Foundation for a Beautiful Life, Inc.*, Memorandum Opinion and Order, 36 FCC Rcd 15933, 15945-46, paras. 16-17 (2021)).

²⁴ *Id.* at 5; see also *Changes In The Rules Relating To Noncommercial Educational FM Broadcast Stations*, Second Report and Order, 69 FCC.2d 240, 259, para. 59 (1978) ("[W]e will use Channel 200 exclusively in the manner described and will limit stations to their present facilities") (*Second Report and Order*); *Fifth LPTV Order*, 38 FCC Rcd at 6988, 7006-7, paras. 24 ("We adopt our proposal to allow only FM6 LPTV stations with 'active' FM6 STAs to continue to provide FM6 service") and 61 (rejecting a plan to allow additional FM radio stations in the TV6 spectrum and stating, "We find that the record does not support such a plan to remove a portion of the remaining spectrum allotted for television use and converting it to radio use. We find that the plan is neither feasible, because of the possibility of interference; nor efficient, because receivers are not capable of receiving FM stations below 87.7 FM; nor appropriate, because TV6 spectrum is still needed for broadcast television use.").

²⁵ *Reconsideration Letter* at 4-5, n.30.

²⁶ *Reconsideration Letter* at 5. The Bureau did not reach WHKA's contention that it satisfied the terms of the *U.S. – Canada Working Arrangement*, as it affirmed the dismissal of the Application on other grounds. In the *Dismissal Letter*, the Bureau declined to consider WHKA's request for waivers of sections 73.825 and 74.1205(b) of the rules to allow it to be short-spaced to WVCC-LD, Westmoreland, New Hampshire (WVCC). See *Dismissal Letter* at 1, n.2 (noting that sections 73.825 and 74.1205 do not set out spacing requirements for the requested frequency of 87.7 MHz and therefore there is no applicable spacing requirement to waive).

²⁷ Application for Review at 9.

²⁸ *Id.* at 3-4.

²⁹ Application for Review at 6 (citing 47 CFR § 73.512(a)(2)).

³⁰ Application for Review at 2, 4; Petition at 4; Application, Attachment entitled WHKA FM 87.7 - Comprehensive Technical Statement.pdf.

³¹ Application for Review at 8-9.

technical and operational similarities between all FM services, especially from a listener's standpoint;³² (2) similar policy goals for the Class D NCE and LPFM services;³³ and (3) the secondary status of both Class D and LPFM services.³⁴ WHKA argues that, when the Commission authorized Class D NCE stations in 1978, it stated that the approved use of Channel 200 was "for the time being" and therefore left open the possibility of additional future uses.³⁵ From a policy standpoint, WHKA contends, the Bureau's denial of its Waiver Request frustrated the "core purpose of the LPFM service to expand local, noncommercial voices in communities underserved by other media outlets."³⁶

III. DISCUSSION

7. We deny the Application for Review. An application for review of a final action taken on delegated authority will be granted when, *inter alia*, such action: conflicts with statute, regulation, precedent or established Commission policy; involves a question of law or policy which has not previously been resolved by the Commission; involves application of a precedent or policy that should be overturned; or makes an erroneous finding as to an important or material factual question.³⁷ The Commission's rules do not permit the grant of an application for review "if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass."³⁸ Here, we find that the Bureau's actions in the *Reconsideration Letter* were consistent with statute, regulation, precedent, and established Commission policy, as explained below.

8. We agree with the Bureau that the Waiver Request does not meet the standard set out in *WAIT Radio*³⁹ and subsequent cases. The Commission's rules may be waived for good cause shown.⁴⁰ When an applicant seeks waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action.⁴¹ The Commission must give waiver requests "a hard look," but an applicant for waiver "faces a high hurdle even at the starting gate"⁴² and must support its waiver request with a compelling showing.⁴³ Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.⁴⁴ It has long been Commission practice to make decisions that alter fundamental components of broadly applicable regulatory schemes in the context of rulemaking proceedings, not adjudications.⁴⁵ Here, WHKA has

³² *Id.* at 5-6.

³³ *Id.* at 6.

³⁴ *Id.* at 6.

³⁵ *Id.* at 7.

³⁶ *Id.* at 5.

³⁷ 47 CFR § 1.115(b)(2).

³⁸ 47 CFR § 1.115(c).

³⁹ *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) (*WAIT Radio*).

⁴⁰ 47 CFR § 1.3.

⁴¹ *WAIT Radio*, 418 F.2d at 1157.

⁴² *WAIT Radio*, 418 F.2d at 1157.

⁴³ *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090, 7094, para. 9 (1999).

⁴⁴ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (1990) (*Northeast Cellular*)).

⁴⁵ *Sunburst Media LP and Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 1366, 1368, para. 6 (2002); *see also, e.g., Birmingham Christian Radio, Inc. and Radio South Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 7909, 7915, para. 19 (2003) (finding that arguments challenging market definitions are more appropriately addressed in a rulemaking proceeding); *Great Empire Broadcasting, Inc.* 14 FCC Rcd 11145, 11148, para. 8 (1999) (finding that "[i]t is generally inappropriate" to question the validity of

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failed to show either special circumstances or that deviation from the Commission's rules in this instance better serves the public interest.

9. *Channel unavailability.* The “technical, logistical, and legal burdens” that LPFM applicants may encounter when searching for an available channel are common to many applicants and therefore do not constitute special circumstances warranting waiver.⁴⁶ As the Bureau noted, “[m]any applicants in densely populated areas could similarly have difficulty locating an available FM frequency.”⁴⁷ WHKA's situation in this respect is not unique or special.⁴⁸ Therefore, this factor does not support grant of the Waiver Request.

10. *Lack of Interference.* WHKA's claim that its proposed station would not interfere with other FM or TV broadcast stations is likewise not a special circumstance. Various rules limit the potential for interference to the reception of other broadcast signals—most commonly by means of minimum distance separation requirements or signal strength contour overlap prohibitions. There is no specific interference-related rule governing LPFM operation in the TV6 Band because these frequencies are not authorized for LPFM use. Therefore, in order to consider the merits of WHKA's claim of no interference, we would need to assess to what degree its proposed operations are analogous to existent interference rules for other situations and services. We need not engage in this exercise, however, because we agree with the Bureau that regardless of what interference standard may be appropriate in these circumstances, WHKA's proposed station is not distinguishable from other LPFM stations from an interference standpoint. Many LPFM stations, if proposing use in the TV6 Band, could assert that they meet the same spacing or contour overlap requirements. Moreover, we note that with respect to grandfathered LPTV FM6 operations in this band, WHKA does not meet and could never meet the primary requirement imposed to avoid interference, which is that the LPTV FM6 station must already exist and have an “established track record of not causing interference to adjacent channel FM stations or their own television signal.”⁴⁹ For these reasons, we conclude that WHKA's claim regarding lack of interference is not a special circumstance justifying waiver.

11. *Existing FM operations in the TV6 Band.* WHKA argues that its proposed LPFM operation is equivalent to the two authorized FM uses of the TV6 Band—grandfathered LPTV FM6 operations and some Class D NCE stations—and that the existence of these authorized uses demonstrates that the TV6 Band generally is prospectively available for use by other FM stations. This argument does not present a special circumstance supporting a waiver request. To the extent that WHKA's proposed station may share policy goals or technical features with LPTV FM6 and Class D NCE services, so do all

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Commission rules in a restricted adjudicatory proceeding “where third parties, including those with substantial stakes in the outcome, have had no opportunity to participate, and in which we, as a result, have not had the benefit of a full and well-counseled record.”) (internal citations omitted); *Community Television of Southern California v. Gottfried*, 459 U.S. 498, 511 (1983) (“[R]ulemaking is generally a ‘better, fairer, and more effective’ method of implementing a new industry-wide policy than the uneven application of conditions in isolated license renewal proceedings.”).

⁴⁶ See Application for Review at 3-4 (objecting to the application process generally, including the “actual process an LPFM applicant must follow to assess spectrum availability and prepare a compliant application”; the fact that “all applicants are realistically bound to locations which are both considered ‘local’ and at which they can site their facilities”; and a concern that the Commission does “not provide technical or legal assistance,” but instead “recommend[s] that applicants hire ‘outside help’”).

⁴⁷ *Reconsideration Letter* at 5.

⁴⁸ See generally, *Northeast Cellular*, 897 F. 2d at 1166-67.

⁴⁹ See *Fifth LPTV Order*, 38 FCC Rcd at 6983, para. 13 and 7005, para. 58 (addressing interference concerns by limiting modifications and service areas of LPTV FM6 stations as well as limiting LPTV FM6 stations to “a finite group that have already proven they do not cause the interference that many of the Part 73 technical rules for FM stations are intended to prevent.”).

other LPFM stations. Importantly, when the Commission authorized FM use of the TV6 Band, it did so through notice-and-comment rulemakings in which all affected stakeholders, including the multiple stations directly affected by the proposed action, had the opportunity to participate.⁵⁰ An individual waiver request is not the proper forum to deliberate whether, generally speaking, LPFM operation in the TV6 Band is comparable to existing uses or would serve the public interest, and we decline to do so here.

12. We reject WHKA's assertion that the FM Band is statutorily or otherwise defined as including 87.7 and 87.9 MHz, and its reliance on the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), the Table of Frequency Allocation, and the LCRA is misplaced.⁵¹ The PIRATE Act⁵² defines what constitutes pirate radio broadcasting, not FM radio broadcasting. The Table of Frequency Allocations allocates 88-108 MHz to broadcasting but does not distinguish between radio and television and therefore is not relevant to determining allocations between the two.⁵³ Finally, the LCRA does not discuss or define frequencies within the FM Band and therefore is not applicable here.⁵⁴ None of these sources ultimately support WHKA's request for a waiver to operate in the TV Band.

13. Regarding WHKA's comparison of the Waiver Request to what it calls the "special circumstances" of allowing a Class D station to operate in the TV6 Band if no regular commercial FM channel is available,⁵⁵ we observe that such operation is permitted through a rule of general applicability at section 73.512(a)(2), which applies only to existing Class D NCE stations.⁵⁶ This is entirely different from the Waiver Request at issue here, which essentially seeks authorization for a new service in the TV6 Band not provided in the rules based on issues of general applicability. Indeed, the existence of a codified exception to regular Class D channel assignments once again illustrates the point that policy decisions affecting an entire broadcast service are best undertaken as part of a rulemaking proceeding, not a waiver

⁵⁰ See *Fifth LPTV Order*, 38 FCC Rcd at 6980. While the Bureau granted special temporary authority (STA) to allow certain stations to conduct LPTV FM6 operations, the Bureau's actions, in addition to being temporary, are not binding on the Commission. *Fifth Report and Order*, 38 FCC Rcd at 6978, para. 4. See *Comcast Corp. v. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008) (affirming the "well-established view that an agency is not bound by the actions of its staff if the agency has not endorsed those actions") (internal citations omitted).

⁵¹ Application for Review at 4.

⁵² 47 USC § 511 (defining "pirate radio broadcasting" to mean "the transmission of communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license by the Commission....").

⁵³ 47 CFR § 2.106.

⁵⁴ See LCRA, *supra* note 19.

⁵⁵ See Application for Review at 6.

⁵⁶ See 47 CFR § 73.512(a)(2). We find that WHKA's claim that 47 CFR § 73.512(a)(2) incorrectly reflects current relevant treaty requirements is irrelevant to this proceeding, as section 73.512(a)(2) relates to neither LPFM stations nor waiver requests, but rather to Class D noncommercial educational stations, which is a different class of stations than WHKA. Likewise, the Bureau's assignment of FM translator station K200AA to Channel 200 is not relevant here, as K200AA is not an LPFM station, K200AA was not authorized pursuant to a waiver, and no FM translators were subsequently authorized to operate in the TV6 Band. Moreover, this action, which was not accompanied by a letter decision explaining the basis of the decision, has no precedential value and as a staff decision is not binding on the Commission. See *Comcast Corp. v. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008) (affirming the "well-established view that an agency is not bound by the actions of its staff if the agency has not endorsed those actions") (internal citations omitted); *Applications for Authority to Construct and Operate Multipoint Distribution Service Stations at Three Transmitter Sites*, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 11162, 11175, para. 41 (1995) ("unexplained staff actions are not precedent to be followed"); *United States Cellular Operating Co. Compliance with Section 22.942 of the Commission's Rules in the Rockford, IL MSA*, Order, 15 FCC Rcd 4372, 4378, para. 10 (2000) (grant of application by public notice without explanation did not serve as precedent).

in an individual adjudication.⁵⁷

14. *Conclusion.* For the foregoing reasons, we deny the Application for Review.

IV. ORDERING CLAUSES

15. IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,⁵⁸ and Section 1.115(g) of the Commission's Rules,⁵⁹ the Application for Review filed by WHKA FM 87.7 Inc. on June 27, 2025 (Pleading File No. 274386) IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵⁷ See *supra*, note 41. In this respect, WHKA's reliance on the Commission's statement that "for the time being, we will use Channel 200 exclusively in the manner described" is misplaced. See Application for Review at 7 (citing the *Second Report and Order*, 69 FCC.2d at 259, para. 59). The Commission has chosen to expand the use of this frequency range since that time, specifically in the case of adopting rules for LPTV FM6 operations on 87.75 kHz, but only after providing notice and seeking comment in a rulemaking proceeding.

⁵⁸ 47 U.S.C. § 155(c)(5).

⁵⁹ 47 CFR § 1.115(g).