Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In re Application of	)	
	)	
All Pending Translator Applications	)	File No.
	)	Facility ID
For Pending Construction Permits for	)	*Refer to Appendix A*
New FM Translator Stations	)	
	)	

PETITION FOR RECONSIDERATION

Center for International Media Action, Common Frequency, Inc, and Prometheus Radio Project ("Petitioners"), pursuant to 47 CFR §1.106 of the Commission's rules, hereby submit these timely filed[1] Petitions for Reconsideration to the *Appendix A-Identified* pending FM translator applications[2] ("Applicants"). On June 8, 2018 the Commission denied[3] Petitioners' *Informal Objections* ("Objection") concerning an identified list of translator applicants for whose applications were in question of complying with the Local Community Radio Act ("LCRA" or "the Act").[4] This Petition demonstrates that the Audio Division erred in denying the *Informal Objections*, seeking Reconsideration on the decision ("Denial"). Petitioners believe the Commission contravened the Administrative Procedure Act, in violation its own rules.[5] Denial is

[1] Per §1.106(f), §1.4(b). Thirty days from June 8, 2018 falls on a weekend, which permits a filing deadline on the next business day, July 9, 2018.
[2] We effectively withdraw with prejudice the mistaken Objections, and withdraw without prejudice the 160 Objections attached to AM class C and D stations.
[3] See letter to Petitioners from Albert Shuldiner, Chief, Audio Division, *In re: "All Pending Translator Applications"* (referred to as "Denial" hereafter) 1800B3-TSN, DA 18-597, June 8, 2018.
[4] H.R. 6533 — 111th Congress: Local Community Radio Act of 2010." www.GovTrack.us. 2010. May 12, 2018 <https://www.govtrack.us/congress/bills/111/hr6533>.
[5] 5 U.S.C. ch. 5.

additionally gauged arbitrary and capricious, failing to account for information on the record, or in some instances irrelevant.

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I. OBJECTION COMPORTS TO PROCEDURAL GUIDELINES.

Petitioners maintains that full qualification was met in entering *Informal Objections*:

(1) Filling was in the public interest. Commission states Petitioners "must allege properly supported specific facts that, if true, would establish a substantial and material question of fact that grant of the application would be inconsistent with the public interest."[6] FCC states Petitioners are deficient of explanation to challenge certain applications, relying only on "cursory examination."[7] To the contrary, Petitioners' charge that "all FM translator service applicants must comply with [the LCRA]."[8] Potential statutory or regulatory violation is substantial for which compliance is in the public interest. Supporting this question of fact, Objectors contend that the FCC provided no LCRA compliance guidance to recent cross-service translator applicants.[9] Urban spectrum statistics and maps of filing results were presented illustrating divergence from LCRA interpretations derived within the LPFM proceedings.[10]

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[6] *Denial*, page 2.

[7] The Commission believes Objection was solely based upon Objectioner's "cursory examination" claim. See Objection, page 9: "This is not a hollow assertion, as a cursory examination of a small number of pending new-translator construction permits quickly revealed these, which would preclude the possibility of an LPFM station at the same location."

[8] Page 1, *Objection*.

[9] Due diligence research, as stipulated by Petitioners stipulated that nowhere within *Revitalization of the AM Radio Service* MB Docket No. 13-249 is LCRA mentioned, nor within Public Notice (e.g., *Media Bureau Announces Filing Dates and Procedures For AM Station Filing Window for FM Translator Modifications*. DA 15-1491) or Filing Instructions (i.e., *Filing Instructions For Cross-Service Fm Translator Auction Filing Window For Am Broadcasters To Be Open July 26 – August 2, 2017* DA 17-533 (June 6, 2017), *Filing Instructions For Second Cross-Service Fm Translator Auction Filing Window For Am Broadcasters (AUCTION 100)* DA 17-1168 (December 4, 2017)) is LCRA mentioned (see *Objection* page 8, "no mention of the LCRA Section 5 anywhere").

[10] *Objection pages 5-6:* Map of NE U.S, Colorado-Utah, and SE U.S. translator coverages greatly outcovers LPFM coverages. Pages 10-11: Comparison of market 60 dBu coverages (Population/Area) for LPFM vs. translator NY, NY, Raleigh-Durham, NC, Louisville, KY, Reno, NV, Oklahoma City, OK, Wilkes Barre-Scranton, PA, San Antonio, TX, & Atlanta, GA demonstrating superiority of translator coverage. Then see Para. 19. "We also adopt our tentative conclusion that our primary focus under Section 5 must be to ensure that translator licensing procedures do not foreclose or unduly limit future LPFM licensing..." *Creation of a Low Power Radio Service,* Fourth Report and Order and Third Order on Reconsideration, MM Docket No. 99-25. March 19, 2012. ("LPFM Fourth Report and Order").

(2) Multiple Objections is in the public interest. LCRA Section 5(1) depends on Section 5(2) to lend actionable meaning:[11] 5(2) determines the ratio of LPFM-translator spectrum in a community, and 5(1) mandates the conserved spectrum ratio must be made available. Without 5(2) one might erroneously read 5(1) as *spectrum for at least one LPFM channel (the last one) only must be kept open in every local vicinity*.[12] LCRA intent loses meaning under such reading; it was never interpreted as such within the LPFM Proceeding. Since the FCC is absent of enforcement of Section 5(2) for AMR filing window applicants, disputes have fallen separately on diluted 5(1) interpretations. Petitioners' quandary resides in the fact that it is not in the public interest to wait until the last LPFM channel is precluded by a translator to then contest Section 5(1) execution failures by petitioning that single translator application. Hence, all new pending translator applications would then appear sweepingly implicated by the absence of upholding Section 5(2).[13] Their award could therefore collectively strike a sizable preclusive blow to LCRA spectrum-ensuring. Collective intervention is in the public interest.

(3) Petitioning individual applicants is appropriate. Informal Objection is an appropriate measure for contest. Since the passing of LCRA, each new/major change application is required to demonstrate LCRA compliance. Each Auction No. 83 application was vetted, and each major-change waiver (Mattoon Waiver) application must demonstrate Section 5(1) compliance.[14] Encroachment of ensured spectrum by any applicant is a petitionable public interest matter.

II. DENIAL INCONSISTENT WITH FACT AND PRECEDENT.

[11] Section 5(1) states "[The FCC… shall ensure that…] licenses are available to FM translator stations, FM booster stations, and low-power FM stations." Section 5(2) states "such decisions are made based on the needs of the local community."
[12] FCC's "cursory examination" procedural issue qualm wrongly interprets this for onus of needed fact to be presented (Denial, page 2).
[13] It appears unknown what the LPFM-Translator spectrum balances should be in different areas due to the lack of FCC *ensuring*. Thus many translators could be foreclosing on LPFM ensured spectrum.
[14] See *John F. Garziglia, Letter*, 26 FCC Rcd 12686 (MB 2011) ("Mattoon Waivers").

Denial lacks compelling points to refute the *Objection*. Concerning to topic of "FM boosters", the FCC rejects Petitioners' conclusion that *boosters* are ensured equal spectrum to LPFM and translators.[15] However, Petitioners never included *boosters* within their grievance.[16] Concerning the FCC's defense that it upholds the LCRA, FCC states, "Objectors ignore… processing measures the Commission established in the *LPFM Fourth Report and Order*", and ignores the larger and smaller grids to "preserve LPFM opportunities", and thus "conclude that Objector's argument is without support or merit." But the Commission's material defense of documented LCRA compliance only cites pre-2014 measures. *Objection* never condemned the FCC's *pre-2104* LCRA execution. Petitioners' simply denounced *post-2014* LCRA execution. *Denial* furthermore states Petitioners suggest that spectrum should be equally divided by LPFM, translators, and boosters via *Section 5(3)*.[17] Petitioners never state *Section 5(3)* is the operator. Division of spectrum are Section 5(1) and 5(2) issues.

Petitioners delve into key fallacies within the *Denial* under the following headings in support of reconsideration:

A. DENIAL MISCONSTRUES LPFM SHORT-SPACING CONSEQUENCE.

The Commission misinterprets LCRA Section 5(3) consequences related to LPFM short-spacing. Although the FCC references "cut-off rule which prioritizes pending FM translator applications over later-filed LPFM applications", Petitioners were not referring to the primary act of LPFM short spacing by a translator, but an unanticipated side-effect of short spacing counter

[15] *Denial* page 3.
[16] Denial argument is superfluous at best, raising non-issue as a reason to object.
[17] *Denial* page 3. " We reject Objectors' conclusion that equality of status as secondary services necessarily implies that the Commission must ensure that all remaining available spectrum in all markets is equally apportioned among FM translators, FM boosters, and LPFM stations."

to LCRA Section 5(3). In normal full-power allocation short-spacing rules, because two full power stations are co-equal in status, both stations may short space as long as they are compliant with §73.215 and are contour compliant on either side. Although there are cut-offs as a result of new allocations, both parties are equally allowed to modify out towards each other to the limitation of contours and short spacing. This is not so with LPFM.

The act of short-spacing does not comply within the frame of future LPFM minor changes after the short-spacing happens. The LPFM is barred from moving closer towards the direction of the translator, even though the move might comply interference-wise with the translator. However, the translator can move closer to the LPFM. This sets up a hierarchy in which the translator may lay claim to future annexation of coverage towards the direction of the LPFM, but the LPFM cannot. This is not a cut-off issue, or an engineering issue. It is that the strained interpretation of §73.807(d) is not harmonized with Section 5(3). At any moment past the initial short-spacing cut-off, the pursuit of technical change is barred from the LPFM facility via perpetual one-sided mutual exclusivity. The translator is awarded higher service within that dynamic resulting in *service bias,* and both parties do not compete on an equal basis because the LPFM is barred from competing. For the same reason this violates *Ashbacker*.[18]

B. DENIAL REASONING IS CONTRARY TO SECTION 5(1) PRECEDENT CONCERNING SPECTRUM ENSURING.

FCC states in *Denial*:

> To the contrary, nothing in MM Docket 99-25 (Creation of a Low Power Radio Service) supports Objectors' claim that Section 5 mandates that the Commission promote the equal use of spectrum by the LPFM and FM translator services or the licensing outcomes that Objectors seek to impose on FM translator new station licensing.[19]

[18] *Ashbacker Radio Corp. v. FCC,* 326 U.S. 327 (1945) ("Ashbacker").
[19] *Denial* page 3.

Precedent within Creation of a Low Power Radio Service*, Fourth Report and Order* states otherwise:

> The LCRA necessarily requires the Commission to make choices between licensing new LPFM and translator stations in some cases, given that the two services compete for the same limited spectrum. Making such choices based on the overall spectrum available to each service does not "favor" one service over the other. **<u>On the contrary, the fact that our interpretation of Section 5(1) enables us to account for the present disparities between the two services</u>** in terms of the number of licensed stations supports its reasonableness. [bold and underline added for emphasis][20]

The rationale for this included:

> ….taking into account existing translators and LPFM stations, or even just those licensed for the first time during the past decade, would militate in favor of the dismissal of translator applications, at least in markets where there is little or no remaining spectrum for future LPFM stations or where substantially fewer licensing opportunities remain.[21]

The FCC's documented interpretation of the LCRA is perspicuous: **to prevent disparities for future secondary service licensing opportunities in spectrum impacted areas** ("the statutory mandate [is] to ensure some minimum number of LPFM licensing opportunities in as many local communities as possible").[22] Yet in the *Denial*, the FCC contrives the arbitrary and capricious new stance "further reject[ing]...the position that Section 5 requires that FM translator or LPFM applications must include a demonstration of spectrum for future LPFM or FM translator stations."[23] It insinuates LCRA enforcement sunsetted at an arbitrary undisclosed date without rulemaking change, public notice, or public comment. **The FCC is in conflict with their interpretation of Section 5(1) in *Fourth Report and Order***.

[20] Para 17. *LPFM Fourth Report*.
[21] Para 12. *Third Further Notice.*
[22] *Ibid*, Para 11.
[23] *Denial* page 4.

C. DENIAL IGNORES SECTION 5(1) *PROXIMITY* PRECEDENT.

The Commission states "We note that nothing in the language of Section 5 of LCRA requires that LPFM licenses be available at the same location as a translator or booster application."[24] In *Third Further Notice*, the FCC interpreted Section 5 to mean otherwise -- to "ensure future LPFM licensing opportunities" "only at locations at which translator licensing will not undermine the Section 5(1) directive."[25] Mattoon waivers required major change moves to locally "not foreclose future licensing opportunities in the LPFM service."[26] Furthermore, if "ensuring" is not interpreted within the same vicinity, then all LPFM or translator "ensuring" could be confined to, say, *a corner of Alaska*, and the LCRA loses all practical meaning.

D. DENIAL ALIGNS WITH SECTION 5(2) PRECEDENT BUT APPEARS NESCIENT OF ITS CONSEQUENCE.

FCC contends, "LPFM stations, with limited coverage and other resource constraints, are better suited to serve more densely populated areas."[27] This statement, which is an interpretation from *LPFM Fourth Report and Order* proclaims **LPFM is a secondary service**

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[24] *Denial,* footnote 13.
[25] Para. 29. *Third Further Notice.*
[26] Page 4, *Mattoon Waiver.*
[27] *Denial*, p 3-4 referencing *LPFM Fourth Report*. While LPFM can serve more people in densely-populated area, this statement may be circular: (1) LPFM coverage is artificially limited by the Commission. LPFM broadcast coverage is not restricted by the LCRA (**see Para 206 "...we believe the issue of increasing the maximum facilities for LPFM stations requires further study. We note, however, that the LCRA does not contain any language limiting the power levels at which LPFM stations may be licensed." Creation of a Low Power Radio Service. *Fifth Order on Reconsideration*. MM Docket No. 99-25. December 4, 2012**). The position is stating since the FCC limits LPFM coverage, the service is better for densely populated communities. Thus, the "needs of the local community" are predetermined by FCC technical decision unconnected with the local community. Although, the FCC investigated upgrading LP-100 to LP-250, seeking input to "allow these stations to better meet the needs of their local communities." (**Para 51. *Creation of a Low Power Radio Service*. Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration. MM Docket No. 99-25. March 19, 2012.**) The FCC has stated there is nothing regulatory that would preclude LP-250, but it has tabled the decision in light of mere simple further technical studies (See Para 11, *Fifth R&O*). These studies were never were pursued in the last 5.5 years. Independent studies have existed within RM-11749 since 2015. (2) "[O[ther resource constraints" is an undefined filler assumption not supported any explanation. What resource constraints exist only in non-densely populated areas?

spectrum preference for urban use under Section 5(2). However, the *Informal Objection* plainly demonstrates that the FCC's licensing priority has supported translators vastly over LPFM priority in a random sampling of cities -- up to 48x more population coverage for translators compared to LPFM within urban areas. The maps provided in the *Objection* clearly demonstrate FCC translator licensing preference not only in urban areas, but all areas.

The FCC is concluding Section 5(2) spectrum needs are tilted towards LPFM in urban areas, yet data presented in *Objection* demonstrates urban spectrum is severely skewed towards translators usage. The *Denial* is unwittingly aligning with the *Objection*. The *Denial*'s embrace of *Fourth Report and Order* infers the mandate to "ensure some minimum number of LPFM licensing opportunities" is still in effect,[28] yet the FCC is not ensuring the required spectrum in these areas.

Petitioners additionally question how the actual needs of the community are ascertained without meaningfully engaging its local population for preference[29] -- this remains unanswered.

E. DENIAL TOUTS SECTION 5(2) UNCERTAIN REASONING FOR RURAL TRANSLATORS.

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[28] *Supra*, note 20.

[29] *Objection* state p. 11 "Applicants make no reference to whether their proposals are based upon the needs of the community. Instead, they are asserting their private viewpoint that their proposed facility is needed for the community. It is clear based upon the data above that in many markets translator spectrum usage vastly exceeds low power FM usage. There is no data from these communities that espouse translator preference. Without unbiased/scientific polls undertaken by a third party, the needs of the community remain unascertained." FCC's arguments concerning Section 5(2) follow from descriptions of their chosen technical capacity without assessing "needs of the local community." Example: If a rural community does not have any local services, or a city is in need of multicultural and/or community broadcast services, those are are LPFM-skewed "needs." If a mountain community is blocked from reception of the only Public Radio service, or a translator could provide a service not already in a market, that is a translators-skewed need. If a city already has ten translators, but only LPFM, its "need" could lie with LPFM. In both practice and within its *Denial,* the FCC provides no cogent explanation, or indication of its compliance gauging these community needs per Section 5(2).

FCC states, “In its analysis of Section 5, the Commission noted that translators are inexpensive to construct and operate, and can effectively bring service to rural and underserved areas.”[30] This interpretation may be untenable. The costs for translators and LPFM are the same: 5-to-300 watt transmitters and off-the-shelf low power nondirectional and directional antennas -- both are sold by the same manufacturers at same prices. *Non-mutually exclusive-granted* LPFM facilities are predominantly licensed in rural and underserved areas of ample spectrum, and like translators, are not anchored by studio or content requirements. Both services need not comply with Section 307(b) comparative licensing processes. Both services consume identical amounts of electrical power and rent identical towers. Both pay similar music licensing fees.[31] The capital and operational costs are the same. The assertion is equivocal.

F. DENIAL DOES NOT ADDRESS CONTINUED LCRA PROCESSING.

Commencing 2011, outside of the Auction No. 83 applications, the FCC required specific major change translator applications requiring waiver (“Mattoon Waivers”) to produce demonstration that the proposal adhered to LCRA via interpretation from LPFM *Third Further Notice.*[32] Specifically, the FCC sought applicants to demonstrate *“*the proposed move does not implicate the concerns raised by the Commission in the recent Third Further Notice in the low-power FM (“LPFM”) docket.”[33] This requirement was not just to be adhered to up to the 2013 LPFM filing window. In a December 2014 *Memorandum Opinion and Order*, the FCC underscored the stipulation over a year after the LPFM filing window (“Sherburne Waiver

[30] *Denial*, page 3 referencing *LPFM Fourth Report.*
[31] TPO for LPFM can be as much as 300 watts considering low gain antennas. LPFM and translators both need to rent tower locations.
[32] *Creation of A Low Power Radio Service*, Third Further Notice of Proposed Rule Making, MM Docket No. 99-25. July 12, 2011 (“Third Further Notice”).
[33] *John F. Garziglia, Letter*, 26 FCC Rcd 12686 (MB 2011) (“Mattoon Waivers”).

MO&O").[34] This reference is pertinent because it infers that **LCRA compliance for LPFM spectrum conservation described in *Third Further Notice* was not exclusively for translator applicants up to the close of the 2013 LPFM filing window**. It is perceived arbitrary for new or major change applicants to simply stop being required to produce individual preclusive LPFM impact studies.

G. AUCTION NOS. 99 AND 100 FAIL TO ACCOUNT FOR PRECLUSION VIA SECTION 5(1) PRECEDENT.

During the entire AM Revitalization Docket proceedings (e.g., rulemaking, window rules, or public notice) no mention of conscious compliance with LCRA was aired by the Commission via FCC documents. A quaggy demonstration of retrospective compliance within the AMR filing windows was submitted in the *Denial*, without any studies, statistics, maps, spectrum audits, etc, to demonstrate actual compliance with the LCRA. The *Denial* theoretically demonstrates how AMR filing window rules ostensibly comport to LCRA objectives. FCC states that since only AM licensees could file for fill-in translators (which additionally could not be assigned), this is sufficient evidence that LCRA compliance was achieved.[35] It then offers unsubstantiated, or relative statements, absent veracity:

> This structural limitation on Auction 99 and Auction 100 filers– absent in the Auction 83 filing window–rendered unnecessary the extreme spectrum-preservation measures implemented for Auction 83 processing
>
> The AM Revitalization windows have had a vastly smaller preclusive impact on LPFM licensing than processing all the Auction 83 applications pending at the time the LCRA was enacted would have had.

[34] In reiterating the four key points of allowing *Mattoon Waivers,* "the Bureau found that waiver of Section 74.1233(a)(1) was in the public interest because… the proposed move was not in an LPFM spectrum-limited market." *Application for a Construction Permit for a Minor Change to a Licensed Facility, Station W267AT, Sherburne, New York*. Memorandum Opinion and Order. FCC 14-193. December 10, 2014.

[35] *Denial*, Page 5.

> Thus, the failure to re-implement Auction 83 processing policies merely recognized the distinction between that filing window and those of Auctions 99 and 100, and does not indicate that "LCRA compliance was forgotten," contrary to Objectors' claim.

The conclusion is devoid of scientific claim or reference to thresholds met, community needs, filing numbers, open channels, objectives, or tangible results. LCRA compliance metric and protocol is undocumented.

It is not difficult to calculate the possible preclusionary effect of a filing window on available channels within an urban area. One would only need to conjure sample lists of AM stations per each market and compare to the number of open frequencies, demonstrating the possibility that the remaining frequencies will be exhausted.[36] This inefficacy is demonstrated below for Pittsburgh, PA (for example[37]):

Pittsburgh AM stations with Daytime 2 mv/m contour extending into urban area:

AM Freq	FM Trans	Call	Community of License
540		WWCS	CANONSBURG PA
570		WKBN	YOUNGSTOWN OH
620	(102.1)	WKHB	IRWIN PA
660	(107.3)	WAMO	WILKINSBURG PA
730	(96.5)	WPIT	PITTSBURGH PA
770	(105.1)	WKFB	JEANNETTE PA
810	(93.3)	WEDO	MCKEESPORT PA
860	(102.9)	WAOB	MILLVALE PA
910	(98.7)	WAVL	APOLLO PA
970	(106.3)	WBGG	PITTSBURGH PA
1020		KDKA	PITTSBURGH PA
1080	(103.9)	WWNL	PITTSBURGH PA

[36] This means that if the number of AM stations in a market exceeds the number of open secondary service radio channels market, there is no difference allowing one application per AM station or infinite amount of applications from infinite applicants.

[37] The example is pertinent to clarify what was previously asserted in the Informal Objection and is merely disproving inaccurate response within the FCC's denial letter. It has no value as data except to corroborate an example protocol to refute the Denial's perceived inaccuracy.

1150	(95.1)	WMNY	NEW KENSINGTON PA
1250	(92.5)	WPGP	PITTSBURGH PA
1320	(99.1)	WJAS	PITTSBURGH PA
1360	(98.9)	WGBN	MCKEESPORT PA
1410		KQV	PITTSBURGH PA
1460	(95.7)	WMBA	AMBRIDGE PA
1510	(98.7)	WPGR	MONROEVILLE PA
1550	(101.1)	WZUM	BRADDOCK PA
1600	(98.1)	WKKX	WHEELING WV

The permitting conclusion is as follows.

Pittsburgh has:
1 LPFM (“NEW” 107.1 FM, does not cover central city).
17 AM (cross-service) translators authorizations
3 FM translators (W204CT, W249BD, W288BO)

TOTAL
20 TRANSLATORS
1 LPFM

With no spectrum left in Pittsburgh**,** the Commission’s structural limitations associated with AMR filing windows failed to uphold LCRA Section 5. This outcome runs contrary to the FCC’s viewpoint on translator licensing procedures from *LPFM Third Further Notice*:

> We tentatively conclude that these considerations establish that the Commission’s primary focus in effectuating Section 5(1) must be to ensure translator licensing procedures do not foreclose or unduly limit future LPFM licensing.[38]

The AM Revitalization Docket is devoid of any cogitation of LCRA. FCC made no conscious effort in the rulemaking to integrate contemplation or systematic process considerations for LCRA compliance. The filing outcome is unassessed, although Petitioners demonstrated LCRA enforcement failure. *Denial’*s rationionalizations do not comport to any explanation or direct proof of efficacy.

[38] Para 13. *LPFM Third Further Notice.*

H. AUCTION NOS. 99 AND 100 STRUCTURAL LIMITATION CLAIMS UNFOUNDED.

The Commission concluded within MM Docket 99-25 that filing caps were ineffective in ensuring spectrum under LCRA. In 2011, the Commission originally attempted to solve the Auction No. 83 filing inundation by prescribing a ten-application processing cap. During the LPFM Docket commenting process, commenter Common Frequency demonstrated within a spreadsheet simulation that the ten-cap would retain 97% of the top 150 urban translator MXs (i.e., consuming 97% of the channels that no cap would have provided).[39] Common Frequency followed-up with an additional spreadsheet simulation demonstrating that an alternative "three-cap" would consume 87% of the top 150 urban translator MXs (i.e., consuming 87% of the channels that no cap would have provided) -- and in the top 30 markets 94% was consumed.[40] A ten cap with a ***one application per local market*** **cap** yielded 87% of the originally-applied market frequencies consumed. The Media Bureau then concurred that caps did not offer appropriate protection[41] to comply with the "ensure" requirement within Section 5(1).[42] Due to limited urban spectrum availability for LPFM and translators, a "grid" approach was opted because processing cap limitations were not strategic enough to address the spatial licensing ensurance of LCRA. The *Denial* even defends that a grid system was needed to be used for Auction No. 83 translator processing "[a]s a result of population distribution

[39] Comment of Common Frequency, September 27, 2010, MM Docket 99-25 via FCC ECFS.
[40] Comment of Common Frequency, January 31, 2011, MM Docket 99-25 via FCC ECFS.
[41] Para 7. "The Media Bureau has carefully reviewed the Common Frequency study. It has found that the methodology is reasonable. Using similar assumptions, the Bureau has undertaken limited analyses of a number of other large markets. It also found that "blocking" translator applications would likely remain following the completion of the cap dismissal process due to the very high number of pending applications and/or discrete applicants in these markets. These findings raise significant concerns about whether the tenapplication cap would be a certain and effective processing policy for preserving LPFM licensing opportunities in many larger markets." *Third Further Notice.*
[42] Para 9 *Third Further Notice*: " Based on the record developed in the proceeding, we tentatively conclude that the ten-application cap is inconsistent with Section 5(1) because it would not "ensure" that licenses will be available in spectrum-congested markets for future LPFM licensing."

differences".[43] The distribution of population of the United States has not changed between 2012 and 2018; Auction Nos. 99 and 100 filing areas contain those same distributions. **Yet with Auction Nos. 99 and 100, the FCC ignored the exhaustive research within the LPFM Rulemakings regarding inefficacy of filing caps related to population distribution differences, and selected a *one application local filing cap*.**

III. ARBITRARY AND CAPRICIOUS.

Arguments presented in the *Denial* are self-inconsistent, inconsistent with FCC precedent, and based on inadequate study.[44]

IV. UNEQUAL TREATMENT.

FCC appears to comply with the Section 5(1) interpretation within *Fourth Report and Order* to account for the "disparities between the two services" up through the *Sherburne Waiver MO&O* (December 10, 2014). Sometime in 2015 or 2016 Section 5(1) enforcement ended without any justification, with applications previous receiving unequal processing treatment to current applications. The FCC processed applications in the past, especially Auction No. 83, differently than current applications, concerning LCRA compliance, without adequate demonstration of cause, which is tantamount to *unequal treatment*.[45]

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[43] *Denial* page 4, "For this reason… the Commission utilized smaller grids to assess and preserve LPFM opportunities 'in core city areas.'" citing *LPFM Fourth Report*.
[44] AM Revitalization exists in a political climate of urgency to save AM stations, lobbying might from NAB, financial interest from translator groups, and is a stated goal of the Chairman. It is not unreasonable to question the possibility of undue political influence.
[45] *Melody Music, Inc., Appellant, v. Federal Communications Commission, Appellee*, 345 F.2d 730 (D.C. Cir. 1965).

V. CONCLUSION.

The Commission provides no justification to arbitrarily deviate from precedent. Petitioners provide comprehensive reasoning to warrant reconsideration of *Reconsideration Objections*. *Applicants* should be required to demonstrate compliance to Section 5 of the LCRA.

VI. REQUEST FOR RELIEF.

Petitioners presented facts and undermined arguments of the *Denial* and so request that:

1. The denied Objections be reconsidered.
2. Community need be studied In translator-laden markets by third-party unbiased and scientific studies, with results determining the outcome of new translator proposals in those markets.
3. An updated LCRA interpretation be established, consistent with LCRA and former FCC precedent, including precedental studies of effects of the presently-applied translators, and future translators, which take into account population density. Ideally, LCRA interpretation would provide predictability into the future for both LPFM stations and FM translators.
4. Dismiss, rescind, or retrospectively intervene with similar measures as with Auction No. 83[46] to effect translator compliance with the forthcoming LCRA interpretation.
5. Permit LPFM stations to use contour-to-contour methods to demonstrate lack of interference with respect to translators.

[46] The lack of retrospective intervention in Auctions No. 99 and 100 compared to said intervention in Auction No. 83; and the presence of population-density considerations in Auction No. 83 but not 99 or 100 is disparate treatment vis *Melody Music, Inc., Appellant, v. Federal Communications Commission, Appellee*, 345 F.2d 730 (D.C. Cir. 1965).

6. Permit LPFM stations to increase HAAT and/or ERP to accomplish spectrum balancing where impermissible imbalance exists.

Respectfully Submitted by,

/s/
Todd Urick
for Common Frequency, Inc

/s/
Paul Bame
for Prometheus Radio Project

/s/
Pete Tridish
for Center for Media Action

July 7, 2018

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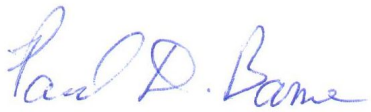
Philadelphia, PA 19101
215-727-9620

AFFIRMED STANDING AS PETITIONERS

I, Paul Bame, reiterate my standing as shown in the Objection.

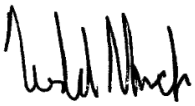
Signed,



Paul Bame
140 E Pomona St
Philadelphia, PA 19144

I, Todd Urick, am a current resident of Roseville, CA. I am within in the coverage area of Appendix-listed Facility ID No.202836, K249FJ, Rocklin, CA. I affirm that this statement and those within the instant filing are true and accurate to the best of my knowledge.

Signed,



Todd Urick
1605 Condor Ct.
Roseville, CA 95661

Appendix A - Captioned Applications -- see separate attachment

Certificate of Service -- see separate attachment