

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In re Application of)	
)	
Mega-Philadelphia LLC	)	File No. BNPFT-20180508ABL
	)	Facility ID No. 202134
For Construction Permit for	)	DA 20-126
W239DS, Camden, New Jersey)	
)	

To: The Commission

APPLICATION FOR REVIEW

Prometheus Radio Project and Paul Bame ("Prometheus"), hereby submit this timely filed¹ Applications for Review ("Review") of the letter decision² of the Audio Division, Media Bureau, dated February 4, 2020 (Ref 1800B3-TSN) ("Recon Decision") denying Prometheus' June 8, 2018 Petition for Reconsideration ("Petition" or "Reconsideration") concerning W239DS, Camden, New Jersey, of licensee Mega-Philadelphia LLC ("Mega"). Review is being sought because the decision is in conflict with statute and precedent, and erroneous in its assessment of fact by the Media Bureau, per §1.115(b)(2)(i) and §1.115(b)(2)(iv).

The Commission should review and reverse the Bureau's decision to grant Mega's application for a new translator service for Camden, New Jersey. Prometheus believes the grant of Mega's translator construction permit violates Section 5 of Local Community Radio Act

¹ Per §1.104(b), §1.4(b). Thirty days from February 4, 2018 falls on March 5, 2020.

² Letter from Albert Shuldiner to Prometheus Radio Project, *In re: Mega-Philadelphia LLC W239DS, Camden, New Jersey*, DA 20-126 (February 4, 2020). ("Recon Decision")

("LCRA" or "the Act").³ Neither the Bureau's original Objection Letter Decision ("Objection Decision")⁴ or current *Recon Decision* directly responds to the Bureau's change of policy concerning Section 5, or Prometheus' specific grievance of violation of the Administrative Procedure Act ("APA").⁵ Within its *Recon Decision*, the Bureau ignores the adopted *broad* interpretation of the LCRA from a prior rulemaking proceeding. Instead, the FCC insinuates that it is not changed policy, but rather the *policies* Prometheus was referring to were actually ephemeral "*ad hoc* processing measure[s]"⁶ (which can change per filing window) to obscure the issue. Moreover, it does not acknowledge any specific definition of Section 5, nor cite any subsequent rulemaking to the *LPFM Proceedings* which augments or adapts the original interpretation of Section 5. This is arbitrary and capricious and in violation of the APA. Furthermore, within its *Recon Decision*, the Commission ignores the Petitioner's evidence within *Reconsideration* that the Commission's purported cross-service translator filing window "structural limitations"⁷ are ineffective and do not comport to the LCRA. The arguments here presented in *Review* are not simply reargued positions; these are grievances concerning failure to account for fact and standing policy that are unanswered by the Commission within *Reconsideration*. This *Review* aims to clearly present issues for the Commission's response, to demonstrate that the purported structural limitations of the AMR filing window do not automatically assure W239DS complies with LCRA. Furthermore, the potential exists for W239DS to interfere with established WPPM-LP listeners outside the W239DS 60 dBu contour, which is uncontestable under §74.1203(a)(3), yet may frustrate the needs of the community.

³ 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>>.

⁴ *Center for International Media Action; Common Frequency, Inc.; Prometheus Radio Project*, Letter Decision, 33 FCC Rcd 5394 (MB 2018) (Objection Decision).

⁵ 5 U.S.C. ch. 5. In fact, neither the *Denial* or *Letter Decision* even cite the APA.

⁶ *Objection Decision*, 33 FCC Rcd at 5396, citing Media Bureau Announces January 10 - January 25, 2013 *Filing Window for Auction 83 FM Translator Application Selections and Caps Showings*, Public Notice, 27 FCC Rcd 15961 (MB 2012).

⁷ Filing window limitations on applicants for LCRA compliance.

Prometheus respectfully requests that the Commission answers it's policy questions and provides filing data to corroborate that their filing window protocols ensure LPFM channels. It is only when the Commission's policy is ascertained that we may gauge the compliance of W239DS.

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SUMMARY.

On May 16, 2018, Center for International Media Action, Common Frequency, Inc, and Prometheus Radio Project (collectively “Petitioners”) filed an *Informal Objection*⁸ concerning the grant of 994 translators resulting from Action No. 100, a filing window for new cross-service FM translators to rebroadcast AM stations⁹. The petitioners contended that Section 5 of the LCRA required the Commission to maintain a protocol for “[e]nsuring the availability of spectrum for low-power FM stations.”¹⁰ The FCC derived its interpretation of the Congressional language of Section 5(1), 5(2), 5(3) within the LPFM proceeding’s *Third Further Notice of Proposed Rulemaking*,¹¹ *Fourth Report & Order*,¹² and *Sixth Report & Order*¹³ (collectively “LPFM Proceedings”). These proceedings decoded the intent of the legislation and prescribed policy for efficacious filing limitations within the Low Power FM vs. FM translator service filing dynamic. These two principles shaped the FCC’s interpretation of Section 5, or *policy*. Both of these radio broadcast services compete for *secondary service* FM radio channels. Policy was

⁸ Critics of the proceedings prior to this Application for Review charge that petitioning individual translators is improper when the rules are the real problem, and that the time to participate was during the AMR rulemakings, insinuating that we LPFM advocates wait, while watching damage occur to LPFM stations, until the next proper opportunity is afforded. We note that LCRA issues actually were raised during the AMR by Common Frequency and REC Networks, and were completely ignored rather than engaged, prior to the AM windows, foreclosing polite activism.

⁹ An FM presence is the only survival hope of some AM stations, which means they really need **primary** FM service (the same argument holds for LPFM), and yet are offered only secondary service and often where no spectrum exists, or where they are forced to compete with LPFM stations for their survival. AMR Docket commenters realized the need for primary FM service and offered several proposals.

¹⁰ LCRA Section 5. Informal Objection, p. 2.

¹¹ *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Third Further Notice of Proposed Rulemaking, 26 FCC Rcd 9986 (2011) (“Third Further Notice”).

¹² *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364 (2012) (“Fourth Report and Order”).

¹³ *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402 (2012) (“Sixth Report and Order”).

developed to determine how the permitting of each service should be moderated (i.e., how channels should be conserved for availability taking into consideration the “need” within specific communities). Also with the LPFM *Sixth Report and Order*, the FCC, within *separate* but related measure, prescribed a *processing protocol* -- which the FCC originally refers to as an “extraordinary *ad hoc* processing measure”¹⁴ -- for pending Auction No. 83 translators (“2003 translators”). The *2003 translators* had been pending for almost a decade and could not be processed without procedures that comported to the newly-forged (at the time) LCRA Section 5 policy (a policy interpretation that prescribed a minimum number of vacant LPFM channels that needed to be reserved within the specific confines of each individual radio market).

Petitioners provided evidence that demonstrated the results of these Auction Nos. 99 and 100 for translators diverged from the FCC’s precedent interpretation of the Section 5 LPFM “ensure” directive. The *ensure directive*, in its most rudimentary interpretation, mandates conserved secondary-service spectrum for both services in instances where there is filing opportunity for either new LPFM or translator services, or in cases where substantially-modified facilities might preclude reserved spectrum in spectrum-limited markets. For this specific contest concerning W239DS, Auction No. 100 allotted FM spectrum without any consideration for future LPFM opportunities, varying degrees of spectrum that was available in each community, or community needs -- processing measures dictated vis-à-vis by LCRA. Such licensing potentially frustrates the fullest operation of co-channel WPPM-LP -- which is now short-spaced -- in serving the needs of the local community. What was apparent is somewhere between the 2013 LPFM filing window and Auction Nos. 99 and 100, the FCC abandoned their

¹⁴ *Objection Decision*, 33 FCC Rcd at 5396, citing Media Bureau Announces January 10 - January 25, 2013 *Filing Window for Auction 83 FM Translator Application Selections and Caps Showings*, Public Notice, 27 FCC Rcd 15961 (MB 2012).

policy concerning this matter. No place within the AM Revitalization rulemaking (“AMR”) was there any mention of LCRA. However, in practice, this LCRA policy did not sunset after the close of processing Auction No. 83 translators applications, or the 2013 LPFM filing window. We know this because translators applying for mutually-exclusive relocations (longer distance moves than permitted under §74.1233(a)(1)) utilizing the request of a *Mattoon Waiver*¹⁵ continued to require a LPFM preclusion study post-2013. Furthermore, the Bureau reiterated aspects of their original policy within the *Objection Decision*.¹⁶ With the absence of any apparent efficacious translator filing limitations comporting to the LCRA within AMR, precedent implicitly directs translator applicants to provide a LPFM preclusion study within their construction permit application, or the FCC needs to validate, via their own preclusion studies, that each AMR translator adheres to LCRA. Otherwise, there would be no LCRA compliance.

Within the *Objection Decision*, the FCC contradicts itself and does not substantiate LCRA compliance. *Objection Decision*, unexpectedly, embraces Section 5(2) (“needs of the local community”) policy, suggesting LPFM is better suited for cities, and translators are suitable to serve “rural and underserved areas”.¹⁷ *Objection Decision* also brought up *grid studies*, as that was how Section 5(1) compliance was maintained within Auction No. 83 application processing.¹⁸ But then, two paragraphs below their cited precedent interpretation of LCRA, the FCC departs from these policies and provides a blanket statement that *one-application-per-AM station application limitation*¹⁹ (“one-cap”) duly complied with LCRA.²⁰ This specific filing limitation suggests LPFM availability in the middle of, say, rural North Dakota and New York

¹⁵ *John F. Garziglia, Letter*, 26 FCC Rcd 12686 (MB 2011) (“Mattoon Waivers”).

¹⁶ *Objection Decision*, pages 3-4.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, page 4.

¹⁹ The total measure was one application per AM station

²⁰ *Ibid.*

City, are to abide by a homogeneous spectrum conservation metric and the same community needs. Even at face value this assertion is conspicuously dubious.

The FCC then purports the *one-cap* was efficacious in ensuring LPFM channels -- i.e., compliance with the Section 5(1) ensure policy -- a policy that takes into consideration spatial considerations -- and the Section 5(2) "needs of the community" policy. The *one-cap* LCRA compliance was posited only in theory, discarding the obvious LPFM disparity in actual filing results asserted by Petitioners. The Bureau denied Petitioner's Objection citing the FCC was automatically complying with LCRA via a *one-cap* without any corroboration.

Petitioners filed Petition for Reconsideration June 8, 2018 concerning 328 of the 994 translator stations that were the subject of the informal objections. Petitioners asserted the Bureau did not take into account its established policy concerning ensuring availability of LPFM, and changed the definition of the LCRA to retroactively explain a new policy -- essentially moving the goal post, or eliminating the goal post entirely. FCC does not cite any rulemaking where their policy automatically changed. Petitioners cite the lack of explanation as an APA violation. Furthermore, petitioners provide evidence the Commission previously stated straight "filing caps," do not comply with the LCRA mandate to ensure spectrum.²¹²² Moreover, Petitioners demonstrated real-life execution of the filing limitation cited in the *Objection Decision* did not, in fact, ensure LPFM availability.²³ The Bureau issued a decision July 13, 2018 denying

²¹ *Petition for Reconsideration*, p. 13.

²² Spectrum shortage is a root cause of translator/LPFM difficulty obviously compounded by adding additional cross-service translators. This was recognized by AMR Docket commenters, a surprising number of whom proposed adding TV channels 5 and 6 to the FM band. FM fill-in translators neither originate programming, nor contribute to ownership diversity, and so their channels could also be retasked to relieve spectrum shortage.

²³ *Petition for Reconsideration* page 10-12.

the Petitioner's standing concerning the contest.²⁴ However, the FCC stated that Paul Bame from Prometheus substantiated his standing as a listener of WPPM-LP, Philadelphia, Pennsylvania to which W239DS, Camden, New Jersey is short-spaced. The contest concerning W239DS was not dismissed with the other contests and was set aside for Reconsideration. On February 4, 2020, the Media Bureau issued a letter decision (*Recon Decision*) dismissing the Reconsideration on material merit.

This *Recon Decision* merely reiterates in detail how the cross-service translator auction limited application filings, and therefore complies with LCRA. The description of limitation is a theoretical treatise and provides no evidence that it has conserved (ensured) any LPFM channels. The *Recon Decision* ignores Prometheus' question of policy change and compliance with the APA. The Bureau ignores the evidence the Commission found "caps" incompatible with enforcing the ensure requirement of the LCRA, and does not acknowledge the factual evidence within the Reconsideration showing how the filing limitation failed in execution.

Prometheus submits this *Review* to again, argue the points, with emphasis, the Commission failed to acknowledge within its *Recon Decision*. The key questions are:

1. The Commission derived its own interpretation Section 5 within the *LPFM Proceedings* to derive non-arbitrary definitions: Regarding the definition of Section 5(1): "[O]ne of our broad principles for implementation of the LCRA is our primary focus under Section 5(1) must be to ensure translator licensing procedures do not **foreclose** or **unduly limit future**

²⁴ *Center for International Media Action; Common Frequency, Inc.; Prometheus Radio Project*, Letter Decision, 33 FCC Rcd 6733 (MB 2018)

LPFM licensing²⁵ [underline and bold added for emphasis] and “...our interpretation of Section 5(1) enables us to account for the present disparities between the two services.”²⁶ which acts as precedent for the Commission to assert the same remedial action today. Regarding definition of Section 5(2): Within the definition discussion of Section 5(2) to gauge the “needs of the community” the FCC gauged densely-populated areas chiefly in need of LPFM, and rural areas chiefly in need of translator service.²⁷ Section 5(2) definitions were re-asserted within the *Objection Decision*.²⁸ Do these definitions stand today? If so, explain how in execution translator licensing is potentially dominant -- in both spectrum and filing numbers -- in both rural and urban areas by far, and many areas have no, or virtually no licensed LPFM station, and no LPFM channels were reserved for future use. If the aforementioned definitions do not stand today, cite the proceeding where the LCRA policy was changed, and discuss the new non-arbitrary interpretations of Section 5(1) and Section 5(2).

2. The FCC states the structural limitation comport to the LCRA. Can the Commission provide spectrum data/filing number of ensured LPFM spectrum within the United States to corroborate this?

²⁵ ¶59. *Sixth Report & Order*.

²⁶ ¶17. *Fourth Report and Order*.

²⁷ In attempt to gauge a non-arbitrary standard for “needs of the community”, the Commission interpretation of Section 5(2) suggests the ratio of LPFM and translators in each area. From LPFM *Fourth Report & Order*, the FCC determines that LPFM is the best usage for urban secondary service spectrum within specific areas: “We believe that LPFM stations can best serve the needs of local communities in areas with significant populations where LPFM service is practical and sustainable.” This viewpoint is recently underscored in *Objection Decision* “LPFM stations, with limited coverage and other resource constraints, are better suited to serve more densely populated areas.” The FCC compliments that viewpoint by 6 stating translators are better suited towards rural areas: “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.”

²⁸ *Ibid*.

3. There is no mention of the LCRA in *AMR*. Is associating the inherent structural limitations to LCRAs structural limitations after-the-fact, without contemplation of how these limitations relate to LPFM channel-ensuring, simply a *post-hoc* development?

4. The Commission determined filing “filing caps” don’t uphold the mandate of Section 5 because the amount of LPFM channels available in any one place is tied to location (i.e. “caps” do not ensure “spectrum-limited” locations conserved -- precisely why the FCC reiterates in *Objection Decision* that grid method was previously used to account for “population distribution differences.”). Why did the FCC opt for a “one cap” when it was fully cognizant that due to population distribution differences that caps did not ensure LPFM opportunities in spectrum-limited areas?

5. A central question is if the *AMR* filing limitations ensured future LPFM licensing ability. The cities of Pittsburgh, Pennsylvania and Oklahoma City, Oklahoma have virtually no LPFM services. All the spectrum was allocated for translators, and no spectrum is left for LPFM. Does this comport with the “ensure” mandate to assure availability of LPFM? Do zero LPFM services and zero spectrum reserved for future LPFM within these major cities comply with Section 5(2), the “needs of the community”, and LCRA in general?

6. If the Commission’s *AMR* filing window structural limitations do not comply with LCRA, do all *AMR* applicants, including Mega, comply?

DISCUSSION.

The Media Bureau issued its *Recon Decision* without addressing Prometheus' primary concerns surrounding the grant of a new cross-service FM translator facility for Camden, New Jersey. Prometheus asserts three key issues for Review:

- (1) The Commission developed a reasoned interpretation of Section 5 within the *LPFM Proceedings*. Since then, that reading has been abandoned, with at times actions taken to the opposite of the reading. There is no other proceeding where the Commission adapts or augments that reading. Furthermore, the Commission has not explained its current reading, and at time provides a self-conflicting and/or ambiguous reading of the rule. This is a perceived APA violation.
- (2) The filing window structural limitation does not comply with the LCRA ensure policy. As posited previously, the regime does not conserve LPFM channels to make them available.
- (3) In practice, the structural limitation does not deliver what it purports.

LCRA SECTION 5 POLICY ABANDONED WITHOUT REASON.

At the center of Prometheus' grievance is the abandonment of the Commission's LCRA Section 5 policy. Upon the passing of the Act, the job of the Commission was to interpret the law. Within the *Objection* and *Recon Decisions*, the FCC redefines Prometheus' *LCRA policy*

questions as a “extraordinary *ad hoc* processing measure”²⁹ to avoid answering difficult questions. *Policy* is the interpretation of rules to provide a framework of principles for adherence to the law. *Processing measures* are the specific protocols, for which, in this case, relate to the procedures of the Auction No. 83 translator filing auction. Prometheus asserts the Commission is not adhering to its promulgated LCRA policy from a Commission Order (**an APA-defined Rule Making process**).³⁰ Furthermore, nowhere within the FCC rulemaking record has the Commission redefined this policy. Originally, within Objection, Prometheus points to the record for the Commission’s *broad* LCRA policy:

[O]ne of our broad principles for implementation of the LCRA is that our primary focus under Section 5(1) must be to ensure that translator licensing procedures do not foreclose or unduly limit future LPFM licensing, because the more flexible translator licensing standards will make it much easier to license new translator stations in the future...³¹

But it does not stop at this. The *LPFM Proceedings* lend copious reference on the significance of ensuring urban LPFM radio channels and a baseline quantity of reserved spectrum. At the root, Commission made clear that Section 5 ensure rule resonated with the Communications Act’s mandate for fair distribution of service:

We adopt the interpretations of the three Section 5 licensing standards proposed in the Third Further Notice. In its broadest terms, **Section 5(1) clearly requires the Commission to ensure that some minimum number of FM translator and LPFM** “licenses are available” throughout the nation when licensing new FM translator and LPFM stations....

...In addition, our interpretation is consistent with the title of Section 5, “Ensuring Availability of Spectrum for Low-Power FM Stations,” **as well as the Commission’s longstanding license allocation policies under Section 307(b) of the Communications Act of 1934**, as amended (“Act”), which directs

²⁹ *Supra* 6..

³⁰ 5 U.S.C. Sec. 553.

³¹ *Sixth Report & Order*, ¶159. Prometheus *Informal Objection*, page 3.

the Commission to ensure “a fair, efficient, and equitable distribution of radio service” “among the several States and communities.” In contrast, interpreting Section 5 to require us to license new translator and LPFM stations without regard to the number of operating stations in each service, as EMF advocates, would be inconsistent **with ensuring the availability of spectrum for both services, as well as Section 307(b)’s direction.**³²[bold added for emphasis]

The Commission was clear in its original interpretation regarding Section 5(1) and 5(2) that LPFM channels were not only to be reserved, but the viability (quality) and distribution (quantity) needed to be fair among the two services. And it delved into the minimum amount of LPFM channels that should be reserved by comparing that to the number of non-commercial educational (NCE) licenses serving a community:

...we believe that the NCE FM service, the radio service most similar to the LPFM service, provides one measure of the relative needs of communities for LPFM service and a point of reference for setting LPFM licensing availability goals.³³

....we are principally guided by the number of top150-market NCE FM full power stations, the service that is most comparable to the LPFM service.³⁴

With licensing of the NCE band to peak capacity at this point, most communities have at least a selection of eight NCE channels. This was the rationale for minimum “channel floors” -- the amount of LPFM channels to save per city. The FCC was also decisive that Section 5 also commanded Commission to chose LPFM over translator if those “ensure” licensing goals were not met:

The LCRA necessarily requires the Commission to make choices between licensing new LPFM and translator stations in some cases, given that the

³² ¶14 *Fourth Report and Order*

³³ ¶25 *Third Further Notice*

³⁴ ¶26 *Third Further Notice*

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.”³⁵ [bold added]

The Commission also provided explicit reference of the intentions of Section 5(2). Section 5(2) states “such decisions are made based on the needs of the local community.” Proceedings delved into Section 5(2), suggesting where each service is better suited for service. From *Fourth Report and Order*, “We believe that LPFM stations can best serve the needs of local communities in areas with significant populations where LPFM service is practical and sustainable.”³⁶ This viewpoint was underscored in the Media Bureau’s *Objection Decision*: “LPFM stations, with limited coverage and other resource constraints, are better suited to serve more densely populated areas.”³⁷ The FCC compliments that viewpoint by stating translators are better suited towards rural areas: “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.”³⁸

The Commission was emphatic in its assessment of Section 5(2). This was posited within a direct statement: **“We... adopt our proposed interpretation of Sections 5(1) and (2) together to require that LPFM and translator licenses be available in as many ‘local communit[ies]’ as possible, according to their needs...”³⁹ [bold and underline added for emphasis]**. This was followed by the FCC’s interpretations of Section 5(2) in relation to LPFM within the same paragraph:

³⁵ ¶17 *Fourth Report and Order*

³⁶ ¶39 *Fourth Report and Order*

³⁷ *Supra* 27.

³⁸ *Ibid.*

³⁹ ¶18 *Fourth Report & Order*

...In contrast, the LPFM service was created “to foster a program service responsive to the needs and interests of small community groups, particularly specialized community needs that have not been well served by commercial broadcast stations.” Numerous LPFM service and comparative licensing criteria are designed to promote these goals. These criteria include a requirement that licensees be local, a licensing preference for those applicants with an established community presence, and a licensing preference for those applicants that pledge to locally originate at least eight hours of programming per day. In addition, ownership restrictions and time-share rules necessarily result in expanded ownership diversity. Based on these factors, we find that LPFM stations are **uniquely positioned** to meet local needs, particularly **in areas of higher population density where LPFM service is practical and sustainable** [bold and underline added for emphasis].⁴⁰

In other words, because LPFM services (1) were created to foster a program service responsive to the needs and interests of small community groups, particularly specialized needs, (2) require the licensees to be local, (3) have community presence, (4) require a locality pledge, (5) have ownership restrictions, (6) have sharetime rules, and (7) expand ownership diversity -- and as previously mentioned, they have (8) limited coverage and (9) limited resource constraints (fundraising from enough population to make station viable, volunteering, business underwriting) -- on top of LPFM service’s (10) non-commercial educational mission, LPFM is “**uniquely positioned**” (as in, **translators do not have these qualities for this specific area of use**), to “**meet local needs**” in areas of “**higher population density**”, i.e., **city centers**.

The Commission has gone to the extent of opting LPFM service as the exclusive Section 5(2) need in high density, urbanized areas:

The Section 5(2) directive to base translator and LPFM licensing decisions on the “**needs of the local community**” could be interpreted to concern **solely the needs of communities for additional LPFM** service on the

⁴⁰ *Ibid.*

theory that **translators cannot be expected to provide meaningful local service, at least in larger markets.** [underline and bold added for emphasis]⁴¹

The Section 5(2) definition could not be more clearly defined than this. It might be easy for one to weasle around these statements as being suggestions or the statements not precluding other possibilities, but the intent here is palpable: **The Commission needed a non-arbitrary reasoning to gauge the needs of the local community and it defined it.**

There is a general sense this precedent has evaporated somewhere⁴² and some new lazy definition of unknown origin has supplanted it. Within its letter decisions, the Commission does not substantiate a definition of Section 5(2) anywhere. Looking back at an FCC decision in 2018, within *Revitalization of the AM Radio Service*, Order on Reconsideration (2018) (responding to Prometheus), the Commission attempts to subtly upend Section 5(2) policy via magic-wand post-hoc decree: “[Because the AM revitalization proceeding] addresses community needs by allowing improved primary service by AM broadcasters, the requirements of Section 5 of the LCRA have been met.”⁴³ Unfortunately, in no rulemaking was Section 5(2) re-dedicated to specifically assist AM Broadcasters. But let’s analyze this if it hypothetically was: So in total, regarding Section 5(2) we have (A) LPFM was best suited in urban areas, and (B) translators were best suited towards rural areas. The Order on Reconsideration then implies that (C) cross-service translators are a need in *all communities*, contrived on-the-spot. Read all together, “C” cancels out “A” and “B”, and we are left with *LPFM is best suited in urban communities unless a cross-service translator desires to locate within rural or urban communities first*. This essentially nullifies Section 5(2) to mean nothing except that the needs

⁴¹ ¶14, Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, Third Further Notice of Proposed Rulemaking, 26 FCC Rcd 9986 (2011).

⁴² See timeline in Appendix B

⁴³ ¶14. *Revitalization of the AM Radio Service*, Order on Reconsideration, FCC 18-64 (2018).

of the community align with the secondary service broadcast entity that first applies for the frequency -- which is the exact protocol of *if no LCRA existed*. **We are left with Section 5(2) having garbage meaning under this assertion.** Within *Recon Decision*, again, the FCC dilutes the meaning of Section 5(2) to just mean *whatever*.

As we noted in Mr. Justin Howze and Marissa C. Repp, Esq., Letter Decision, DA 19-1229 at 2 n.7 (MB Dec. 4, 2019) (Howze), the fact that an LPFM station's limited coverage area makes the station more effective in an urban area is not the same as saying that only LPFM stations may be licensed in urban areas. LPFM stations have in fact been licensed at smaller communities and in rural areas, and likewise FM translators have proved effective in more densely populated urbanized areas. Indeed, and as we observed in Howze, to accept such a segregation of the two services into urban-only LPFMs and rural-only FM translators would implicitly negate LCRA Section 5's mandate to treat the two services as equal in status.⁴⁴

The problem with the Bureau's reasoning is that Section 5(2) loses all meaning by saying both services are the "needs" everywhere determined by who (LPFM or translator) first files for the channel. The reasoning submitted is arbitrary and capricious. First, it negates the original policy. Second, it deems Section 5(2) meaningless. If the Commission now believes in the above statement, they need to explain their new policy -- specifically, how they are gauging the need for translator and LPFM on a per-community basis. Because if the definition is what they profess in *Recon Objection* and *Howze*, Section 5(2) is nullified to mean "translators and LPFM are homogeneous across the United States -- and not per community -- and these 'needs' are determined by the respective applicants of these services and not the communities." The FCC suggestion of "a segregation of the two services into urban-only LPFMs and rural-only FM translator" is an exaggeration of the argument seeking to corrupt it. The original policy was meant to mean that there is a **first-priority preference (or "need") for LPFM in urban areas -- not segregated areas for the two services.** This priority works in-hand with Section 5(1),

⁴⁴ Page 6, Footnote 24, *Recon Decision*.

which mandates the availability of LPFM channels (reserving LPFM channels). The needs of the community are at the least met when LPFM licenses reach the same number of NCE channels available in the area.⁴⁵ This is in-line with the Commission's Section 307(b) sentiment of achieving fair distribution of service.⁴⁶ This was all gleaned from the *LPFM Proceedings*. Finally, the statement closes with "...to accept such a segregation of the two services into urban-only LPFMs and rural-only FM translators would implicitly negate LCRA Section 5's mandate to treat the two services as equal in status." FCC appears to argue the opposite of what they stated in *Objection Decision*: "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..."⁴⁷ So which is it? Both?

The above are not the only examples of incongruous judgment in conflict with precedent concerning LCRA policy. Within *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Report and Order ("Translator Interference Rulemaking"), the FCC disregards the precedent that existing translator stations are required to protect LPFM-ensured spectrum: "[S]uch an approach is not required by Section 5 of the Local Community Radio Act of 2010 (LCRA), which pertains to the licensing of new rather than existing stations" (MB Docket No. 18-119, ¶.9) citing suggestion of *docket commenters* (?!). The record shows the Commission extended this requirement not only to new applications, but **already licensed facilities**:

⁴⁵ *Supra* 33 and 34.

⁴⁶ *Supra* 32.

⁴⁷ *Objection Decision*, page 3.

We also find that Section 5 is most reasonably interpreted **to require consideration of existing licenses**. As we observed in the Third Further Notice, the word “new” appears in the first clause of Section 5 **but not in subparagraph 1, suggesting that we should consider the availability of both new and existing stations in ensuring that “licenses are available” for both services.**[bold and underline added for emphasis]⁴⁸

The *Translator Interference Rulemaking* also permitted translators to relocate to any channel desired within a quest for interference relief. Not only does this preempt any LCRA mandate to reserve LPFM channels, but such a regime of translators relocating to non-mutually exclusive-to-itself-channels / non-adjacent channels was previously found to “be inconsistent with the requirement of Ashbacker and its progeny to provide potentially competing applicants the opportunity to compete on an equal basis under procedures applicable to all similarly-situated applicants.”⁴⁹

Furthermore, the Bureau repeats that “*ad hoc* processing measure” of preclusion studies were only required for Auction No. 83 translator processing. But this seems contradicted by the maintained FCC expectation of a preclusion showing for all translator minor change *Mattoon Waiver* requests, which continued after the LPFM filing window past the *Revitalization of the AM Radio Service* rulemaking, with reference to the stipulation in December 2014.⁵⁰ Furthermore, *Mattoon Waiver* requests were not for new stations but **existing stations**. It is important to note, Prometheus is reiterating this to establish a policy history -- not “reargue”

⁴⁸ ¶16 *Fourth Report and Order*.

⁴⁹ Page 4, *Letter to Robert D. Augsberg from Peter H. Doyle “In re: W218CR, Central City, Kentucky.”* DA 14-1365. Media Bureau. September 19, 2014.

⁵⁰ This was affirmed in December 2014 (a year after the LPFM filing window) within Letter Decision: “...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.” See *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.

perceived *ad hoc* measures. The FCC does make comment regarding *Mattoon Waivers* with *Recon Decision* for which we comment:

“First, nothing in *Garziglia*⁵¹ or any subsequent Commission decision requires a preclusion study, and currently the staff does not require them.” The third prong of the four-pronged approach with *Mattoon* was demonstration the translator did not affect LPFM channels within a “spectrum-limited market” (“we note that its proposed move to Effingham would not foreclose future licensing opportunities in the LPFM service”). How does an applicant demonstrate non-foreclosure of future LPFM licensing? A preclusion study. The FCC would associate the term “spectrum-limited market” with an *ad hoc* procedure from the Auction No. 83 processing regime (since that term was associated with the processing from that filing window). However, it reaffirms that translator applicant waiver-seekers provide demonstrations not to affect “spectrum-limited” markets long after the processing of Auction No. 83 translators and the LPFM filing window in the December 2014 release of the *Sherbourne* letter decision.⁵² If this is an *ad hoc* procedure for Auction No. 83, why is it being used in a *waiver policy*? The FCC also does not cite when the policy ended or reference a public notice of its end.

“Second, in *Garziglia* it was noted that “certain temporary restrictions on the modification of translator stations were necessary to preserve LPFM licensing opportunities in identified spectrum-limited markets.” 26 FCC Rcd at 12688 (emphasis added). That decision clearly did not contemplate that such restrictions would be permanent.” The FCC misconstrues the context of this language. It was quoting from the *Third Further Notice* that recently was published. At

⁵¹ *Supra*, 15.

⁵² See *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

the time, the FCC did not want modified translators interfering with the Auction No. 83 translator processing measures. However, the policy, Prometheus stated above, outlived Auction No. 83 processing and the LPFM filing window. So even if the measure was “temporary”, it was not hinged to either of those filing windows.

Conclusion: The aforementioned does not outline *ad hoc* procedures, but fundamental legal interpretations of LCRA Section 5 previously made by the FCC -- that have not changed or been revisited within the *AMR* rulemaking -- seemingly now simply avoided. The above citations unequivocally affirm that it is the job of the Commission to reserve a set amount of channels in urban areas for LPFM even if that goal competes with translators for those channels.

It would not make sense for the Commission to proffer this interpretation, and then a few years later suggest “Section 5(1) means something entirely different now, but we’re not going to solicit comment on the new interpretation, we’re not going to reveal our definition, and are we not going to analyze any of the radio markets for total LPFMs and translators and ensured channels.” Within *Reconsideration*, Prometheus asks the Commission to explain this discrepancy. However, the FCC avoids the question, reiterating that Prometheus is referring to *ad hoc processing measures*. The FCC’s precedent interpretation requires the Commission to enact contemporaneous protection of future LPFM opportunities to AMR translator permitting. If that protection has failed in any way, like for example in (translator) Auction No. 83, the Commission has the authority to rescind translator filings “to account for the present disparities between the two services”⁵³

⁵³ *Supra*. 26.

The *Recon Decision* further states:

Section 5 does not, by its terms, mandate that the same drastic spectrum-preservation measures adopted in Auction 83 be used in Auctions 99 and 100, just as it does not require that the same measures adopted in Auctions 99 and 100 be used in subsequent FM translator or LPFM windows.⁵⁴ The Commission must make public interest decisions for all aural services, and these decisions always involve a balancing of interests. The prevailing interest in Auction 83 was to prevent an extraordinary number of FM translator applications from depleting all available secondary service spectrum. In Auctions 99 and 100, the prevailing interest was to enable AM stations to expand and improve the service they provide to their communities. Were we to impose the extreme market-by-market limits used in Auction 83 that Petitioner demands, we could severely dilute—if not undercut completely—the public interest benefits to local markets served by AM stations that the Commission sought to implement in the AMR First R&O.⁵⁴

Prometheus is not attempting to force the FCC to use specific protocols from Auction No. 83. It is simply stating the FCC must abide by the underlying policy itself, and make sure its chosen filing limitations work⁵⁵. When some translator applications do not comply with Section 5, and the Commission looks the other way, these applications must be called out. If the FCC wanted to integrate the “the public interest benefits” served by AM stations, it should have exercised due diligence and weighed these public interest concerns against LCRA Section 5 within the *AMR First R&O* to augment that policy per APA compliance. Instead, the FCC is essentially stating it had to discard its own previous interpretations of the LCRA to achieve the perceived qualitatively-assessed benefits (“AM broadcasters provide unique, community-based programming... For example, all-news/talk, all-sports, foreign language, and religious programming formats”)⁵⁶ of AM radio. What it fails to note is Low Power FM provides this same

⁵⁴ Page 6, *Recon Decision*.

⁵⁵ We acknowledge that proper LCRA procedure may not always favor LPFM stations, despite our advocacy preference, but absent proper LCRA procedure, the game is likely to go to those with the most money and political power.

⁵⁶ Revitalization of the AM Radio Service, Notice of Proposed Rule Making, 28 FCC Rcd 15221, 15222. ¶13.

type of distinct programming service as AM (if not more diversified and hyperlocal) described in the cited *AMR* passage. So the FCC is opting to arbitrarily choose one winner here, a decision of unequal treatment.⁵⁷ Further referencing the passage above: “The prevailing interest in Auction 83 was to prevent an extraordinary number of FM translator applications from depleting all available secondary service spectrum.” This undesired scenario is actually what occurred in several markets as a result of four *AMR* translators filing windows’ ineffective filing limitations.

A considerable portion of the *Recon Decision* was asserting *AMR*’s public interest right to pursue FM translators for AM stations. The Commission cannot cite any passage from the record where a LCRA policy shift was pursued, so it provides no explanation. An agency’s refusal to consider evidence, which bears relevance to the issue before it, constitutes arbitrary agency action, violating the purposes of § 706 APA. In *Butte County v. Hogen*, 613 F.3d 190 (D.C. Cir. 2010), it was gauged that an agency’s nonresponse violated APA: “This response violates § 555(e) for the same reason the response in *Tourus Records* violated that provision. The response ‘provides no basis upon which we could conclude that it was the product of reasoned decision making.’ 259 F.3d at 737. It had all the explanatory power of the reply of Bartelby the Scrivener to his employer: ‘I would prefer not to.’ Which is to say, it provided no explanation.”

AUCTION NOS. 99 and 100 STRUCTURAL LIMITATIONS DO NOT COMPLY WITH LCRA “ENSURE” POLICY.

⁵⁷ *Melody Music, Inc., Appellant, v. Federal Communications Commission, Appellee*, 345 F.2d 730 (D.C. Cir. 1965).

The Bureau pontificates (in an elaborate bunch of paragraphs that detail a processing limitation rationale desperately striving to comply with LCRA) yet never quotes any references to the LCRA within the entire AMR rulemaking. The *Recon Decision* LCRA filing policy audit is a post-hoc description of an LPFM ensure policy that never was. Let's go down the list of purported filing limitations:

A "ONE CAP" PER AM STATION IS NOT A MEASURE AGAINST
OPEN LPFM SPECTRUM AND BY DESIGN DEPLETES ALL OPEN
LPFM CHANNELS WITHIN CITIES.

The FCC writes in *Recon Decision* "First, the Commission limited participation to AM station licensees and permittees on a one-per-AM station basis, thus effectively capping the potential number of applications at 4,684 (the number of AM stations at the time)." This statement is devoid of how many urban channels are left available and what is left over to be ensured for LPFM. Consider a similar analogy: If a person says he is going to enact a draconian effort to conserve milk by only allowing 500 people one tablespoon each of milk out of a gallon jug, and leaves the statement at that, he is completely glossing over the fact that there are only 256 tablespoons in a gallon. And maybe a large amount of milk is in Winnemucca, and none is in San Francisco. But even continuing in the vein of the FCC's topical assessment, the Commission says it is limiting translators by opening **four translator filing windows** (plus another translator filing window previous to the LPFM window, Auction No. 83) -- but only having **one LPFM filing window**? Then we move on and look at the total number of translators vs LPFM: **8,126** and **2,178**.⁵⁸ This statistic shows **translators are vastly favored over LPFM**. Furthermore, the **third and fourth AMR windows capped the potential of new translator**

⁵⁸ As of July 9, 2019, taken from "FM Translator Surge Doesn't Stop: The Latest Broadcast Station Totals" by Adam Jacobson, *Radio & Television Business Report* <https://www.rbr.com/broadcast-station-totals-q2-19/>. July 9, 2019.

applications (“4,684” potential) at 2.2 times the amount of total current licensed LPFM services. The FCC is touting this as a structural limitation without even gauging the number in context, which **communicates the direct opposite**. How is a limitation translated to cater to the “needs of the local community” or “ensure” channels? Notably, the AM rebroadcast signal in some percentage of these cases is not impacted, meaning the translators introduce multiple redundant local radio broadcasts on AM and FM to the detriment of the community having its first LPFM at times (such as the case of Pittsburgh, Pennsylvania). The Commission never scrutinized the quality of reception of the AM signal within its criteria. Furthermore, a single fill-in translator can enjoy as much as **65 times the coverage of LPFM station**.⁵⁹ The LCRA, as written, directs “[e]nsuring availability of spectrum”(underline and bold added for emphasis) and **not total number (count) of translator and LPFM facilities**. The Commission, however, did not place any structural limitation on translator coverage (i.e., spectrum). **The effect of this is depicted below.**⁶⁰ The cap is **entirely relative to translator filings itself and says nothing about the LPFM channels available or ensured per community**. Furthermore, it is very easy to demonstrate the number of open channels is always less than the number AM stations in a market. By design, if every AM station applies, **the only difference between one-per-station and unlimited filings is the size of the applicant groups (MX groups) competing for each channel**. Finally, as stated in *Reconsideration*, the FCC previously came to the conclusion that caps do not promote the LPFM spectrum ensure goal in the LPFM proceeding (see Appendix A for reiterated explanation). FCC also states within *Objection Decision* “[a]s a result of population distribution differences, the Commission concluded that it was inappropriate to use larger grids in certain markets to identify LPFM licensing opportunities. For this reason, and with

⁵⁹ Take for example 250-watt/1196 m HAAT translator K288GY: Repeating KUDD HD-2, it effectively creates a new Class C2 FM station for Salt Lake City with an equivalent coverage of 65 LPFM stations.

⁶⁰ This is taken from Petitioner’s *Informal Objection*.

broad support from LPFM advocates, the Commission utilized smaller grids to assess and preserve LPFM opportunities ‘in core city areas.’” The Commission makes no note why it abandons the *grid system* in AMR for a *one application cap per each station* in the *Objection Decision*. Commission reiterates in *Objection Decision* the grid system was used to account for “population distribution differences.” Did those population distribution differences innate to U.S. cities disappear between 2013 and AMR? **Not that Petitioner has seen.** Did scarcity of secondary service channels get remarkably better? **No, the opposite occurred.** So it confounds Prometheus why the letter decision reinforces the policy reasoning behind the grid use, but then ignores precedent.

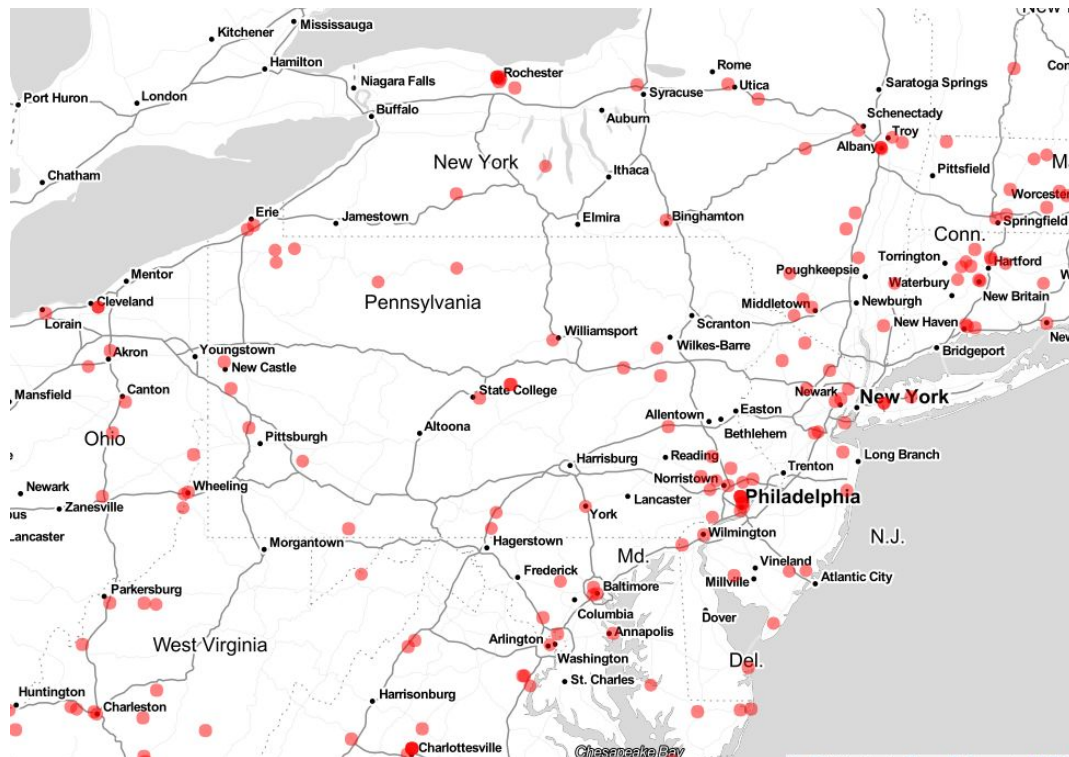


Figure 1A: Simplified LPFM (60 dBu) Spectrum Usage Coverage Northeast (Above)

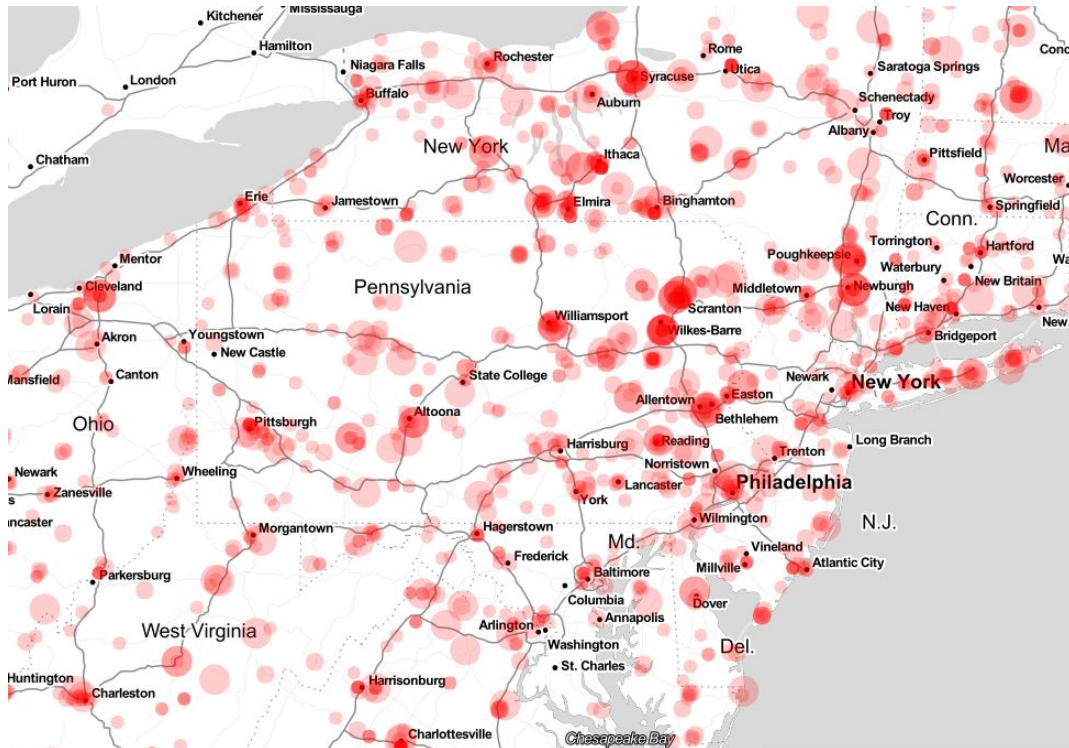


Figure 1B: Simplified Translator (60 dBu) Spectrum Usage Coverage Northeast (Above)

“FILL-IN BASIS” IS AN IRRELEVANT FILING LIMITATION.

Recon Objection further states (regarding filing limitations) “Second, translators were required to operate on a fill-in basis only, thus markedly restricting the area in which such a translator could be located.”⁶¹ This is a dubious translator filing limitation. First, the Commission **has never allowed commercial radio broadcaster licensees to directly apply for translators to extend their signals via translators in the first place.** This is deep-rooted communications regulation history and not a LCRA-affiliated structural limitation within filing. Fill-in translators, by definition, are required to be within the station’s primary contour. Second, it is completely irrelevant to state this as a limitation when the total number of AM stations in all spectrum-limited markets vastly exceeds the number of open channels in those cities. By filing

⁶¹ *Recon Decision*, p 5.

window design, the channels will all be filled regardless of the limitation if all the local AM stations apply within the window.

A WINDOW HAS NO NET ATTRIBUTABLE LIMITING FACTOR.

Recon Decision continues (regarding filing limitations) “Third, the introduction of a modification window, allowing AM broadcasters to move an existing FM translator up to 250 miles rather than add a new FM translator, further limited the number of potential new FM translator grants, as modification window participants were precluded from participating in Auction 99 or 100.”⁶² This is not a LCRA-affiliated filing structural limitation. This filing opportunity merely allowed AM stations a chance to “jump in front of the line” in moving licensed/permitted rural translators into urban areas prior to the new translator window. Those urban channels would have been filed for regardless within the new cross-service translator filing window because the AM licensee would have been allowed to participate in the latter new translator window if not the modification window, establishing the same result. The 250-mile relocation window essentially had no conservative effect for coveted spectrum-limited areas. But at the crux, permitting the movement of a translator out of a rural area **that already has multiple other channels available** to a **spectrum-limited area** is at best **is not a LCRA Section 5 measure**, and at worst, **the antithesis of LCRA Section 5**.

BAN ON ASSIGNMENT IS IRRELEVANT WHEN IT DOES NOT LIMIT THE OTHER PURPORTED LIMITATIONS WHICH DON'T WORK.

Recon Decision concludes reasoning (regarding filing limitations) with

“Finally, new translators awarded through the Auction 99 and 100 filing windows may not be assigned or transferred except in conjunction with the AM primary

⁶² *Recon Decision*, p 5.

station by which it is owned, and may not rebroadcast any other station, thus limiting the extent to which it can be moved and precluding potential interference with other secondary station licensing opportunities.⁶³

This is the absolute minimum limitation anyone might expect from a translator filing window for AM radio stations. This measure would not be attributed to conserving channels concerning LCRA, but **to the name and purpose of the filing window itself**. These stipulations are standard anti-gamesmanship features among AM licensee filers that should be expected in any spectrum filing opportunity. Re-selling limitations merely reiterate the anti-trafficking sentiment of Section 309(j)(4)(E) of the Communications Act. Assigning the translator will not take up any further spectrum than using the translator. But also again, if there are a lot less frequencies available than the total number of AM stations per market, the AM station is going to apply for a free frequency regardless if it can assign it -- it would be a foolish business move not to. Lastly, the stated limitation on moving translators (“...limiting the extent to which it can be moved...”) has been negated by the Commission’s approval of MB Docket No.18-119, **which allows these newly-granted AMR translators to jump to any channel that might have been previously “ensured”**.⁶⁴ These moves are now permitted **without an LPFM preclusion showing**, even though the proposals are major changes that take up new spectrum that was purportedly ensured by the AMR filing limitation. **The alleged limitation, at the end, has the appearance of a shell game.**

FCC states in *Recon Decision* “Auction 100 procedures comport with Section 5.” The assessment above clearly demonstrates the Section 5 procedures have little to do with ensuring spectrum or gauging community needs per Section 5. The LCRA was not even contemplated in

⁶³ *Recon Decision*, p 5.

⁶⁴ Appendix B, *Amendment of Part 74 of the Commission’s Rules Regarding FM Translator Interference*, Report and Order. FCC 19-40. May 9, 2019.

AMR; the procedures were repackaged in retrospect with attempt to acknowledge Section 5 while drafting *Recon Decision*. The measures are merely concomitant attributes of any filing window dealing with spectrum management.

CLUES THAT SHOULD HAVE TRIGGERED LCRA DUE DILIGENCE.

The FCC *LPFM Proceedings* reveal a high-quality process addressing a difficult interpretation of an imprecise law in a complex radio universe.

1. The Commission proposed via NPRM an agency interpretation of the LCRA beginning in the *LPFM Third Report and Order*, which survived Public Comment. No proceeding has changed the Commission LCRA interpretation.
2. Scientific study of markets, existing and proposed translators, LPFM availability and more were performed by the Commission to determine the LCRA-related state of things, what changes might be needed to comply with the LCRA, and to predict the outcome of their recommendations.
3. Processing procedures and tools were proposed based on 1 and 2, which were then adjusted in response to Public Comment to become the preclusion procedures of Auction 83.

Referring back to the (2011 Arbitron) markets used in preclusion studies, a quick check would have revealed that there were many more AM stations covering each market⁶⁵ than

⁶⁵ The top 30 markets are each covered by approximately 20 AM stations today, and probably a similar number prior to the AM translator windows.

LPFM allocations available even compared to the *LPFM Third Report & Order* data before the LPFM window and Auction No. 83 awards. That alone should provoke a policymaker to probe deeper into LCRA issues and more. It might have been appropriate then to run the Commission's old "LPFM6" study software to see how many LPFM allocations remained, and to check the balance between translators and LPFMs in each market, and to compare with the *LPFM Proceeding's* LPFM channel floors, and from there to propose suitable, possibly market sensitive, processing procedures. The tools and procedures do not need to mimic Auction No. 83, but they should adhere to the Commission's LCRA interpretation and conclusions (until those are properly changed), benefit from studies of the extant LCRA-relative situation possibly re-using the old tools and data, and be justified, proposed, and honed by rulemaking.

That none of the above or anything like it is on the public record concerning the AMR translator rulemaking is further circumstantial evidence that the Commission neglected to consider their LCRA-mandated responsibility.

APPLICATION DATA DEMONSTRATES PURPORTED TRANSLATOR AUCTION FILING LIMITATION DID NOT WORK.

As stated above, merely stating a *one-application cap per station* says nothing at all about the FCC's responsibility to uphold LCRA Section 5(1). Filing numbers or caps do not take into consideration spectrum already utilized, nor have any bearing on conservation in spectrum-limited areas. The capping is devoid of scientific claim or reference to thresholds met, community needs, filing numbers, open channels, objectives, or tangible results. The LCRA's compliance metric and protocol is completely undocumented. Prometheus is reiterating the

compelling filing example below from the Reconsideration for which the FCC did not acknowledge with *Recon Decision*.

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 compile sample lists of AM stations per each market and compare to the number of open frequencies before the AMR filing window, demonstrating the possibility the remaining frequencies will be exhausted.⁶⁶ From *Reconsideration* this inefficacy is demonstrated below for Pittsburgh, PA (for example⁶⁷):

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
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

⁶⁶ 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.

⁶⁷ 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 Recon Decision's perceived inaccuracy.

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 egregiously failed to uphold LCRA Section 5. This outcome runs contrary to the FCC’s viewpoint within *Objection* and *Recon Decisions*.

It is not hard to easily show the Commission’s “one-cap” instantly fails in virtually every populous market. If the *number of vacant FM translator channels* is **less than** the *total number of AM stations in the market*, the cap is instantly destined to “ensure” no FM channels. The FCC could have easily verified this prior to the auctions but did not. This is a vast oversight.

The same failure to ensure spectrum and abide by any definition concerning “needs of the local community” occurred in many other markets, as listed below:

	Population*	Area (sq km)*
<u>1 New York, NY</u>		
Translator	17213740	2304.8
LPFM ⁶⁸	2538707	622.3

⁶⁸ LPFM population/area could be considered inflated by 700,000 persons/200 sq km due to two LPFM frequency timeshares.

Translator Advantage	6.8x	3.7x
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Translators	10 (Central City 7)
LPFM	6*** (Central City 0)
LPFM Ensured**	0

*** 2 LPFMs share a channel

38 Raleigh-Durham, NC

Translator	5288957	16512.5
LPFM	391863	684.5
Translator Advantage	13.5x	24.1x

Translators	26 (Central City 16)
LPFM	6 (Central City 1)
LPFM Ensured**	1 (NCE Channel, Durham)

55 Louisville, KY

Translator	2505810	3975.1
LPFM	666534	902.2
Translator Advantage	3.8x	4.4x

Translators	12 (Central City 8)
LPFM	8 (Central City 3)
LPFM Ensured**	1 (NCE Channel)

97 Reno, NV

Translator	3980616	19046.6
LPFM	472440	615.7
Translator Advantage	8.4x	30.9x

Translator	39 (Central City 13 (Reno))
LPFM	4 (Central City 3 (Reno))
LPFM Ensured**	0

50 Oklahoma City, OK

Translator	6324217	12536.2
LPFM	549948	955.7
Translator Advantage	11.5x	13.1x

Translator	19 (Central City 17)
LPFM	7 (Central City 0)
LPFM Ensured**	0

77 Wilkes Barre-Scranton

Translator	3067984	8013.2
LPFM	64179	205.3
Translator Advantage	47.8x	39x

Translator	29 (Central City 24 Scranton or Wilkes-Barre)
LPFM	2 (Central City 1 Scranton or Wilkes-Barre)
LPFM Ensured**	0

26 San Antonio

Translator	7829308	7603.5
LPFM	1043703	879.6
Translator Advantage	7.5x	8.6x

Translator	17 (Central City 11)
LPFM	8 (Central City 3)
LPFM Ensured**	0

8 Atlanta

Translator	12952739	12753.7
LPFM	519069	633.7
Translator Advantage	25x	20x

Translator	19 (Central City 12)
LPFM	6 (Central City 0)
LPFM Ensured**	0

* see Appendix C for tallying

** within 5.6 km of city center

TOTALS ACROSS EIGHT MARKETS

Total Translator	171
Total City Center Translators	108
Total LPFM	47
Total City Center LPFM	11
LPFM Central Channels Ensured via AMR Filing Limitations	0 (2 NCE Channels)

Across eight markets, there is an average of **1.4** LPFMs per central city coverage (11/8), and an average of **13.5** translators per central city coverage (108/8). The statistics show no ensuring of channels, contrary to the Commission's assertion that the AMR filing windows complied with LCRA.

CONCLUSION.

Prometheus has demonstrated beyond a shadow of a doubt the Commission:

- (1) Did not contemplate LCRA matters within the entire AMR rulemaking, providing a retrospective excuse that clearly provides no proof of ensured spectrum.
- (2) Does not provide any compelling reasoning for changing precedent interpretation regarding the reading of the language of LCRA.
- (3) Does not explain why the FCC enacts filing limitations in AMR they previously stated do not work to ensure spectrum (concurrent to spectrum-limited markets being much tighter than years previous).
- (4) Mixes and self-conflicts interpretations regarding LCRA.
- (5) Does not include any clear, non-arbitrary definition of their new interpretations of Section 5(1) and 5(2). Section 5(2) is forced to a national translator preference while the wording implies differentiation of LPFM and translator choice at the local community level. This is directly against the word and spirit of the law.
- (6) Provides rhetorical assessment of filing limitations without a real world reference frame or hard data on actual ensured spectrum.
- (7) Effectively abandoned ensuring LPFM channels. LPFM channels within 5.6 km of the city center with 8 markets were sampled and the data showed the AMR filing limitations ensured zero non-reserved-band channels -- an abysmal failure.
- (8) Insinuates it basically needs to break the law -- discarding LCRA policy -- to assist or extend the qualitatively-assessed programming benefits of AM stations at the cost of

LPFM, ignoring that LPFM provides the same programming benefits. This decision-making results in unequal treatment.

It is imperative the Commission substantiate its policy-related rationale and corroborate the effectiveness of its AMR filing limitations to form the basis of if W239DS has complied with LCRA.

Respectfully Submitted by,

/s/

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March 5, 2020

CERTIFICATE OF SERVICE

A copy of this Petition for Review was sent to the Representative for Mega Philadelphia at:

F. Reid Avett
Duane Morris LLP
505 9th Street NW STE 100
Washington, CA 20004

on March 6, 2020 via USPS

/s/

Paul Bame

APPENDIX A - WHY FILING CAPS DO NOT WORK WITH LCRA FM SPECTRUM ENSURING⁶⁹

What is confusing about the Commission's argument concerning the *AMR* limitation of one application per AM station (a "one application cap") is the FCC learned previously in the *LPFM proceedings* 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 the ten-cap would retain 97% of tentative selectees for new translator grants within the top 150 urban-market translator MXs (i.e., **consuming 97% of the channels applied for that no cap (i.e., 100% consuming) would have provided**).⁷⁰ In other words, the cap proposal did not comply with LCRA spectrum ensuring within spectrum-limited markets. Common Frequency followed-up with an additional spreadsheet simulation within docket comment 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.⁷¹ A ten cap with a **one application per local market cap yielded 87% of the originally-applied market frequencies consumed**. This is identical to the current AMR one-application-per-station criteria, but more liberal (excluding the capping of ten applications nationally). The Media Bureau then concurred that **caps did not offer appropriate protection**⁷² to comply with the

⁶⁹ This information is being re-published from Petitioner's *Reconsideration* since the FCC did not acknowledge or digest the information.

⁷⁰ Comment of Common Frequency, September 27, 2010, MM Docket 99-25 via FCC ECFS.

⁷¹ Comment of Common Frequency, January 31, 2011, MM Docket 99-25 via FCC ECFS.

⁷² ¶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

“ensure” requirement within Section 5(1).⁷³ **This is the precise reason the grid system and preclusion studies had to be used.** The fallacy in “capping” is the homogeneous spatial approach does not ensure opportunities per Section 5 directive in spectrum-limited markets where it is critical to reserve channels attached to the location where they are located. A “cap” does not discriminate between concerning channels within swampland or downtown -- so every applicant will naturally gravitate to the highest populated area. **It escapes the Petitioner why the FCC defaults to endorsing a structural limitation within *Recon Decision* which the Commission previously acknowledged did not uphold the LCRA mandate.** *Recon Decision* provides no reasoning for this, or no proof of the efficacy of LPFM channel conservation per Section 5(1). *Recon Decision* relies completely on a rhetorical or theoretical offering while not supplying what the FCC’s new definition of “ensuring” is, nor mentioning proof of how many channels were ensured under their system.

APPENDIX B - ILLUSTRATIVE AMR TIMELINE

This timeline supports the suppositions the Commission ignored the LCRA in the AMR and did not respond to Public Comments about it.

October 31, 2013 -- The Commission releases the NPRM initiating AM Revitalization (AMR) and docket 13-249. Paragraphs 17 and 18 seek comment about effects on LPFM and other services. The Local Community Radio Act (LCRA) is never mentioned, which is surprising

tenapplication cap would be a certain and effective processing policy for preserving LPFM licensing opportunities in many larger markets.” *Third Further Notice*.

⁷³ 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.”

because the LPFM application window is active, and is the result of considerable heavy lifting by the Commission to implement the LCRA.

ECFS responses in the docket mention LPFM at least 32 times, another 17 times in a manner judged substantial by this reader. Both Common Frequency (1/5/2014) and REC Networks (1/22/2014) also raise interpretation especially of section 5 of the LCRA.

The Local Community Radio Act is still in effect

With this upcoming FM translator for AM stations window as well as all future windows for FM translators, we remind the Commission that the Local Community Radio Act did not expire at the end of the October/November, 2013 LPFM filing window. Prior to the FM translator filing window, the Commission should reevaluate all of the Nielsen-Audio8 metropolitan markets using the same 20 x 20 and 30 x 30 minute grids to classify the markets as spectrum-available and spectrum-limited taking into consideration the number of full-time LPFM stations and FM translators taking into consideration the availability of spectrum for future LPFM services. REC 1/22/2014

October 23, 2015 -- Commission released *AM Revitalization First Report and Order, FNPRM, NOI* in which the word LPFM occurs twice in no substantial context. The LCRA is not mentioned. *The Commission simply did not respond to public comments* about LPFM or the LCRA.

Although LPFM is not mentioned, subsequent entries in ECFS nevertheless mention LPFM at least 8 times, and a further three times substantially.

February 2, 2016 -- REC Networks (untimely) *Petition for Reconsideration* argues at length that the Commission's First Report & Order violates the LCRA.

2/16/2017 -- Prometheus (untimely) objects to a late change pertinent to allowable AM translator locations, raising LFPF harm and LCRA.

2/23/17 -- FCC rules to continue AMR without notice of LCRA, LFPF, REC or Prometheus.

4/2017 -- Prometheus requests a partial AMR stay and reconsideration, only of allowing translators to be located further than 40 miles from the corresponding AM station, based on harm-to-LFPF and LCRA arguments. Several parties object including one who misread the limited stay and impugns Prometheus as unsupportive of small AM stations, despite ex parte on the record to the contrary. The Commission repeats these off-target and inaccurate comments to bolster their 2018 denial of Prometheus' reconsideration.

10/25/2017 -- *Third Report and Order*, does not contain the word LFPF

1/2018 -- final AM cross-service translator filing window

5/22/18 -- FCC denies Prometheus' April 2017 Petition for Reconsideration including Prometheus' LCRA arguments in a reactive manner reminiscent of the instant AFR's history, in

that the Commission did not support their argument by referring to their proper process and conclusions overturning their initial LCRA interpretation.

APPENDIX C - TALLYING DATA

New York, NY

			Population	Housing Units	Area (sq. km)
WBQE-LP (272)	[Brooklyn, NY]				
FCC F(50-50)	60.00 dBu (	326,997	122,019	105.9	
WDMB-LP (288)	[Queens, NY]				
FCC F(50-50)	60.00 dBu (	453,937	166,335	103.5	
WNJI-LP (240)	[Kearney, NJ]				
FCC F(50-50)	60.00 dBu (	434,875	167,588	113.3	
WQEQ-LP (288)	[Flushing, NY]				
FCC F(50-50)	60.00 dBu (	453,937	166,335	103.5	
WSBP-LP (232)	[Wood Ridge, NJ]				
FCC F(50-50)	60.00 dBu (	259,717	97,252	79.4	
WZYE-LP (240)	[Maplewood, NJ]				
FCC F(50-50)	60.00 dBu (	609,244	228,796	116.7	

			Population	Housing Units	Area (sq. km)
W220EJ (220)	[Weehawken, NJ]				
FCC F(50-50)	60.00 dBu (	2,869,906	1,332,837	262.1	
W232CY (232)	[Parsippany, NJ]				
FCC F(50-50)	60.00 dBu (	21,337	8,525	17.4	
W236CH (236)	[Fort Greene, NY]				
FCC F(50-50)	60.00 dBu (	4,139,521	1,803,866	387.2	
W248CG (248)	[Jersey City, NJ]				
FCC F(50-50)	60.00 dBu (	2,009,333	839,541	342.5	
W252CS (252)	[Brooklyn, NY]				
FCC F(50-50)	60.00 dBu (	627,759	327,074	52.5	
W268BY (268)	[Queens, NY]				
FCC F(50-50)	60.00 dBu (	260,212	99,185	48.1	
W276AQ (276)	[Fort Lee, NJ]				
FCC F(50-50)	60.00 dBu (	2,088,216	876,764	261.1	
W284BW (284)	[Perth Amboy, NJ]				
FCC F(50-50)	60.00 dBu (	128,792	43,988	90.1	
W284DG.C (284)	[Hempstead, NY]				
FCC F(50-50)	60.00 dBu (	735,111	247,266	378.3	
W292DV (292)	[New York, NY]				
FCC F(50-50)	60.00 dBu (	4,333,553	1,848,891	465.5	

Raleigh-Durham, NC

			Population	Housing Units	Area (sq. km)
W207CB (207)	[Raleigh, NC]				
FCC F(50-50)	60.00 dBu (	117,323	50,299	122.9	
W216BN (216)	[Raleigh, NC]				
FCC F(50-50)	60.00 dBu (	75,673	29,957	129.6	
W224DK (224)	[Durham, NC]				
FCC F(50-50)	60.00 dBu (	18,289	9,318	28.9	
W227CZ (227)	[Durham, NC]				
FCC F(50-50)	60.00 dBu (	183,815	75,020	742.6	
W228CZ (228)	[Cary, NC]				

FCC	F(50-50)	60.00 dBu (	109,928	42,165	422.8
W232CH	(232)	[Raleigh, NC]			
FCC	F(50-50)	60.00 dBu (	419,909	174,859	1645.3
W236CA	(236)	[Durham, NC]			
FCC	F(50-50)	60.00 dBu (	165,906	69,963	392.1
W237BZ	(237)	[Clayton, NC]			
FCC	F(50-50)	60.00 dBu (	569,930	237,989	2307.6
W239CK	(239)	[Raleigh, NC]			
FCC	F(50-50)	60.00 dBu (	477,867	201,892	1565.7
W243DK	(243)	[Durham, NC]			
FCC	F(50-50)	60.00 dBu (	235,117	99,819	676.1
W250AZ	(250)	[Raleigh, NC]			
FCC	F(50-50)	60.00 dBu (	221,411	93,862	329.0
W251CA	(251)	[Rolesville, NC]			
FCC	F(50-50)	60.00 dBu (	80,970	31,251	638.2
W254AS	(254)	[Rolesville, NC]			
FCC	F(50-50)	60.00 dBu (	45,918	18,201	527.2
W254BV	(254)	[Clayton, NC]			
FCC	F(50-50)	60.00 dBu (	32,725	12,848	301.4
W255AM	(255)	[Raleigh, NC]			
FCC	F(50-50)	60.00 dBu (	174,228	80,534	199.9
W255BE	(255)	[Fuquay-varina, NC]			
FCC	F(50-50)	60.00 dBu (	20,185	7,933	120.7
W256AH	(256)	[Durham, NC]			
FCC	F(50-50)	60.00 dBu (	132,967	54,226	546.8
W257CS	(257)	[Morrisville, NC]			
FCC	F(50-50)	60.00 dBu (	316,148	135,887	534.9
W262CZ	(262)	[Raleigh, NC]			
FCC	F(50-50)	60.00 dBu (	378,177	157,343	1112.1
W284CD	(284)	[Youngsville, NC]			
FCC	F(50-50)	60.00 dBu (	32,546	13,251	605.7
W284CP	(284)	[Raleigh, NC]			
FCC	F(50-50)	60.00 dBu (	332,851	141,594	604.7
W288BQ	(288)	[Wake Forest, NC]			
FCC	F(50-50)	60.00 dBu (	18,066	7,245	111.6
W288BU	(288)	[Durham, NC]			
FCC	F(50-50)	60.00 dBu (	174,126	72,772	361.1
W289BD	(289)	[Raleigh, NC]			
FCC	F(50-50)	60.00 dBu (	391,215	168,069	631.8
W299AP	(299)	[Apex, NC]			
FCC	F(50-50)	60.00 dBu (	498,825	209,150	1550.2
W300CE	(300)	[Chapel Hill, NC]			
FCC	F(50-50)	60.00 dBu (	64,842	29,367	303.6

			Population	Housing Units	Area (sq. km)
WCOM-LP	(278)	[Chapel Hill, NC]			
FCC	F(50-50)	60.00 dBu (	57,717	24,156	147.3
WFNE-LP	(278)	[Wake Forest, NC]			
FCC	F(50-50)	60.00 dBu (	20,906	8,102	108.9
WKR-P-LP	(270)	[Raleigh, NC]			
FCC	F(50-50)	60.00 dBu (	56,129	24,424	100.3
WRLY-LP	(228)	[Raleigh, NC]			
FCC	F(50-50)	60.00 dBu (	67,596	30,859	110.1
WSHP-LP	(277)	[Cary, NC]			
FCC	F(50-50)	60.00 dBu (	91,273	38,123	116.7
WUIT-LP	(212)	[Durham, NC]			
FCC	F(50-50)	60.00 dBu (	98,242	39,996	101.2

louisville

Population Report for All Contours

Population Database: 2000 US Census (SF1)

			Population	Housing Units	Area (sq. km)
WCHQ-LP	(265)	[Louisville, KY]			

FCC F(50-50)	60.00 dBu (	165,696	80,800	122.7
WFBR-LP (237)	[Mt Washington, KY]			
FCC F(50-50)	60.00 dBu (	14,196	5,360	121.3
WFHS-LP (224)	[Fern Creek, KY]			
FCC F(50-50)	60.00 dBu (	95,777	39,197	111.3
WFMP-LP (293)	[Louisville, KY]			
FCC F(50-50)	60.00 dBu (	147,749	71,859	98.7
WIOP-LP (292)	[Shepherdsville, KY]			
FCC F(50-50)	60.00 dBu (	13,441	4,986	119.1
WJHI-LP (253)	[Jeffersonville, IN]			
FCC F(50-50)	60.00 dBu (	61,250	27,959	116.7
WPMQ-LP (257)	[Charlestown, IN]			
FCC F(50-50)	60.00 dBu (	8,953	3,566	99.8
WXOX-LP (246)	[Louisville, KY]			
FCC F(50-50)	60.00 dBu (	159,472	77,993	112.6

Louisville, KY

		Population	Housing Units	Area (sq. km)
W274AD (274)	[Corydon, IN]			
FCC F(50-50)	60.00 dBu (	10,120	4,203	204.2
W236AN (236)	[Floyd's Knobs, IN]			
FCC F(50-50)	60.00 dBu (	341,364	154,540	850.1
W216BW (216)	[Hamburg, IN]			
FCC F(50-50)	60.00 dBu (	14,874	5,624	179.2
W241CK (241)	[Jeffersonville, IN]			
FCC F(50-50)	60.00 dBu (	389,709	182,700	400.4
W297BV (297)	[Louisville, KY]			
FCC F(50-50)	60.00 dBu (	372,496	175,521	376.3
W261CO (261)	[Louisville, KY]			
FCC F(50-50)	60.00 dBu (	389,709	182,700	400.4
W274AM (274)	[Louisville, KY]			
FCC F(50-50)	60.00 dBu (	116,182	53,030	112.0
W250BD (250)	[Louisville, KY]			
FCC F(50-50)	60.00 dBu (	142,133	70,701	103.5
W285ER (285)	[Middletown, KY]			
FCC F(50-50)	60.00 dBu (	19,647	8,174	34.7
W270CR (270)	[New Albany, IN]			
FCC F(50-50)	60.00 dBu (	264,537	119,567	734.4
W284AD (284)	[New Albany, IN]			
FCC F(50-50)	60.00 dBu (	371,873	170,589	372.8
W205BT (205)	[New Albany, IN]			
FCC F(50-50)	60.00 dBu (	73,166	31,407	207.1

Reno, NV

		Population	Housing Units	Area (sq. km)
K200AA (200)	[Sun Valley, NV]			
FCC F(50-50)	60.00 dBu (	242,187	101,166	302.1
K201HO (201)	[Reno, NV]			
FCC F(50-50)	60.00 dBu (	48,998	20,361	117.6
K207CP (207)	[South Lake Tahoe, NV]			
FCC F(50-50)	60.00 dBu (	2,765	2,326	190.6
K210AK (210)	[Incline Village, Et, NV]			
FCC F(50-50)	60.00 dBu (	16,236	12,374	224.6
K211GA (211)	[Carson City, NV]			
FCC F(50-50)	60.00 dBu (	5,292	2,091	137.1
K215DS (215)	[Truckee, CA]			
FCC F(50-50)	60.00 dBu (	1,293	571	137.6
K215FJ (215)	[Carson City, NV]			
FCC F(50-50)	60.00 dBu (	49,198	20,361	167.8
K215FK (215)	[Sparks, NV]			
FCC F(50-50)	60.00 dBu (	173,446	70,200	233.7
K219AR (219)	[Verdi, NV]			
FCC F(50-50)	60.00 dBu (	330,258	136,621	3383.1
K223AL (223)	[Reno, NV]			

FCC	F(50-50)	60.00 dBu (	310,389	128,693	932.5
K226AL	(226)	[Carson City, NV]			
FCC	F(50-50)	60.00 dBu (	56,843	22,879	312.6
K227AW	(227)	[Truckee, CA]			
FCC	F(50-50)	60.00 dBu (	20,980	15,933	436.4
K228DA	(228)	[Carson City, NV]			
FCC	F(50-50)	60.00 dBu (	66,609	26,936	873.9
K231CS	(231)	[Reno, NV]			
FCC	F(50-50)	60.00 dBu (	218,493	93,724	254.5
K232EA	(232)	[Carson City, NV]			
FCC	F(50-50)	60.00 dBu (	67,027	27,008	531.5
K236CN	(236)	[Reno, NV]			
FCC	F(50-50)	60.00 dBu (	62,236	27,231	57.5
K240CA	(240)	[Crystal Bay, NV]			
FCC	F(50-50)	60.00 dBu (	569	717	17.8
K241AK	(241)	[Reno, NV]			
FCC	F(50-50)	60.00 dBu (	310,389	128,693	932.5
K245BV	(245)	[Reno, NV]			
FCC	F(50-50)	60.00 dBu (	310,389	128,693	932.5
K249ES	(249)	[Carson City, NV]			
FCC	F(50-50)	60.00 dBu (	73,776	30,474	1081.6
K253BH	(253)	[Gardnerville, NV]			
FCC	F(50-50)	60.00 dBu (	46,793	18,420	207.1
K254AK	(254)	[Reno, NV]			
FCC	F(50-50)	60.00 dBu (	244,294	102,020	310.7
K254AR	(254)	[Truckee, CA]			
FCC	F(50-50)	60.00 dBu (	4,347	2,005	209.0
K258BN	(258)	[Verdi, NV]			
FCC	F(50-50)	60.00 dBu (	12,103	4,728	147.3
K259AK	(259)	[Carson City, NV]			
FCC	F(50-50)	60.00 dBu (	54,147	22,411	234.0
K259AY	(259)	[Reno, NV]			
FCC	F(50-50)	60.00 dBu (	126,801	51,607	132.0
K263BL	(263)	[Carson City, NV]			
FCC	F(50-50)	60.00 dBu (	63,743	25,641	489.9
K267AA	(267)	[Incline Village, NV]			
FCC	F(50-50)	60.00 dBu (	15,259	11,569	130.4
K269DB	(269)	[Carson City, NV]			
FCC	F(50-50)	60.00 dBu (	72,857	29,902	1049.7
K269FC	(269)	[Reno, NV]			
FCC	F(50-50)	60.00 dBu (	310,423	128,702	942.2
K273AF	(273)	[Carson City, NV]			
FCC	F(50-50)	60.00 dBu (	122,677	52,580	689.5
K273BI	(273)	[Truckee, CA]			
FCC	F(50-50)	60.00 dBu (	3,060	1,284	31.4
K277BW	(277)	[Reno, NV]			
FCC	F(50-50)	60.00 dBu (	70,069	27,022	523.8
K277CL	(277)	[Stateline, NV]			
FCC	F(50-50)	60.00 dBu (	1,569	961	120.7
K285EQ	(285)	[Reno, NV]			
FCC	F(50-50)	60.00 dBu (	309,937	128,508	913.7
K286AG	(286)	[Carson City, NV]			
FCC	F(50-50)	60.00 dBu (	58,969	23,662	232.2
K286AN	(286)	[Truckee, CA]			
FCC	F(50-50)	60.00 dBu (	5,322	5,955	162.8
K292EP	(292)	[Incline Village, NV]			
FCC	F(50-50)	60.00 dBu (	17,679	13,987	192.9
K293CA	(293)	[Carson City, NV]			
FCC	F(50-50)	60.00 dBu (	73,194	30,100	1069.8

			Population	Housing Units	Area (sq. km)
KBOK-LP	(227)	[Reno, NV]			
FCC	F(50-50)	60.00 dBu (	145,634	64,339	99.9
KJLR-LP	(263)	[Reno, NV]			

FCC	F(50-50)	60.00 dBu (	137,623	62,101	99.9
KNVC-LP	(236)	[Carson City, NV]			
FCC	F(50-50)	60.00 dBu (	58,497	23,708	280.4
KWNK-LP	(249)	[Reno, NV]			
FCC	F(50-50)	60.00 dBu (	130,686	53,376	135.5

Oklahoma City, OK

			Population	Housing Units	Area (sq. km)
KHDD-LP	(257)	[Oklahoma City, OK]			
FCC	F(50-50)	60.00 dBu (	71,564	33,781	105.8
KOUJ-LP	(296)	[Norman, OK]			
FCC	F(50-50)	60.00 dBu (	76,024	33,685	110.5
KPCG-LP	(267)	[Edmond, OK]			
FCC	F(50-50)	60.00 dBu (	10,857	4,022	106.4
KRGU-LP	(249)	[Midwest City, OK]			
FCC	F(50-50)	60.00 dBu (	74,215	32,323	106.7
KSMJ-LP	(265)	[Edmond, OK]			
FCC	F(50-50)	60.00 dBu (	72,292	27,639	102.6
KSQE-LP	(249)	[Oklahoma City, OK]			
FCC	F(50-50)	60.00 dBu (	67,129	25,650	100.2
KWDW-LP	(230)	[Oklahoma City, OK]			
FCC	F(50-50)	60.00 dBu (	62,289	25,590	118.9
KZUC-LP	(257)	[Edmond, OK]			
FCC	F(50-50)	60.00 dBu (	67,004	25,604	100.3

			Population	Housing Units	Area (sq. km)
K208CG	(208)	[Oklahoma City, OK]			
FCC	F(50-50)	60.00 dBu (	85,818	39,976	184.8
K213EM	(213)	[Edmond, OK]			
FCC	F(50-50)	60.00 dBu (	227,364	105,425	504.1
K221FQ	(221)	[Oklahoma City, OK]			
FCC	F(50-50)	60.00 dBu (	531,048	240,832	1206.7
K225BN	(225)	[Oklahoma City, OK]			
FCC	F(50-50)	60.00 dBu (	637,167	286,492	1295.9
K231BH	(231)	[Oklahoma City, OK]			
FCC	F(50-50)	60.00 dBu (	273,589	131,540	410.1
K237GE	(237)	[Oklahoma City, OK]			
FCC	F(50-50)	60.00 dBu (	30,034	13,867	85.6
K239BT	(239)	[The Village, OK]			
FCC	F(50-50)	60.00 dBu (	590,688	266,793	1050.8
K243BJ	(243)	[Oklahoma City, OK]			
FCC	F(50-50)	60.00 dBu (	534,924	240,463	1011.6
K253AY	(253)	[Norman, OK]			
FCC	F(50-50)	60.00 dBu (	95,680	41,726	341.1
K253BV	(253)	[Oklahoma City, OK]			
FCC	F(50-50)	60.00 dBu (	286,200	132,805	614.9
K257DA	(257)	[Norman, OK]			
FCC	F(50-50)	60.00 dBu (	98,284	42,812	385.8
K261DP	(261)	[Edmond, OK]			
FCC	F(50-50)	60.00 dBu (	115,921	47,074	429.3
K266BG	(266)	[Edmond, OK]			
FCC	F(50-50)	60.00 dBu (	250,829	113,056	267.1
K268BR	(268)	[Oklahoma City, OK]			
FCC	F(50-50)	60.00 dBu (	334,948	146,114	495.4
K272FD	(272)	[Del City, OK]			
FCC	F(50-50)	60.00 dBu (	415,541	184,881	816.5
K276EX	(276)	[Oklahoma City, OK]			
FCC	F(50-50)	60.00 dBu (	562,692	254,902	904.9
K279CR	(279)	[Oklahoma City, OK]			
FCC	F(50-50)	60.00 dBu (	306,444	140,320	444.3
K283BW	(283)	[Oklahoma City, OK]			
FCC	F(50-50)	60.00 dBu (692,689	308,633	1618.5
K297BB	(297)	[Edmond, OK]			

FCC	F(50-50)	60.00 dBu (254,357	118,896	468.8
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Wilkes Barre-Scranton

			Population	Housing Units	Area (sq. km)
W205AG	(205)	[Clarks Summit, Etc., PA]			
FCC	F(50-50)	60.00 dBu (	132,851	59,805	271.4
W208AF	(208)	[Nanticoke, Etc., PA]			
FCC	F(50-50)	60.00 dBu (	140,379	65,637	269.4
W208BQ	(208)	[Clarks Summit, PA]			
FCC	F(50-50)	60.00 dBu (	72,232	31,507	136.6
W212AT	(212)	[Clarks Summit, PA]			
FCC	F(50-50)	60.00 dBu (	52,950	22,917	98.5
W220CO	(220)	[Carbondale, PA]			
FCC	F(50-50)	60.00 dBu (	27,599	11,572	247.9
W223CC	(223)	[Wilkes-barre, PA]			
FCC	F(50-50)	60.00 dBu (	244,636	110,292	1276.3
W227BA	(227)	[Bear Creek, PA]			
FCC	F(50-50)	60.00 dBu (	139,384	64,209	435.9
W234BV	(234)	[Dickson City, PA]			
FCC	F(50-50)	60.00 dBu (	77,034	35,082	71.8
W235AA	(235)	[Wilkes-barre, PA]			
FCC	F(50-50)	60.00 dBu (	130,130	60,531	281.6
W237DP	(237)	[Mountain Top, PA]			
FCC	F(50-50)	60.00 dBu (	195,889	89,161	581.5
W241AZ	(241)	[Clarks Summit, PA]			
FCC	F(50-50)	60.00 dBu (	22,549	8,822	124.6
W241BB	(241)	[Wilkes-barre, PA]			
FCC	F(50-50)	60.00 dBu (	71,523	33,849	77.2
W248BP	(248)	[Plains, PA]			
FCC	F(50-50)	60.00 dBu (	122,043	56,932	179.0
W255BO	(255)	[Scranton, PA]			
FCC	F(50-50)	60.00 dBu (	259,257	116,675	991.4
W260AY	(260)	[Harveys Lake, PA]			
FCC	F(50-50)	60.00 dBu (	12,354	5,492	250.2
W262AI	(262)	[Forty Fort, Etc., PA]			
FCC	F(50-50)	60.00 dBu (	133,599	62,283	294.8
W263AL	(263)	[Scranton, PA]			
FCC	F(50-50)	60.00 dBu (	106,572	48,744	89.8
W264CG	(264)	[Wilkes-barre, PA]			
FCC	F(50-50)	60.00 dBu (	85,051	40,112	71.0
W264CP	(264)	[Clarks Green, PA]			
FCC	F(50-50)	60.00 dBu (	18,677	7,216	66.7
W265CU	(265)	[Scranton, PA]			
FCC	F(50-50)	60.00 dBu (	84,739	39,481	50.4
W269CF	(269)	[Clarks Summit, PA]			
FCC	F(50-50)	60.00 dBu (	69,730	31,085	167.1
W270CC	(270)	[Hamlin, PA]			
FCC	F(50-50)	60.00 dBu (	7,525	5,341	255.4
W274AO	(274)	[Scranton, PA]			
FCC	F(50-50)	60.00 dBu (	80,818	37,522	61.1
W278CF	(278)	[Scranton, PA]			
FCC	F(50-50)	60.00 dBu (	130,724	59,562	272.2
W280CV	(280)	[Scranton, Etc., PA]			
FCC	F(50-50)	60.00 dBu (	127,479	56,870	256.5
W283BE	(283)	[Scranton, PA]			
FCC	F(50-50)	60.00 dBu (	136,275	61,929	418.1
W288BE	(288)	[Wilkes-barre, PA]			
FCC	F(50-50)	60.00 dBu (	114,521	53,216	242.1
W291AP	(291)	[Scranton, PA]			
FCC	F(50-50)	60.00 dBu (	137,639	61,848	285.7
W297AF	(297)	[Scranton, PA]			
FCC	F(50-50)	60.00 dBu (	133,825	61,378	189.0

Population Report for All Contours

Population Database: 2000 US Census (SF1)

			Population	Housing Units	Area (sq. km)
WHMN-LP (297)	[Plymouth, PA]				
FCC F(50-50)	60.00 dBu (	57,805	26,771	104.8	
WKCV-LP (278)	[La Plume, PA]				
FCC F(50-50)	60.00 dBu (	6,374	2,641	100.5	

San Antonio, TX

			Population	Housing Units	Area (sq. km)
1776445.A (229)	[San Antonio, TX]				
FCC F(50-50)	60.00 dBu (	429,980	150,018	281.3	
K204DX (204)	[San Antonio, TX]				
FCC F(50-50)	60.00 dBu (	145,455	68,698	145.6	
K221GF (221)	[San Antonio, TX]				
FCC F(50-50)	60.00 dBu (	426,063	148,717	251.3	
K223CT (223)	[San Antonio, TX]				
FCC F(50-50)	60.00 dBu (	17,503	6,408	420.1	
K227BH (227)	[San Antonio, TX]				
FCC F(50-50)	60.00 dBu (	891,363	333,546	956.4	
K229BJ (229)	[Hollywood Park, TX]				
FCC F(50-50)	60.00 dBu (	54,814	21,408	132.9	
K233DB (233)	[San Antonio, TX]				
FCC F(50-50)	60.00 dBu (	754,129	285,459	529.7	
K260CC (260)	[San Antonio, TX]				
FCC F(50-50)	60.00 dBu (	136,859	61,011	169.2	
K264CJ (264)	[Live Oak, TX]				
FCC F(50-50)	60.00 dBu (	254,508	102,622	315.9	
K272EK (272)	[San Antonio, TX]				
FCC F(50-50)	60.00 dBu (	417,107	146,503	236.0	
K277CX (277)	[Terrell Wells, TX]				
FCC F(50-50)	60.00 dBu (	718,239	259,362	665.0	
K279AB (279)	[San Antonio, TX]				
FCC F(50-50)	60.00 dBu (	752,247	274,361	729.6	
K285EU (285)	[Mendoza, TX]				
FCC F(50-50)	60.00 dBu (	806,944	314,091	577.0	
K289BN (289)	[San Antonio, TX]				
FCC F(50-50)	60.00 dBu (	749,284	272,044	715.3	
K290BO (290)	[The Dominion, TX]				
FCC F(50-50)	60.00 dBu (	74,452	27,174	207.7	
K292FF (292)	[Terrell Wells, TX]				
FCC F(50-50)	60.00 dBu (	309,155	122,016	313.9	
K296GK (296)	[San Antonio, TX]				
FCC F(50-50)	60.00 dBu (	891,206	333,480	956.6	

			Population	Housing Units	Area (sq. km)
KCJV-LP (250)	[Leon Springs, TX]				
FCC F(50-50)	60.00 dBu (	7,642	3,297	103.0	
KHJS-LP (256)	[San Antonio, TX]				
FCC F(50-50)	60.00 dBu (	187,344	83,640	140.9	
KPPC-LP (245)	[San Antonio, TX]				
FCC F(50-50)	60.00 dBu (	114,395	43,860	108.9	
KXTJ-LP (245)	[San Antonio, TX]				
FCC F(50-50)	60.00 dBu (	121,951	42,667	112.4	
KCTC-LP.C (251)	[San Antonio, TX]				
FCC F(50-50)	60.00 dBu (	159,635	57,331	73.6	
KEPJ-LP (268)	[San Antonio, TX]				
FCC F(50-50)	60.00 dBu (	148,928	54,600	72.6	
KIEI-LP (268)	[San Antonio, TX]				
FCC F(50-50)	60.00 dBu (154,880	66,358	195.6	
KMSW-LP (268)	[San Antonio, TX]				

FCC	F(50-50)	60.00 dBu (148,928	54,600	72.6
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Atlanta, GA

			Population	Housing Units	Area (sq. km)
WGRU-LP (256)	[Riverdale, GA]				
FCC	F(50-50)	60.00 dBu (112,255	42,438	118.6
WIEH-LP (256)	[Marietta, GA]				
FCC	F(50-50)	60.00 dBu (	76,214	26,345	97.4
WNIZ-LP (261)	[Marietta, GA]				
FCC	F(50-50)	60.00 dBu (	102,978	40,054	97.9
WRUX-LP (279)	[Atlanta, GA]				
FCC	F(50-50)	60.00 dBu (	74,895	31,271	96.4
WWSV-LP (251)	[Snellville, GA]				
FCC	F(50-50)	60.00 dBu (	40,809	13,918	109.1
WWXR-LP (243)	[Norcross, GA]				
FCC	F(50-50)	60.00 dBu (	111,918	50,434	114.3

			Population	Housing Units	Area (sq. km)
W209CD (209)	[Atlanta, GA]				
FCC	F(50-50)	60.00 dBu (	364,630	154,185	253.7
W209CG (209)	[Tallapoosa, GA]				
FCC	F(50-50)	60.00 dBu (	154,841	63,678	180.3
W213BE (213)	[Snellville, GA]				
FCC	F(50-50)	60.00 dBu (	89,364	29,688	145.9
W222AF (222)	[Marietta, GA]				
FCC	F(50-50)	60.00 dBu (	881,423	384,946	735.7
W223BP (223)	[Lithia Springs, GA]				
FCC	F(50-50)	60.00 dBu (	55,687	21,491	143.5
W223CQ (223)	[Lilburn, GA]				
FCC	F(50-50)	60.00 dBu (	90,529	32,696	94.3
W229AG (229)	[Atlanta, GA]				
FCC	F(50-50)	60.00 dBu (	1,461,536	613,650	1406.1
W233BF (233)	[Atlanta, GA]				
FCC	F(50-50)	60.00 dBu (	1,417,040	591,226	1490.4
W250BC (250)	[Atlanta, GA]				
FCC	F(50-50)	60.00 dBu (	1,599,877	665,751	1618.9
W255CJ (255)	[Atlanta, GA]				
FCC	F(50-50)	60.00 dBu (	1,461,536	613,650	1406.1
W257DF (257)	[Atlanta, GA]				
FCC	F(50-50)	60.00 dBu (	377,807	182,078	258.6
W261BG (261)	[Morrow, GA]				
FCC	F(50-50)	60.00 dBu (	93,504	34,205	100.0
W266BW (266)	[Winder, GA]				
FCC	F(50-50)	60.00 dBu (	1,269,159	522,868	1215.8
W271CV (271)	[Atlanta, GA]				
FCC	F(50-50)	60.00 dBu (	665,723	282,411	527.7
W275BK (275)	[Decatur, GA]				
FCC	F(50-50)	60.00 dBu (	1,263,143	526,281	1281.1
W279CZ (279)	[Atlanta, GA]				
FCC	F(50-50)	60.00 dBu (	312,778	131,074	216.6
W283CT (283)	[Douglasville, GA]				
FCC	F(50-50)	60.00 dBu (	118,463	43,250	436.4
W292EV (292)	[Marietta, GA]				
FCC	F(50-50)	60.00 dBu (	312,379	130,653	356.6
W296BB (296)	[Jonesboro, GA]				
FCC	F(50-50)	60.00 dBu (	963,320	380,878	886.0