Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the matter of:	)	
	)	RM-_____
Amendment of Parts 73 and 74 of the	)	
Commission's Rules to Address Future FM	)	MB Docket _____
Translator Filing Windows	)	

SUMMARY

With the Commission likely to hold the next filing window for new LPFM stations, possibly as soon as 2023, we need to look even further into the future to the next logical activity for secondary services in the Audio Division after the next LPFM window, the first general filing window opportunity for new FM translator applications for the non-reserved band (92.1~107.9) since 2003, the first general filing window for new FM translator applications for the reserved band since the last millennium and the first opportunity ever for new FM translator applications by licensees of Low Power FM (LPFM) stations.

Even as early as 2003, many in the industry determined that there was a market for new FM translators. This market would eventually be expanded with the ability for FM translators carry AM primary stations, the increase of use of FM Translators for analog simulcast of HD Radio streams and the first opportunity ever for new FM translators to be licensed to LPFM organizations.

As a result of the increased versatility of FM translators as early as 2003, the last general filing window for FM Translators was showered with filing abuses, gamesmanship and the sale of unbuilt noncommercial FM translator construction permits for commercial use bypassing filing fees and auctions.

This petition will:

- Propose safeguards for future FM Translator filing windows to prevent the level of construction permit trafficking and gamesmanship that followed the 2003 Auction 83 FM Translator filing window:
    - Propose restrictions on unbuilt FM Translator construction permits to limit consideration to legitmate and prudent values.
    - Propose to require the disclosure of parties to a new FM translator application and to disclose attributable interests.
    - Propose a nationwide cap of 70 applications (no more than 50 in the Top-150) markets for new FM translator application filings in the non-reserved band (92.1~107.9) and a scaled down limit for the reserved band (88.1~91.9) and to apply the cap to all parties of an application.
    - Propose to place a condition on all new FM Translator construction permits issued noncommercially without filing fees to remain noncommercial for the first four years of licensed operations.

- Make recommendations to assure that Section 5 of the Local Community Radio Act of 2010 (LCRA) is followed by assuring that future LPFM opportunities (even after the next LPFM filing window) are protected in the core area of spectrum limited markets.
- Recommend that the next FM Translator filing window be for noncommercial educational applicants on the reserved band channels, marking the first ever opportunity for LPFM licensees to apply for FM translators and the first opportunity for new reserved band FM translators in this millennium.
- Limits the special rule exceptions and selection priority for all *new* fill-in FM translators in the reserved band to areas where the primary station is the first or second educational service.
- Make minor changes to the point system and tie-breaker rules to accommodate LPFM licensees applying for new FM translator stations.
- Recommend that the filing window for new reserved band FM Translators be followed up by an auction window for new FM Translator stations in the non-reserved band.
- Propose to change some aspects of the LPFM/translator/booster cross-ownership rules and repeal others, to reflect changing industry trends, the actual use of these stations and to eliminate unnecessary and redundant regulations:
    - Eliminate the LPFM to FM translator contour overlap requirement.
    - Permit LPFM stations to "daisy chain" their two (four, if Tribal) translators if necessary.
    - Replace the current 10-and-20-mile market-dependent distance restrictions on the siting of FM translators with a nationwide 25-mile limit consistent with translator rules and to provide additional considerations for government and tribal organizations.
    - Remove redundant language in Part 73 related to FM boosters for LPFM stations that is already codified in Part 74.

This petition will NOT:

- Impose any “per market” application caps in the next FM translator filing windows due to the other extensive anti-trafficking rules already being proposed.
- Propose any rules that would make LPFM stations primary to existing FM translator stations as such arrangements are prohibited by the LCRA.
- Impose any new overall ownership caps on FM translator stations.
- Allow LPFM stations to use alternate means to deliver programming to a non-fill in FM translator.
- Allow LPFM stations to create large regional or national translator networks.
- Make any changes to current or future fill-in FM translators in the non-reserved band or reduce the spectrum rights of existing fill-in FM translators in the reserved band.
- Increase the number of FM translators and/or FM boosters an LPFM station is allowed to own.
- Make any major changes to the point system for full-service NCE filing windows.
- Change the localism qualifications for the ownership of LPFM stations.
- Directly impact the pending proceedings in MB Docket 03-185 (related to FM to TV6 protections) and MB Docket 20-401 (geo-targeted FM boosters)
- Delay the start of the next LPFM filing window.

REC Networks is filing this *Petition for Rulemaking* years in advance of the next FM translator window to assure that there is a full record and to call attention to the events of nearly 20 years ago, which were never made truly permanent to assure that they do not happen again.

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PETITION FOR RULEMAKING

I. INTRODUCTION

1. REC Networks is a leading regulatory advocate supporting a citizen's access to spectrum through commercial and noncommercial broadcasting and non-broadcast services with a major emphasis on Low Power FM (LPFM) and noncommercial educational (NCE) community radio.

2. This *Petition for Rulemaking* (Petition) is being filed in advance of the next potential LPFM filing window to address the next logical steps after the completion of the LPFM window, which would be one or two filing windows for new and major change FM Translator construction permits. This *Petition* is being filed well in advance in order to assure that as we get ready to prepare for the next FM Translator application opportunity, we need to assure that there is enough time to discuss the strong potential for application filing abuses, such as those experienced following the Auction 83 filing window, which not only resulted in a decade of delay for some translator applicants, but also resulted in legislative change and thus resulting in policy changes during the pendency of many of these FM translator applications.

3. This *Petition* will: (1) propose that Commission rules regarding the non-*pro forma* assignment and transfer unbuilt constriction permits in other broadcast service situations in specific situations which are highly prone to trafficking, also apply to FM Translator unbuilt construction permits; (2) propose to assure that FM translator stations obtained without filing fees are operated in a noncommercial manner for at least a four year period; (3) propose a nationwide application cap for FM translator applications in upcoming filing windows; (4) propose minor changes to the eligibility requirements for an FM translator to be commonly-owned by an LPFM station; (5) redefine the core role of new reserved band fill-in FM translators in light of industry trends and technological advancements; and (6) request the first filing opportunity in decades to new FM translator stations on reserved band Channels 201 through 220 be the filing window that proceeds the next LPFM filing window.

4. Like LPFM stations, FM translators are a part of the broadcast ecosystem and have the same secondary status as such. However, FM translators may be used for both commercial and noncommercial services and with the ability to rebroadcast the multicast stream of an FM broadcast station operating IBOC digital (HD Radio), they are permitted to provide "virtual program origination". In

addition, FM translator stations may be used to rebroadcast the audio of an AM broadcast station.[1] As demonstrated in the aftermath of Auction 83, there is a major market for FM translator licenses and construction permits. When deployed properly FM translators provide a lifeline radio service to those in locations where the provision of a full-service station would not be viable and fill-in FM translators can provide additional coverage within a full-service station's service contour. REC acknowledges the value of the FM translator service in this *Petition,* but also recognizes the obligations of the Commission to honor the will of Congress in the relationship between FM translator stations and LPFM stations.

5. REC further acknowledges that other proceedings and events that are taking place that this proceeding may be contingent upon. This *Petition* assumes that the FCC will hold a window for new LPFM stations following the processing of NCE FM applications filed in the 2021 NCE filing window.[2] The Commission stated in the *LPFM Tech Reconsideration Order* that it was likely LPFM would be next. Nothing in this *Petition*, including the proposed rule changes for LPFM stations does not have any direct impact on the LPFM filing window and therefore should not delay that window. If anything, the outcome of the next LPFM filing window may influence a portion of this proceeding. We are also cognizant of MB Docket 03-185, which one of the items up for discussion is the amendment of §74.1205 of the Commission's Rules to provide relief to FM translators, as well as LPFM stations and full-service FM stations in respect to the protection of Channel 6 digital television stations.

II. TRAFFICKING OF FM TRANSLATOR CONSTRUCTION PERMITS WAS AN EPIDEMIC ISSUE IN AUCTION 83 AND CANNOT BE REPEATED

A. Auctions 99 and 100 had sufficient controls to prevent trafficking

6, The previous filing window series for FM translators were the Auction 99 window in 2017 and the Auction 100 window in 2018. This filing window series was unique because it addressed a specific purpose, the revitalization of AM broadcast stations. The Auction 99 filing window was limited to one application from Class C and D AM broadcast licensees that did not participate in a previous opportunity to move an FM translator up to 250 miles to be used for the rebroadcast of an AM station.[3] Auction 100

[1] 47 C.F.R. §74.1231(a).

[2] *Amendments of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules,* Order on Reconsideration, FCC-21-70 ("*LPFM Tech Reconsideration Order*") at p.7, para. 15 ("...a new LPFM filing window is expected after the recently announced full service noncommercial FM new station filing window.")

[3] *FCC Announces First AM Revitalization New Translator Filing Window,* Public Notice, 32 FCC Rcd. 3159 (2017).

was similar but was available to all classes of AM broadcast station licensees.[4] Because of these tight controls on the eligibility of applicants, the restriction on the number of applications filed and a license condition that the primary station of the translator cannot be changed to another station, the trafficking of FM translator construction permits was not an issue in that window series.

B. Speculation in Auction 83 demonstrated that there is a market for FM translators requiring rules to address the trafficking of unbuilt construction permits

7. The previous opportunity for new FM translator stations was the Auction 83 filing window in 2003. This window was affectionately referred to in the advocacy community as the "Great Translator Invasion". As noted by the Commission in the *Third Further Notice,* the window generated over 13,000 applications.[5] Prior to the opening of the Auction 83 window, the Commission stated that there was a total of 3,818 licensed FM translator stations.[6] The Commission further noted that two commonly owned applicants filed 4,219 applications in this window, which accounts for almost one-third of the applications filed in the window.[7] The Commission further noted that fifteen applicants were responsible for over 50 percent of all tech-box submissions in the window.[8] At the adoption of the *Third Further Notice* in 2011*,* the Commission noted that this applicant sought to assign more than 50 percent of the 1,046 construction permits that they awarded through the window.[9]

8. In the *Third Report and Order*, the Commission was concerned about the skewed activity in the Auction 83 window to the point where it raised "concerns about the integrity of the FM translator licensing procedures."[10] The Commission at the time also stated that even if it was lawful, it was fair to question whether the acquisition of unprecedented numbers of FM translator authorizations by a handful of entities through the window filing process promotes either diversity or localism and that the "rapid flipping

[4] *Second FM Translator Filing Window, Freeze on Certain FM Applications,* Public Notice, 32 FCC Rcd. 10173 (2017).

[5] *Creation of a Low Power Radio Service,* Third Further Notice of Proposed Rulemaking, 26 FCC Rcd. 9986 (2011) ("*Third Further Notice*") at para. 2.

[6] *Creation of a Low Power Radio Service,* Third Report and Order, 22 FCC Rcd. 21912 (2007) ("*Third Report and Order*") at para. 51.

[7] *Third Further Notice* at para. 4. Because these two entities had common attributable interests, we will refer to them going forward as a single "applicant".

[8] *Third Report and Order* at para. 54.

[9] *Third Further Notice* at para. 4

[10] *Third Report and Order* at para. 55.

of hundreds of permits acquired through the window process for substantial consideration does suggest that [the Commission's] current procedures may be insufficient to deter speculative conduct."[11]

C. Unbuilt FM translator authorizations should be subject to the Commission's anti-trafficking rules

9. *Background* – In §73.3597(c)(1)(i), the Commission considers an "unbuilt station" as a "construction permit [which] is outstanding, and, regardless of the stage of physical completion, as to which program tests have not commenced or, if required, been authorized."[12] §73.3597(c)(2) states that "[t]he FCC will not consent to the assignment or transfer of control of the construction permit of an unbuilt station if the agreements or understandings between the parties provide for, or permit, payment to the seller of a sum in excess of the aggregate amount clearly shown to have been legitimately and prudently expended and to be expended by the seller, solely for preparing, filing, and advocating the grant of the construction permit for the station, and for other steps reasonably necessary for placing the station in operation."[13] Subparagraph (c)(3) of that section further states that on any such assignment of a unbuilt station must include a statement that there was no consideration or if consideration was made[14], to include an itemized accounting of the expenses.[15]

10. As demonstrated by the filing abuses that took place in Auction 83, as well as significant rule changes that had taken place, including the ability for FM translators to rebroadcast AM broadcast stations as demonstrated by the responses in the AM Revitalization 250-mile move opportunity in 2016[16] as well as Auctions 99 and 100 in 2018 and 2019 respectively, as well as the increased role of using fill-in FM translators for the simulcasting of HD multicast streams, it can be established that there is definitely an identified market for FM translators that are just as prone to abuse as construction permits obtained in past Commission programs. This abuse was clearly demonstrated in broad daylight by the post-window activities of a small number of applicants representing a considerable majority of the applications filed in the window.

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[11] See *Id.*

[12] 47 C.F.R. §73.3597(c)(1)(i).

[13] 47 C.F.R. §73.3597(c)(2).

[14] 47 C.F.R. §73.3597(c)(3)(i).

[15] 47 C.F.R. §73.3597(c)(3)(ii).

[16] *AM Station Filing Window for FM Translator Modifications Opens 7/29/16*, Public Notice, 31 FCC Rcd. 7765 (2016).

11. In contrast, the LPFM service has very tight controls in place to prevent the trafficking of construction permits. First, LPFM attributable entities, other than public safety agencies and tribal entities are limited to an ownership cap of only one station.[17] Second, LPFM stations have very limited cross-ownership ability.[18] Finally, LPFM stations are very restricted on assignments including a prohibition on the assignment of unbuilt construction permits in the first 18 months, restrictions on assignments of LPFM stations granted through comparative review to inferior situated entities within the first four years of licensed operation and most importantly, at all times, a restriction on consideration that is limited to legitimate and prudent expenses only.[19]

12. *Proposal* – REC therefore proposes that for future FM translator filing windows, both in the commercial and noncommercial segments, that the procedures of §73.3597(c) and (d) apply to all new FM translator authorizations. We therefore propose to amend §74.1233 to add a new paragraph (f) to cross reference to this rule in Part 73. In addition, we propose to amend §73.3597(c) to include FM translators to the services included by the rule and to add a provision that only new and major change translators filed after the date of the *Notice of Proposed Rulemaking* for this proceeding are affected by this rule..

13. The behaviors following Auction 83 clearly show that FM translator construction permits do have a lot of value and that in the past, the Commission has identified vulnerabilities in this application process. The addition of this restriction to FM translator construction permits will help assure that in future filing windows, that granted construction permits will not be immediately "flipped" and sold, especially in cases where there was no outlay by the applicant to obtain the grant.

D. Closing the "NCE Loophole"

14. REC further notes that during Auction 83, the activities taken by both the applicant in question as well as other applicants in the window was that these applications were originally filed as NCE from a nonprofit organization. This meant that these applications would not be subject to any filing fees, however, if the application was considered mutually exclusive (MX) and could not be resolved through settlement or other modification, the application would be dismissed in favor of a competing commercial

[17] 47 C.F.R. §73.855.

[18] 47 C.F.R. §73.860.

[19] 47 C.F.R. §73.865.

application.[20] If only NCE applications existed in the MX group, then the MX group would be settled through a comparative review (point) hearing.

15. Unlike auctions for FM or TV allotments or other non-broadcast services, there are more opportunities to modify FM translator facilities due to the extreme flexibility in the authorization and licensing process, thus resulting in many more singleton applications, which in the case of Auction 83, were mostly filed without paying the Government a dime.

16. If the application is filed as commercial, the current filing fees for an original FM translator construction permit application is $705 per application, $1,280 if part of an auction; license to cover applications are $180 per application and applications to assign or transfer an authorization in the FM Translator service is $290 per station. No fees apply to notifications to change the primary station of an FM translator.

17. To avoid these fees, one can simply file the original FM translator application as NCE. While there are fees for the commercial assignment application, the so-called "non-profit" organization was able to make a hefty profit on the assignments of mere pieces of paper. As REC noted in comments during that just over 2 years of the close of the Auction 83 window, the one applicant in question had already raked over one million dollars on authorizations for which they did not pay a dime.[21] In this day and age and especially with the comments made by the advocates of the commercial broadcast industry that regulatory fees are too high, it should be very concerning that any entity was able to make millions in profits without paying a dime to the government. All at the expense of improved localism in our communities and the integrity of the Commission's licensing process.

18. Another practice we have observed from one of the largest licensees of NCE facilities is the operation of the FM translator specifying a commercial facility as the primary station. In the case of an original construction permit, this again evades the necessary filing fees for the construction permit and license applications and since (1) the licensee is statutorily exempt from regulatory fees; (2) there is no assignment of license involved; and (3) there is no fee to notify the Commission of a change of primary station to a commercial facility. The only time this translator will ever have to pay any fees is $175 every eight years for the license renewal.

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[20] *See Reexamination of the Comparative Standards for Noncommercial Educational Applicants,* Report and Order, 18 FCC Rcd. 6691 (2003) at para. 1.

[21] See *Reply Comments of REC Networks*, MM Docket 99-25 (Sep. 21, 2005) at p. 5.

19. *Proposal* – Our proposal to close the NCE loophole is simple. We are proposing that NCE FM translator authorizations, regardless of band, would include a condition that restricts the primary station to only NCE and LPFM stations for a period of the first four years of licensed operation. After which time, FM translators operating in the non-reserved band (92.1~107.9) would be permitted to specify a commercial broadcast station as their primary station. This condition is also necessary on reserved band permits and licenses as constructed facilities are permitted to "band hop" to the non-reserved band.[22] It is REC's position that such a simple condition on new permits and licenses will further assure that the will of Congress is met by assuring that authorizations granted on a fee-waived noncommercial basis are being used for their intended purpose. We propose to amend §74.1232 to add a new paragraph (i) to enact this rule. This proposed rule would not apply in cases where the primary station does not change but the primary station modifies their license to change from noncommercial to commercial operation.

III. SECTION 5 OF THE *LOCAL COMMUNITY RADIO ACT OF 2010* IS STILL IN EFFECT FOR NEW FM TRANSLATOR APPLICATIONS

A. History of application handling, post Auction 83

1. Introduction of the "10-cap"

20. After the massive filing activities of Auction 83, the alarm bells at the LPFM advocacies REC and Prometheus Radio Project ("Prometheus") started to ring loudly. The Commission took notice as early as 2005 in the LPFM *Further Notice of Proposed Rulemaking*, which addressed statements made by Prometheus where they claimed that virtually all opportunities for new LPFM stations in the top-25 markets have been eliminated and that translators were not being filed by members of the local community, but instead by non-local organizations applying for a large number of applications.[23] At the time, Prometheus asked the Commission to give locally controlled and operated LPFM stations priority over translators and did make several inquiries regarding the relationship between LPFM and FM translators.[24]

21. In the *Third Report and Order* adopted in November, 2007, the Commission had stated that they had already granted 3,500 original construction permit applications from the Auction 83 window

[22] 47 C.F.R. §74.1233(a)(1)(i)(B).

[23] *Creation of a Low Power Radio Service,* Further Notice of Proposed Rulemaking, 20 FCC Rcd. 6763 (2005) ("*LPFM Further Notice*") at para. 30.

[24] *See Id.*

and that 7,000 applications remained pending.[25] The FCC determined at the time that very few opportunities for LPFM stations existed prior to the Auction 83 window and that the Auction 83 window did have a preclusive effect on future LPFM licensing opportunities.[26]

22. To address the issue, the Commission limited further processing of applications in the Auction 83 window to 10 proposals per applicant.[27] Those with more than 10 pending applications needed to identify which applications they wanted to keep ("10-cap"), and the remaining applications would be dismissed. The Commission stated that the cut-off would limit the preclusive impact of Auction 83 filings on LPFM licensing opportunities by barring the processing of thousands of applications filed by a small number of applicants without impacting the 80 percent of the filers who filed 10 or fewer applications.[28] The FCC collected further comments in the companion *Second Further Notice of Proposed Rulemaking* to determine the status of LPFM stations in respect to FM translators.[29]

2. Enactment of The Local Community Radio Act of 2010

23. In January, 2011, the *Local Community Radio Act of 2010* was signed into law by President Obama.[30] Section 5 of the LCRA states:

> SEC. 5. ENSURING AVAILABILITY OF SPECTRUM FOR LOW POWER FM STATIONS
>
> The Federal Communications Commission, when licensing new FM translator stations, FM booster stations, and low-power FM stations, shall ensure that –
>
> (1) licenses are available to FM translator stations, FM booster stations,17 and low-power FM stations;
>
> (2) such decisions are made based on the needs of the local community; and
>
> (3) FM translator stations, FM booster stations, and low-power FM stations remain equal in status and secondary to existing and modified FM stations.

24. Section 5(1) mandated that the Commission adopts licensing procedures that ensure some minimum number of licensing opportunities exist for each service throughout the nation. When read

[25] *Third Report and Order* at para. 43.

[26] *See Id.*

[27] *Id.* at para. 56.

[28] *See Id.*

[29] *Id.* at para. 84.

[30] Pub. L. 111-371, 124 Stat. 4072 (2011) ("LCRA").

together with Section 5(2), the Commission interpreted that Section 5(1) requires that the Commission to the extent possible, license opportunities for both services in as many local communities as possible. The Commission needed to address the disparity between the two services. At the time, there were 1,921 FM translators at locations within the top 200 Arbitron (now Nielsen Audio) rated markets where in contrast, there were only 290 LPFM stations.[31] The FCC also noted that due to the differences in how LPFM stations and FM translator stations are authorized (distance separation vs. contours), it is significantly easier to assure that licenses were available for future FM translators than it was for future LPFM stations.[32]

25. Section 5(2) directed the FCC to base FM translator and LPFM licensing decisions on the "needs of the local community", which could be interpreted to concern solely that the needs of communities for additional LPFM service on the theory that translators cannot be expected to provide a meaningful local service, at least in larger markets.

26. In the LPFM *Third Further Notice of Proposed Rulemaking,* the Commission determined that the imposition of the 10-cap was not consistent with LCRA Section 5(1).[33] As a result, the Commission looked at other concepts including holding a joint LPFM/Translator filing window, holding the FM translator applications in abeyance until after another LPFM filing window or to consider a market-specific translator application dismissal processing policy, also known as the "channel floors" approach.[34] The *Third Further Notice* also considered methods to prevent trafficking of FM translator construction permits including the potential for a cap of 50 or 75 applications.[35]

3. Grids and channel floors

27. In the *Fourth Report and Order,* the Commission took the Top-150 media markets as well as several lower markets with at least four pending FM translator applications and classified each one as either "spectrum limited" or "spectrum available".[36] The area evaluated for each market was normally a grid of 31 minutes of latitude and longitude with the core of the market being in the center ("31x31 grid") or in some cases where most of the population was concentrated within the center area of the grid, a grid of

[31] *Third Further Notice* at para. 12.

[32] *Id.* at para 13.

[33] *Id.* at para 9.

[34] *Id.* at paras 21-31.

[35] *Id.* at para. 34.

[36] *Creation of a Low Power Radio Service,* Fourth Report and Order, 27 FCC Rcd. 3364 (2012) (*"Fourth Order"*) at para. 38.

21 minutes of latitude and longitude ("21x21 grid") was used.[37] Within each grid, a channel search study was performed on each of the 100 FM channels to determine LPFM availability.[38] If there was LPFM availability, then the "channel point" would be considered an LPFM opportunity.

28. The FCC also looked at "channel floors" of potential LPFM licensing opportunities in these markets.[39] The channel floors ranged from 8 potential LPFM channels in the top 20 markets to 5 potential LPFM channels below the top 100 markets. They based these figures on a rough approximation of NCE stations in the top 150 markets as a gauge for the potential of new LPFM stations in the same area.[40] They used a computer program to determine the number of potential LPFM opportunities based on the locations and channels of the channel points in each market and if the number of available opportunities exceeded the channel floor, then the market was considered spectrum available while those that did not meet the requirement were considered spectrum limited. Translator applicants that were in or near the grid market areas that were spectrum limited were required to make an anti-preclusion study to demonstrate that their application would not preclude any identified LPFM opportunities based on the identified channel points inside the grid.

4. National application cap

29. To further address the trafficking issue the Commission imposed a cap of 50 remaining applications from the Auction 83 window ("50-cap") that could continue to be prosecuted.[41] This meant that all but the 20 applicants with the most remaining pending applications would be able to prosecute all of their applications.[42]

30. On reconsideration, the Commission extended the cap to a national total of 70 applications, of which, only 50 of the applications may be in any of the top-150 or other markets identified at the time.[43]

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[37] *Id.* at para 39.

[38] *Id.* at paras. 28-

[39] *Third Further Notice* at para. 29.

[40] *See Id.*

[41] *Fourth Order* at para. 58.

[42] *See Id.*

[43] *Creation of a Low Power Radio Service,* Fifth Order on Reconsideration, 27 FCC Rcd. 15402 (2012) ("*Fifth Recon*") at para. 41.

5. Per-market cap

31. In addition to the national 50-cap, the Commission implemented a one application per market cap. The Commission would then eventually clarify that the per-market cap was based on the full Arbitron metro markets and it would be based on the physical location of the transmitter. Embedded markets would be treated as separate markets for the cap. ‘

32. On reconsideration, the Commission increased the per-market cap from one to three applications with certain conditions placed on the second and third applications in each market. [44]

B. Analysis and proposal to maintain LPFM opportunities in core urban areas

33. REC has reanalyzed the methods that were used in 2012 in the aftermath of Auction 83. We have also taken into account the LPFM filing window and the FM translator application activity that took place in 2016 with the "major move opportunity" to support AM Revitalization as well as the AM Revitalization filing windows, Auctions 99 and 100. We are also cognizant to the likelihood of another LPFM filing window as soon as 2023. It is REC's general position that an LPFM window must be next in order to assure that both LPFM and FM translator proponents have an equal opportunity to take a bite from the apple. We must also take into consideration that Section 5 of the LCRA is still in force and that the Commission must provide licenses to both LPFM and FM translator stations. With this, we propose to streamline the Section 5 criteria in a manner that addresses the disparity and assures that even at the time of the next FM translator window or window series, that potential LPFM opportunities will remain in the spirit of Section 5.

1. Replacement of "channel floors" with a "disparity factor"

a. Overview

34. The previous concept of using "channel floors" was a method of attempting to address the disparity in LPFM presence within the Top-150 core areas as opposed to FM translators. One of the issues with the old channel floor concept was that potential LPFM opportunities did not necessarily reflect the reality of where communities are located and also did not take fully into consideration the level of difficulty in which an LPFM station could be proposed in a particular area, mainly the requirement that a second-adjacent channel waiver would be necessary in order to achieve the grant for an LPFM station. The channel floor concept involved assuring that a fixed number of LPFM opportunities were available based on market size.

[44] *Id.* at paras. 46-68.

35. REC recommends a modification to the channel floor concept that assures that LPFM opportunities are maintained in areas where FM translator presence exceeds LPFM presence in the core market areas. The REC plan not only looks at number of stations, but also looks at the coverage that these stations provide. The REC plan also looks at how an FM translator is being used to determine whether the translator serves a true community need or provides only a "station want". The plan also takes future LPFM opportunities into a more realistic approach that does not look solely at any available spot where an LPFM station can fit; but takes into consideration that it serves a viable community and whether a station can realistically be applied for and built at the channel point used for reference.

36. As an initial matter, we recommend using the grid and channel point methodology that was originally used to determine opportunities in the core urban market areas. While a few markets have changed since 2012, we will use the same grid center points and grid sizes (31 x 31 or 21 x 21) that were used in 2012. Only grids for current markets 1 through 150 would be used.[45] For a couple of the markets that did not exist or were not in the top 150 back in 2012, we have established new 31 x 31 grids for those areas.

b. Determination of reference channel points for LPFM opportunities

37. A part of the prediction of LPFM opportunities must include the assignment of potential LPFM opportunities at channel points that show the availability of LPFM stations and assignments of those opportunities are compatible with other assigned channel points to assure that minimum distance separations between multiple LPFM opportunities in the same market grid area are met as well as to assure compatibility with other identified LPFM opportunities in adjacent market grids.[46]

38. In each market grid, we measured the distances between the center channel point on the grid and the immediate channel point in the 8 cardinal directions surrounding the center channel point. We used the longest of those distances to determine the search area that will be used in the next process. On average, the search distances came out to between 2 and 3 kilometers based on the location's latitude taking into account the curvature of the earth.

39. To assign channel points for potential LPFM opportunities, we identified all of the reference point coordinates for census designated communities located within the 31x31 or 21x21 minute

[45] Core market grid areas based on the current Nielsen Audio top 150 markets at the time this *Petition* was written are identified in Appendix C.

[46] Detailed information about the core market grid process and how potential LPFM opportunities are assigned can be found in Appendix B.

grids and sorted them in reverse population order, thus giving priority to the communities with the higher population. We then searched within the search distance defined in the previous paragraph to locate the nearest channel points. If a channel point indicated potential LPFM availability, we assigned that channel point to that community as a potential opportunity. Rules were put in place to prevent the assignment of channel points less than 23.5 km apart on co-channel and 13.5 km part on first-adjacent channels. After searching by community, we did the same search using Census Bureau ZIP Code Tabulation Areas (ZCTA) following the same rules.[47] No more than one channel was assigned per community or ZCTA.[48]

c. Determination of spectrum available and limited markets

40. Under the REC approach, a core area is considered "spectrum limited" if it can be demonstrated that the concentration of FM translator facilities exceeds the concentration of existing LPFM stations and LPFM opportunities within the grid. This is done through a scoring system that considers the type of facility, the size of the facility, the difficulty to construct a facility and other public interest factors.

41. *Scoring existing LPFM stations* – Under our approach, base facility scoring is based on the class standard service contour size in kilometers. An existing LPFM station, regardless of ERP and HAAT will receive six points (to represent the 5.6 km service contour). LPFM stations that are time shared will be assigned a fraction of those points.[49] For example, for a two-station time share, both LPFM stations are given three points. The need to fractionalize like this is due to the fact that even though these are separate LPFM licensees, they are not able to simultaneously operate their stations and in most cases, not requiring an additional channel.

42. *Scoring potential LPFM opportunities* – LPFM opportunity scoring takes into account the more realistic potential that a station can be constructed at or near the channel point. We do this through taking into account whether a second-adjacent channel waiver is required and if so, whether a second adjacent channel is feasible. The latter part looks at the distance to the short-spaced second-adjacent channel stations. If all short-spaced stations are within a specific distance which represents the 80 dBu

[47] ZIP Code Tabulation Areas (ZCTA) are generalized representations of United States Postal Service ZIP Code service areas. More information at: https://www.census.gov/programs-surveys/geography/guidance/geo-areas/zctas.html.

[48] The use of ZCTA as a second data source for determining a community is especially useful in very large cities, such as Los Angeles as the ZCTA narrows to specific areas within the city that are well distanced from the Gazetteer reference coordinates.

[49] Currently, all LPFM time share groups located within the top-150 core market grids include all members of those groups within that grid. As a result, there are no markets where the total countable LPFM stations is a fractional number.

service contour of class maximum of the short-spaced station, then it is considered an "easy" waiver. If one or more distances exceed this guideline, then it is considered a "hard" waiver.

43. The distances to the 80 dBu contour to determine an easy waiver are as follows:

FM station class	**Maximum distance required (km)**
A	9.1
A (Puerto Rico)	14.0
B	19.2
B (Puerto Rico)	33.3
B1	12.9
B1 (Puerto Rico)	15.9
C	44.6
C0	38.1
C1	31.2
C2	19.2
C3	12.9
D	1.8
Translators up to 7.3 km service contour	2.3
Translators more than 7.3 km and up to 13.3 service contour	4.2
Translators more than 13.3 km service contour	6.1

44. Each existing LPFM station and identified LPFM opportunity inside the grid will be identified as such:

LPFM station/opportunity type	**Points per LPFM station/opportunity**
Existing LPFM station not in a time share group	6
Existing LPFM station in a time share group	6 divided by the number of LPFM stations in the time share group
Identified LPFM opportunity that does not require a second adjacent channel waiver.	6
Identified LPFM opportunity that requires a second-adjacent waiver, however all short-spaced stations meet the 80 dBu maximum distances above	5 (“easy waiver”)
Identified LPFM opportunity that requires a second-adjacent channel waiver, however all short-spaced stations exceed the 80 dBu maximum distances above	4 (‘hard waiver”)

45. *Scoring existing FM Translator facilities* – First, as a point of order, it is the position of REC that within the urban grid, a single FM translator that specifies an AM facility as the primary station that serves the community of license of the AM station has a stronger community need than an FM translator that rebroadcasts another FM station. For simplicity in this proceeding, REC will consider all FM translators rebroadcasting an AM station as serving a stronger community need. To recognize this increased

community need, our plan proposes to "discount" the number of offsetting points that are used to represent the existing FM translators when calculating the disparity factor.

46. Points are assigned to each FM Translator facility based on the three "sub-classes" used for the protection of FM Translators by LPFM stations as defined by the Commission in §73.807(c)(1) of the Commission's Rules. Those "sub-classes" are based on the distance to the FM Translator's 60 dBu contour based on ERP and HAAT along 8 radials. As previously mentioned, a discount in points are awarded to any FM translator that rebroadcasts an AM station.[50]

47. Points representing FM translators are assigned as follows:

Distance to FM Translator 60 dBu contour	**FM Translator rebroadcasting an AM station**	**FM Translator rebroadcasting an FM station**
7.3 km or less (lower tier)	6	7
Greater than 7.3 and less than 13.3 km (middle tier)	11	13
13.3 km or greater[51] (higher tier)	17	20

48. Points for actual LPFM stations and potential LPFM opportunities are aggregated. If the number of aggregated points exceeds the point value representing FM translators using the method above, then the market grid is considered as "spectrum available". If the point values are equal or the FM Translator point value exceeds the LPFM aggregated point value, then the market grid is considered as "spectrum limited".

49. For example, in Los Angeles, there are 4 LPFM existing stations (including 7 that are in time share agreements), 8 potential LPFM channel points of which 2 are considered easy and 6 are considered as hard. This gives LPFM a score of 58 points. There are 5 FM translators rebroadcasting AM stations, four at the lower tier and one at the middle tier of protection. There are also 4 FM translators rebroadcasting FM Translators, all at the higher tier. This gives FM translators a score of 115 points. As

[50] While FM translators providing fill-in service for the primary station have historically been in the public interest, this provision in the rules has been used to justify the use of FM translators to provide analog "fill-in" service for the HD subchannel of an FM station as opposed to their main analog or HD-1 audio stream. Most modern applications of FM translators to be used for fill-in service are being used for the purpose of rebroadcasting the HD subchannel

[51] The minimum distance separations in §73.807(c)(1) at the top tier are based on an FM Translator having a service contour of 20 kilometers.

the score for FM Translators exceeds the scoring representing LPFM, then the grid area is considered "spectrum limited".

50. Another example, in Tucson, Arizona, there are currently 8 LPFM stations and 9 opportunities including 3 not requiring a waiver, 5 with an easy waiver and 1 with a hard waiver giving LPFM a score of 95. There are 6 FM Translators, all broadcasting FM stations including 5 in the lower tier and 1 in the higher tier giving FM Translators a score of 55 points. As the score for LPFM exceeds the score for FM Translators, the grid area is considered "spectrum available".

51. REC is completely aware that the data we will present in this *Petition* regarding specific markets is very premature as it does not take into account the outcome of the next filing window and therefore, the determinations of spectrum limited and spectrum available core grid areas denoted in this *Petition* are based on the time of writing and will completely need to be revisited following the conclusion of comparative processing of the next LPFM window and prior to the opening of a subsequent FM Translator window or window series.

52. If we look at this data based on today's (pre-2023 LPFM window), we find that out of the 150 grid areas, only 28 areas have a disparity factor that favors LPFM over FM Translators with the largest market being Seattle.[52] The areas with the worst LPFM disparity situations include Reading, PA (2,467%), Nassau-Suffolk, NY (2,183%), Trenton, NJ (1,660%), New York, NY (1,358%) and Fort Collins, CO (1,129%). We do note that some of those disparities, especially in New York New Jersey and Pennsylvania are attributed mainly to spectrum crowding by full-service stations and in markets like New York City, LPFM channels were very difficult to find. In the 2013 window, the only New York City area LPFM grants were in Flushing-Queens, Staten Island and a couple in New Jersey.

53. REC Networks has made available a fully-interactive tool that will allow the viewing of the 150 channel point grids, the channels and locations of the potential opportunities we identified, the actual channel points themselves and the stations considered in the scoring method, at our website https://recnet.com/channel-points.

2. Proposal for FM Translators within the market grids

54. REC proposes a process somewhat similar to what was done following Auction 83. FM Translator window applications, including amendments filed post window would be required to protect any

[52] See Appendix C.

channel point within a "spectrum limited" grid that shows LPFM availability. Channel points within "spectrum available" grids need not be protected in this manner.

55. Window FM translator applications, including amendments that are located either inside of or within 39 kilometers of a spectrum limited channel point grid must include an anti-preclusion study that demonstrates that within a specific radius of the proposed translator facility[53], there are no LPFM channel points for the appropriate channel within the §73.807(c)(1) preclusion distances as set forth:

FM translator 60 dBu contour distance	**Co-channel**	**First-adjacent channel**	**Second-adjacent channel**
7.3 km or less	26	15	8
Greater than 7.3 km but less than 13.3 km	32	21	14
13.3 km or greater	39	28	21

56. This level of protection will demonstrate that within the specific Top-150 core grid areas that are considered "spectrum limited", that future LPFM opportunities are protected pursuant to Section 5 of the LCRA.

C. Consideration of the per-market cap

57. As previously mentioned, the Commission enacted an application cap for FM Translators on a per market basis which started with one and eventually expanded to three. Upon consideration of the anti-trafficking rule expansion that REC is proposing as well as the national application cap proposed below, we feel that these two methods will best help control the overall trafficking of authorizations in the FM Translator service. Therefore, we will not propose a per-market cap in this *Petition*.

D. National cap on applications filed in FM Translator windows

58. Following the Auction 83 filing window, the Commission first responded by placing a cap on still ungranted construction permit applications to a limit of 10 applications. Following the enactment of the LCRA, this limit would be extended to 50 applications and then eventually be expanded on reconsideration to 70 applications with a maximum of 50 being located in the Top-150 Arbitron (now Nielsen Audio) metro markets. This national cap was successful in gaining control of an out-of-control filing window and affected a small number of applicants. Application caps are not a novel idea. Application caps have been used in both the 2007 and 2021 NCE FM filing windows as well as the Auction 99 and 100 translator filing window series. Application caps assure that as many diverse applicants have an opportunity and helps prevent the trafficking of authorizations.

[53] An example of an anti-preclusion showing can be found in our Frequently Asked Questions list in Appendix E.

59. Normally, application caps in the NCE service are based on party. This means that if one party has an attributable interest in more than one entity, their attributable interest applies all applications for which they are a party to. Since the 2003 FM Translator window did not request information on parties or attributable interests, the Commission was stuck having to apply the cap to filing entity name.[54] This needs to be changed for FM Translator windows going forward in order for an application cap to be truly effective.

60. REC is proposing that for a filing window for the non-reserved band channels (221 through 300), that the Commission imposes a cap of 70 applications of which, no more than 50 applications may be from locations inside of the 150 Nielsen Audio metro markets, based on the full definition of the market as opposed to just inside the 31x31 or 21x21 grid.

61. Such a cap should be by *party* as opposed to license entity. This will require a change to Form 2100, Schedule 349 to require information on parties to the application and for the disclosure of attributable interests of each party to the application. For example, if John Doe is a part owner of ABC Corporation and XYZ Corporation and both ABC and XYZ file applications in the filing window, both applications would count separately towards the cap by the virtue of John Doe being a party to both entities. In order to properly enforce application caps like this, party information is vital as it will prevent gamesmanship of the system.

62. For filing windows involving the reserved band channels (201 through 220), the application caps need to be scaled down to one quarter of that of the non-reserved band channels. This means that the application cap proposed for reserved band channel windows is 18 applications nationwide with no more than 13 applications located in the top-150 markets.[55]

[54] *Fifth Recon* at para. 58; *see* also *Id.* at note 113.

[55] In comparison, the application caps for the 2007 and 2021 NCE filing windows were 10 applications, regardless of market size.

IV. REEXAMINING THE PRIORITY OF NEW FILL-IN FM TRANSLATORS IN THE RESERVED BAND

A. The modern history of fill-in FM translator stations

63. The modern iteration of the "fill-in" FM translator was created in the 1990 *Translator Order*.[56] Fill-in translators were characterized at the time as being used to "fill-in 'dead spots'".[57] At the time, fill-in translators were provided with the ability to operate at ERP and HAAT combinations that would normally exceed those for other FM translators as long as the translator's service contour remained inside the primary station's contour,[58] use alternate program delivery methods including auxiliary frequencies in certain cases[59] and the most relevant for this discussion, priority for selection in the event of mutual exclusivity.[60]

64. In November 1990, when the *Translator Order* was adopted, there were only 1,438 NCE FM stations.[61] By the year 2000, that number had increased to 2,140 NCE FM stations.[62] By 2010, almost three years following the first modern filing window for new NCE FM stations, the number shot up to 3,151 NCE FM stations.[63] As of June 30, 2022, there are currently 4,184 NCE FM stations licensed.[64] In addition, REC has evaluated 1,433 facility records of FM translators operating in the reserved band. Of those 1,433 records, we are estimating that 1,127 facilities are operating within the power limitations of §74.1235(b) and the remaining 306 are not. After performing some spot checks on some of the facilities that are not meeting the §74.1235(b) requirements, we are finding that some are not operating fill-in service but instead may have been authorized prior to the changes made in MM Docket 88-140[65] and some are simply unexplained. With only about one-fifth of the reserved band translators potentially not meeting the limits

[56] *Amendment of Part 74 of the FM Commission's Rules Concerning FM Translator Stations,* MM Docket 88-140, Report and Order, 5 FCC Rcd. 7212 (1990). ("*Translator Order*")

[57] *Translator Order* at 7233 ¶ 78.

[58] *Id.* at 7225-7228 ¶ 95-109.

[59] *Id.* at 7220-7221 ¶ 56-66.

[60] *Id.* at 7223 ¶ 76-78.

[61] *Broadcast Station Totals as of November 30, 1990,* News Release (Dec. 5, 1990).

[62] *Broadcast Station Totals as of September 30, 2000,* News Release (Dec. 1, 2000).

[63] *Broadcast Station Totals as of December 31, 2009,* News Release (Feb. 26, 2010).

[64] *Broadcast Station Totals as of July 7, 2022*, News Release (June 30, 2022).

[65] See *Translator Order,* Final Rules.

in §74.1235(b), it can suggest that there are currently a fairly small number of fill-in FM translators inside the reserved band. However, with the modern redefinition (ability to rebroadcast AM) and industry repurposing (HD simulcast) of fill-in FM translators in a purpose for which they were never anticipated at their creation (filling in gaps), we must continue the question any justification that future fill-in reserved band translators would have. Therefore, we must challenge the public interest of new and major change reserved band fill-in translators used in well-served areas. Fill-in translators in the non-reserved (commercial) band are not subject to our challenge.

65. When the modern rules for fill-in translator services were adopted, the reserved band was a lot sparser with more educational "white" (no-service) and "grey" (only one service) areas and thus a substantial need to use fill-in FM translators to assure that levels of first and second educational service were made available to as many people as possible. This growth was well realized in the outcomes of the Fair Distribution Analyses decisions from the 2007 and the most recent 2021 NCE FM filing windows:

NCE FM Filing Window	**Total MX groups (excluding bifurcated sub-groups)**	**Groups determined solely on §307(b) priority**	**Groups determined based on first educational service population**	**Groups determined based on aggregated first/second service population**	**Granted singleton applications with fair distribution claims**
2007[66]	459	84	32	55	308
2021[67]	231	44	9	7	153[68]

B. The role of fill-in FM translators today

66. Since 1990, we have seen substantial growth in the NCE FM service resulting in nearly triple the number of licensed stations since the *Translator Order*. We have also seen the role of fill-in FM translators, especially in the commercial non-reserved band evolve over time to include the ability to provide "fill-in" services for AM broadcast stations as well as those who are using the fill-in "loophole" to use an FM translator to rebroadcast an HD radio audio stream other than the station's primary analog or HD-1 programming.

[66] Does not include "pre-2000" MX groups that were also processed around this time.

[67] While the Audio Division has completed the major Fair Distribution Analyses orders for the 2021 window, they are still considering the point system comparative hearings, which, based on the outcome of defective applications and/or responsive pleadings may result in more Fair Distribution decisions being made.

[68] Excludes claims of solely "First Aural Transmission Service" due to a general misunderstanding by some applications of this point criterion as under the perception that it meant first aural service to a community of license (in the commercial context) as opposed to service to bona-fide white area. This value may increase as more applications are granted.

67. Also, during this time, we have seen substantial growth in the use of FM boosters, especially with the technological developments that have taken place over time and the ability to deliver broadband services to more places than ever at a more affordable cost. For example, Geo Broadcast Systems provides a hardware and software solution called MaxxCasting™, which they describe as "… a system of FM single-frequency networks (SFN) with transmitters fully synchronized to boost the signal from the main transmitter with seamless transitions from the main to and between the booster nodes. MaxxCasting uses modern cellular network design, broadcast and SFN software tools utilizing high resolution terrain data including building heights, propagation tuning based upon real-time field measurements, as well as analysis of vehicular traffic, and demographics."[69] This type of technology is a far step from the 1990s and before.

68. Now that since the last time that the Commission has authorized new fill-in FM translators in the reserved band a hard look and considering that the areas with educational "white" and "grey" areas have substantially reduced as a result of the pre-2000 application processing as well as the NCE filing windows in 2007 and 2021, we must reexamine the role and more importantly, the spectrum priority of NCE fill-in translators in the reserved band going forward.

C. Redefinition of priority and privileges for new reserved band fill-in FM translators

1. Introduction

69. For a long period of time, the Commission has recognized the unique role of FM translators used for fill-in purposes and has previously mentioned, fill-in FM translators are afforded the ability to operate at ERP and HAAT levels above those otherwise authorized for non-fill in translators and they are given highest priority in the comparative review in the event of mutual exclusivity.

70. Because of the fact that the number of educational services has tripled since the 1990s and due to the emerging technologies including more precision methods of engineering FM boosters and coupled with the ancillary roles that fill-in FM translators play today, the original core purpose of the fill-in translator has significantly diminished over time.

71. REC is also deeply concerned about the advantage that fill-in translator applications will have in a future reserved band FM translator filing window, especially in light of those ancillary uses such as for the analog simulcast of HD subchannels not otherwise available to an analog radio receiver. With this in mind, we must also consider the statutory requirements of providing fair and equitable distribution

[69] https://www.geobroadcastsolutions.com/maxxcasting

of radio services pursuant to §307(b) of the Communications Act as well as the mandate in LCRA §5(2) that licenses for new FM translator stations must be granted based on community need.

2. Multiple options were evaluated

72. We have looked at several options to modify the rules regarding new reserved band fill-in FM translators which included (1) eliminating the selection priority for new fill-in reserved band FM translators; (2) requiring that new fill-in reserved band FM follow the power level restrictions of §74.1235(b); (3) requiring that while proposed fill-in reserved band FM translators can propose a facility that exceeds the limitations of §74.1235(b), their population and land area claims for technical points be limited to those of a §74.1235(b) compliant facility based on the 12 cardinal radials (which would also mean that non-fill technical point claims will need to follow the same method) and (4) maintain the existing fill-in translator rules but limit them only to areas where the translator service contour is only served by one or two full-service educational services and impose a four-year holding period where the FM translator must remain solely in areas where only first and second services were provided as of the date of the original filing.

73. Option (1) would simply put fill-in and non-fill in translators on an equal playing field for consideration in the point system. However, without the technical point provisions of Option (3), all fill-in translator applications, including those intended for HD simulcast will always have an advantage and as a result, would defeat the purpose of any rule change and therefore would be unfair to other applicants seeking to provide a more original service for their proposed area.

74. Option (2) would be a very significant change to the definition of a fill-in translator and in some cases, may not achieve the original intended purpose of fill-in translators and would not be very effective in advancing §307(b) and LCRA §5(2) goals.

75. Option (3) would involve an out of the ordinary method of measuring a service contour, does not provide an accurate depiction to the area being served and is slightly complex. While Option (3) would put all FM translators on an equal footing through the comparative review process, it does not recognize the §307(b) and LCRA §5(2) goals.

76. Option (4) on the other hand, maintains most of the status quo with minimal rule changes. It assures the original primary intention of fill-in FM translators, which is to fill-in gaps to assure that as many Americans can receive a basic level of educational service consistent with the intentions of §307(b). It also increases diversity through assuring that unique "voices" are available in the translator coverage area, which is consistent with the "community need" criteria of LCRA §5(2).

3. REC proposal for new fill-in reserved band FM translators

77. To assure maximum essential radio service in areas where there are limited educational services, REC is proposing the following:

78. We propose to amend §74.1201 to add new definitions for "fill-in translator" and "priority fill-in translator", which describes these facilities as those that have a translator coverage contour solely inside of a fill-in area or AM fill-in area (as also defined in §74.1201) and also meets one of the following criteria:

- Operates on a reserved band channel between 200 and 220 and was originally authorized prior to the adoption of the *Notice of Proposed Rulemaking*.
- Operates on a reserved band channel between 200 and 220; was originally authorized after the next reserved band FM translator filing window; and at the time of filing, the primary NCE FM station was the first or second educational service in the proposed translator coverage area (this will also be defined as a "priority fill-in translator"); or
- Operates on a non-reserved band channel between 221 and 300.

79. The wording of this definition assures that all existing fill-in FM translator stations, both commercial and noncommercial would not be affected by this rule change and that going forward, there will be no restrictions on new fill-in FM translators in the non-reserved band and that existing reserved band fill-in FM translator stations may make changes (except major modifications) without having to apply the new criteria.

80 We propose to amend §74.1235(e) to modify the selection priority rule to clarify that only fill-in proposals that cover areas where there are only one or two educational services would qualify for the overriding priority.

81. We propose to amend §74.1232 to include a provision that if a fill-in translator in the reserved band is granted based on the overriding priority (priority fill-in translator), that for a period of four years of licensed operation, it may not extend a signal into any area that has three or more educational services. For determination of those educational services, we use the cut-off date for the filing window. This will assure that if another NCE FM station modifies their facility and introduces third educational service into the fill-in translator's coverage contour, the fill-in translator may still modify within the first four years as long as they maintain no greater than second service in effect on the window cut-off date.

82. Finally, in Part 73, we propose to amend §73.7003 to clarify the new definitions for a fill-in translator and a priority fill-in translator by referring to the new §74.1201 definition in the language related to local diversity of ownership and the first tie-breaker criteria.

V. RESERVED BAND FM TRANSLATOR FILING WINDOW

A. The need for the next FM translator window to be for new reserved band FM translators

83. While there have been three recent opportunities for new FM translator stations in the non-reserved band in 2003, 2017 and 2018, there has been no opportunities for new FM translator stations in the reserved band since the Commission reverted from the former comparative proceeding process which was frozen in 1994[70], revised later that year[71] and then eventually changed to the current point system process in 2000.[72] Since 2000, the Commission has granted hundreds of authorizations to both full-service noncommercial FM stations through filing windows in 2007 and 2021 and for LPFM stations through filing windows in 2000, 2001, 2013 and eventually in the near future. Due to the facts that there has not been a general FM translator filing window since 2003 and due to the fact that LPFM stations were not given the ability to commonly own up to 2 FM translators until 2012 and especially as the Commission appears to be reluctant to allow LPFM stations to increase their coverage through much more spectrally efficient means such as operating as "LP-250" stations,[73] REC has identified FM translators for use by these licensees and permittees to be consistent with REC's overall opinion on "community need" under Section 5(2) of the LCRA.[74]

84. It is REC's position and recommendation that following the next LPFM filing window, the next opportunity for new FM translators should be made available for the reserved band channels only. We note that the availability of such an opportunity does not negate REC's previously filed *Petition for Rulemaking* in regard to 250-watt LPFM stations nor does it negate our *Petition for Rulemaking* to expand

[70] *FCC Freezes Comparative Proceedings,* Public Notice, 9 FCC Rcd. 1055 (1994).

[71] *Modification of FCC Comparative Proceedings Freeze Policy,* Public Notice, 9 FCC Rcd. 6689 (1994).

[72] *Reexamination of the Comparative Standards for Noncommercial Educational Applicants,* Report and Order, 15 FCC Rcd. 7386 (2000); *recon.* Memorandum Opinion and Order, 16 FCC Rcd. 5074 (2001).

[73] See *REC Networks Petition for Rulemaking "Simple 250"*, RM-11909.

[74] See *REC Policy Opinion Statement: What Constitutes "Community Need" Under Section 5 of the LCRA*, REC Networks, https://recnet.com/policy-on-community-need. *("REC 5(2) Policy")*

full-service NCE opportunities for new smaller full-service NCE stations to serve rural areas where opportunities have been foreclosed on due to the growth of larger NCE stations that serve urbanized areas.

85. Consistent with the *REC 5(2) Policy,* the existing use of the point system rules previously adopted for reserved-band NCE FM translators will assure that priority is given to established local organizations where the proposed FM translator is located within 25 miles of the applicant's headquarters or 75 percent of their board members.[75] As detailed further below, we propose to extend the maximum allowable distance for an FM translator application for an LPFM licensee or permittee to be more consistent with this criterion.

B. Modifications to the rules to prepare for this window

86. In §73.7003(b)(2) and §74.1233(e)(3), the current rules do not take into consideration that some FM translator applicants may hold an LPFM authorization, which unlike in the full-service NCE filing window, they are not required to divest as long as the LPFM meets the requirements of §73.860(b) of the rules related to cross-ownership of FM translators and boosters by LPFM licensees.

87. To assure fairness in future FM translator filing windows, we propose to amend §73.7002(b)(2) to consider LPFM authorizations when determining local diversity of ownership. Consistent with other FM services, we propose to use the 3.16 mV/m (70 dBu) contour of the LPFM station as the reference. On flat earth with a maximum LPFM facility, this contour extends to 3.2 kilometers, where the 60 dBu distance is 5.6 kilometers. This will permit an LPFM station to use an FM translator to make an extension of their coverage area with some 60 dBu overlap and still maintain ownership diversity priority.

88. For the same reasons, we propose to amend §74.1233(e)(3) to include LPFM authorizations. We note that in the full-service filing window context, the LPFM applicant seeking a new full-service NCE station must pledge to divest their LPFM station upon program test. In those cases, the LPFM does not need to be counted as a current authorization. However, for FM translators, the divestiture is not necessary since an LPFM licensee can own up to two FM translators pursuant to §73.860(b). The addition of LPFM to this criterion will be solely for that purpose.

[75] For public safety entities, REC proposes that a translator can be located within the public safety agency's jurisdiction and for tribal entities, located on tribal lands. Notwithstanding this proposed redefinition of the LPFM translator and booster rules, LPFM stations would still be required to receive the primary station through space and would be specifically limited to rebroadcasting their analog or HD-1 main programming stream. The 60 dBu service contours of FM boosters operated by LPFM licensees would still be required to be fully encompassed by the 60 dBu service contour of the LPFM station for which the booster is rebroadcasting.

VI. REMOVING REDUNDANT RULES FOR FM TRANSLATORS AND FM BOOSTERS LICENSED TO LPFM STATIONS

A. Current state of FM translators and boosters for LPFM stations

89. LPFM stations have been permitted to hold authorizations for FM translator stations since 2012 and for FM booster stations since 2020. Currently, there are 66 FM translators that specify an LPFM facility as their primary facility. Of those 66 translators, 18 are commonly owned by LPFM station licensees. All of these translators were originally acquired through Auction 83 or were those that pre-dated the modern filing window system. Of the 48 FM translators that are not commonly owned by the LPFM licensees, only 5 of these translators rebroadcast LPFM stations that are considered in a Top 50 media market county and would subject to the current "10-mile rule" for FM translators if they were commonly owned by the LPFM entity.

90. There are currently 4 licensed FM boosters operated by LPFM stations of which, three have been coordinated through REC.

B. Reevaluation of the LPFM cross ownership Rules

1. Current rules

91. The cross-ownership rules for LPFM stations with FM translators and FM boosters can be found in §73.860(b). This rule currently permits LPFM stations to hold up to a maximum of 2 FM translators and/or FM boosters with tribal licensees permitted to hold up to 4 authorizations.[76] The rules further require that for FM translators, the 60 dBu service contour of the LPFM station must overlap the 60 dBu service contour of the booster and for FM boosters, the 60 dBu service contour of the FM booster must by fully encompassed by the 60 dBu contour of the "primary" LPFM station.[77] FM translators commonly-owned by LPFM licensees are required to rebroadcast the LPFM station's main analog or HD-1 audio stream and must receive its input signal directly through space as opposed to using internet, microwave or satellite for distribution.[78] Finally, for LPFM stations located in the Top 50 media market counties, the location of the FM translator or FM booster cannot exceed 10 miles (16.1 kilometers) from the LPFM station and for all other areas, 20 miles (32.2 kilometers).[79]

[76] 47 C.F.R. §73.860(b).

[77] 47 C.F.R. §73.860(b)(1).

[78] 47 C.F.R. §73.860(b)(2) and (b)(3).

[79] 47 C.F.R. §73.860(b)(4).

92. Based on the progress in the industry, which for FM translators has been about 10 years, we must further analyze each of these issues based on analysis of current FM translator and booster operations as well as responses from LPFM licensees in a constituent survey conducted by REC on the subject of FM translators for LPFM stations. We must also address unnecessary redundancies in these rules.

2. Ownership limits

93. Of the 66 FM translators that specify an LPFM facility as their primary station, a total of 52 LPFM stations are represented. Of those, 5 LPFM stations are being served by two translators, 3 LPFM stations are served by three translators and one LPFM station is being served by four FM translators.

94. As a result, the average number of commonly owned and non-commonly owned FM translators by LPFM stations is an average of 1.27 FM translators. Based on this trend, we do feel that the current restriction on the cross-ownership of FM translator stations and FM booster stations is sufficient. REC will propose no changes to the LPFM/translator-booster cross-ownership limits.[80]

3. The contour overlap rules for LPFM translators and boosters

95. *Overview* – Upon reviewing a significant sample of the non-commonly owned FM translators specifying an LPFM station as their primary station, we find in most cases, that will it is likely that the FM translator is able to receive the LPFM station through space, there is no contour overlap between the LPFM and the FM translator.

96. For example, LPFM station KUPV-LP, Santa Rosa, California is located in Top-50 Sonoma County. KUPV-LP is carried on a non-commonly owned translator K222CV to serve Calistoga, which is in Top-50 Napa County. Santa Rosa and Calistoga are separated by significant intervening terrain. K222CV uses a directional antenna to provide LPFM service into Calistoga, a community that is within 10 miles of the LPFM station. In this case, the intended community of coverage of the translator would otherwise be considered as "local", but this translator would be prohibited to be commonly owned because of the lack of contour overlap as well as the location of the translator site, which we will discuss further below.

97. REC has analyzed many of the non-commonly owned FM translators and have found a significant number of them that while specifying a nearby town, exhibit no contour overlap between the

[80] We do continue to support our position that exceptions to the "2-cap" for FM boosters should be made on case-by-case basis. At this time, REC has not received any specific shows of interest for an LPFM station to exceed the limit of 2 boosters but based on the locations of at least one LPFM station with booster authorizations, we must keep this ability in our back pocket.

LPFM station and the translator involved, even though the translator community may still have a nexus to the overall general region and may be the only local transmission service in that community.

98. In our Constituent Survey, where we surveyed LPFM licensees about their plans if the FCC was to announce a window for FM translator filings, we had found that a majority of respondents stated that their communities of interest for an FM translator are located between 5 and 15 miles away from the LPFM station. In addition, an overwhelming 81 percent of respondents stated that they are physically located east of the Mississippi River, where non-fill in FM translators are limited to the equivalent of a 7.3 kilometer service contour. This increases the probability that an FM translator, while still "local" may not be possible because of the contour overlap requirement.

99. *Proposal* – REC proposes to amend §73.860(b)(1) of the Commission's Rules to remove the contour overlap requirement as excessive and unnecessary, especially in light of other controls we propose to either maintain or amend. In addition, REC also proposes to eliminate the existing §73.860(b)(1) language in respect to FM booster stations as redundant and unnecessary. The language in §73.860(b)(1) is completely redundant with the existing language in §74.1232(f) of the Commission's Rules, which require an FM booster station to maintain a 60 dBu service contour within the service contour of its primary station.

4. Requirement that LPFM translators rebroadcast the analog/HD1 stream

100. There are currently 6 LPFM stations operating hybrid digital audio broadcasting (DAB) and REC is aware of at least one more LPFM station that is currently in construction of their upgraded DAB facilities. While one of these stations has an FM booster, none of these stations are currently being carried on an FM translator.

101. The requirement that commonly-owned FM translators be restricted to the rebroadcast of the analog or HD-1 programming stream was established in the *Sixth Report and Order* was a forward-looking protection as more LPFM stations avail themselves of technological advances.[81] As a matter of policy, REC considers an FM translator operating to "convert" an HD multicast stream to analog through a translator to be a "station want" as opposed to a community need.[82]

102. Of the six LPFM stations that are currently engaged in HD operation, we have not received any inquiries or comments in respect to a desire to use FM translators to simulcast a multicast stream. It is

[81] *Sixth Report and Order* at para. 143.

[82] See *REC 5(2) Policy*.

our position that this current restriction is reasonable and is compatible with the character of LPFM stations. Therefore, we will not propose any changes to §73.860(b)(2).

5. Requirement that a translator receives the LPFM station over the air

103. *Overview* – In the *Sixth Report and Order*, the Commission determined that this requirement is to prevent "chained networks" of FM translators and to keep the LPFM service locally focused.[83] Other than two very egregious violations of this rule, we have found that most FM translators are rebroadcasting their LPFM primary stations through space based on distance and line of sight. We have also found in one situation where two non-commonly owned translators are daisy chained, but still receiving their signals through space.

104. *Proposal* – With our proposed revised definition of a "local" LPFM translator discussed below, we see no reason to change the portion of the rule that requires FM translators commonly owned by LPFM licensees to receive their primary stations through space, we do feel that the specific requirement that an FM translator must directly receive the LPFM station directly as opposed to via another translator to be excessive, especially given the other restrictions that are in place such as the ownership cap on FM translators and the maximum distance to where an FM translator can be sited. With that, REC proposes a minor amendment to §73.860(b)(3) which would permit an FM translator commonly owned by an LPFM licensee to receive their source programming either directly through space from the LPFM station or directly from space via another FM translator, as long as the overall primary station is the LPFM facility. We also propose that LPFM stations, especially those in "foothill effect" situations that are operating a fill-in translator may use any terrestrial means of receiving the signal, consistent with the current fill-in FM translator rules and with the FM booster rules.[84]

105. We also propose to eliminate the specific language of §73.860(b)(3) in respect to FM boosters as redundant and unnecessary. The FM booster provision in §73.860(b)(3) is merely a duplication of the language contained in §74.1231(i) of the Commission's Rules.

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[83] *Sixth Report and Order* at para. 143.

[84] "Foothill effect" is a term coined by REC Networks to describe a LPFM or full-service FM facility that is located in a manner where the station is along the side of a mountain which has much higher terrain in one direction and much lower terrain in the other direction, which when averaged together, results in a low height above average terrain and thus, a much higher effective radiated power, compared to stations on a mountain top, resulting in a service contour size that well exceeds the class maximum service contour size based on flat earth and maximum facilities for the service class (well exceeds 5.6 kilometers for LPFM).

6. The limitation on the distance between an LPFM station and their commonly owned FM translator or FM booster stations

106. *Overview* – Currently, FM translator and booster stations that are commonly owned by LPFM licensees are restricted to being located no more than 10 miles from the LPFM station for markets 1 through 50 and 20 miles in all other markets areas. This was seen as a simple solution in order to have to prevent rules that would be based on political boundaries.[85] In contrast to this rule, the Commission considers an "established local applicant" for a new NCE FM translator station, subject to comparative review to be local if the community served is within 25 miles of the headquarters or 75 percent of the board members of the licensee organization.[86]

107. In our review of the non-commonly owned FM translators carrying LPFM stations, we do find that there a considerable amount of them operating within 25 miles of the LPFM station. In some cases, the LPFM station may be located a certain distance from the intended community and the FM translator is intended to provide service to more of the local areas. In the case of KUPV-LP which we had mentioned earlier, their non-commonly owned FM translator is intended to serve a community within their 10 mile "local" area yet because of technical reasons, the actual translator is located more than 10 miles from the LPFM station.

108. We also cannot ignore the fact that there are currently very few FM translators operated by LPFM stations located in Top-50 markets. We must also take into consideration that when Nielsen Audio determines market boundaries, they do in most cases, use the county boundaries as the limit as it is an easy definable limit that can be used. Only in a few cases where there are unique audiences, does Nielsen split a county and only include a portion of the county in a given metro market. While the use of county boundaries as delineations of markets, it does not always represent population density in the same manner that Census Bureau "urbanized area" and "urban cluster" boundaries do. Within most Nielsen Audio counties, much of the land area is well outside of the urbanized area.

109. In our recent Constituent Survey of LPFM stations, 40 percent of the respondents were from LPFM stations located inside the counties considered as Top-50 markets and subject to the "10 mile rules" imposed by the Commission on local ownership and translator placement. Some respondents to that survey that were in the Top-50 market counties stated that they had identified potential areas for an FM translator more than 10 miles away.

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[85] *Sixth Report and Order* at para. 143.

[86] See 47 C.F.R. §74.1233(e)(3), *citing* 47 C.F.R. §73.7003(b).

110. As REC had noted in past proceedings regarding the urban and rural delineation, we had stated that even "metro" counties have rural areas, mainly because county boundaries do not stop at the edge of the urbanized area. Even in Los Angeles County, a significant portion of the northern portion of the county is very rural in nature with agricultural operations and very low population densities, yet it is treated the same as a densely urbanized area like Compton.

111. One of the intentions of LPFM stations operating FM translators was not always to extend their signals into other urbanized areas, but to extend their signals to reach more rural listeners and those on the fringe, but outside of the urbanized areas. In these situations, the need to reach outlying areas with improved radio service is something that should be commended and encouraged and not something held back based on the opinion of a third-party organization on what constitutes a "metro" area.

112. With nearly 10 years since LPFM stations were able to own their own FM translators and seeing how FM translators have been used by to support LPFM stations for nearly 20 years, also with the evolving changes in the overall broadcast industry where more rural and suburban areas are being further ignored in the broadcast space, which has been the catalyst for two REC *Petitions for Rulemaking* before the Commission[87] in order to shed light on the needs of radio listeners outside of the urbanized areas and given the fact that the current costs of entry into existing FM translators due to their marketability as mere replacements for AM broadcast stations and HD subchannels, it is our position that LPFM stations being able to construct new FM translators in a future filing window are a means of entry into these organizations' educational objectives to reach wider audiences with the same brand of hyperlocal programming that they already provide. Also we note that with the various rules that REC is proposing for FM translators in general, many of the concerns in the aftermath of Auction 83 are being addressed through these proposed changes, we do not see the need to keep some of these restrictions on FM translators for LPFM stations.

113. *Proposal* – While continuing to maintain the long-standing and successful local ownership requirements of LPFM stations as well as address the issues surrounding the siting locations of LPFM stations in respect to the organization's headquarters and board members, we propose to eliminate the current rules requiring that LPFM owned FM translators be located within 10 miles of the LPFM station for the Top-50 markets and 20 miles everywhere else. We propose to replace this criterion with the well-established definition of "local" in the FM translator context. Specifically, we propose the same distance

[87] RM-11909 (Simple 250, 250 watt LPFM stations) and RM-11846 (New local NCE broadcast stations outside of major markets and urbanized areas, second and third-adjacent channel waivers for smaller full-service NCE stations on public interest grounds).

criteria as that used to determine a "local applicant", as defined in §73.7000, consistent with §74.1233(e)(3) and §74.7003(b) of the Commission's Rules.

114. We propose to amend to allow a commonly owned LPFM translator licensed to an educational institution or an educational organization to be located within 25 miles of the LPFM organization's physical headquarters or campus, or within 25 miles of at least 75 percent of the organization's board members.

115. Due to the unique nature of LPFM as compared to the NCE full-service, we recognize that LPFM stations may also be licensed to government entities such as public safety agencies or to tribal entities. Due to these nuances, we must address each one separately. For public safety licensees, who are able to hold an unlimited number of LPFM authorizations, we would propose to restrict FM translators to any area within its jurisdiction.

116. For tribal entities, which are permitted to own up to four translators on over one or two LPFM stations, we would propose that the placement of FM translators be limited to tribal lands as defined in §73.7000. This will permit tribal entities in remote areas to be able to use FM translators in a daisy chain to deliver programming to areas of their land as they see fit.

117. We note though that the lack of a hard distance limitation for government entities within their jurisdiction and for tribes on tribal lands does not negate the requirement that programming must be received by the translator via space from either the LPFM station itself or from another translator and the programming carried on such translators are limited to direct simulcasts of the programming carried on the main analog or HD-1 programming stream of the originating LPFM station.

118. Finally, we propose to eliminate the distance requirements in respect to FM boosters as redundant and unnecessary. Boosters for LPFM stations are very rare and the stations that do use them are normally those in "foothill effect" situations or otherwise are impacted by intervening terrain in some manner. In some cases, the FM booster may need to be located beyond current distance restrictions, especially for LPFM stations located in the Top-50 market counties. Unlike non-fill in FM translators, the siting limit for an FM booster is naturally controlled by assuring that the booster's 60 dBu contour remains within the 60 dBu contour of the primary LPFM station. FM boosters do not normally foreclose on other secondary opportunities such as FM translators as the primary FM station is protected to the 60 dBu service contour and the FM booster is only permitted to operate a 60 dBu contour completely inside that primary service area. As such, the hard distance limitations for LPFM boosters in Part 73 are unnecessary as the siting restrictions for FM boosters is clearly noted in §74.1232(f).

VII. CONCLUSION

119. 2003 was not a great year for community radio. Those of us who were there remember it very vividly. Not too long before, the Radio Broadcast Preservation Act of 2001 (Pub. L. 106-553), legislation that was driven solely on deception by national broadcast organizations over unfounded fears of the boogeyman called LPFM and the unfounded fear that tens of thousands of radio pirates were going to come on the air with kit built transmitters, destroying third-adjacent channels and tearing money away from the large commercial broadcasters in the name of broadcast diversity and localism. On March 17, 2003, those of us remembered the inevitable, the "St. Paddy's Day Massacre", when hundreds of qualified LPFM applicants had their aspirations torn away from them because of a compact disc that was sent to members of Congress, misleading them on what would happen if LPFM stations were allowed to come on the air. Of course, the FM apocalypse that "Mr. Nabb" and the other big boys feared never surfaced and today, LPFM is flourishing, though limping and hopefully in 2023, we get to welcome our third generation of local organizations, schools, churches and ministries as third generation members of this collective we call LPFM.

120. What happened just before the "massacre" was a much bigger travesty in its own way. What would have otherwise been a routine filing window for new FM translators with overoptimistic hopes that the window would bring in some much-needed auction revenue would instead be a gold mine for a very small number of people who gamed the system and created one of the biggest fleecing of Commission resources in modern history. The "Great Translator Invasion", which was known on the books as "Auction 83" involved the filing of thousands of applications, most of which were from a small number of filers. This was at a time when electronic filing systems were new. This was at a time when HD Radio was still being discussed. This was at a time when FM translators were merely a blip on the Commission's radar and a fairly small footprint on the FM dial. Who truly benefited from the window? It definitely was not community radio. It was a small number of people who made millions without having to pay a dime to the government. The Commission, and admittedly, the rest of the industry was not prepared for this. There were no rules to prevent this.

121. Fast forward 15 years later, after countless public notices, interim policies, rulemaking decisions and even Congressional legislation. What came out of it all? Exactly $576,520, actually $574,771 if you account for the bidding credits. A measly total of 30 permits, most settled in the first round or few, with just Austin, Texas going for the long haul and 13 being thrown back to the FCC because no one wanted them anymore.

122. Auction 83 brought the Media Bureau a ton of workload with having to sift through thousands of applications, doing damage control and then having to deal with them again on the back end

with the assignment applications, many with Asset Purchase Agreements that would make your teeth shatter.

123. Despite the major workloads, the fleecing of the government, the loss of most urban LPFM opportunities and the millions to be made, Auction 83 resulted in a surplus of translators that were looking for something to do. HD Radio was a new thing and stations were just getting authority to multicast. Why not use the translators as profit machines so we can lease out our HD subchannels to entities that had not been through the normal vetting process for licensed broadcasters. This way, no one has to purchase HD radios thus putting a huge crutch into the advancement of this exciting technology. Yes, the aftermath of Auction 83 was one of the contributors to the pathetic penetration of HD Radio we still have to this day and the Commission still tolerates this abuse of the fill-in translator for such purpose.

124. If there was any silver lining that came out of Auction 83, it was the surplus of translators that became the foundation that led us to AM Revitalization, a more noble cause than HD simulcast. The eventual amendment of the Rules and Ajit Pai's AM Revitalization initiative may have reduced urban LPFM opportunities even more, but in the rural areas, it was a godsend for small market, "mom and pop" and minority-owned commercial AM stations, especially stand-alone owners who were able to capture new audiences and a new trickle of new life into their stations. If anything good came out of Auction 83, it would be the saving of some AM radio stations, but at what expense?

125. So here we are today, coming up soon on the 20-year anniversary of the Great Translator Invasion. REC has had a lot of time to think about this. We have performed the root cause analysis, we have reviewed the statistics and we have had time to think about the "lessons learned".

126. The AM Revitalization window series (Auctions 99 and 100) was done right. Strict control over who can file for a translator and set limits on those translators. We were not worried about trafficking and gamesmanship in that window series. But now, nearly 20 years has passed since the Auction 83 window and it would seem logical that after the next LPFM window, we would have a general FM translator filing window. But first, we need a reserved band NCE translator window. NCE stations have been waiting since the last millennium for this opportunity and LPFM stations have never had any opportunity yet.

127. The rules proposed are a work product of 20 years of that filing window being fresh in our minds like it happened yesterday. If that window has proven anything, it is that FM translators are a strong member of our FM ecosystem and have a lot of versatility and therefore have a substantial market value. That impression of FM translators did not exist 20 years ago. It was just a radio service that allowed you to get a Phoenix radio station in Flagstaff. Auction 83 was a wakeup call that general filing windows like

this, especially those with a no fee option are vulnerable time bombs and unless controls are put in place, things will just explode again, and like before, it will take another 15 years to clean up the mess.

128. Specifically, we are proposing strict anti-trafficking rules on unbuilt permits (paper) that have been tried and tested in the LPFM and NCE services for many years. Bottom line, you can't profit on paper. Our proposed rules assure that all assignments for unbuilt stations are limited in consideration to what is legitimate and prudent, regardless of market size. We also propose a holding period that basically states in the first four years the station is built and you did not pay filing fees or participate in the auction, then you have to keep it noncommercial and not be able to profit off of the free ride from the government.

129. Also, to prevent an overnight explosion of applications, we have proposed a nationwide cap. The same cap that was eventually put in place for the 80 channels in Auction 83. We feel that such a cap is very generous and for virtually all filers, will be many more than they really need. For the reserved band, there's only 20 channels, so the proposed cap is only one quarter of the caps for the non-reserved band. In an effort to meet in the middle, we have declined to propose a one or three application cap per market. Not only do per market caps disadvantage rural portions of Nielsen Audio metro counties, we see it as more of a burden on not just the Media Bureau, but those of us who watch application activity closely and are not afraid to raise the red flag. With the proposed anti-trafficking rules and national caps in place, the per market cap, especially at one may seem a bit draconian, especially for a regional NCE organization that may need 4 translators to cover the 10 counties in one market that they are providing a local experience in.

130. This *Petition* also reminds the Commission and the industry that we cannot lose sight of the LCRA. Any time the Commission is considering licensing any new secondary services, we need to assure that the LCRA is in the discussion. It wasn't in the Auction 99/100 discussion, but because of the rural towns that benefited from it, it sort of got a free pass from REC. Well, that free pass will not be the case this time. We implore the Commission to make sure that when the next FM translator window opens, that opportunities remain for future LPFM stations in the fourth generation and the fifth, and until the disparity between LPFM and translators is finally eradicated.

131. To achieve LCRA compliance in future FM translator windows, we are proposing to bring back the grids and channel points. We will use a much more simplified approach to determining whether core market areas need to have LPFM opportunities set aside. Simply put, if FM translators have a stronger presence in the grid than LPFM, LPFM must be protected. Our proposed rules replace the previous "channel floors" regime with a disparity factor that supports this notion. With that, about 20 percent of the core market grids do not need additional protections in order to comply with the LCRA.

132. The fill-in translator, once the savior of signal in areas blocked by mountains in order to bring that one NPR station operated by the University has turned into the Swiss Army Knife of radio as the ultimate versatile tool for HD and AM simulcasts, which is a far cry from their original intention of filling in holes. With that, we must revisit the role of the fill-in translator and whether the new ways of using these mighty 250-watt machines is in the public interest so much that it warrants spectrum priority and liberal power and height allowances. With that said, we are not touching the commercial fill-in translators. These could be a potential money machine in a future auction and that is in the public interest. Our focus in on the free-ride in the reserved band. REC is proposing rules that reward fill-in proponents who intend to use them for their original intended purpose, to provide support in areas with limited educational services. We need a filing window where as many applicants will have a fair chance as possible and not have to worry about the 50 kW monolith proposing a massive translator facility, destroying community broadcasters trying to get to a small town and for what? So they can put their HD2 signal on the air in an area with many services and higher HD penetration.

133. Finally, we are proposing to fix some redundancies on the rules in the LPFM service directly related to the cross-ownership of FM translators and boosters. We are also proposing some rule changes that better reflect how people are using translators in the LPFM service. These rules are reasonable and do not chip away at the localism that these stations provide. By having these rules in place, LPFM will finally get their chance to participate in a translator window and actually have a chance for a grant.

134. With that, we *petition* the Commission to promptly take up these issues as the Commission and the Media Bureau, through delegated authority, take up the planning for future FM translator filing windows after the completion of the next LPFM window.

Respectfully submitted,

/S/
Michelle Bradley, CBT
Founder
REC Networks
11541 Riverton Wharf Rd.
Mardela Springs, MD 21837
202 621-2355
https://recnet.com
lpfm@recnet.com

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APPENDIX A

PROPOSED RULES

PART 73 – RADIO BROADCAST SERVICES

Subpart G – Low Power FM Broadcast Stations (LPFM)

1. In Section 73.860, REC proposes to remove and reserve subparagraph (b)(1) and replace subparagraphs (b)(3) and (b)(4) to read as follows:

§73.860 Cross-ownership.

* * * * *

(b) * * * * *

(1) [reserved]

(2) * * * * *

(3) The FM translator, other than a fill-in translator as defined in §74.1201(m) of this Part receives the signal of the community-owned LPFM station over-the-air either directly from the community-owned LPFM station itself or via another FM translator retransmitting the signal of the community-owned LPFM station. In the case of a fill-in FM translator, as defined in §74.1201(m) of this Part, receives the signal of the community-owned LPFM station through any terrestrial means.; and

(4) The FM translator meets the requirements of a "local applicant" as defined in §73.7000. In the case of tribal entities, the proposed FM translator is on "tribal lands" as defined in §73.7000.

* * * * *

Subpart H – Rules Applicable to All Broadcast Stations

2. In Section 73.3597, REC proposes to replace subparagraph (c)(1)(i) and add new subparagraph (c)(1)(iv) to read as follows:

§73.3597 Procedures on transfer and assignment applications.

* * * * *

(c) * * * * *

(1) * * * * *

(i) ***Unbuilt station*** refers to an AM, FM, FM translator or TV broadcast station or a low power TV or TV translator station for which a construction permit is outstanding, and, regardless of the stage of physical completion, as to which program tests have not commenced or, if required, been authorized.

* * * * *

(iv) The provisions of paragraphs (c) and (d) of this section apply only to new and major change FM translator applications filed on or after August 27, 2022, regardless of mutual exclusivity.

* * * * *

Subpart K – Selection Procedures for Reserved Noncommercial Educational Channels, and for Certain Applications for Noncommercial Educational Stations on Non-Reserved Channels

3. In Section 73.7003, REC proposes to replace subparagraphs (b)(2) and (c)(1) to read as follows:

§73.7003 Point system selection procedures.

(a) * * * * *

(b) * * * * *

* * * * *

(2) ***Local diversity of ownership.*** Two points for applicants with no attributable interests, as defined in §73.7000, in any other broadcast station or authorized construction permit (comparing radio to radio and television to television) whose principal community (city grade) contour overlaps that of the proposed station. The principal community (city grade) contour is 5 mV/m for AM stations, the 3.16 mV/m for FM and LPFM stations calculated in accordance with §73.313(c), and the contour identified in §73.865(a) for TV. Radio applicants will count commercial and noncommercial AM, FM, LPFM and FM translator stations other than fill-in translator stations as defined in §74.1201(m) of this chapter. Television applicants will count UHF, VHF and Class A stations.

* * * * *

(c) * * * * *

(1) ***Tie breaker 1***. Each applicant's number of attributable existing authorizations (licenses and construction permits, commercial and noncommercial) in the same service (radio or television) nationally, as of the time of application shall be compared, and the applicant with the fewest authorizations will be chosen as tentative selectee. Radio applicants will count commercial and noncommercial AM, FM, and FM translator stations other than fill-in translator stations as defined in §74.1201(m) of this chapter. Television applicants will count UHF, VHF, and Class A stations.

* * * * *

PART 74 – EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

Subpart L – FM Broadcast Translator Stations and FM Broadcast Booster Stations

4. In Section 74.1201, REC proposes to add new paragraphs (m) and (n) to read as follows:

§74.1201 Definitions.

* * * * *

(m) ***Fill-in translator.*** An FM translator that has a translator coverage contour solely inside of a Fill-in area or AM Fill-in area and also meets one of the following criteria:

(1) Operates on a reserved band channel between 200 and 220 and was originally authorized prior to August 27, 2022;

(2) Operates on a reserved band channel between 200 and 220; was originally authorized after August 27, 2022 as a new facility or major change modification; is commonly owned by the primary NCE FM station being served; and at the time of filing, the primary NCE FM station was the first or second educational service in the proposed translator coverage area; or

(3) Operates on a non-reserved band channel between 221 and 300.

(n) ***Priority fill-in translator.*** A fill-in translator operating on a reserved band channel between 200 and 220; was originally authorized after August 27, 2022 as a new facility or major change modification; is commonly owned by the primary NCE FM station being served; and at the time of filing, the primary NCE FM station was the first or second educational service in the proposed translator coverage area.

5. In Section 74.1231, REC proposes to replace the heading of paragraph (b) to read as follows:

§74.1231 Purpose and permissible service.

* * * * *

(b) An FM translator may be used for the purpose of retransmitting the signals of a primary AM or FM radio broadcast station or another translator station the signal of which is received directly through space, converted, and suitably amplified, and originating programming to the extent authorized in paragraphs (f), (g), and (h) of this section. However, a fill-in translator may use any terrestrial facilities to receive the signal that is being rebroadcast. An FM booster station or a noncommercial educational FM translator station that is operating on a reserved channel (Channels 201-220) and is owned and operated by the licensee of the primary noncommercial educational station it rebroadcasts may use alternative signal delivery means, including, but not limited to, satellite and terrestrial microwave facilities. Provided, however, that an applicant for a noncommercial educational translator operating on a reserved channel (Channel 201-220) and owned and operated by the licensee of the primary noncommercial educational AM or FM station it rebroadcasts complies with either paragraph (b)(1) or (b)(2) of this section:

* * * * *

6. In Section 74.1232, REC proposes to add new paragraphs (i) and (j) to read as follows:

§74.1232 Eligibility and licensing requirements.

* * * * *

(i) Authorizations for new FM translator stations originally authorized as noncommercial educational may not subsequently change the primary station to an AM or a commercial FM facility if the new FM translator station has been operated on-air for a period of less than four years.

(j) Authorizations for new or major change fill-in FM translator stations in the reserved band that were originally authorized through the selection process for mutually exclusive applications as provided in §74.1233(e) of this part may not modify their translator coverage contour into any area that is within the 1 mV/m coverage contour of more than two NCE FM services as of the date of the original application filing if the new fill-in FM translator station has been operated on-air for a period of less than four years and seeks to remain a fill-in translator.

7. In Section 74.1233, REC proposes to replace subparagraph (b)(3), add a new subparagraph (d)(2)(v), replace paragraph (e) and to add a new paragraph (f) to read as follows:

§74.1233 Processing FM translator and booster station applications

* * * * *

(b) * * * * *

* * * * *

(3) Applications for reserved band FM translator stations will be processed using filing window procedures. The FCC will specify by Public Notice, a period for filing reserved band FM translator applications for a new station or for major modifications in the facilities of an authorized station. FM translator applications for new facilities or for major modifications will be accepted only during these specified periods. Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after the specified deadline will be dismissed with prejudice as untimely. Except as provided in §73.860(b) of this chapter, no party may file more than 18 applications for new FM translators during the filing window of which, no more than 13 may be located within a top-150 media market as determined by Nielsen Audio in effect as of the first day of the filing window.

* * * * *

(d) Processing of non-reserved band FM translator applications.

(1) * * * * *

(2) * * * * *

* * * * *

(v) Except as provided in §73.860(b) of this chapter, no party may file more than 70 applications for new FM translators during the filing window of which, no more than 50 may be located within a top-150 media market as determined by Nielsen Audio in effect as of the first day of the filing window.

(e) Selection of mutually exclusive reserved band FM translator applications.

(1) Applications for new or major change priority fill-in translator stations proposing to provide fill-in service (within the primary station's protected contour) of a commonly owned primary station will be given priority over all other applications upon a showing that as of the date of filing, the commonly owned primary station was the first or second educational service over the entire proposed translator coverage area.

(2) Where applications for FM translator stations are mutually exclusive and do not involve a proposal to provide priority fill-in service of commonly owned primary stations as described in paragraph (e)(1) of this section, the FCC may stipulate different frequencies as necessary for the applicants.

(3) Where there are no available frequencies to substitute for a mutually exclusive application, the FCC will apply the same point system identified for full-service reserved band FM stations in §73.7003 of this chapter. In the event of a tie, the FCC will consider:

(i) ***Existing authorizations.*** Each applicant's number of existing radio authorizations (licenses and construction permits for AM, FM, LPFM, and FM translators but excluding fill-in translators as defined in §74.1201(m) of this chapter) as of the time of application shall be compared, and the applicant with the fewest authorizations will be chosen as tentative selectee. If each applicant is applying for a priority fill-in translator only, and consideration of its other radio stations is not dispositive, its number of existing fill-in translator authorizations will also be considered, and the priority fill-in applicant with the fewest fill-in authorizations will be chosen as tentative selectee.

(ii) ***Existing applications***. If a tie remains, after the tie breaker in paragraph (e)(3)(i)(D)(1) of this section, the remaining applicant with the fewest pending new, major change and assignment applications in which the applicant is the proposed assignee (AM, FM, LPFM and FM translators excluding fill-in as defined in §74.1201(m) of this chapter) will be chosen as the tentative selectee. If each applicant is applying for a priority fill-in translator only, and consideration of its other radio stations is not dispositive, its number of fill-in translator authorizations will also be considered and the priority fill-in applicant with the fewest fill-in authorizations will be chosen as tentative selectee.

(iii) When the procedures in paragraphs (e)(1), (e)(2), (e)(3)(i) and (e)(3)(ii) of this section fail to resolve the mutual exclusivity, the applications will be processed on a first-come-first-served basis as based on the application's Licensing Management System sequential file number.

(f) Assignment and transfer applications of unbuilt FM translator construction permits are subject to the provisions of §73.3597(c) and §73.3597(d) of this chapter.

8. In Section 74.1235, REC proposes to replace paragraph (a) to read as follows:

§74.1235 Power limitations and antenna systems.

(a) An application for an FM translator station filed by the licensee or permittee of the primary station to fill-in service within the primary station's coverage area as defined in §74.1201(m) of this part, will not be accepted for filing if it specifies an effective radiated power (ERP) which exceeds 250 watts.

* * * * *

APPENDIX B

INTRODUCTION TO THE GRID PROCESS

Introduction

As a part of the REC LPFM Channel Point Study, we have attempted to assign the locations of potential LPFM stations. This study is similar to those conducted by the FCC in 2011 as a part of the *Third Further Notice of Proposed Rulemaking* in MM Docket 99-25 (26 FCC Rcd. 9986) with some modifications to the criteria. REC only evaluated markets 1 through 150. REC used the same grid sizes (31x31 or 21x21) used by the FCC in the post-Auction 83 process. Any new qualifying markets that were not used in the post-Auction 83 FCC study were assigned a 31x31 grid for the REC study. Actual grid sizes may need to be reevaluated prior to the FM translator filing windows to compensate for population shifts that may have occurred over the past 10 years.

NOTE: The channel points, potential opportunities and designation of spectrum available vs. spectrum limited markets used in the presentation with this Petition was merely to demonstrate the mechanics of the process and does not reflect the actual parameters for future FM translator filing windows. Because of an upcoming LPFM filing window and the general fluidity of the FM spectrum, this study will need to be conducted prior to the filing window in order to determine the actual parameters to be used in each translator filing window.

Once the channel points were identified, the FCC used a simple method that would place potential LPFM stations at any available channel point regardless of nearby population or potential station viability. Instead, the method used by REC will only assign a channel point in an area that is within or adjacent to a community.

Identification and order of community selection for the potential LPFM opportunities

First, REC identified all communities in the US Census Bureau Gazetteer that have reference coordinates within the grid and prioritized each community in reverse population order. Second, REC identified all US Census Bureau ZIP Code Tabulation Areas (ZCTA) within the grid and also prioritized them in reverse population order.

Due to the curvature of the earth, we needed to determine the distance between each one minute of latitude and longitude. We determined the distance between the center channel point for the market and measured the distances to the channel points directly to the northwest, northeast, southwest and southeast. The longest of those distances will be used as the search radius.

For each community within the grid, we searched for any identified channel points where LPFM would be available within the search radius. If there was a channel available, then that channel point would be assigned to that community. After we exhausted the Gazetteer list, we would then do the same process using the ZCTAs within the grid.

Before a channel point was assigned to a community or ZCTA, it is checked for any previous assigned LPFM allotments made within this study in the same or any adjacent higher ranked market. An allotment would only be given if there are no other assignments within 23.5 kilometers on co-channel nor within 13.5 kilometers on first-adjacent channels.

Within a market, no community nor ZCTA would be eligible for more than one LPFM assignment.

Disparity Factor overview

In order to determine whether a core market grid area is “spectrum limited” or “spectrum available”, a formula is used to assign two scores representing LPFM (existing stations and potential opportunities) and FM translators (existing stations).

If the score representing LPFM exceeds the score for FM translators, the core area will be designated as "spectrum available" and as a result, FM translator proposals will not be required to protect the LPFM channel points within the grid.

If the score representing FM translators ties with or exceeds the score for LPFM, the core area will be designated as "spectrum limited" and as a result, FM translator proposals will be required to protect the LPFM channel points within the grid.

In general, scoring for both LPFM and FM translators will be based on the general "footprint" of the facility within the grid. Since most FM translator facilities are larger and in many cases, significantly larger than LPFM facilities, FM translator stations will be given a higher score for each facility. FM translator facilities located outside of the grid boundaries, while having an influence on LPFM opportunities will not be given a score. Only LPFM and FM translator facilities within the grid boundaries will be scored.

Scoring of LPFM stations and opportunities

Existing LPFM stations authorized for unlimited hours will receive 6 points (representing a 5.6 km service contour). Existing LPFM stations that are in a time share group will each receive a prorated score based on the number of stations within the group, regardless of the number of hours the station actually broadcasts. This takes into consideration that both LPFM stations cannot simultaneously operate and while this may constitute two separate "voices" for diversity purposes, only one voice can be active at a time. For example, if a time share group has two LPFM stations, each LPFM station will be assigned 3 points.

Potential LPFM opportunities will be assigned a score between 4 and 6 points depending on the likeliness that a station can actually be constructed. We base this on whether the opportunity will need a second-adjacent channel waiver or not, and for those that do require a waiver, the difficulty of achieving the waiver.

In order to differentiate between an "easy" waiver and a "hard" waiver, we will utilize the following distance separation chart based on the class of short-spaced full-service station or the service contour size of a short-spaced FM translator station as set forth:

FM station class	**Maximum distance required (km)**
A	9.1
A (Puerto Rico)	14.0
B	19.2
B (Puerto Rico)	33.3
B1	12.9
B1 (Puerto Rico)	15.9
C	44.6
C0	38.1
C1	31.2
C2	19.2
C3	12.9
D	1.8
Translators up to 7.3 km service contour	2.3
Translators more than 7.3 km and up to 13.3 service contour	4.2
Translators more than 13.3 km service contour	6.1

This chart is based on the standard distances to the 80 dBu service contour F(50,50) for each service class. FM translators are based on 250 watts effective radiated power (ERP) at 32 meters height above average terrain (HAAT) for the lower tier, 250 watts ERP at 107 meters HAAT for the middle tier and 250 watts at 233 meters HAAT for the upper tier (20-kilometer service contour). Those same values are used for the FM translator scoring element.

If an LPFM opportunity is second-adjacent channel short spaced and the distances to each short-spaced station is less than or equal to the values shown, it is considered an "easy" waiver. Easy waivers may allow for the use of rooftops, smaller antennas, lower heights and locations within more densely populated areas, thus giving as much opportunity as possible to the potential LPFM applicant.

If an LPFM opportunity is second-adjacent channel short spaced and the distance to at least one short-spaced station is greater than the values shown, it is considered a "hard" waiver. Hard waivers may require a more remote location outside of town, a higher antenna site, more likelihood of more expensive leased tower space, the potential need to use larger antennas or higher heights (which could reduce ERP).

Overall, each LPFM station and opportunity inside the grid boundaries will be scored as follows:

LPFM station/opportunity type	**Points per LPFM station/opportunity**
Existing LPFM station not in a time share group	6
Existing LPFM station in a time share group	6 divided by the number of LPFM stations in the time share group
Identified LPFM opportunity that does not require a second adjacent channel waiver.	6
Identified LPFM opportunity that requires an "easy" waiver	5
Identified LPFM opportunity that requires a "hard" waiver	4

The total points of all LPFM stations and opportunities in the grid boundaries will represent the LPFM score.

FM translator scoring

Each existing FM translator will be considered nondirectional and will be assigned a score value based on 60 dBu service contour size calculated by using the station's overall ERP and the HAAT based on 8 radials and then assigned one of three "sub-classes", which are the same sub-classes that are used by the FCC in the LPFM to FM translator protection rules in §73.807.

A favorable deduction in the individual score is given to any fill-in FM translator that is used to rebroadcast an AM broadcast station of any class. Fill-in FM translators that rebroadcast FM stations (including HD simulcasts) receive no favorable deductions.

Overall, each FM translator facility inside the grid boundaries will be scored as follows:

Distance to FM Translator 60 dBu contour	**FM Translator rebroadcasting an AM station**	**FM Translator rebroadcasting an FM station**
7.3 km or less (lower tier)	6	7
Greater than 7.3 and less than 13.3 km (middle tier)	11	13
13.3 km or greater (upper tier) – based on a 20 km service contour	17	20

APPENDIX C

MARKET CORE GRID SUMMARY AS OF AUGUST 2022

On the following pages, we show a summary of each of the 150 Market Core Grid areas based on broadcast database information effective as of close of business on August 18, 2022.

This summary analysis identifies the 150 core market areas, the grid size used, a breakdown of how the LPFM and FM translator scores were calculated for each core market area, the total scores for each service, the disparity factor and the designation of spectrum availability status.

The channel points, potential opportunities and designation of spectrum available vs. spectrum limited markets used in the presentation with this *Petition* was merely to demonstrate the mechanics of the process and does not reflect the actual parameters for future FM translator filing windows. Because of an upcoming LPFM filing window and the general fluidity of the FM spectrum, this study will need to be conducted prior to the filing window in order to determine the actual parameters to be used in each translator filing window.

While it drives no part of the overall proposed policy, we also show show the current LPFM availability and around the very center of the interior of the grid.

More detailed information including identification of the location and channels used to identify LPFM opportunities as well as the information on the specific channel points that would be protected in spectrum limited markets can be retrieved from REC Networks at:

https://recnet.com/channel-points

The data on the Channel Points website may be updated from time to time to reflect changes in spectrum.

Market Rank	Core community or market name	Grid Size	LPFM availability at core?	LPFM Stations				FM Translators						Analysis			
					Potential			AM Primary			FM Primary						
				Current Stations (6)	NoWvr (6)	Easy (5)	Hard (4)	Low (6)	Mid (11)	Upper (17)	Low (7)	Mid (13)	Upper (20)	LPFM points	FX points	FX over LPFM	Spectrum status
1	New York, NY	31x31	None	2	0	0	0	1	2	1	0	6	2	12	163	1358%	Limited
2	Los Angeles, CA	31x31	None	4	0	2	6	4	1	0	0	0	4	58	115	198%	Limited
3	Chicago, IL	31x31	None	4	0	0	0	1	2	3	0	2	6	24	225	938%	Limited
4	San Francisco, CA	31x31	None	5	0	5	4	0	1	3	1	0	3	71	129	182%	Limited
5	Dallas, TX	31x31	None	8	1	8	2	0	2	1	3	6	1	102	158	155%	Limited
6	Houston, TX	31x31	None	15	1	5	1	1	7	6	1	2	8	125	378	302%	Limited
7	Atlanta, GA	31x31	None	3	1	11	1	2	4	6	1	3	5	83	304	366%	Limited
8	Washington, DC	31x31	None	3	0	0	4	0	4	3	0	2	0	34	121	356%	Limited
9	Philadelphia, PA	31x31	None	4	0	3	6	1	3	1	6	2	1	63	144	229%	Limited
10	Boston, MA	31x31	None	4	0	0	2	3	3	3	0	2	1	32	148	463%	Limited
11	Seattle, WA	31x31	None	9	0	18	3	1	0	4	0	0	2	156	114	73%	Available
12	Miami, FL	31x31	None	16	0	5	3	2	0	9	2	0	4	133	259	195%	Limited
13	Detroit, MI	31x31	Easy	2	0	9	6	0	3	3	0	1	6	81	217	268%	Limited
14	Phoenix, AZ	31x31	Easy	3	1	14	0	2	1	9	0	2	4	94	282	300%	Limited
15	Minneapolis, MN	31x31	None	8	4	13	1	1	3	4	1	2	7	141	280	199%	Limited
16	San Juan, PR	31x31	Hard	1	0	4	1	4	1	6	0	0	0	30	137	457%	Limited
17	San Diego, CA	31x31	None	2	1	3	0	1	0	1	3	0	0	33	44	133%	Limited
18	Tampa, FL	31x31	None	17	8	20	3	1	8	3	1	2	5	262	278	106%	Limited
19	Denver, CO	31x31	None	2	1	8	6	1	0	1	3	0	1	82	64	78%	Available
20	Nassau-Suffolk, NY	31x31	None	1	0	0	0	0	2	2	5	0	2	6	131	2183%	Limited
21	Baltimore, MD	31x31	None	2	0	2	1	1	1	1	4	1	2	26	115	442%	Limited
22	Portland, OR	31x31	None	13	1	12	0	1	0	2	0	2	6	144	186	129%	Limited
23	Charlotte, NC	31x31	Easy	3	1	5	2	0	5	9	2	3	5	57	361	633%	Limited
24	St. Louis, MO	31x31	Easy	4	6	15	9	0	4	5	1	2	5	171	262	153%	Limited
25	San Antonio, TX	21x21	Easy	7	2	3	2	0	4	4	0	4	4	77	244	317%	Limited
26	Riverside, CA	31x31	None	3	2	0	3	1	0	2	0	2	1	42	86	205%	Limited
27	Salt Lake City, UT	31x31	Easy	1	0	13	1	0	0	0	1	1	3	75	80	107%	Limited
28	Sacramento, CA	21x21	Easy	7	2	4	4	0	4	1	2	2	0	90	101	112%	Limited
29	Las Vegas, NV	31x31	None	5	1	3	0	3	0	4	3	1	7	51	260	510%	Limited
30	Pittsburgh, PA	31x31	None	0	1	2	4	2	5	5	0	1	3	32	225	703%	Limited
31	Austin, TX	31x31	Easy	3	4	6	0	1	1	6	2	3	9	72	352	489%	Limited
32	Orlando, FL	31x31	None	17	3	4	2	3	1	8	5	1	8	148	373	252%	Limited
33	Cincinnatti, OH	31x31	None	5	7	6	9	2	2	2	1	1	5	138	188	136%	Limited
34	Kansas City, MO	31x31	None	7	6	19	1	2	5	4	0	1	4	177	228	129%	Limited
35	Cleveland, OH	31x31	Easy	1	1	6	9	1	2	1	1	0	5	78	152	195%	Limited
36	Columbus, OH	31x31	Easy	6	1	4	4	0	1	2	1	1	2	78	105	135%	Limited
37	Raleigh, NC	31x31	None	5	5	7	1	1	5	4	5	2	10	99	390	394%	Limited
38	San Jose, CA	31x31	None	3	1	0	0	2	0	2	1	2	6	24	199	829%	Limited
39	Indianapolis, IN	31x31	None	4	1	5	9	1	3	2	1	0	4	91	160	176%	Limited
40	Kingston, NY	31x31	Hard	4	12	1	7	2	2	0	0	8	2	129	178	138%	Limited
41	Nashville, TN	31x31	Hard	7	5	9	2	0	5	8	2	2	7	125	371	297%	Limited
42	Middlesex/Somerset NJ,	31x31	None	1	0	0	2	0	2	1	2	3	0	14	92	657%	Limited
43	Milwaukee, WI	31x31	Easy	5	1	4	9	0	7	3	0	0	2	92	168	183%	Limited
44	Providence, RI	31x31	None	3	3	0	4	2	8	0	1	0	0	52	107	206%	Limited
45	Norfolk, VA	31x31	Easy	3	3	7	3	0	3	7	4	4	3	83	292	352%	Limited
46	Jacksonville, FL	31x31	None	4	4	3	0	1	3	7	2	0	10	63	372	590%	Limited
47	West Palm Beach, FL	31x31	None	4	2	2	1	0	3	4	2	3	5	50	254	508%	Limited
48	Greensboro, SC	31x31	Easy	5	10	12	1	4	8	2	3	0	1	154	187	121%	Limited
49	Oklahoma City, OK	31x31	None	7	8	5	1	0	3	5	0	5	9	119	363	305%	Limited
50	New Orleans, LA	31x31	Hard	6	0	16	2	1	2	5	1	0	3	124	180	145%	Limited

Market Rank	Core community or market name	Grid Size	LPFM availability at core?	LPFM Stations				FM Translators						Analysis			
				Current Stations	Potential			AM Primary			FM Primary						
					NoWvr	Easy	Hard	Low	Mid	Upper	Low	Mid	Upper	LPFM points	FX points	FX over LPFM	Spectrum status
				(6)	(6)	(5)	(4)	(6)	(11)	(17)	(7)	(13)	(20)				
51	Memphis, TN	31x31	None	5	9	8	3	0	5	8	1	0	4	136	278	204%	Limited
52	Monmouth-Ocean, NJ	31x31	None	4	2	0	5	0	2	1	2	1	0	56	66	118%	Limited
53	Richmond, VA	31x31	Easy	5	2	1	0	0	2	6	1	1	7	47	284	604%	Limited
54	Hartford, CT	31x31	None	6	2	5	3	4	2	6	1	2	2	85	221	260%	Limited
55	Fort Myers, FL	31x31	None	6	0	5	3	0	3	2	1	1	1	73	107	147%	Limited
56	Louisville, KY	31x31	None	4	1	4	4	0	5	0	2	1	1	66	102	155%	Limited
57	McAllen, TX	21x21	Hard	9	1	2	4	0	1	0	2	1	0	86	38	44%	Available
58	Buffalo, NY	31x31	None	0	2	4	3	0	6	1	4	0	3	44	171	389%	Limited
59	Greenville, SC	31x31	None	10	5	5	4	0	2	0	1	2	11	131	275	210%	Limited
60	Rochester, NY	31x31	Easy	4	1	5	1	0	3	3	2	0	3	59	158	268%	Limited
61	Birmingham, AL	31x31	Easy	5	9	7	1	0	2	5	1	0	12	123	354	288%	Limited
62	Tucson, AZ	21x21	None	8	3	5	1	0	0	0	5	0	1	95	55	58%	Available
63	Dayton, OH	31x31	None	2	0	4	5	0	1	2	3	1	0	52	79	152%	Limited
64	Honolulu, HI	31x31	Easy	2	2	24	0	2	0	6	1	2	7	144	287	199%	Limited
65	Albany, NY	31x31	Hard	5	12	4	11	0	2	2	1	1	4	166	156	94%	Available
66	Tulsa, OK	31x31	Hard	3	8	15	1	1	1	6	0	7	3	145	270	186%	Limited
67	Fresno, CA	21x21	Hard	3	1	0	5	1	1	0	1	1	0	44	37	84%	Available
68	Grand Rapids, MI	21x21	None	3	1	2	1	0	3	3	1	1	1	38	124	326%	Limited
69	Albuquerque, NM	31x31	Easy	3	2	10	0	1	0	8	0	0	5	80	242	303%	Limited
70	Sarasota, FL	21x21	Hard	5	3	2	9	0	2	3	1	0	2	94	120	128%	Limited
71	Des Moines, IA	21x21	None	1	3	3	2	0	4	0	0	6	5	47	222	472%	Limited
72	Knoxville, TN	31x31	Easy	3	12	13	2	3	4	6	2	1	0	163	191	117%	Limited
73	Allentown, PA	31x31	None	0	2	0	3	3	1	0	6	6	0	24	149	621%	Limited
74	Bridgeport, CT	31x31	None	0	0	0	4	2	2	2	6	3	3	16	209	1306%	Limited
75	Omaha, NE	31x31	Easy	4	9	14	1	0	3	1	1	6	2	152	175	115%	Limited
76	Charleston, SC	21x21	No Wvr	2	2	10	0	0	4	3	3	3	2	74	195	264%	Limited
77	Baton Rouge, LA	31x31	Easy	8	12	11	3	0	1	3	2	3	1	187	135	72%	Available
78	Wilkes-Barre, PA	31x31	None	3	1	3	3	4	2	7	5	8	5	51	404	792%	Limited
79	El Paso, TX	31x31	None	3	2	4	1	0	1	1	1	5	2	54	140	259%	Limited
80	Bakersfield, CA	21x21	None	4	1	1	4	2	1	4	2	0	0	51	105	206%	Limited
81	Stockton, CA	31x31	None	6	9	4	6	1	2	1	3	1	0	134	79	59%	Available
82	Lakeland, FL	31x31	Easy	1	2	4	5	0	2	4	2	2	3	58	190	328%	Limited
83	Boise, ID	31x31	Easy	2	1	4	0	0	2	6	2	1	5	38	251	661%	Limited
84	Harrisburg, PA	21x21	Easy	0	2	1	5	0	0	2	1	1	3	37	114	308%	Limited
85	Wilmington, DE	31x31	None	3	0	0	2	2	2	1	1	2	2	26	124	477%	Limited
86	Gainesville, FL	21x21	None	7	3	3	0	2	1	2	1	0	2	75	104	139%	Limited
87	Colorado Springs, CO	31x31	Hard	0	8	7	1	9	0	1	10	0	2	87	181	208%	Limited
88	Chattanooga, TN	31x31	Easy	7	9	12	1	4	1	5	0	5	6	160	305	191%	Limited
89	Madison, WI	21x21	Easy	5	3	4	1	2	1	4	3	1	2	72	165	229%	Limited
90	Columbia, SC	31x31	None	6	8	5	7	2	2	4	2	2	4	137	222	162%	Limited
91	Akron, OH	31x31	Hard	2	1	3	9	0	1	1	0	2	1	69	74	107%	Limited
92	Spokane, WA	31x31	Easy	1	3	10	0	0	0	10	1	3	0	74	216	292%	Limited
93	Portland, ME	31x31	Easy	1	4	5	6	1	5	2	4	3	0	79	162	205%	Limited
94	Little Rock, AR	31x31	None	4	3	16	0	1	4	1	0	1	0	122	80	66%	Available
95	Daytona Beach, FL	21x21	No Wvr	4	4	5	2	1	3	0	2	1	0	81	66	81%	Available
96	Greenville, NC	21x21	Easy	1	5	2	3	0	2	0	5	1	2	58	110	190%	Limited
97	Monterey, CA	31x31	Hard	0	2	3	3	0	0	4	2	1	2	39	135	346%	Limited
98	Fort Pierce, FL	31x31	No Wvr	4	9	16	10	0	2	1	5	1	1	198	107	54%	Available
99	Syracuse, NY	31x31	Easy	1	6	4	8	3	2	0	4	4	1	94	140	149%	Limited
100	Reno, NV	31x31	None	3	0	2	2	0	1	1	1	3	9	36	254	706%	Limited

Market Rank	Core community or market name	Grid Size	LPFM availability at core?	LPFM Stations				FM Translators						Analysis			
					Potential			AM Primary			FM Primary						
				Current Stations (6)	NoWvr (6)	Easy (5)	Hard (4)	Low (6)	Mid (11)	Upper (17)	Low (7)	Mid (13)	Upper (20)	LPFM points	FX points	FX over LPFM	Spectrum status
101	Mobile, AL	31x31	Easy	3	8	4	5	0	3	4	1	1	4	106	201	190%	Limited
102	Springfield, MA	31x31	No Wvr	9	3	1	5	2	3	2	0	0	1	97	99	102%	Limited
103	Melboune, FL	21x21	Easy	2	2	5	3	1	0	2	3	0	1	61	81	133%	Limited
104	Huntsville, AL	31x31	Easy	1	15	11	0	1	2	5	2	4	5	151	279	185%	Limited
105	Lexington, KY	21x21	Easy	4	2	3	3	0	4	3	0	1	3	63	168	267%	Limited
106	Fort Collins, CO	31x31	None	1	1	1	0	0	0	2	0	6	4	17	192	1129%	Limited
107	Wichita, KS	31x31	Easy	4	3	22	4	1	4	1	0	4	0	168	119	71%	Available
108	Toledo, OH	21x21	None	4	2	1	1	0	3	0	2	3	0	45	86	191%	Limited
109	Visalia, CA	31x31	No Wvr	2	13	0	13	1	0	2	0	0	0	142	40	28%	Available
110	Augusta, GA	21x21	Hard	2	4	5	2	0	0	2	1	1	3	69	114	165%	Limited
111	York, PA	31x31	No Wvr	1	2	4	8	0	2	4	2	1	2	70	157	224%	Limited
112	Victorville, CA	21x21	None	2	1	0	0	0	2	1	0	6	1	18	137	761%	Limited
113	Lafayette, LA	31x31	Easy	5	7	11	7	2	0	3	1	0	0	155	70	45%	Available
114	Johnson City, TN	31x31	No Wvr	0	19	7	3	0	3	8	0	3	4	161	288	179%	Limited
115	Corpus Christi, TX	21x21	Easy	4	1	7	2	0	2	2	0	5	1	73	141	193%	Limited
116	Fort Wayne, IN	21x21	Easy	3	1	6	3	0	5	1	2	3	1	66	145	220%	Limited
117	Lancaster, PA	31x31	None	0	2	0	4	0	3	0	2	0	2	28	87	311%	Limited
118	Fayetteville, AR	31x31	Easy	4	10	10	3	0	4	1	1	7	0	146	159	109%	Limited
119	Worcester, MA	31x31	No Wvr	2	4	0	3	1	0	3	0	0	0	48	57	119%	Limited
120	Modesto, CA	21x21	None	5	6	0	3	0	4	0	3	1	0	78	78	100%	Limited
121	Roanoake, VA	21x21	Easy	2	4	8	0	2	1	3	3	0	6	76	215	283%	Limited
122	Portsmouth, NH	31x31	No Wvr	5	10	4	4	0	2	0	2	0	0	126	36	29%	Available
123	Morristown, NJ	31x31	None	2	0	0	4	1	1	0	1	0	0	28	24	86%	Available
124	Pensacola, FL	21x21	Easy	1	1	4	3	1	5	3	0	1	1	44	145	330%	Limited
125	Oxnard, CA	21x21	None	6	2	0	1	4	0	0	0	4	1	52	96	185%	Limited
126	New Haven, CT	31x31	None	3	1	0	3	1	1	3	6	3	3	36	209	581%	Limited
127	Lansing, MI	21x21	Easy	0	3	3	2	2	4	0	1	2	1	41	109	266%	Limited
128	Jackson, MS	21x21	Easy	4	1	7	1	0	3	6	1	1	0	69	155	225%	Limited
129	Myrtle Beach, SC	31x31	Easy	1	8	12	2	0	6	0	5	0	0	122	101	83%	Available
130	Macon, GA	31x31	Easy	0	12	5	0	2	3	3	5	3	1	97	190	196%	Limited
131	Fayetteville, NC	21x21	Easy	0	2	4	3	0	2	2	0	3	2	44	135	307%	Limited
132	Palm Springs, CA	31x31	No Wvr	2	5	1	3	0	2	4	1	3	4	59	216	366%	Limited
133	Salisbury, MD	31x31	Easy	2	5	4	13	0	2	0	3	0	1	114	63	55%	Available
134	Killeen, TX	21x21	Easy	4	3	4	1	0	1	1	0	1	0	66	41	62%	Available
135	Reading, PA	31x31	None	1	0	0	0	2	0	1	2	5	2	6	148	2467%	Limited
136	Youngstown, OH	31x31	None	0	2	3	3	1	1	3	0	0	0	39	68	174%	Limited
137	Springfield, MO	21x21	No Wvr	3	7	8	1	0	3	1	0	2	0	104	76	73%	Available
138	Fredricksburg, VA	21x21	No Wvr	1	5	2	0	0	1	0	4	1	0	46	52	113%	Limited
139	Appleton, WI	31x31	Easy	1	8	7	2	2	7	2	8	0	0	97	179	185%	Limited
140	Flint, MI	31x31	None	4	11	0	4	0	2	1	2	0	0	106	53	50%	Available
141	Tyler, TX	21x21	No Wvr	2	7	8	1	0	1	2	0	3	0	98	84	86%	Available
142	Burlington, VT	31x31	No Wvr	4	14	5	1	1	2	0	5	1	0	137	76	55%	Available
143	Canton, OH	31x31	No Wvr	1	6	2	4	0	1	0	0	1	0	68	24	35%	Available
144	Biloxi, MS	31x31	No Wvr	1	11	6	0	0	1	3	2	0	0	102	76	75%	Available
145	Savannah, GA	31x31	Easy	4	5	22	2	0	0	3	3	1	1	172	105	61%	Available
146	Eugene, OR	21x21	No Wvr	2	2	8	2	0	0	6	0	2	5	72	228	317%	Limited
147	Newburgh, NY	31x31	None	0	0	0	0	4	1	1	3	10	3	0	263	0%	Limited
148	Shreveport, LA	21x21	Easy	3	5	10	0	0	3	2	1	3	0	98	113	115%	Limited
149	Trenton, NJ	31x31	None	0	0	1	0	1	0	1	3	3	0	5	83	1660%	Limited
150	Beaumont, TX	31x31	No Wvr	3	10	18	2	1	1	0	0	5	0	176	82	47%	Available

APPENDIX D
FM TRANSLATOR FILING WINDOW PROCESS FLOWS

RESERVED BAND NCE-FM TRANSLATOR FILING WINDOW

OVERALL APPLICATION LIMITS

- No more than 18 applications nationwide
- No more than 13 applications inside the Top 150 media market areas based on Nielsen Audio market boundaries (normally by county) in effect at the time of the opening of the filing window.
- No limits on the number of applications in a single market (overlapping applications will need to be justified on technical need).

LPFM ANTI-PRECLUSION

- Applications filed in within 39 km of one or more core market grid areas that were designated as **spectrum limited** markets must include an anti-preclusion study that shows that the proposed translator does not overlap a channel point within the grid that indicates potential for LPFM by using the following distance separation requirements:

FM translator 60 dBu contour distance	**Co-channel**	**First-adjacent channel**	**Second-adjacent channel**
7.3 km or less	26	15	8
Greater than 7.3 km but less than 13.3 km	32	21	14
13.3 km or greater	39	28	21

- Applications more than 39 km from any core market grid area or applications filed within 39 km of only market grids that were designated as **spectrum available** do not require an anti-preclusion study.

PRIORITY FILL-IN TRANSLATOR STATUS

- While any translator can be used for "fill-in" service, only those with fill-in status will be able to operate at ERP and HAAT combinations not permitted to non-fill in FM translators and will have selection priority in the event of mutual exclusivity.
- If the proposed translator applicant is different than the licensee for the primary station, the application is automatically disqualified priority fill-in status. Must be commonly owned.
- Perform a service count study similar to one that is performed for a full-service NCE Fair Distribution Analysis using the proposed 60 dBu contour of the proposed fill-in translator as the reference. First and second service populations are not utilized for this study.
- Using the same criteria used for counting educational services as full-service NCE, determine the number of educational services that overlap into the service contour of the proposed translator. Since this is a fill-in service, there will always be at least one service.
- If it can be shown that there is either only one or two existing educational services overlapping all areas of the proposed translator contour, then the translator qualifies as a fill-in service. (NOTE: the second station can be different stations in different parts of the translator contour as long as there is no area, even minute that has 3 or more educational services.)
- If the proposed translator qualifies as a fill-in under this criterion, then the translator can operate at a maximum of 250 watts at any HAAT as long as the service contour of the proposed translator remains entirely within the service contour of the commonly-owned primary station.

- If the proposed translator does not qualify as a fill-in under this criterion, it may still be used for rebroadcasting a primary station within its service contour but the facility may not exceed the ERP and HAAT requirements of §74.1235(b) and it does not receive selection priority.

MUTUAL EXCLUSIVITY

- If the applicant can claim fill-in status priority as described in the previous section, that application will have priority and will win the MX Group.
- Otherwise, a settlement or other modification is required to try to settle the group.
- If resolution can be made, then the NCE point system is used:
    - Established local applicant (25 miles) – 3 points
    - Diversity of Ownership or Statewide Network – 2 points (NOTE: A translator obtained in this window that is inside a co-owned full-service service contour but does not qualify for priority as shown above, is considered an overlapping interest not eligible for diversity).
    - Technical points (same criteria as NCE) – 1 or 2 points
- In the event of a tie, two tie breakers are used:
    - First tie breaker: Number of current authorizations. – lowest value wins
    - Second tie breaker: Number of pending authorizations. – lowest value wins
    - (previous NCE point system dismissal is not used for translators).
    - The number of authorizations includes AM, commercial FM, NCE FM, LPFM and non-fill in translators. The number of fill-in translators is also considered if the tied applicants both qualify for fill-in priority.
- If the tie cannot be broken, the applicant with the lower file number will win.

POST-GRANT HOLDING PERIODS

- While the FM translator station remains unbuilt, the authorization may be assigned or transferred to another entity but the consideration is limited to the legitimate and prudent expenses accrued in the prosecution of the original construction permit application.
- For a period of 4 years after licensing, a noncommercial FM translator cannot change channel and become a commercial translator.
- For a period of 4 years after licensing, translator applications that win the MX group using fill-in status priority may not modify their facility to specify a service area where they would be overlapping into any area that receives 3 or more educational services (based on the full-service facilities in place at the time of the filing window).
- For a period of 4 years after licensing, translator applications that win the MX group using the established local applicant points must remain local (25 miles).
- For a period of 4 years after licensing, translator applications that win the MX group using the diversity points must maintain diversity. (NOTE: New translators used as fill-in but do not qualify for the priority since they are not exclusively over an area with 1 or 2 educational services are counted as a station and not considered for diversity purposes)

NON-RESERVED BAND TRANSLATOR FILING WINDOW

OVERALL APPLICATION LIMITS

- No more than 70 applications nationwide
- No more than 50 applications inside the Top 150 media market areas based on Nielsen Audio market boundaries (normally by county) in effect at the time of the opening of the filing window.
- No limits on the number of applications in a single market (overlapping applications will need to be justified on technical need).

LPFM ANTI-PRECLUSION

- Applications filed in within 39 km of one or more core market grid areas that were designated as **spectrum limited** markets must include an anti-preclusion study that shows that the proposed translator does not overlap a channel point within the grid that indicates potential for LPFM by using the following distance separation requirements:

FM translator 60 dBu contour distance	**Co-channel**	**First-adjacent channel**	**Second-adjacent channel**
7.3 km or less	26	15	8
Greater than 7.3 km but less than 13.3 km	32	21	14
13.3 km or greater	39	28	21

- Applications more than 39 km from any core market grid area or applications filed within 39 km of only market grids that were designated as **spectrum available** do not require an anti-preclusion study.

FILL-IN TRANSLATORS

- No restrictions on fill-in translators in the non-reserved band like there is in the reserved band.

MUTUAL EXCLUSIVITY

- If unable to make a technical modification:
  - If the application is noncommercial, it will be dismissed.
  - If the application is commercial, it will go to auction.

POST-GRANT HOLDING PERIODS

- While the FM translator station remains unbuilt, the authorization may be assigned or transferred to another entity but the consideration is limited to the legitmate and prudent expenses accrued in the prosecution of the original construction permit application.
- For a period of 4 years after licensing, a singleton translator authorized as noncommercial without filing fees cannot become a commercial translator. (Commercial applications including those that went to auction will not have this provision because filing fees were paid.)

APPENDIX E

FREQUENTLY ASKED QUESTIONS

Anti-trafficking assignment and transfer rule

Q. How does this affect existing FM translator stations?
A. Existing FM translator stations would not be affected by this rule, not even on major change applications filed during the window. This rule would only apply to new translators applied for during the window.

Q. What if we need to change the board members during the construction period?
A. As long as the permit is not being assigned or transferred to a different entity with a different mission statement, then it would fall under *pro forma*. *Pro forma* assignment and transfer applications are exempt from the construction period rule.

Q. What is considered "legitimate and prudent" expenses?
A. They are considered expenses reasonably incurred by the applicant in preparing, filing, prosecuting and settling its application for which reimbursement is being sought. It can also include expenses reasonably incurred during the construction phase including purchased equipment that will be included in the transaction and installation costs. Operating costs such as rent, salaries and utilities are not recoverable. Applicants should include a detailed schedule of the expenses incurred to demonstrate that they were reasonable, legitimate and prudent.

Q. How will this proposed rule prevent trafficking?
A. Currently, if a new authorization for a FM translator is granted, it can be immediately assigned to another entity for any value, especially when the original grantee has made no effort to physically start construction of the station. The authorization is merely "paper". Following the Auction 83 FM translator filing window, there were a significant number of these "paper" assignments for profit. Other broadcast services have this kind of anti-trafficking protections, but FM translators are exempt. Our proposed change merely closes that loophole.

Q. Is there an 18-month holding period where no assignments are allowed like in LPFM?
A. No. The assignment can take place at any time in the three-year construction period as long as the consideration is limited to reasonable, legitimate and prudent expenses.

Q. Does this rule also apply to "singleton" FM translator grants?
A. Definitely, yes. It was the singletons that were being trafficked after Auction 83.

Q. Is there an exception for FM translator applications that were won in an auction?
A. Unless there's a statutory reason that forbids it, there are no exceptions. A translator can be won in an auction and immediately flipped. This rule is intended to suppress all profit from flipped unbuilt translators, whether fees were paid up front or not.

Closing the NCE Loophole

Q. Why was this rule proposed?
A. To assure that FM translators obtained without filing fees are not immediately used for commercial purposes.

Q. What about entities that are considered non-profit and exempt from regulatory fees and apply to rebroadcast a commercial station where filing fees are paid?
A. It does not apply since filing fees were paid.

Q. Why would the condition also apply to new and major change reserved band translators?
A. Because there are certain provisions in the rules that allow a reserved band translator to "band hop" to the non-reserved band.

Q. If the FM translator is in the non-reserved band and the primary station was originally noncommercial, but then the primary station modified their license to specify being a commercial station?
A. The rule only applies on changes in the primary station. If the non-reserved band station suddenly changes from noncommercial to commercial, it would not violate the proposed condition.

Application caps

Q. Why 50 and 70?
A. This was consistent with the post-2003 procedures and as observed following the 2003 window, most applicants filed less than 70 applications nationally. This provision is in place to prevent massive filings and to assure that those who are granted authorizations will actually build them, therefore preserving spectrum opportunities for new and modified FM translator and LPFM stations.

Q. For the 50-cap, what is the boundary considered?
A. The market boundaries considered by Nielsen Audio for the top-150 metropolitan markets. In most cases, these are the county boundaries.

Q. Why no per-market cap?
A. We considered the prior per-market caps of 1 and 3 applications that were enacted post-2003, but because of the rural nature of portions of some counties in a designated market, we felt that the rule would be too restrictive and burdensome to administrate. Other proposed rules such as the assignment/transfer rule, closing the NCE Loophole, the 50/70 cap as well as the core urban grid protection of LPFM opportunities will be sufficient to control trafficking and assure future LPFM and FM translator opportunities.

Protection of LPFM opportunities in the core market grid

Q. Why count FM translators differently than LPFM stations?
A. Because FM translators, especially commercial fill-in FM translators can provide much wider coverage and can preclude more than one LPFM opportunity. The point values are based on a general footprint of each station within the market grid.

Q. Do directional FM translators receive a reduced score since their footprint does not cover the whole area?
A. No. This is because LPFM stations are required to protect FM translators by distance separation regardless of the translator station's directionality.

Q. Why give a "discount" on points to fill-in FM translators carrying an AM station but not to fill-in FM translators carrying an AM station?
A. REC considers FM translators used to rebroadcast Class C and D AM broadcast stations to be a "community need" under Section 5(2) of the LCRA and we feel that these translators deserve some consideration as they are more likely to serve their local community than a translator carrying an FM signal or HD subchannel in an urban area. To assure simplicity in the process, we are also giving the discount to FM translators carrying Class A and B AM stations.

Q. How was the point value for FM translators determined?
A. We look at the translators ERP (ERP to the farthest lobe on directional translators) and the height above average terrain based on 8 radials. The "sub-class" each translator is placed in is based on the curves calculation of the ERP and HAAT combination to the 60 dBu service F(50,50) contour.

Q. What is the difference between a "easy" and a "hard" waiver for LPFM stations.
A. For simplicity, we used the standard distance to the 80 dBu service F(50,50) contour for each FM service class as well as the three "tiers" of FM translator "sub-classes". If the distance from to all short-spaced second adjacent channel stations is less than the 80 dBu standard distance, then the waiver is considered "easy" and if there is at least one short-spaced station with a distance further than the 80 dBu standard distance, then the waiver is considered "hard". The stronger the short-spaced second-adjacent channel stations are, the easier it is for the LPFM station to protect the short-spaced station(s). Easy waivers can mean that rooftop antennas, smaller antennas and locations in more densely populated areas where hard waivers require increased height, larger antennas, more remote locations (reducing population coverage) and in some cases, contour overlap studies.

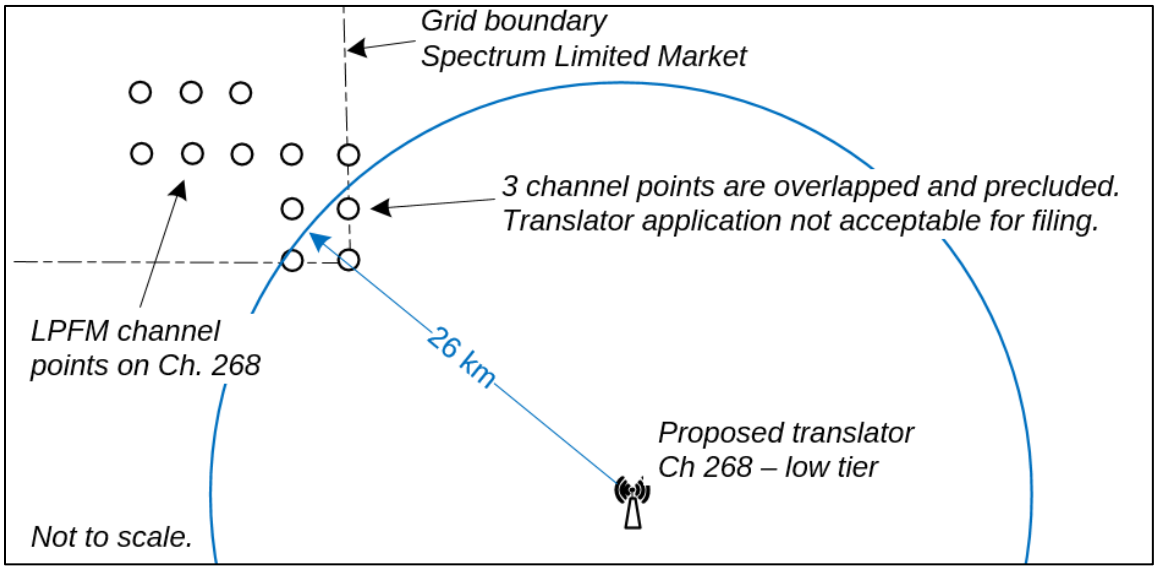
Q. What constitutes the use of a 21x21 grid as opposed to a 31x31 grid?
A. In the post-2003 processes, the 21x21 grid was used in areas where the population in the area outside of the 21x21 grid but inside the 31x31 grid was not substantially dense. For our current study, we are only applying the 21x21 grids in areas where the FCC applied them in the post-2003 procedures.

Q. What if the proposed translator is outside of the grid?
A. If the translator is within 39 kilometers of a grid area and the grid area is considered as "spectrum limited", then an anti-preclusion study is required. This is because on co-channel, the minimum distance separation between an LPFM station and a FM translator on the highest tier (greater than 13.3 km service contour) has a minimum 39-kilometer distance separation and as such, these translators outside of the grid can preclude LPFM opportunities inside of the grid. An example of how an anti-preclusion study is performed is shown on the next page…

Here is an example of a proposed FM translator with a service contour of less than 7.3 kilometers located outside of the grid of a spectrum limited market. Since the translator proposal is within 39 km of a spectrum limited grid, an anti-preclusion study would be required.

Since this is a lower tier FM translator proposal, any area inside the grid boundary that is within 26 km of the translator must be examined to determine if there are any identified channel points for the same channel (there are shorter distances for first and second adjacent channels).

In this example, there are identified LPFM channel points on the same channel inside of the spectrum limited grid. Those areas would be precluded from LPFM on Channel 268 and therefore, this translator application would not be acceptable for filing:



If this was a spectrum available market, the translator proposal would have been acceptable for filing.

Q. If the translator is directional and does not radiate towards the grid, does the translator still have to protect the channel points within the grid?

A. Yes. This is because LPFM stations are required to protect FM translators by distance separation regardless of the translator station's directionality.

Q. Does a translator have to protect any channel points that are entirely over major bodies of water or located outside of the United States?

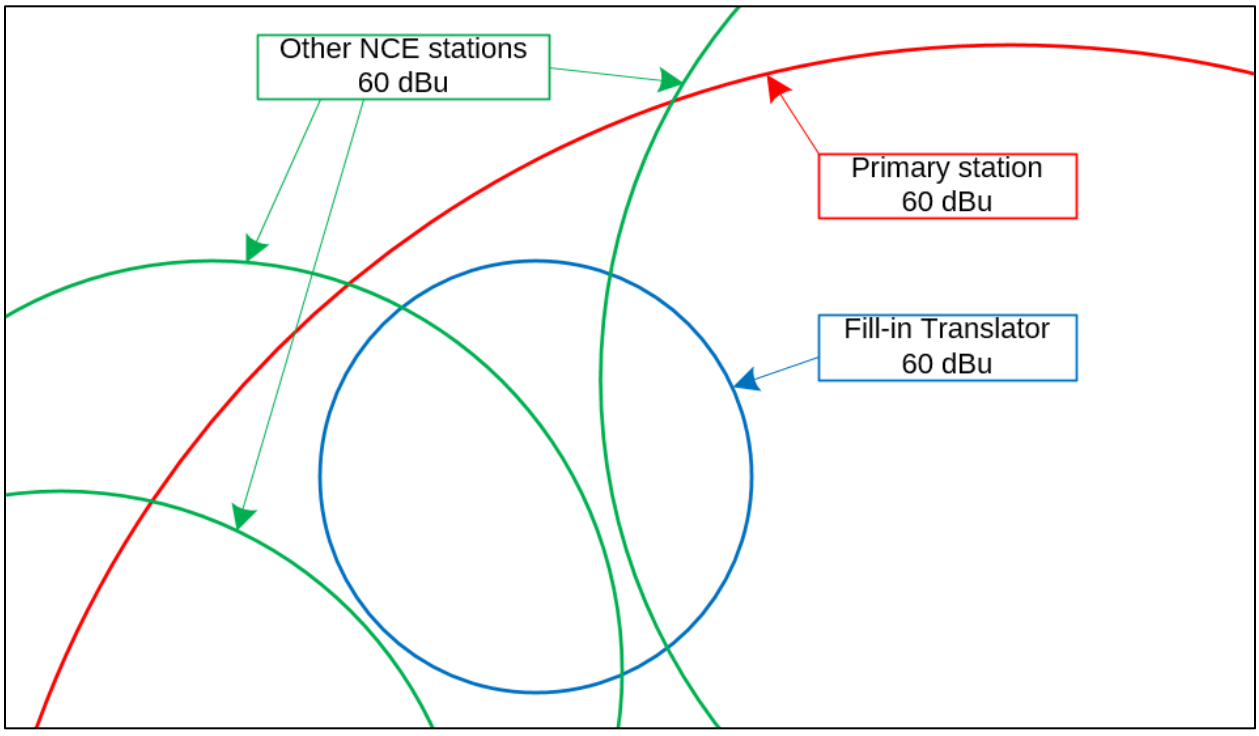
A. No. The Commission's post-Auction 83 computer program included "water files" which identified the 1-minute points within the grid that were either over major bodies of water or located in foreign territory. While the Commission's and REC's computer programs did take these "water points" into account, there may be times when a channel point will appear over the ocean, in a major body of water or in foreign territory. A channel point located entirely over a small lake or in the middle of a river may need to consider the immediately adjacent land area (including islands) that are close to the 1-minute channel point location. REC has no issue with not protecting channel points that are in lakes or other inland waters where the nearest land area is more than 2 minutes in all directions.

Reserved band fill-in translators

Q. Why is this rule necessary?
A. This rule is necessary to assure that NCE stations, especially smaller stations are able to grow their signals into nearby communities without the concern of all opportunities being precluded by well-established NCE stations in more urbanized areas proposing fill-in translators for the purpose of HD rebroadcast. The fill-in service was originally designed to help NCE FM stations fill in holes in their primary coverage areas due to intervening terrain or other obstructions. Fill-in translators are not used much for that purpose anymore.

Q. Why doesn't this rule apply to commercial translators?
A. Because in the reserved-band, mutually exclusive fill-in translators are given priority over all other applications, regardless of their intended use. Mutually exclusivity in the commercial band is settled through auction.

Q. How would a fill-in proposal qualify?
A. The translator's 60 dBu service contour must be in a location where there is only one or two full-service NCE services. This assures that the fill-in translator would be used more likely for its intended purpose. In this case, the fill-in translator contour (blue) is fully inside the primary station's contour (red) and while there are three other NCE stations nearby, only two of them overlap the fill-in translator and in no cases, in a manner where three NCE services would exist at any location within the fill-in contour.



Q. Are existing reserved band fill-in translators grandfathered?
A. Yes, except in one case. If a fill-in translator files a major change application in the filing window for a reserved band channel and the application is granted, there will be no grandfathering rights on the new facility. The current facility will retain those rights until the new construction permit is covered. We are not proposing any changes to the rules for non-reserved band fill-in translators.

Reserved band fill-in translators (continued)

Q. We were granted as a priority fill-in translator (either singleton or through comparative review) because there were only two educational services in the service contour of the fill-in translator. Now another NCE station has filed a modification that results in translator having three NCE services in a portion of the service contour. Do we have to reduce our facility now?
A. No. These priority rights are based on a snapshot of the spectrum taken prior to the opening of the filing window that established or major changed the fill-in translator. Any subsequent application activity by other NCE stations will have no impact on designation as a fill-in translator.

Q. We need to move a priority fill-in translator, is there any restrictions on this move?
A. A restriction only applies if the translator was originally mutually exclusive in the filing window and the status as a priority fill-in translator was a factor in the grant. In that case, during the first 4 years of licensed operation, the translator would be restricted from modifying into a situation where the new site's translator service contour receives at least 3 NCE services (including the underlying primary station) at any location based on the spectrum snapshot taken prior to the translator window. If the fill-in translator was granted as a singleton, but still qualified for priority, then this restriction would not apply.

Q. What if we modify the priority fill-in translator to be a non-fill in translator (where the service contour of the translator exceeds that of the primary station)?
A. That can be done without immediate restriction. If the station was to seek a future modification to provide service entirely within the primary station contour, it could regain its fill-in status as long as the subsequent proposed contour has only one or two NCE services per the original window snapshot.

Q. If we are granted priority fill-in translator in the window, do we have to rebroadcast the primary HD-1 or analog signal or is HD multicast simulcast permitted?
A. While the intention was for these priority fill-in stations to assure a first or second NCE service within gaps of primary station coverage, there is nothing in the current or proposed rules preventing the priority translator from being used for HD simulcast. This is an unworkable loophole in the rule, which would be difficult to overcome without proposing a whole new regime of rules to prevent HD simulcasting, which is outside the scope of this proceeding.

Q. Can an LPFM station file for a priority fill-in?
A. Yes, but unless the LPFM is a "foothill effect" station with a large service contour in one direction, it will not be too effective since the non-fill in translator rules already permit a facility at greater parameters than a LP-100 LPFM station.

Q. Can a non-reserved band translator "band hop" to the reserved band and receive the higher ERP and HAAT ability if the proposed location has no more than two educational services?
A. Only as a major change application during the filing window where it is subject to competing applications.

Q. Can a reserved band translator "band hop" to the non-reserved band and receive the higher ERP and HAAT as a fill-in station?
A. Yes, as long as the band hop is done in accordance with the rules.

Reserved band filing window

Q. Can an NCE applicant that filed 18 applications in the reserved band filing window also be able to file up to 70 applications in a subsequent non-reserved band filing window?
A. Yes. The applications filed in the reserved-band window will not "follow" the station to a subsequent window for the purposes of the application cap. Any applications from a previous window that are still pending at the time of the subsequent window must be counted as pending applications for the second tie breaker question.

Q. Why hold the reserved band window before the non-reserved band window?
A. Simply, because the non-reserved band has been waiting longer for a filing window than the non-reserved band which had a general opportunity in 2003 and restricted opportunities in 2017 and 2018.

Q. Will holding the reserved band window first preclude any opportunities for a future non-reserved band translator filing window?
A. It will only impact potential opportunities on Channels 221, 222 and 223 (92.1, 92.3 and 92.5) by previously filed reserved band translator applications on Channels 218, 219 and 220 (91.5, 91.7 and 91.9).

Q. Why not hold a combined window for both the reserved and non-reserved band at the same time?
A. This will create complexities in respect to the requirement that commercial applications will trump noncommercial applications. Depending on the applications filed during the combined window, it could create an MX group that extends even below Channel 218 (91.5) and could result in even more noncommercial applications being dismissed because of a distant mutually exclusive commercial application which is further frustrated by the Commission's "one grant" policy.

Q. Must LPFM stations filing for translators in either window claim their LPFM station as a current authorization, even though we did not have to in the full-service NCE window?
A. Yes. You were able to not claim the LPFM station in the NCE window because cross-ownership between a LPFM and a full-service station is prohibited, and that the application filed in the full-service NCE window was conditioned on the divestiture of the LPFM station.

Q. Can an educational organization or institution LPFM station file more than 2 applications in a translator filing window even though it would only plan to keep two translators to stay within the ownership limit?
A. The current rules state that LPFM stations may not hold attributable interest in more than 2 FM translator *stations*. It makes no mention of *applications*. The current rules, nor does this petition address this issue specifically. This will be a call for the Media Bureau to make. If they wish to keep the rules consistent with the LPFM window rules, then the LPFM would be limited to only two applications. REC would support the ability for LPFM stations to file more than two translator applications in the window, however only two should be allowed to be granted. The latter concept may be dismissed by the Media Bureau staff due to a potential administrative burden. Again, we will leave this to staff to decide.

Q. Can an LPFM use alternate terrestrial means (internet or microwave, but not satellite) to feed an FM translator if the translator is fill-in?
A. Under our proposal, yes. This would be consistent with the LPFM booster rules which permits LPFM stations to use any terrestrial means to feed a booster. We do note that except in foothill effect and other situations where an LPFM service contour is extended substantially in a certain direction, fill-in translators for LPFM stations will be mostly ineffective.