

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

In the Matter of)	
)	
Creation of A Low Power Radio Service)	MM Docket No. 99-25
)	
Amendment of Service and Eligibility Rules for)	MB Docket No. 07-172
FM Broadcast Translator Stations)	RM-11338

COMMENTS OF
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I. Introduction and Summary

After ten long years of working to pass the Local Community Radio Act, the commenters to this filing—Prometheus Radio Project, Future of Music Coalition, and the United Church of Christ, OC Inc.¹ (hereinafter “Joint LPFM Advocates”)—are pleased to finally have the opportunity to comment on its implementation. We look forward to working closely with the Commission and its staff as we move ahead on this next, important phase in the low-power radio service.

We commend the Commission for all of its efforts to chart a path for the licensing of new LPFM stations with such speed and in accordance with the Local Community Radio Act, the most recent being its Notice of Proposed Rulemaking. Like the Commission, we look forward to seeing the promise of the Local Community Radio Act – specifically the availability of low-power radio stations in urban markets – fulfilled. Thus, in furtherance of the Commission’s steps to that end, we offer here a few suggestions, based on our long expertise serving and working with potential low-power radio applicants and existing low power radio stations, as well as with underserved communities and nonprofit organizations for many years.

¹ Prometheus Radio Project builds, advocates for, and supports low power FM (LPFM) community radio stations. Prometheus led a national, bipartisan grassroots coalition in a ten-year campaign to pass the Local Community Radio Act, signed into law January 2011. Future of Music Coalition (FMC) is a national nonprofit research, education and advocacy organization for musicians that helps artists engage on issues that affect their livelihoods. www.futureofmusic.org The United Church of Christ is a faith community rooted in justice. It established the Office of Communication, Inc. in 1959 as its agency working to replace the media we have with the media we need to create a just society. UCC OC Inc. has been actively filing and working in support of low power radio since the idea’s inception at the Commission in 1998.

As a preliminary matter, we emphasize that one of the most important things the Commission can do to ensure a successful LPFM service is give potential applicants adequate time to apply for construction permits. Accordingly, we ask the Commission to open an LPFM application filing window no sooner than six to nine months after the publication of the final LPFM rules, and to seek comment on the use of multiple filing windows as was done in the 2000 filing process.

We offer our views on the meaning of Section 5 of the LCRA. In particular, we believe the Commission correctly has concluded that section 5(1) requires the Commission to ensure that its translator processing plan does not preclude licensing opportunities for future low-power FM stations. We demonstrate that the legislative history supports this conclusion. To appropriately implement Section 5(1), the Commission also must ensure adherence to its historic diversity jurisprudence, particularly in light of compelling evidence that the current low-power radio service, limited to third-adjacent channels, has yet to fulfill its promise of serving underserved communities.

Section 5(2) is a localism mandate, drawing on the Commission's long dedication to localism, especially as it relates to low-power radio. Beyond drawing on localism principles, Section 5(2) empowers the Commission to take steps that will favor LPFM stations in relation to translators—as well as to revise the translator rules to augment the localism offered by those licensees.

The unambiguous plain language interpretation of Section 5(3) is that it retains the status of both translator stations and LPFM stations as secondary to full-power stations. Given that language, we do not believe the Commission has the freedom under *Chevron* to adopt the

proposed interpretation referencing “co-equal” status under the Commission’s “cut-off” rule, which addresses the processing order of applications filed in the two services.

We believe that a market-specific translator application dismissal could comply with the directives of the Local Community Radio. Further to that end, we propose improvements to certain aspects of the Commission’s methodology, as discussed at greater length in a separate filing (included here as an appendix).

We offer several suggestions to prevent or limit the trafficking in translator construction permits and licenses, including a three-year ban on the re-assignment of translator construction permits. We also support a national translator application cap of ten applications per entity per window and a local translator application cap of one. While we appreciate the efforts to further assist the AM radio service, we oppose the lifting of cross-service restrictions on translators licensed from Auction 83 unless other anti-trafficking safeguards are instituted beforehand, at least until the Commission develops a better factual record of the localism benefits of any such change. We also ask the Commission to prohibit the rebroadcast of HD signals on FM translators, particularly when such translators are operating at increased power and height under the “fill-in” rule.

II. Allowing Adequate Time for Applicants to Learn About and Prepare Their Applications is the Simplest and Among the Most Important Means to Ensure the Success of LPFM.

At the outset of the *Notice*, the Commission seeks comment on whether to open an LPFM-only window no later than summer 2012. Alongside all the complex and important items for consideration in this proceeding over the coming months and years, giving adequate time for organizations to prepare their applications is among the most critical to ensure a successful

service. As the Commission repeatedly notes, this is likely to be the first and last opportunity for low-power radio stations in any urban area in the United States. We share the Commission's vision of a "robust, dynamic and permanent" LPFM service, as well as the sense that the next LPFM window represents the "last best opportunity to create a vital and sustainable community radio service in major metropolitan areas."

Thus, while we commend the Commission for moving swiftly toward the implementation of the LCRA and the expansion of the LPFM service, we cannot urge the Commission enough to carefully plan the application timeline to ensure the success of this window. Low participation or a high rate of incorrectly completed applications will hinder the development of the service. We have identified a number of factors that will influence the success of a future LPFM window, based on our experience supporting grassroots applicants during the 2000-01 LPFM windows as well as the 2007 NCE window.

The first factor is outreach. Very few potential applicants learn about NCE filing opportunities via the FCC's own communication channels. Most potential applicants learn of the opportunity in the press or via direct organizing from advocates, such as Prometheus, who reach potential applicants at community meetings, national conferences, through internet communications, etc. Outreach is time consuming. Community groups, schools, churches, and other potential applicants need ample time to consider the impact of running a radio station on their organization's mission, finances, and human resources. Even applying means a commitment of significant financial resources for an engineering study. In many cases, we have found that community groups are unwilling to seriously consider applying before knowing whether open frequencies will be available in their city or neighborhood, a question that is difficult and

sometimes impossible to answer prior to the publication of the final rules for LPFM. A better outreach process reaching more qualified, capable and prepared applicants will lead to higher-quality LPFM stations with the resources and knowledge to serve their communities at the best possible level.

The second factor is efficiency. The Commission will receive better and more complete applications as a result of a judicious application timeline. Even the relatively simple application process in 2000 was by no means transparent for those unfamiliar with Commission procedures. This is true even for well-organized, well-resourced groups. For example, WCIW-LP and WRFU-LP, strong, community-based, volunteer-run stations heralded as success stories in the FCC's recent Future of Media report, required significant support from organizers at Prometheus to understand and complete the application process in 2000.² Sufficient lead time is critical to ensure that grassroots groups, experienced in serving their communities if not in navigating Commission procedures, can meet the requirements of the application process. Better quality applications will save Commission staff time and energy addressing oversights or other difficulties.

The pool of broadcast allocations engineers available to perform low-cost studies for the application process is even more limited than that of advocates and attorneys. During the 2007 NCE window, a relatively small number of engineers undertook many of the applications for community-based groups, some completing dozens of applications within the final weeks prior to the deadline. The next LPFM window has the potential to be much larger than the 2007 NCE

² The Information Needs of Communities: The Changing Media Landscape in a Broadband Age, Steve Waldman and the Working Group on Information Needs of Communities, pp.184 (“Future of Media Report”) (rel. June 9, 2011) at http://www.fcc.gov/osp/inc-report/The_Information_Needs_of_Communities.pdf.

window. Moreover, if the Commission adopts any rule changes prior to the upcoming window, the application process will be different and potentially much more complex than the 2000-01 LPFM windows. More time for engineers to complete studies will result in fewer errors and correspondingly less burden on Commission staff.

A third and related factor is fundraising. Depending on the complexity of engineering studies needed to locate an available frequency, applicants will need to raise between several hundred and several thousand dollars to submit an application. This is a substantial sum that must be raised months, and in many cases years, prior to learning whether applications will be successful. At a time when many non-profit organizations struggle to fund their regular operating budgets, even those most prepared to run LPFM stations need sufficient time to raise the additional funds for engineers and in some cases attorneys.

For the aforementioned reasons, we ask that the Commission open an LPFM application filing window no sooner than six to nine months after the publication of the final LPFM rules. If the rules are published no later than January 2012, then July 2012 would be the soonest reasonable date for an application window; and August, September, or October would be more likely to ensure good outcomes. A period of no less than six to nine months would allow sufficient opportunity for outreach to potential applicants, fundraising for engineering costs, and the coordination of limited engineering, lawyering and advocate support for the thousands of potential applicants.

We also ask the Commission to consider opening multiple LPFM application filing windows. The first LPFM application opportunity was to occur over five filing windows, which became four when Congress rendered LPFM applications on third adjacent frequencies

ineligible. Although this system presented some complications, multiple filing windows had the advantage of allowing engineers, attorneys, and volunteers to help many more applicants than possible in a single window. Even two filing windows would lower the challenges for outreach and application support considerably. We ask that the Commission seek comment in its forthcoming Notice the question of holding two to four application filing windows.

Finally, we ask the Commission to consider the time of year of the application filing window(s). The Commission's proposal to open a window in summer 2012 seems ideal, provided a sufficient lead time of six to nine months after the publication of the LPFM rules, as previously discussed. An LPFM application window during or immediately after the winter holidays would be very difficult for community groups, as well as for the engineers, lawyers, and advocates supporting them. We therefore urge the Commission to ensure that the application window is complete prior to November 2012. If this is not possible, we ask the Commission to postpone the window until spring 2013 or later.

III. Interpreting Section 5 of the LCRA

A. The Commission Correctly Interprets Section 5(1) to Require That Translator Licensing Procedures Do Not Foreclose or Limit Future LPFM Licensing.

The Commission seeks comment on how to best interpret Section 5(1) of the Local Community Radio Act's directive that the Commission ensure "licenses are available to FM translator stations, FM booster stations, and low-power FM stations."³ We concur with the Commission's conclusion that that the plain language of this section of the LCRA requires the Commission to adopt "licensing procedures that ensure some minimum number of licensing

³ *Third Further Notice of Proposed Rulemaking* at ¶7.

opportunities for each service throughout the nation” and to “provide, to the extent possible, licensing opportunities for both services in as many local communities as possible.”⁴ We also concur with the Commission’s assessment that the primary focus in effectuating Section 5(1)⁵ of the Local Community Radio Act therefore must be to ensure translator licensing procedures do not foreclose or unduly limit future LPFM licensing.⁶ As the four lead co-sponsors of the legislation from the House and Senate explained to the Commission, section 5(1) was “carefully negotiated” and “does not leave the Commission free to process translator applications to the exclusion of LPFM stations.”⁷

1. The LCRA’s Legislative History Supports the Commission’s Proposed Interpretation.

Beyond the plain language of the statute, the legislative history of the bill fully supports these conclusions and makes clear that Congress anticipated widespread availability of low-power radio stations in urban markets as a result of its passage. For example, during the floor statements made upon passage of the final version of the House bill in December 2010, Congressman Stearns said, “the legislation expands the opportunity for ... all of these groups to the 116 million Americans in the top 50 radio markets in the country who thus far have been

⁴ *Id.*

⁵ Section 5(1) reads as follows:
SEC. 5. 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, and low-power FM stations....
Pub. L. No. 111-371, 124 Stat. 4072 (2011).

⁶ See *Third Further Notice* at ¶13.

⁷ Letter to Chairman Genachowski from Congressman Mike Doyle, Congressman Lee Terry, Senator Maria Cantwell, Senator John McCain, MB Docket 99-25, 07-172 (filed July 12, 2011).

excluded.”⁸ Congressman Doyle, the lead co-sponsor of the bill, explained the goal of the bill: “We have been working together to bring local community-oriented radio to more cities, counties, and neighborhoods across the country for 10 years now.... This bill will allow churches, schools, neighborhood groups, and others to put community-oriented programming on the air, and it will help first responders provide those communities with critical information in times of natural disasters and other emergencies.” He explained further, “Congress has to act on the Commission's recommendations; otherwise, similar stations are prevented from operating in communities across America, communities like mine, which are too large to have any slots for any LPFM stations at 4th adjacent, but could fit several at 3rd.”⁹ Congressman Waxman’s statement also reflected this intent: “This bill removes a statutory barrier to the creation of potentially thousands of new low power stations across the country. The creation of these stations will further the overriding national policy goals of promoting broadcast localism and diversity.”¹⁰

Individually and together, these statements demonstrate that the Commission is correct in its determination that it would not be consistent with the LCRA to adopt a translator processing scheme that fails to ensure adequate and widespread LPFM availability, particularly in the top 50 radio markets.

2. The Commission Must Adopt a Processing Proposal that Supports Its Diversity Goals By Ensuring Availability in Core Urban Areas.

⁸ 156 Cong. Rec. H8622.

⁹ *Id.* at H8621.

¹⁰ *Id.* at H8623.

In its *Notice*, the Commission asserts that “it is important that...there is sufficient spectrum to establish a robust, dynamic and permanent LPFM service in larger markets.”¹¹ Joint Commenters agree wholeheartedly. As more fully covered in our separate pleading, attached here as an appendix, we support adoption of the market-specific translator processing plan, with some modifications, as consistent with Section 5. It is critical that the Commission ensure opportunities for low-power radio stations for organizations within the most populated portions of urban areas.

Ensuring licensing opportunities in urban areas is particularly important because the recently eliminated third-adjacent channel restrictions have precluded LPFM opportunities in these areas since the inception of the service. A 2009 study showed that of 11,880 Census-designated Urban Areas (CUAs) in the United States, only 438 (3.6 percent) contain an LPFM station.¹² Therefore, 96.4% of CUAs never have had the benefit of LPFM service. The study authors highlight the impact of channel adjacency restrictions as the primary barrier to the establishment of LPFM in large urban areas. However, lifting these restrictions cannot advance LPFM in urban areas if the Commission allows its translator licensing procedures to impose a similar barrier.

Not only do core urban markets represent the most densely populated neighborhoods and communities that LPFM stations could serve, but these markets especially are important for serving groups who could particularly benefit from low-power radio – people of color and immigrants. The above-referenced study uses census data to demonstrate that the restriction of

¹¹ See *Third Further Notice of Proposed Rulemaking* at ¶25

¹² Wikle, Thomas A. and Comer, Jonathan C.(2009) “Barriers to Establishing Low-Power FM Radio in the United States”, *The Professional Geographer*, 61: 3, p. 376.

LPFM to rural and suburban areas has resulted in fewer opportunities for communities of color. The study relies on U.S. Census block groups as “the best proxy for representing socioeconomic characteristics of persons potentially impacted by LPFM stations,” and finds that “block groups with LPFM stations have lower percentages of black, Hispanic, and Asian persons, demonstrating that the principal beneficiaries of LPFM have been white persons, despite the stated goals of LPFM to increase diversity in radio station ownership.”¹³ In other words, the presence of an LPFM station is a predictor that an area has lower-than-average racial diversity, due to channel adjacency restrictions that have systematically kept LPFM out of more diverse communities. The study concludes: “Ultimately, these analyses in aggregate reveal that LPFM radio has not served minorities or disadvantaged populations to the extent envisioned by the FCC.”¹⁴ It is critical that the Commission not “punt” on this critically important issue, as it has been criticized recently for past efforts on media ownership.¹⁵

By ensuring opportunities for radio stations that are controlled by and serve underserved populations the Commission would significantly forward its policy to promote diversity. As part of its obligation to promote diversity in media, the Commission historically has adopted media ownership policies designed to promote ownership by women and people of color.¹⁶ As recently as 2007, the Commission maintained that, “beyond fostering viewpoint diversity, ... taking steps

¹³ *Id.* at 373-6.

¹⁴ *Id.* at 376.

¹⁵ *See Prometheus Radio Project v. Fed. Comm Comm’n*, ___ F.3d ___, slip op at 45 (3d Cir. 2011).

¹⁶ *See, e.g.,* Implementation of Section 309(j) of the Communications Act, 13 FCC Rcd 15920, 15994-95 (1998); 2002 Biennial Regulatory Review, 18 FCC Rcd 13620 (2003); 2006 Quadrennial Regulatory Review, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010 (2008).

to facilitate the entry of new participants into the broadcasting industry may promote innovation in the field....[which] may be particularly true with respect to small businesses, including those owned by minorities and women.”¹⁷ Despite these long-standing initiatives and policies, the number of stations controlled by women and people of color is abysmally low. The most recent complete study, conducted by Free Press in 2007, revealed that racial or ethnic minorities controlled only 7.7% of all radio stations, despite representing 33 % of the population at that time.¹⁸ In addition, only 4.7% of full-power commercial radio stations were owned by a company with a woman CEO or president, and 8% were owned by a company with a president or CEO who is a person of color.¹⁹

Low power radio, as the Commission’s Information Needs of Communities Report found, can increase service to these underserved groups.²⁰ Smaller stations such as low power radio stations are more likely to offer a wider diversity of formats aimed at serving underserved groups. For example, in an extensive 2006 study of radio, the Future of Music Coalition showed that smaller commercial station groups were the almost exclusive provider of foreign-language

¹⁷ 2008 Diversity Report and Order and Third NPRM, 23 FCCRcd 5922 (2008) at ¶12 (2008).

¹⁸ S. Derek Turner, *Off the Dial: Female and Minority Ownership in Broadcast* (2007) at 4-5, available at http://www.freepress.net/files/off_the_dial.pdf. See also, See also Sandoval, C., “Minority Commercial Radio Ownership in 2009: FCC Licensing and Consolidation Policies, Entry Windows, and the Nexus Between Ownership, Diversity, and Service in the Public Interest,” available at http://mmtconline.org/lppdf/Minority_Commercial_Radio_Broadcasters_Sandoval%20MMTC_2009_final_report.pdf (finding a decrease in ownership to 7.24 percent in 2009).

¹⁹ Turner, *Off the Dial* at 8. (check)

²⁰ The Information Needs of Communities: The Changing Media Landscape in a Broadband Age, Steve Waldman and the Working Group on Information Needs of Communities, Chapter 10 (“Future of Media Report”) (rel. June 9, 2011) at http://www.fcc.gov/osp/inc-report/The_Information_Needs_of_Communities.pdf.

and ethnic-community programming.²¹ Free Press found that minority owners are more likely to air formats that appeal to audiences of color, even though other formats might be more lucrative. Among the 20 general station format categories, minority-owned stations were significantly more likely to air “Spanish,” “religion,” “urban,” and “ethnic” formats.

The Commission’s approach to ensuring opportunities in larger markets thus serves the broader goal of ownership diversity as well as the Section 5(1) directive to ensure that licenses are available. By ensuring that LPFM licenses are available in areas of significant population, the Commission not only fulfills a Congressional mandate under the LCRA, but also will reverse a policy that systematically keeps LPFM out of diverse communities.

B. Section 5(2)’s directive to base licensing decisions on the “Needs of the local community” is best interpreted as a localism mandate.

The Commission seeks comment on the Section 5(2) directive to base translator and LPFM licensing decisions on the “needs of the local community.” The most logical reference point for the terms “needs of the local community” in the statute is the Commission’s extensive policy jurisprudence in support of localism.

No one disputes the media’s longstanding, significant impact in shaping our democracy, our economy, and our communities. Accordingly, the Commission’s policy and practice maintain as a bedrock principle the public’s interest in the three distinct goals of diversity, competition, and localism. Of these three goals, one might consider competition as the goal specific to the public’s role as consumers, and diversity to address the public’s role as citizens

²¹ Peter DiCola, *False Premises, False Promises*, (Future of Music Coalition, 2006) at 7, available at <http://futureofmusic.org/article/research/false-premises-false-promises>.

and as speakers protected by the First Amendment, which thrives on a multiplicity of viewpoints. Localism particularly serves the public's interests as members of local communities.

While all local communities are part of the public, and all members of the public live in local communities, nonetheless a difference exists with respect to their needs and interests, which is addressed by the Commission's localism mandate. The needs of local communities are distinct from the broader public interest in part because of the highly decentralized nature of democracy in the United States. Local communities need media that facilitates democratic participation with diverse information and debate about local elections, governmental institutions, and schools. Localism also enables members of local communities to act as producers of media, and use their First Amendment freedom to share ideas. Beyond this civic imperative, Commission policy recognizes the importance of localism inherent in our economies and our cultures. Accordingly, local ownership and local programming have been recognized as valuable for the public interest.

The Commission asks whether the entirety of Section 5 should be read as a Congressional finding that both translators and LPFM stations can be expected to serve community needs. Joint Commenters believe that Section 5(2) is a mandate compelling the Commission to rely on its localism jurisprudence in the case of policy decisions relating to low power radio and translators. Low power radio and its service rules provide the greatest localism benefits of any Commission-regulated service. The Commission has itself concluded that the LPFM eligibility, selection, and service rules "*will ensure* that LPFM licensees will meet the needs and interest of their communities.²²" By contrast, the Commission's existing translator

²² *First Report and Order*, 15 FCC Rcd at 2270,

eligibility, licensing and service rules do not provide the same assurance. The Commission therefore asks how heavily Section 5(2) should weigh in favor of LPFM licensing.

We share the view that LPFM’s eligibility, selection, and service rules do guarantee that the service better meets local community needs. In contrast, we do not believe that the Commission’s current translator rules effectively serve local community needs. However, translators can and should be expected to serve community needs. Indeed, we assert that Section 5 of the LCRA requires the Commission to base translator licensing decisions on this expectation. We therefore urge the Commission to improve its regulation of translators to increase their localism focus.

1. Localism is One of the Commission’s Oldest and Most Important Policy Goals.

Localism has informed the FCC’s decision-making since the earliest days of radio. In a 1928 amendment to the Radio Act of 1927, Tennessee Congressman E.L. Davis recommended that radio stations be equitably distributed across the United States rather than concentrated in the populous eastern part of the country.²³ He envisioned that such distribution would localize ownership as well as programming.²⁴

In the decades that followed, the Commission issued several important decisions pertaining to localism, each of which reaffirmed its high valuation of locally-produced programming. As of 1946, for example, broadcasters were required to provide local programming as part of their public interest obligations as licensees.²⁵ In 1955, the Supreme Court supported the Commission’s efforts with its own statement that “[f]airness to communities

²³ 45 Stat. 373 (1928).

²⁴ *Id.*

²⁵ *See Public Service Responsibilities of Broadcast Licensees*, 11 FCC 1458 (1946).

[in distributing radio service] is furthered by a recognition of local needs for a community radio mouthpiece.”²⁶ A few years later, in its seminal and definitive *1960 Programming Statement*, the Commission emphasized the need to provide opportunities for local self-expression and the development and use of local talent as part and parcel of the programming obligations before television broadcasters.²⁷

Thereafter the Commission maintained an “overarching goal of establishing and maintaining a system of local broadcasting that is responsive to the unique interests and needs of individual communities.”²⁸ Even when deregulating radio in the 1980s, the Commission

²⁶ *FCC v. Allentown Broadcasting Corp.*, 349 U.S. 358, 362 (1955).

²⁷ *En banc Network Programming Inquiry, Report and Statement of Policy*, 44 FCC 2303, 2314 (1960) (“[The major elements usually necessary to meet the public interest, needs and desires of the community in which the station is located as developed by the industry, and recognized by the Commission, have included: (1) the opportunity for local self-expression, (2) the development and use of local talent...”). *See also id.* at 2316 (“[T]he principal ingredient of the licensee’s obligation to operate his station in the public interest is the diligent, positive, and continuing efforts by the licensee to discover and fulfill the tastes, needs, and desires of his community...”).

²⁸ *Broadcast Localism, Notice of Inquiry*, 19 FCCRcd 12425, 12427 ¶4 (2004) (“*Broadcast Localism*”). *See also id.* at 12426 ¶2 (“In carrying out [its public interest mandate], the Commission has long recognized that ‘every community of appreciable size has a presumptive need for its own transmission service.’”) (citations omitted).

affirmed its concern with growing and ensuring the viability of programming responsive to the local needs of each licensee's community.²⁹

More recently, in aid of establishing the impact of media consolidation on localism in radio broadcasting, the Commission spearheaded an initiative, including a "Localism Task Force."³⁰ In field hearings around the country, during which members of the public could directly address the question of whether their local needs and interests were met by then-existing radio and television broadcasting services, Commissioners learned from many participants that the answer was "no."³¹ On one such occasion, U.S. Congressman David Price singled out radio

²⁹ See, e.g., *Deregulation of Radio*, 84 FCC 2d 968, 977 ¶24 (1981) ("[W]e believe that the only non-statutory programming obligation of a radio broadcaster should be to discuss issues of concern to its community of license."). See also *id.* at 978 ¶26 ("We do expect, and will require, radio broadcasters to be responsive to the issues facing their community."), 989 ¶48 ("With regard to competing new applicants, the programming showing should be made on how each intends to serve currently unmet needs; the hallmark of a superior proposal in that context will be based on an ad hoc evaluation of which proposal will best serve community needs...[and thus] best serve the public interest objective of obtaining licensees, and programming, that addresses community issues with fresh voices and which will initiate, encourage and expand diversity of viewpoints and varieties of programs available..."); *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 FCC 2d 1076, 1077 ¶2 (1984), *revd in part on other grounds* (affirming commitment to ensuring "programming that responds to community needs and provid[ing] incentives for licensees to become and remain aware of the needs and problems of their communities."); see also *id.* at 1091 ¶32 ("[T]he only programming obligation of a licensee should be to provide programming responsive to the issues of concern to its community of license.").

³⁰ See <http://www.fcc.gov/localism/>. See also *Broadcast Localism*, 19 FCC Rcd at 12427 ¶¶5, 6.

³¹ See *Broadcast Localism*, 19 FCC Rcd. at 12447, Statement of Commissioner Michael J. Copps (approving in part, dissenting in part) ("During the hearings and forums on media ownership that Commissioner Adelstein and I attended across the country, we heard time and again from citizens about the detrimental impact that consolidation has already had on localism and diversity and we heard their fears about where still more concentration will lead.").

services as particularly failing to serve the needs of local communities: “Look at radio....Many local stations these days are essentially run by remote control.”³²

This long history of localism was fundamental to the Commission’s decision to create the low-power FM service, and should inform future licensing decisions as well.

2. Low Power Radio Serves Localism More Directly Than Translators.

The Commission’s singular goal in the creation of the LPFM service was to meet community needs, a goal that was explicitly linked to localism by the Commission. The Commission explained that its preference for local licensees rested on its “predictive judgment that *local entities with their roots in the community will be more attuned and responsive to the needs of that community*, which have heretofore been underserved by commercial broadcasters.”³³ In 2000, the Commission developed the rules for the LPFM broadcasting service “[i]n order to enhance the availability of community-responsive programming.”³⁴ Specifically, Commission sought “to create a class of radio stations designed to serve very localized communities or underrepresented groups within communities.”³⁵ The Commission’s historical

³² Transcript, Field Hearing, Broadcast Localism Hearing, Charlotte, North Carolina, Oct. 22, 2003, Testimony of Hon. Michael Price, at 29, at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-242307A1.doc.

³³ *Id.* at ¶34, emphasis added (furthermore noting that “local residence should carry particular weight here because we envision LPFM as a uniquely local service designed to serve local community needs.”).

³⁴ *Broadcast Localism*, 19 FCC Rcd. at 12441 ¶43.

³⁵ *See Report and Order, Creation of Low Power Radio Service*, 15 FCC Rcd 2205 ¶4 (2000) (“2000 LPFM Report and Order”). *See also id.* at ¶33 (noting intent “to respond to the highly local interests that are not necessarily being met by full-power stations” with LPFM).

focus on the importance of media ownership in serving localism³⁶ guided its approach to LPFM ownership requirements.

As Commissioner Copps once remarked, “it is impossible to divorce localism from ownership.”³⁷ Thus the Commission designed each of the requirements for LPFM license eligibility “to enhance the localism of the service.”³⁸ To be eligible for an LPFM license, an applicant must demonstrate its local basis and lack of attributable interests in other media or other LPFM stations.³⁹ Specifically, an LPFM applicant must “certify that it or its local chapter or branch is physically headquartered, has a campus, or has 75 percent of its board members residing within 10 miles of the reference coordinates of the proposed transmitting antenna.”⁴⁰

³⁶ See, e.g., *Broadcast Localism*, 19 FCCRcd at 12427 ¶4; *2002 Biennial Regulatory Review*, 18 FCCRcd 13620 (2003). See also *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age*, Steve Waldman and the Working Group on Information Needs of Communities, p. 310 (“Future of Media Report”) (rel. June 9, 2011) at http://www.fcc.gov/osp/inc-report/The_Information_Needs_of_Communities.pdf.

³⁷ *Broadcast Localism*, 19 FCC Rcd. at 12447, Statement of Commissioner Michael Copps (approving in part, dissenting in part).

³⁸ *Broadcast Localism*, 19 FCC Rcd. at 12442 ¶43.

³⁹ 47 C.F.R. §73.853 (licensing requirement); 47 C.F.R. §73.855 (ownership limits). Originally the Commission proposed to allow a single entity to own up to ten LPFM stations. But in 2007, seeking to further protect localism and foster greater diversity of programming, the Commission restricted ownership of more than one LPFM station. See *Creation of a Low Power Radio Service, Third Report and Order and Second Further Notice of Proposed Rulemaking*, 22 FCC Rcd 21912, 21922 ¶23 (2007) (“*Low Power Radio Svc. Order 2007*”); 47 C.F.R. § 73.855(a). Further to that end, an LPFM license may not be transferred or assigned for three years from the date of issue, and the transferee/assignee must satisfy all eligibility criteria that apply to an LPFM licensee; and LPFM construction permits are non-transferrable. See 47 C.F.R. §73.865. “In addition, in the case of mutually exclusive applications for LPFM stations, the Commission will grant the license to the applicant with the greatest number of points,” which are earned by “those that pledge ‘to originate locally at least eight hours of programming per day.’” *Broadcast Localism*, 19 FCCRcd at 12442 ¶43 (citations omitted).

⁴⁰ *2000 LPFM Report and Order*, 15 FCC Rcd 2205 at ¶33. This rule was later modified to 30 miles for rural stations. Cite 2007 Report and Order.

The recent Future of Media report observed that LPFM and translators “could not be more different in terms of the services they provide.”⁴¹ The Commission underscored this distinction in the creation of the LPFM service, affirming its expectation “that a significant amount of [LPFM] programming will be locally produced” and proposing that “in order to promote new broadcast voices,” “an LPFM station not be permitted to operate as a translator, retransmitting the programming of a full-power station.”⁴²

Unlike LPFM, FM translators were not designed to fulfill a localism concern but instead “envisioned as a ‘fill-in’ service for full-power FM stations,” or “a means whereby the signals of FM broadcast stations may be retransmitted to intervening terrain barriers.”⁴³ Accordingly, “their associated stations may be many miles away.”⁴⁴ Furthermore, translators cannot “provid[e] opportunities for local self-expression...reaching out, developing and promoting local performing artists and other local talent” which are part and parcel of localism.⁴⁵ There can be no talent “local” to translators, which per the Commission “are not permitted to originate programming themselves,” except for emergency announcements and 30-second-per-hour

⁴¹ See *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age*, Steve Waldman and the Working Group on Information Needs of Communities, p. 326 (“Future of Media Report”) (rel. June 9, 2011) at http://www.fcc.gov/osp/inc-report/The_Information_Needs_of_Communities.pdf.

⁴² *In the Matter of Creation of a Low Power Radio Service, Notice of Proposed Rulemaking*, 14 FCCRcd 2471 ¶68 (1999).

⁴³ *Broadcast Localism*, 19 FCCRcd at 12442 ¶45.

⁴⁴ *Id.*

⁴⁵ See Transcript, Field Hearing, Broadcast Localism Hearing, Charlotte, North Carolina, Oct. 22, 2003, Remarks of Commissioner Adelstein, at 19, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-242307A1.doc.

requests for or acknowledgment of financial support.⁴⁶ “LPFM stations, by contrast, often originate local programming.”⁴⁷

In acknowledgment of these crucial differences, the Commission earlier recognized that the proliferation of translators, at the expense of that of LPFM, would interfere with its efforts to promote localism.⁴⁸ In this proceeding the Commission affirmed the same, moving to uphold the public’s interest in localism by dismissing translator applications that would prevent LPFM licensing.

We agree with the Commission’s earlier opinions to the effect that LPFM best and most efficiently meets the needs of local communities; thus we propose that dismissal of translator applications where required to preserve opportunities for LPFM stations meets the directive of 5(2). The rules for each service dictate this outcome, particularly in spectrum-limited, populous markets. In an amendment to the FM translator rules, the Commission clarified “the intended purpose of this service, which is to provide supplementary service to areas in which direct reception of radio broadcast stations is unsatisfactory due to distance or intervening terrain barriers.”⁴⁹ Secondary service in such cases not only is the “proper role of FM translators among

⁴⁶ *Broadcast Localism*, 19 FCCRcd at 12442 ¶45. *See also* 47 C.F.R. §74.1231(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.”); *id.* at §74.1231(g) (“Originations concerning financial support are limited to a total of 30 seconds an hour.”).

⁴⁷ *Broadcast Localism*, 19 FCCRcd at 12442 ¶45, n. 117.

⁴⁸ *See Low Power Radio Svc. Order 2007*, 22 FCCRcd at 21934-35 ¶53.

⁴⁹ *See In the Matter of Amendment of the Commission's Rules Concerning FM Translator Stations*, 5 FCC Red at 7219, ~ 48 (1990).

aural services to the public stations,”⁵⁰ but as the Commission emphasized originally, this supplementary service is “the sole purpose of FM translators.”⁵¹ Translators thus have no purpose in unobstructed but densely populated urban areas, where spectrum is scarce.

Conversely, LPFM was created as “a program service responsive to the needs and interests of small local community groups, particularly specialized community needs that have not been well served by commercial broadcast stations.”⁵² Such unserved and underserved communities exist everywhere, including in urban areas. The licensing of LPFM stations clearly advances the goal of localism, and indeed the needs of local communities, more directly and efficiently than the licensing of translator stations, particularly in spectrum-limited markets.

3. The Commission’s translator rules should be modified to better serve localism goals and comply with the directive of Section 5(2).

The Commission’s translator rules nonetheless could better serve localism goals and, to that end, should be modified to comply with the directive of Section 5(2). Specifically in section IV below, Joint Commenters propose several approaches to preventing or limiting trafficking in translator permits and licenses. By limiting the incentive for speculators to pursue translator applications, these proposals could increase the potential for translator licensing decisions to benefit local communities. Further to that end, the Commission may wish to consider a number of other rules that would increase the localism focus on the translator service. For example, the Commission could require translator licensees to cover the community of license named on their

⁵⁰ See *In the Matter of Amendment of the Commission’s Rules Concerning FM Translator Stations*, 5 FCC Rcd 7212, ¶1 (1990).

⁵¹ *Ibid* at ¶5 (1990).

⁵² See *In the Matter of the Creation of Low Power Radio Service*, MM Docket No. 99-25, Report and Order, 15 FCC Rcd 2205, ¶17 (2000).

application with a certain strength signal and prohibit community of license changes. The Commission could set a priority for translator application processing that favors or limits eligibility to local applicants. The Commission also could prohibit translators from changing their primary station without notice, and set a priority for a translators whose primary station is locally owned.

Stronger localism requirements for translators would benefit not only local communities but also local broadcasters. Local broadcasters interested in operating translators have been frustrated by the behavior of speculators and large translator networks, behavior which regulations facilitate by failing to distinguish between local broadcasters and these non-local networks and speculators. Several locally owned community stations, such as KWMR in Point Reyes, California, a commenter to this proceeding, are at risk of losing translator applications that may not directly conflict with future LPFM licensing opportunities. To prevent others from suffering similarly, future translator processing guidelines should prioritize translators that meet localism requirements.

It is axiomatic that LPFM stations better serve localism than do translators. However, that fact should not mean that translators cannot be expected to meet local community needs. Under the Commission's current translator rules, the vast majority of the translator applications filed in Auction 83 neither benefit localism nor therefore meet the needs of the local community. This suggests strengthening the translator rules may be in order to support localism and comply with the Section 5(2) mandate for localism.

C. Section 5(3) Does Not Block the Commission from dismissing translator applications prior to an LPFM application window.

1. The Best Interpretation of Section 5(3) is that It Requires Both Translators and LPFM Stations Remain Secondary to Full Power Stations.

The Commission seeks comment on the appropriate interpretation of Section 5(3) and whether its terms limit its proposed translator application processing plan.⁵³ Section 5(3) states: “FM translator stations, FM booster stations, and low-power FM stations remain equal in status and secondary to existing and modified FM stations.” The Commission seeks to determine whether this statutory provision refers to its “cut-off” rule, wherein a prior filed application in one service “cuts off” a subsequently filed application in the other service.⁵⁴

The simple, plain language interpretation of Section 5(3) does not refer to the Commission’s cut-off rule. The plain language meaning of Section 5(3) is to retain the status of both translator stations and LPFM stations as secondary to full power stations and equal to each other (i.e., neither translator stations nor LPFM stations are superior to the other). This interpretation has the distinct advantage of hewing to the plain language of the statute, from which the Commission’s proposed interpretation would require several interpretive leaps. As is clear under *Chevron*,⁵⁵ the agency does not have the ability to depart from the plain language of the statute unless the statute is unclear.

In this case, the statute is clear without changing the wording of the section. Read as a complete sentence, Section 5(3) authorizes the existing arrangements between licensed LPFM

⁵³ *Third Further Notice* at ¶19.

⁵⁴ *Third Further Notice* at ¶20 (citing 47 C.F.R. §§ 73.807(d) and 74.1204(a)).

⁵⁵ *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

and translator stations as they relate to full-service stations. Both can be displaced by primary stations, but neither can displace the other; and in this sense these stations should remain equal. This more commonsense read of the equal status of the two services is more likely the intent of Congress.

The most fundamental problem with the Commission's proposed interpretation is that it makes sense only if the Commission concludes that Congress intended to say "applications" when it in fact used the term "stations." The Commission admits the same, then asserts that the words "stations" and "applications" were used interchangeably in the Commission proceeding discussing the cut-off rule before the LCRA was adopted, and "it seems reasonable to assume that Congress intended the same meaning when it used the term 'station' in the LCRA." In fact, it does not seem reasonable to assume Congress meant "applications" when using the word "stations." Much more likely, Congress was ensuring that translators and LPFM stations both remained, as they were, secondary to full-power radio stations. A court might accept the substitution of "application" for "station" were there no sensible reading left to the Commission, but not when given, as here, terms dictating a perfectly logical and plausible Congressional intent.

Similarly, the Commission suggests Section 5(3) makes reference to its regulatory term "co-equal" status, which is used in its cut-off rule. Congress, however, did not use the term "co-equal" in the statute. The term "equal" is shared, but it is not logical to assume mere inclusion of the word "equal" in one place in a statute intends reference to the differently placed, regulatory term "co-equal." Further bolstering this view is the fact that Section 5(3) says that LPFM and translators must "remain" equal in status—currently both LPFM stations and translators are

equal to each other in relation to full power stations, which are primary to both. This question of the relationship between LPFMs and translators to each other and to full-power stations has been a central point of dispute among the parties before the Commission and is at least as likely as the cut-off rule to have been the concern of Congress.

The simple, plain language interpretation has the added advantage of avoiding the problems the Commission anticipated with respect to deferring or dismissing translator applications. The Commission is free to dismiss translator applications pursuant to its proposed market-specific translator application processing plan under this interpretation. Moreover, this interpretation would not eliminate the proposal advanced in a joint filing by Prometheus and the Educational Media Foundation prior to the passage of the Local Community Radio Act, discussed further in Part 2 of Section D, below.

Adoption of the Commission's proposed interpretation would leave unaffected the dismissal of translator applications prior to the filing of LPFM applications. The cut-off rule applies only to the processing order of prior- and subsequently-filed applications, and cannot be read to address broader issues, such as the dismissal of applications for any cause deemed reasonable by the Commission. Moreover, parties do not acquire rights by virtue of filing an application. In fact, in a case strikingly similar to the case at hand, the Commission has been upheld in its determination to flexibly freeze or process applications for an existing service as it tries to preserve space applications for a new service.⁵⁶ Thus, even if it were adopted, the cut-off rule would not limit the Commission's authority to dismiss translator applications in compliance

⁵⁶ *Neighborhood TV Company, Inc. v. FCC*, 742 F.2d 629 (D.C.Cir. 1984) (upholding FCC decision to freeze and limit processing of TV translator applications in the face of a pending rulemaking initiating the low power television service).

with Sections 5(1) and 5(2), and in accordance with the Commission's broader 307(b) obligations.

2. Section 5(3) Does Not Prohibit the Commission from Favoring Either Service.

We disagree with the interpretation that Section 5(3) requires the Commission to favor neither service when developing translator and LPFM new station licensing rules.⁵⁷ The Commission is still free to favor the LPFM service, and in fact Sections 5(2) of the LCRA may direct it to do so to meet the needs of local communities. Under the Commission's 307(b) obligation to distribute radio service in the public interest, the Commission has the authority to favor the LPFM service using any regulatory and technical means not specifically prohibited by Congress.

If this interpretation of Section 5(3) were accepted, however, the Commission's proposed translator processing plan still would be permissible, as would alternate translator processing plans that ensure increased opportunities for LPFM. Given the more flexible technical licensing rules facilitating the development of the translator service, and the asymmetry between the two services, this interpretation would require Commission action to balance the services by aiding the development of LPFM. The relevant criteria for assessing rules under this interpretation of Section 5(3) would be whether such rules ensure the development of the LPFM service to include as many licensed stations as are currently held by translators. Once an equal number of each were licensed, then rules would ensure equal opportunities for each in the future, still taking into account the differential technical rules of the two services.

⁵⁷ See *Third Further Notice* at ¶20

D. The alternative FM translator application processing plans Posited by the Commission Would Be Permissible under the LCRA Only Under certain Conditions.

In addition to the market-specific approach discussed at length above, the Commission seeks comment on two alternative translator application processing plans.

1. A Joint Filing Window for Translators and LPFM Stations Would Be Permissible Under Section 5 of the LCRA Only If LPFM Applications Have a Priority Over Translator Applications.

In the first alternative, the Commission raises the possibility of dismissing all FM translator applications from the 2003 window and opening a joint FM translator/LPFM application window.⁵⁸ The Commission notes the difficulty of such a plan would be in selecting among competing applications from each service. Currently the only procedure for selection among competing NCE and commercial applications requires the dismissal of NCE applications in conflict with commercial ones. As the Commission states and we demonstrate above, such a procedure would not comply with Section 5 of the Local Community Radio Act.

However, a joint window in which competing LPFM applications require the dismissal of translator applications would comply with all three Section 5 directives. As previously discussed, translator processing is likely to limit LPFM processing, but not vice-versa. This would ensure licensing opportunities for each, as required in Section 5(1). As discussed above, favoring LPFM licensing over translator licensing best meets both Section 5(2) as well as the Commission's longstanding interest in localism. In regards to Section 5(3), all three interpretations discussed

⁵⁸ *Id.* at ¶22-23.

above would permit the Commission to favor LPFM applications filed simultaneously with translator applications.

We concur, however, that a joint filing window likely would be subject to extensive, time-consuming challenges, and thus we do not recommend the Commission adopt this mechanism.

2. Deferred Processing of Translator Applications Until After an LPFM Filing Window is Permissible Under Section 5(3).

As a second alternative approach the Commission advances the establishment of a priority for future LPFM applications.⁵⁹ This proposal would defer consideration of all translator applications until after the next LPFM window, and only dismiss those translator applications conflicting with LPFM filings. We believe this approach to be consistent with LCRA directives and fair both to LPFM and translator applicants. Although impermissible under an interpretation of Section 5(2) that prohibits cutoff rule waivers as described above, we do not believe that this interpretation was intended by Congress. Rather, we believe Congress intended for LPFM stations and translator stations to remain mutually protected from interference or displacement and secondary to primary stations. As explained above, the Commission has ample authority to deal flexibly with pending translator applications.⁶⁰

The Commission asks whether this proposal would increase the disparity between the number of LPFM and translator stations in larger markets, where the number of translator applications is likely to outnumber LPFM licensing opportunities. If the Commission adopts appropriate licensing procedures for future LPFM stations and places both local and national

⁵⁹ *Id.* at ¶24.

⁶⁰ *Neighborhood TV Company, Inc. v. FCC*, 742 F.2d 629 (D.C.Cir. 1984).

caps on pending translator applications as proposed here, the disparity between translator applications and LPFM applications would not harmfully increase.

IV. To Deter Speculative Licensing Conduct, the Commission Should Adopt Restrictions on Re-assigning Translator Construction Permits as Well as Licenses and Local and National Application Caps.

We concur that the proposed translator application processing policy would not be sufficient to deter speculative licensing conduct, and that nothing in the LCRA limits the Commission's ability to address the potential for licensing abuses by Auction 83 applicants. We therefore offer several suggestions to limit the trafficking of translator permits and licenses.

Application caps are an important tool at the Commission's disposal to limit trafficking in translator permits and licenses. We encourage the Commission to consider returning to the previously advanced solution of a ten-application processing cap on remaining Auction 83 translator applications. Although the ten cap alone could not have ensured LPFM availability, the policy still would meet its second intended function and address speculation. The Commission notes that 501 of the 646 (78%) remaining applicants from Auction 83 hold five or fewer applications; thus a ten-application cap would have no effect on the majority of Auction 83 filers. However, we suggest that the cap include an applicant's granted permits during Auction 83 against the total of ten; for those applicants who have had more than ten applications granted, no more applications would be processed. At the outset of future filing windows, each entity would be limited to ten applications per window.

In addition to a national cap, we concur with the Commission's proposal of a market-based processing cap of one application per market per window. A market cap would prevent a

single entity from taking the majority of licensing opportunities in a given area, implementing the principles of localism as we describe them above. Although some speculators operate at a national scale, others operate locally or regionally, and we urge the Commission to address this problem at both the local and national level. It is critically important when addressing markets where so few opportunities are left that no single entity be permitted to obtain all the spectrum in a single market.

Although an important tool, application caps are not the only means by which the Commission could discourage trafficking. Joint Commenters propose a prohibition on the assignment of translator construction permits, except in cases of demonstrated financial distress. This would disincentive translator applicants with no interest in building facilities. We further propose that the Commission prohibit the assignment of translator licenses for financial compensation, minus reasonable and prudent expenses. These policies would address the problem of trafficking directly, with little impact on translator operators legitimately interested in broadcasting. Those who traffic in permits and licenses not only profit from the public airwaves without serving public interest, they also take the few remaining opportunities from those who do wish to serve their communities. As the Commission has recognized, the few remaining frequencies available in spectrum-limited markets must be balanced between translators and LPFM stations. However the balance between services is set, speculators should not take the lion's share. When community groups have been waiting and working towards broadcast licenses for more than a decade, the Commission should not only disincentivize trafficking with processing caps but also bar speculation. Thus we urge the Commission to prohibit speculation on translator permits outright.

V. The Commission Should Consider the Localism Impact Prior to Lifting Rebroadcast Restrictions.

The Commission seeks comment on lifting restrictions on the use of FM translators to rebroadcast the signals of AM stations. Such a deregulatory step may be an example of a well-intentioned policy with unintended consequences. The Commission notes that “a number of factors may create an environment which promotes the acquisition of translator authorizations solely for the purpose of selling them.”⁶¹ Lifting these restrictions is one such factor. In spectrum-limited markets, the lifting of this restriction dramatically has increased demand for and sale value of translator stations, even as the value of full-power commercial stations dropped in recent years. The Commission itself noted that the introduction of cross-service translators has “created an enormous new demand for FM translators.”⁶² If the restriction is lifted on Auction 83 permittees, these entities will have an even greater incentive to sell their permits to meet this demand. Without much stronger safeguards against speculation, lifting this restriction likely will further limit spectrum availability for LPFM as a large number of applicants with no intention to build or operate facilities will pursue applications for financial gain.

The Commission also observes that “[a]necdotal reports from many AM licensees repeatedly emphasize their vastly increased ability to cover local community, governmental and school events, and, generally, to better serve the needs of their communities.”⁶³ Given the

⁶¹ *Third Further Notice at* ¶34.

⁶² *Third Further Notice at* ¶36. *See, e.g.*, Comments of Mark D. Humphrey, CPBE, MM Docket 99-25 (filed Aug. 30, 2011) (describing “frustrated” AM broadcasters who cannot find any translators for sale).

⁶³ *Third Further Notice at* ¶36.

potentially severe impact of applying this deregulatory policy to Auction 83 applicants prior to opening an LPFM window, we ask the Commission to rely on more than anecdotal reports. With the enormous new demand created by the recent lifting of restrictions for translators authorized after 2009, the numerous application modification waiver requests received, and the dramatic increase in the sale value of translators, the Commission's policy should consider not only the best-case scenarios presented in anecdotal reports but also the more likely impact of this policy on the needs of local communities: What percentage of the AM stations thus rebroadcast on FM translators are indeed covering their local communities, and what percentage are syndicating non-local broadcasts most of the time? Are AM stations locally owned? What percentage of the new cross-service translators are owned by large broadcast owners who already control a significant percentage of the airwaves, nationally and locally? How many journalists (if any) have been hired by AM stations broadcasting on FM frequencies to cover issues of local importance? Has the increased value of AM stations caused any transfers of stations in a manner that dilutes the Commission's diversity goals?

We ask the Commission to tie this deregulatory policy to the desired outcome of meeting local community needs with localism-based eligibility requirements. For example, the Commission might allow cross-service translators only for locally owned AM stations doing local programming, or only for locally owned stations in rural areas, where AM broadcasters more often cover local community issues and spectrum is less scarce. Such policies would enable local AM stations to provide better coverage and remain viable, but would not simply offer a cheaper alternative for large broadcast owners to own a greater share of the FM airwaves. The Joint Commenters' proposal of a three-year limitation on assigning construction permits also

would help ensure that this policy does not have the unintended consequence of decreasing spectrum availability for LPFM, as licensees would wait until after the LPFM window before engaging in sales.

Should the Commission implement other safeguards to prevent trafficking in permits, such as those proposed here, Joint Commenters would consider endorsing such a rule change in the future.

Joint Commenters are similarly concerned about the impact of permitting FM stations to rebroadcast their HD signals using FM translators, particularly when authorized under the fill-in coverage rule. The Commission's fill-in rule allows FM translators to operate at maximum power at maximum height if within the protected contour of the primary station. This rule is intended to aid stations in better reaching listeners within their protected contour with a signal that is blocked by terrain. Because the Commission has no policy on the rebroadcasting of HD signals with FM translators, stations are taking advantage of the fill-in rule to broadcast additional programming streams at much higher power than ordinarily permitted and originate programming without a license to do so. With this advantage, incumbent broadcasters gain the opportunity to control a larger share of their local airwaves with no additional public interest obligations.

VI. Conclusion

In sum, we support the Commission's market-by-market approach, with modifications to focus on availability in core urban markets. We believe that Section 5 requires the Commission to ensure that frequencies remain available for LPFM stations despite the pendency of many applications from Auction 83. We urge the Commission to adopt rules that will promote localism

and service to underserved communities. We seek any and all relief as might be required to achieve the objectives identified herein.