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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the matter of:)	
)	
Creation of a Low Power Radio Service)	MM Docket-99-25
)	
Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations)	MB Docket 07-172 RM-11338
)	

COMMENTS OF REC NETWORKS

Introduction

1. REC Networks (“REC”), an unincorporated entity through its founder Michelle (Michi) Eyre is a long-time proponent for the Low Power FM (LPFM) radio service from the original petitions for the service through today and into the future. REC is best known for our free self-service broadcast tools including the Low Power FM Search Tool as well as providing education regarding the Low Power FM Radio Service as well as other broadcast services¹. REC believes in a citizen’s access to the airwaves.

2. In the above captioned proceeding, the Commission is now charged with a very difficult aspect of the implementation of the Local Community Radio Act ² (“LCRA”), the implementation of Section 5, which addresses the distribution of LPFM and FM Translator licenses.

¹ - <http://www.recnet.com/lpfm> - <http://lpfm.ws> – <http://lpfm2012.com>

² - Pub. L. No. 111-371, 124 Stat. 4072 (2011).

3. REC supports a method of distribution that assures that areas that are well served by the “corporate” voices of commercial and non-commercial radio can receive some new local voices while assuring that smaller markets and rural areas which receive limited FM services can receive a mix of local voices and regional voices provided by FM Translators.

DISPOSITION OF AUCTION 83 FM TRANSLATOR APPLICATIONS

Existing LPFM licensees should not be included in “channel floor” minimums

4. REC supports the Commission’s belief that the balance of LPFM and translators applies to *new* licenses only³. Even if currently licensed stations were counted, the current balance of licensed stations overall favor FM Translators. Therefore, our counterproposal for availability methodology does not take into consideration existing LPFM or even existing FM translator stations. Even once the dismiss and process markets are determined, MX groups are settled and construction permits are issued and translators are eventually licensed, we still feel that the number of translators will continue to exceed that of the total LPFM licenses that would be granted in the upcoming LPFM filing window.

LPFM is currently not truly “equal in status” with FM translators and will remain that way without statutory change

5. Section 5(3) requires that translators and LPFM stations “remain equal in status”. The current rules favor translators. In the current rules, a translator can displace an LP10 station⁴, translators are not required to protect an LPFM station’s second adjacent channel⁵ yet an LPFM is required to protect not just a translator’s second adjacent channel but also third adjacent and

³ - See *Third Further Notice of Proposed Rulemaking* 76 FR 45491 at 11.

⁴ - See §74.1204(a)(4) – only provides protection for LP100 stations, not LP10.

⁵ - See §74.1204(a)(4) – Translators are only required to protect co-channel and first adjacent.

intermediate frequency (IF) channels⁶ (+/- 10.6 and 10.8 MHz). FM translators operating “under 100 watts” are not required to protect the IF channels of any full power station⁷. FM Translators operating on channels 201-220 are required to protect full power TV Channel 6 through contours and other methods with provisions for co-located facilities⁸ while LPFM has a basic restriction based on full facilities⁹. In addition, the requirement for LPFM to protect secondary LPTV channel 6 stations is codified while there is no such rule for FM translators. A translator’s interference contour may not overlap the full power station’s service contour¹⁰. LPFM has similar rules (through distance spacing) however the full power station’s service contour is artificially increased by a 20 km “buffer zone”¹¹. The “buffer zone” rule is for all intents and

⁶ - See 47 CFR §73.807.

⁷ - See 47 CFR §74.1204(g).- “FM translator stations and booster stations operating with less than 100 watts ERP will be treated as class D stations and will not be subject to intermediate frequency separation requirements.”

⁸ - See 47 CFR §74.1205(b).

⁹ - See 47 CFR §73.825, also see “*Creation of a Low Power Radio Service*” – *Memorandum Opinion and Order on Reconsideration*, 15 FCC Rcd at 19208 (2000) at 42, also footnote 47, “The requirements we are adopting for Class A TV, LPTV and television translator protection are based upon these stations operating with 3 kW ERP at 610 meters HAAT and the appropriate ratios of § 73.525 and are thus much less restrictive than the requirements for protection of full service TV Channel 6 stations.”

¹⁰ - See 47 CFR §74.1205(c).

¹¹ - See “*Creation of a Low Power Radio Service*”, *Report and Order*, MM Docket No. 99-25, 15 FCC Rcd 2205 (2000) at 64.

purposes, codified in the LCRA.¹² Until these rules are changed, LPFM and translators will not be equal in status.

6. REC feels that the scope of this proceeding is not to propose any new technical rules. These issues can be addressed in the next rulemaking that will codify the elimination of the third adjacent channel and codify other technical provisions of the LCRA. We feel though that there is nothing in the LCRA that does not prohibit any changes to the rules for FM translators to make the service equal in status to LPFM.

A review of the Commission's proposals for the handling of FM Translator applications

7. REC has reviewed all of the Commission's options¹³ as well as our own proposal placed into the record¹⁴ earlier this year. Our proposal called "2x70" would have evaluated all of the census blocks within the service contour of an FM translator and if within census blocks representing at least 70% of the population within the contour would be able to apply for LPFM stations on at least two channels. REC feels that this would be the fairest method as it looks at every licensed translator, not just the ones within a sample area. REC also is aware that Commission resources are limited, especially with other proceedings in progress.

¹² - LCRA Section 3(b)(1) – "IN GENERAL- The Federal Communications Commission shall not amend its rules to reduce the minimum co-channel and first- and second-adjacent channel distance separation requirements in effect on the date of enactment of this Act between--

- (A) low-power FM stations; and
- (B) full-service FM stations."

¹³ - See *Third Further Notice of Proposed Rulemaking* at 21.

¹⁴ - See MM Docket 99-25, "Letter from REC Networks" dated February 22, 2011. (The REC "2 x 70" Proposal)

8. The Commission recommends a “Joint FM Translator/LPFM Application Window.”¹⁵ REC would oppose such a window. This is due to the disparity in the rules between LPFM and translators. Much of this disparity is outlined earlier in this pleading. We are concerned because of the technical differences between the services that we have mentioned where FM Translators enjoy full flexibility where it comes to contour overlap while LPFM is subject to some statutory limitations that artificially inflates the service contours of full service stations. Also as the Commission mentions, an LPFM application mutually exclusive with a commercial translator application will always result in the LPFM application being trumped¹⁶.

9. The Commission’s second option calls for LPFM applications to be filed “on top” of existing pending translator applications.¹⁷ We agree with the Commission’s findings that this option will substantially increase the overall disparity between LPFM and translators as it will continue to foreclose on future opportunities for new LPFM stations and destroy any possibility of existing LPFM stations to move in the event of encroachment by a full service station. REC feels that an original local voice should have priority over a voice “imported” from another city or a voice that is already heard elsewhere on the dial¹⁸.

10. The Commission’s third option calls for an analysis to be done in markets 1 through 150 that have pending translator applications as well as markets beyond 150 that have at least 4

¹⁵ - See *Third Further Notice of Proposed Rulemaking* at 22.

¹⁶ - See *Third Further Notice of Proposed Rulemaking* at 23.

¹⁷ - See *Third Further Notice of Proposed Rulemaking* at 24.

¹⁸ - In reference to cross-service “fill-in” translators.

translator applications pending. A “channel floor” would be established for each market¹⁹ and if, based on a check of channels in a 30 minute by 30 minute area centered around the urban center of the market shows that the number of channels available are below the designated channel floors, then all of the pending translator applications in the market would be dismissed in order to free up spectrum for new LPFM stations as well as the ability for future growth and space in the event of displacement. REC feels that this Commission option, in theory, is so far, the best proposed to reduce disparity towards the service. A group of LPFM Advocates including REC Networks, Prometheus Radio Project and Common Frequency have evaluated the Commission’s plan and we have found multiple issues with the Commission’s proposed methods. The LPFM Advocates have created an alternate plan that uses similar methods to the Commission’s original plan but it corrects some of the flaws in the Commission’s version and also better reflects the LPFM need in urban and suburban areas while preventing foreclosure of opportunities in the urban areas due to rural availability in the fringe portions of the 30 x 30 study area.

REC supports the LPFM Advocates Assessment of LPFM Availability

11. REC is a co-signatory along with Prometheus Radio Project and Common Frequency (collectively, “LPFM Advocates”) on a Joint Proposal on the assessment of LPFM availability²⁰. In this proposal, we will show that in many markets, the use of a 30 minute by 30 minute study area does not properly represent the medium and small markets like it would the large markets like Los Angeles and New York. As a result, the LPFM Advocates have introduced a new study area that is 20 minutes by 20 minutes in size (the “inner-zone”). Our analysis shows that in the

¹⁹ - See *Third Further Notice of Proposed Rulemaking* at 26.

²⁰ - See “*Joint Proposal of Prometheus Radio Project, REC Networks and Common Frequency on the Assessment of LPFM Availability*” which has been separately filed in this proceeding.

area that is beyond the inner-zone but within the Commission's original 30 x 30 study area (an area we refer to as the "outer-zone"), 70 study areas have 25% or less of the population in the study area living in the outer zone. 10 of these markets have 10% or less of the population within the outer zone²¹. REC examined several different handling options to deal with markets with smaller land mass and the LPFM Advocates have agreed that reducing the study area to 20 minutes by 20 minutes for all markets would best represent the availability of LPFM in the urban and suburban areas while preventing foreclosure of opportunities due to fringe rural availability.

12. To support this proposal, REC has developed reports based on our ENAC²² search methodology to simulate the Commission's 30 x 30 search methodology as well as the LPFM Advocates' proposed 20 x 20 methodology²³. In the software and subsequent analysis, we have identified issues in the FCC software and compensated for them in our ENAC version. These fixes had a beneficial impact for markets such as El Paso²⁴ and Santa Barbara²⁵.

²¹ - See Appendix B.

²² - ENAC ("Every Nook And Cranny") is a Perl script based search tool that is used internally within REC to create bulk availability reports. The ENAC functionality is not available to the general public but it uses the same database as our publicly available LPFM Search Tool and other broadcast services.

²³ - In some of our appendix materials, the Commission's originally proposed study area may be referred to as a "31 x 31" grid while the LPFM Advocates counterproposal is referred to as "21 x 21". This is because the actual searching area performed by the FCC and REC software is 31 rows by 31 columns or 21 rows by 21 columns respectively.

²⁴ - In El Paso, REC noticed that the Commission's report did not properly exclude search points that were actually in Mexico. In McAllen, TX, the Commission used a "water file" to denote the Mexican areas that would be exempted from search. REC also noticed that the Commission's software did not accurately account for vacant Mexican allotments. The REC LPFM Channel Search Tool and REC's ENAC system have always taken these vacant allotments into consideration. We feel that these defects were the cause of the LPFM availability in this market being skewed in the FCC study. REC shows El Paso with 6 channels available at the 30 x 30 level and 2 channels available at the 20 x 20 level.

13. The Commission, at their own admission states that their analysis that “no attempt was made to otherwise ascertain site viability.²⁶” In REC’s ENAC version of the one minute by one minute grids, we have also included a study to search for the population at each study point. In the ENAC report²⁷, we have identified each point within a study area where there is zero population within 5.6 km of the study point therefore identifying places where it is not practical to place an LPFM station. Within the 30 x 30 study areas, REC has identified 171 channels that are only available at study points where there is no population. This represents 12% of all of the potentially available LPFM channels. Within the 20 x 20 inner-zone, we found 44 of these channels. This represents 6% of the channels available. In addition, we have also found that out of the 719 potential LPFM channels within the 20 x 20 inner-zone, only 132 of them will place a service grade signal at the center point of the market search area²⁸ thus indicating a limited urban availability²⁹. Based on the disparities caused by “zero-population” areas and the limited availability in the core center point, we feel that an increase of the channel floors in all markets is warranted. REC and the LPFM Advocates are proposing channel floors as follows:

Markets 1 through 20	10 LPFM Channels
Markets 21 through 50	9 LPFM Channels
Markets 51 through 100	8 LPFM Channels
Markets 101 and smaller	6 LPFM Channels

²⁵ - In Santa Barbara, a water file designed for a 20 x 20 report was included in the software package. If this file was actually used in the Commission’s analysis, it would have placed some areas that are actually on land into the water and vice versa.

²⁶ - See *Third Further Notice of Proposed Rulemaking* at Footnote 20.

²⁷ - See Appendix C.

²⁸ - These are channels where the closest availability point is within 5.6 km of the center point of the study area. This is used to determine urban availability in the overall market study area.

²⁹ - See Appendix D.

14. As a result, REC and the LPFM Advocates are proposing that the applications for the Auction 83 translators in the markets indicated in Appendix A of this pleading should be dismissed.

TRANSLATOR APPLICATION HANDLING & OWNERSHIP

The “Great Translator Invasion”

15. REC is very pleased that the Commission is now addressing the excessive applications that were filed in the 2003 FM Translator Auction 83 window. The excessive applications and abuse of the non-commercial exemption from filing fees was a complete travesty and the ultimate abuse of Commission policies and resources. Public radio spectrum was granted to these so-called non-commercial organizations who in turn sold the permits for a profit. This is no different than an educational organization receiving a grant of a plot of land and instead of building a school on the land, they sell the land to a commercial developer who builds a shopping mall on the site and the school keeping all of the profits from the sale. This is exactly what happened in March, 2003. REC sees this as a complete breach of the public trust and we hope that the changes resulting from this proceeding will shore up the many loopholes of FM Translator regulation³⁰.

FM Translator application freezes

16. REC feels that in the remaining markets where translator applications will be processed that application activity that involves channel changes, power increases or site changes must be frozen. In addition, we must also make sure that changes by translators located outside the

³⁰ - See also Appendix E.

market boundaries but could impact the LPFM service within the market boundaries also be frozen. Examples include site moves to locations just on the other side of a county line or into the market county from a translator currently outside a Top-150 Arbitron market.

17. REC supports a freeze of minor changes such as channel changes, power increases, antenna system changes, tower height changes, directional antenna pattern changes and transmitter site locations on all existing translator licensees and permittees as well as amendments to original construction permit applications for translators that proposes service either within an Arbitron metro market county designated as a “dismiss” market or at a location within 40 km of the boundary³¹ of such an Arbitron metro market county. This will prevent any speculative “land rush” tactics that a translator applicant can use to “run for the hills” to prevent their application from being dismissed while still causing impact to the availability of LPFM within the metro.

Trafficking of FM Translator construction permits

18. REC Networks was the first to break the news of the major filing habits of a small number of entities³² and the eventual speculative trading of construction permits by these entities for profit. This was what we coined as “The Great Translator Invasion” (GTI)³³. In numerous proceedings, REC has exposed organizations such as the co-owned Radio Assist Ministries and

³¹ - 40km was chosen because §73.807(d)(1) of the rules requires a minimum spacing of 39km between LP100 stations and FM translators operating with a service contour exceeding 13.3 km.

³² - See “REC Alert to all LPFM Applicants”, May 8, 2003 - <http://home.recnet.com/node/299>

³³ - See “Translator Invasion’s Impact on LPFM” - <http://www.diymedia.net/feature/lpfm/f070604.htm>

Edgewater Broadcasting (RAM/EB) for booking hundreds of thousands of dollars³⁴ if not now millions in revenues³⁵. This was an organization that before the 2003 filing window, had no attributable broadcast interests.

19. To address the specific issues of construction permit trafficking, we feel that short form applications that specify a primary station³⁶ that is not co-owned by the applicant must include an attached signed statement that the primary station gave the authorization to the applicant to rebroadcast their station³⁷. During REC's 2003 investigation of the GTI applications, especially those of RAM/EB, we had contacted some of the station owners of short form applications and have concluded that in most cases, RAM/EB did not have the owner's consent to specify that station as their primary station³⁸. In addition, short forms should show legal facilities. REC has identified 107 pending FM translator applications that specify facilities that exceed those

³⁴ - See REC e-mail <http://www.diymedia.net/feature/recmail022305.htm>, also "Creation of a Low Power Radio Service" - MM Docket 99-25 – Reply Comments of REC Networks, September 21, 2005 at 6.

³⁵ - Even if an organization used the proceeds from the sale of construction permits to obtain other broadcast infrastructure (such as full service stations), we consider this to still be an abuse of public resources as the other facilities were still obtained at minimal out of pocket expenses by the original translator permit grantee.

³⁶ - See "Broadcast Localism" – MB Docket 04-233 – Comments of REC Networks at 11.

³⁷ - See "Broadcast Localism" – MB Docket 04-233 – Comments of REC Networks at 12.

³⁸ - We also note that in some cases, translator applicants specified "non-commercial educational, no fee" on their applications yet they are proposing to rebroadcast a commercial station. REC feels this is another abuse of policy and perhaps not in the scope of this proceeding is a shortfall to the integrity of the FM Translator service and should be looked at. We note there are several translators on the air today that are licensed to non-commercial educational organizations but are repeating commercial radio stations through local marketing agreements. Therefore, they are not subject to filing fees or regulatory fees. This is unfair to commercial licensees in the translator service who do pay their fees.

specified in §74.1235(b)³⁹ and do not appear to be fill-in stations subject to the exemption in §74.1235(a). Many of these applications are specifying 250 watts on mountaintops.

20. Based on input from our allies, REC agrees that there must be an avenue to assign a construction permit. However, such a transfer should be done for no financial consideration at all. Some may argue that financial consideration must be given for engineering services retained to file the application. We feel that the burden of any engineering services should be on the initial applicant and those costs should not be carried on to the assignee as those amounts can be inflated in order to achieve a de facto profit. REC sees the construction permit as a piece of paper and a record in the database and nothing else.

FM Translators rebroadcasting DAB multicast streams is contrary to localism

21. While technically not in the scope of this proceeding, we feel that the FCC should re-look at any service rules that permits a full power FM station's multicast (HD-2) stream from being carried on an analog translator and even worse, allowing a translator carrying a multicast stream in analog to be considered a "fill-in" station and therefore subject to §74.1235(a) which permits output power of up to 250 watts if the translator is used as a "fill in" translator. REC feels that translators that are relaying a multicast stream should not be able to qualify as a "fill-in" translator as they are not actually "filling-in" a bad reception area but instead are filling in due to a customer's lack of financial ability or lack of desire to purchase an DAB radio receiver.

22. These translators are introducing a new audio service into the market that for some listeners would not be available on the dial elsewhere. In *Saga Communications*, while the

³⁹ - See "Creation of a Low Power Radio Service" – MM Docket 99-25 – Letter from REC Networks dated February 22, 2011. Specifically, see the Appendix. The identified applications are shown in List 5.

commission states that digital FM stations may “use their additional digital bit rate capacity as it wishes.”, it also points out “in contrast, there is no prohibition on FM translator stations rebroadcasting the station’s FM2 or FM3 digital programming stream⁴⁰.” The Commission in the digital audio broadcasting (DAB) Second Report and Order states that “allowing radio stations the flexibility to provide multicast services will allow them to offer a mix of services that can promote consumer acceptance of DAB, which, in turn, will likely speed the conversion process.”⁴¹ We feel that it was the Commission’s intention to permit multicasting in an effort to “promote the consumer acceptance of DAB”. By permitting FM translators to continue to retransmit multicast streams, this produces a crutch and is contradictory to the promotion of customer acceptance of DAB. We note that in *Saga*, the Commission gives the impression that the capacity needed to accommodate a multicast is “additional” capacity. 47 CFR §73.1231(b) of the rules specifically states:

“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 the signal for which it is received directly through space, converted and suitably amplified...”

“However, an FM translator providing fill-in service may use any terrestrial facilities to receive the signal that is being rebroadcast.”

The current FM translator rules have never anticipated DAB multicasting. We feel that there are two things that need to be specifically addressed. First, does an audio service carried through so-called “additional capacity” actually considered a part of the “primary FM station”, especially if it can be received with a conventional (analog) FM radio? Secondly, do we need to clarify the

⁴⁰ - See *Saga Communications of New England, LLC*, Minor Modification Application BPFT-20100128AFD , letter from Peter Doyle, Chief, Media Bureau, May 3, 2010, DA 10-764.

⁴¹ - See “*Digital Audio Broadcasting Services And Their Impact on the Terrestrial Broadcast Service*” First Order on Reconsideration and Second Notice of Proposed Rulemaking, 22 FCC Rcd 10344 at 37.

definition of “fill-in” to apply to situations in FM radio where the primary station is not able to provide service in a portion of their protected contour due to terrain and in the case of AM, is not able to provide service due to interference? In other words, as it applies to FM radio, should a “fill-in” translator have actual coverage in areas that are already substantially served by the primary station and there is no demonstrated area of land mass that the translator would serve that the primary station is not able to service due to a terrain obstruction?

23. We feel that FM DAB multicast services rebroadcast on FM translators are contrary to the Commission’s localism objectives as the multicast stream is still under the direct control of an existing FM broadcast licensee and therefore is not creating a new “voice”. REC feels that by permitting FM multicast services to be rebroadcast on FM translators would create a new de-facto FM station in the market belonging to an existing voice and therefore denying additional opportunities for new non-commercial voices or even for existing struggling stand-alone AM stations, many of which are minority owned. The ability to purchase excess bandwidth on a DAB FM station and as a licensee not be directly subject to public file requirements and other accountability to the community will create additional motivation for future speculative filing of FM translators in profitable urban markets. For these reasons and the Commission’s desire to obtain public acceptance for DAB services, REC considers FM translators rebroadcasting multicast signals to be contrary to the public interest. We are asking the Commission to consider rulemaking that would make a multicast service not a part of the primary FM station and therefore should be prohibited from being carried over the analog carrier of an FM translator⁴².

⁴² - The Commission has authorized digital operation for FM translators and boosters however no service rules have yet been established. See “*Digital Audio Broadcasting Services And Their Impact on the Terrestrial Broadcast Service*” First Order on Reconsideration and Second Notice of Proposed Rulemaking, 22 FCC Rcd 10344 at 37. REC’s objection to multicast stations bring

National ownership cap on FM Translators

24. REC frequently receives the question, “why should one entity be allowed to own hundreds of translators?” We can definitely relate to that question. REC feels that over the years, the scope of the FM translator service has gone unnoticed and under the radar of Commission interaction. What was once a service to bring FM radio services into the mountains of Utah and into prairie towns well distanced from urbanized areas has now turned into an urban broadcasting service rebroadcasting national networks, AM radio stations and even HD-2 radio streams. In other words, the scope of the FM translator service has simply gotten totally out of control. Educational Media Foundation (EMF) currently has 339 translators. These translators, other than the few that are being leased to commercial broadcasters for profit are all broadcasting one of their two different networks, K-Love or Air1. Calvary Chapel of Twin Falls has 418 translators, also relaying one of two different networks. So again, we ask, why should one entity really need to own hundreds of translators? The only legitimate use of owning a large number of translators that we can find is a statewide public radio network. Minnesota Public Radio has 38 translator licenses to complement many full power FM stations.

25. REC feels that it’s time for the Commission to finally reel-in the scope of the FM translator closer to its roots. REC feels that there should be a nationwide ownership cap of 30 translators. Statewide public radio services would be permitted an unlimited number of translators in a single state but still subject to the cap for out of state stations. No entity may have attributable interest in more than one ownership group subject to the cap. REC feels that this cap of 30 translators will meet the needs of broadcasters, municipal governments, educational and religious institutions in order to reach their regional audience. If the

broadcast over translators is limited to the analog FM carrier of a non-digital or hybrid FM translator station.

Commission imposes a nationwide cap on translator ownership, existing licensees would be permitted to keep their stations, they would not be required to divest but they would not be able to increase the number of owned stations as long as they are over the national ownership cap.

Cross-service (AM over FM Translators)

26. Currently, REC is actively working on two major interference issues regarding cross-service translators. One of the major problems with cross-service translators is that they are considered “fill-in” translators under Sec. 74.1235(a) of the rules that permits “fill-in” translators to operate up to 250 watts regardless of the geographic requirements of 74.1235(b). This rule has been applied to AM fill-in translators to permit them to increase power and cause interference to LPFM stations as well as the inputs to translators for those LPFM stations.

27. As long as fill-in translators have different rules than regular translators where it comes to power levels and field strength sizes, to allow any new cross-service translators, especially in the Top-150 markets would foreclose on opportunities for future LPFM stations once those translators are permitted to go up to 250 watts.

28. REC is very sympathetic to the owners of stand-alone AM stations, especially to those that are minority, female or GLBT/T⁴³ owned and we know that these stations are struggling for listeners, especially at night when many of these stations either are forced to go off the air or it is not practical to operate at night due to interference from domestic and foreign sources. At the same time, we must take into consideration that not all AM stations are in bad shape. Many of them are corporate owned are in a “cluster” with other AM and FM stations. REC feels that these stations have other resources, such as HD radio to provide “clear” versions of their AM

⁴³ - Gay, lesbian, bisexual, transgender and transsexual.

signals during the day and at night. REC feels that the FCC should permit cross-service on these translators under the condition that the station being rebroadcast is an AM broadcast station that has no FM holdings in the same market. In addition, translators that are in or within 40 km of the 31 x 31 study areas can't file for any kind of move, channel change, antenna system change or power increase until the conclusion of the LPFM filing window.

Conclusion

29. Many organizations have been waiting for almost a decade to establish their own LPFM station. Licensed LPFM stations have proven themselves time and time again from bringing back the days of true local radio to being the only station on the air during a major natural disaster. LPFM has given more citizens and organizations access to the airwaves. Federal legislation, based on unproven theory had prevented the growth of the service in the communities where it is needed the most, our urban and suburban areas. Through the efforts of the Commission and LPFM advocates across the country, Congress recognized that LPFM stations are needed in these urban and suburban areas and that the impact to full service stations is very minimal.

30. At the same time, we must take into consideration the translator applicants, especially those who represent organizations supporting minorities, women and the GLBT/T. These organizations have been waiting since 2003 to improve their coverage and better project their voice. While we are sympathetic to these organizations and their desire to build out, we must weigh in the diversity that will be brought into urban areas as a result of LPFM stations and support the distribution of spectrum to the services for their original purposes, LPFM to add new voices in all areas, especially urban and FM translators to provide service into rural areas that are underserved by existing broadcast stations.

31. REC feels that the joint proposal by the LPFM Advocates best meets the public interest as it provides the least amount of overall disparity between LPFM and translators and better defines LPFM as a urban service and FM translators as a suburban service.

32. We feel that the original NCE and FM Translator rules never anticipated mega-ministries with hundreds of full service and translator holdings. While Congress and the Commission has been focusing on commercial station ownership, there is been little oversight on non-commercial ownership. Imposing a national ownership cap on FM translators with no divestiture requirement keeps some checks and balances on the service as a method of relaying nearby FM stations into rural areas and not to build de-facto national networks. We hope there will be a day when national ownership caps will also apply to full service NCE FM stations.

33. Finally, we must better clarify the intention of cross service translators. We feel that corporately owned AM stations are abusing the cross-service rules to start an FM talk station using a translator. We do note that all-talk and all-sports on FM is a growing industry trend and we recognize the use of translators to exploit the trend. At the same time, we must recognize the stand-alone AM stations that are struggling for daytime and nighttime listeners. Many of these stations are minority, woman or GLBT/T owned and provide niche programming similar to what may be provided by LPFM stations.

34. “De-facto” FM stations created through a lack of rules addressing the use of FM translators to rebroadcast multicast services, especially under the guise of being a “fill-in” station creates additional channels for existing voices, is contrary to localism and is contrary to the industry’s desire to increase the consumer’s acceptance of DAB and we support the discontinuance of all rebroadcasting of multicast streams on analog FM translators.

35. REC is very excited about the future of LPFM and community radio in general. LPFM truly means “more choices and more voices”.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michelle Eyre". The signature is stylized and cursive.

Michelle (Michi) Eyre
Founder, REC Networks
<http://recnet.com>
mae@recnet.com
September 1, 2011

APPENDIX A

MARKETS PROPOSED BY REC AND THE LPFM ADVOCATES WHERE AUCTION 83 ORIGINAL CONSTRUCTION PERMIT APPLICATIONS WOULD BE DISMISSED.

MARKETS 1 – 20 (Channel floor: 10)	
New York	Detroit
Los Angeles	Miami-Ft. Lauderdale-Hollywood
Chicago	Seattle-Tacoma
San Francisco	Puerto Rico
Dallas-Ft. Worth	Phoenix
Houston-Galveston	Minneapolis-St. Paul
Atlanta	San Diego
Philadelphia	Nassau-Suffolk (Long Island)
Washington, DC	Denver-Boulder
Boston	Tampa-St. Petersburg-Clearwater

MARKETS 21 – 50 (Channel floor: 9)	
St. Louis	Orlando
Baltimore	Columbus, OH
Portland, OR	Austin
Charlotte-Gastonia-Rock Hill	Milwaukee-Racine
Pittsburgh, PA	Indianapolis
Riverside-San Bernardino	Middlesex-Somerset-Union
Sacramento	Norfolk-Virginia Beach-Newport News
Cincinnati	Nashville
Cleveland	Greensboro-Winston-Salem-High Point
Salt Lake City-Ogden-Provo	Jacksonville
San Antonio	Oklahoma City
Kansas City	West Palm Beach-Boca Raton
Las Vegas	Memphis
San Jose	Hartford-New Britain-Middletown

MARKETS PROPOSED BY REC AND THE LPFM ADVOCATES WHERE AUCTION 83 ORIGINAL CONSTRUCTION PERMIT APPLICATIONS WOULD BE DISMISSED.

MARKETS 51 - 100 (Channel floor: 8)	
Monmouth-Ocean	El Paso
New Orleans	Akron
Buffalo-Niagara Falls	Wilmington, DE
Louisville	Harrisburg-Lebanon-Carlisle
Rochester, NY	Monterey-Salinas-Santa Cruz
Birmingham	Charleston, SC
Greenville-Spartanburg	Little Rock
McAllen-Brownsville-Harlingen	Syracuse
Tucson	Springfield, MA
Dayton	Toledo
Ft. Myers-Naples-Marco Island	Des Moines
Honolulu	Spokane
Tulsa	Colorado Springs
Fresno	Mobile
Grand Rapids	Lakeland-Winter Haven
Albuquerque	Wichita
Allentown-Bethlehem	Ft. Pierce-Stuart-Vero Beach
Wilkes Barre-Scranton	Melbourne-Titusville-Cocoa
Omaha-Council Bluffs	Lexington, KY-Fayette
Sarasota-Bradenton	

MARKETS 101 AND LOWER (Channel floor: 6)	
Boise	Youngstown-Warren
Visalia-Tulare-Hanford	Canton
York	Reading, PA
Ft. Wayne	Corpus Christi
Worcester, MA	Newburgh-Middletown, NY (Mid Hudson Valley)
Ft. Collins-Greeley, CO	Trenton
Morristown, NJ	Eugene-Springfield
New Haven	Stamford-Norwalk, CT
Oxnard-Ventura	Danbury, CT
Reno	Santa Barbara, CA
Bridgeport	

APPENDIX B

AN EVALUATION OF THE FCC PROPOSED 31 X 31 STUDY AREA



*An evaluation of the FCC
proposed 31x31 LPFM
study area*

Prepared by Michi Eyre for REC Networks,
Prometheus Radio Project and Common
Frequency

MM Docket 99-25

August, 2011

OVERVIEW

In the Third Notice of Proposed Rulemaking (NPRM), the Federal Communications Commission (FCC) was trying to develop a method to implement section 5 of the Local Community Radio Act (LCRA) to assure that channels are available for both LPFM and for translators based on community need.

To address a community need for new Low Power FM (LPFM) stations in urban areas, the NPRM proposes a methodology where a 30 minute by 30 minute sample of LPFM was done. The study was performed using 961 reference points within study areas consisting of most of the Top-150 Arbitron markets plus a few lower markets.

The FCC looked at each location to see where LPFM was available. If a channel was available at any point inside the study area, it would count it. The final count for each market was then compared to a "channel floor". If the number of available channels fall short of the channel floor, then the translator applications in the entire market would then be dismissed. If the number of available LPFM channels met or exceeded the designated channel floor, then the translator applications would be processed.

THE ISSUE

While using the 30 minute by 30 minute (31x31) grid shows a good representation of consistent population density in the major urban markets like New York, Chicago and Los Angeles, it does not represent such a consistent population density in medium and smaller markets.

REC has evaluated the populations of each study area at the 30 minute (31x31) level and then we evaluated population at 20 minute (21x21) level. REC has found that in the Top 150 markets, 70 of the study areas have at least 75% of their population in the REC study area at the 20 minute (21x21) level. This means that the remaining 25% of

the population lives in the area outside the 20 minute (21x21) study area and within the original FCC evaluated 30 minute (31x31) level.

Communities like Flagstaff AZ, Bakersfield, CA, Reno, NV as well as the Victor Valley, CA market only have 4% or less of their population within the area outside the 20 minute (21x21) level but within the 30 minute (31x31) level (the "outer zone") with the remaining 96% or more being located in the area between the center point of the city and the boundary of the 20 minute (21x21) level (the "inner zone").

In many areas, the LPFM Advocates have noticed that there are a significant number of LPFM channels available in the outer zone area only that would not be reached by the more populated communities. In fact, in the full 31x31 study, REC found 181 channels that were only available at reference points that had no population within the FCC's original 31x31 study area. Out of 1,491 channels found in REC's study at the 31x31 level, nearly half of those channels (726) were only available in the outer zone.

PROPOSAL

The LPFM Advocates feel that the availability could be better represented at the 21x21 level. We feel that it was the intent of Congress to pass the LCRA to place LPFM in urban areas based on community need. Over the past 10+ years, tens of thousands of comments have been filed to the FCC in MM Docket 99-25 including many outside of proceedings expressing a desire, a community need for LPFM in their community, especially in urban communities.

Therefore, the LPFM Advocates are supporting reducing the study area for all markets to the inner zone (21x21) only. In addition, the LPFM Advocates are endorsing an increase of the channel floors to address the issue of areas where channels are

available and there's no population, water areas that were not properly discounted as well as a more realistic outlook on LPFM demand in the city center areas of the market.

URBAN AREAS/URBAN CLUSTERS

The US Census Bureau defined a urban area in 2000 as consisting of "core census block groups or blocks that have a population density of at least 1,000 people per square mile and surrounding census blocks that have an overall density of at least 500 people per square mile⁴⁴.

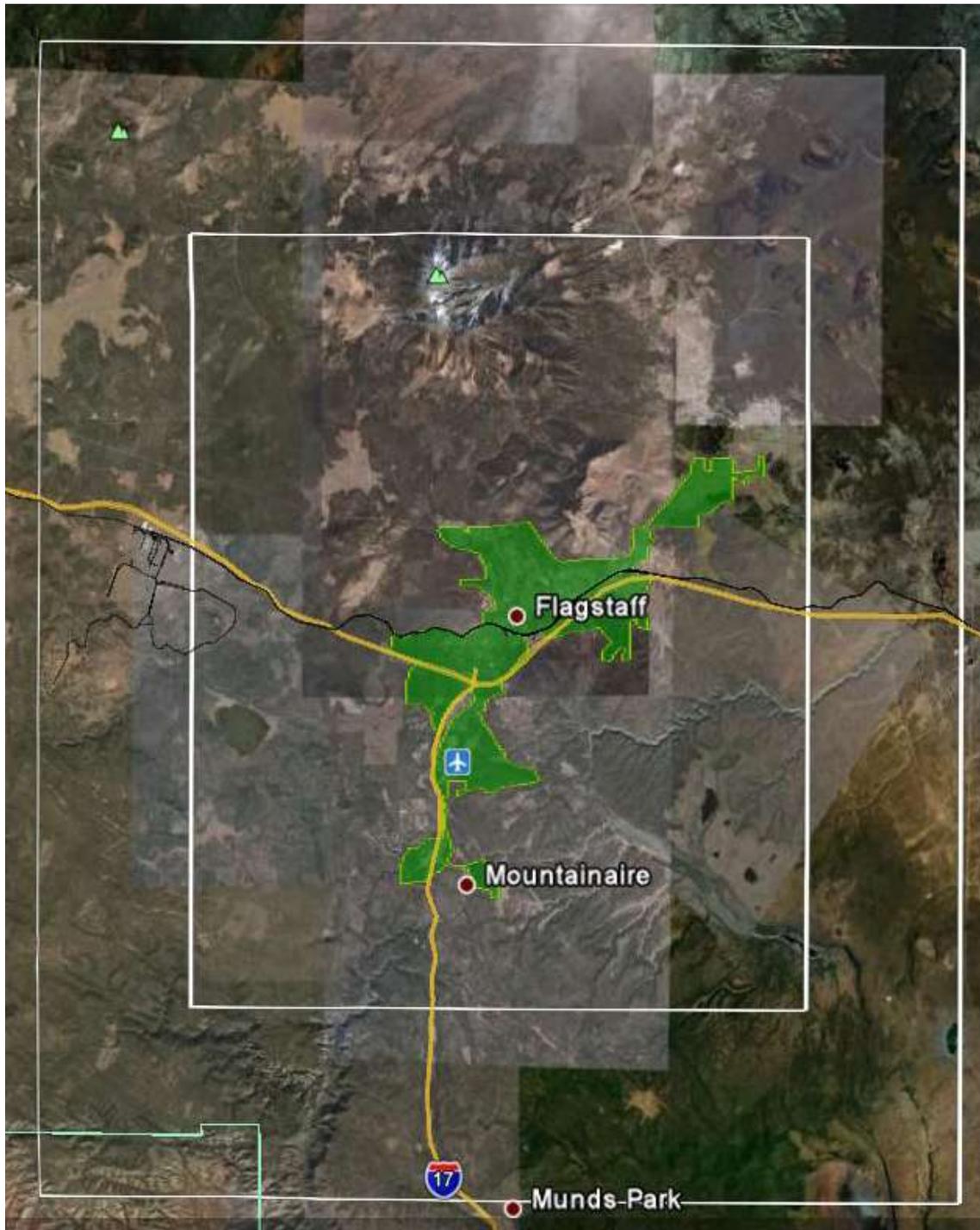
In the following maps, we will show the markets that have the least of their overall (31x31) study areas within the outer zone. The areas in green are urban areas and urban clusters as defined by the US Census Bureau. These maps will demonstrate that the use of the 21x21 study area as proposed by the LPFM advocates would better represent the overall population that would benefit from an LPFM station in their city.

⁴⁴ - http://www.census.gov/geo/www/ua/ua_2k.html

FLAGSTAFF, AZ

Market #146

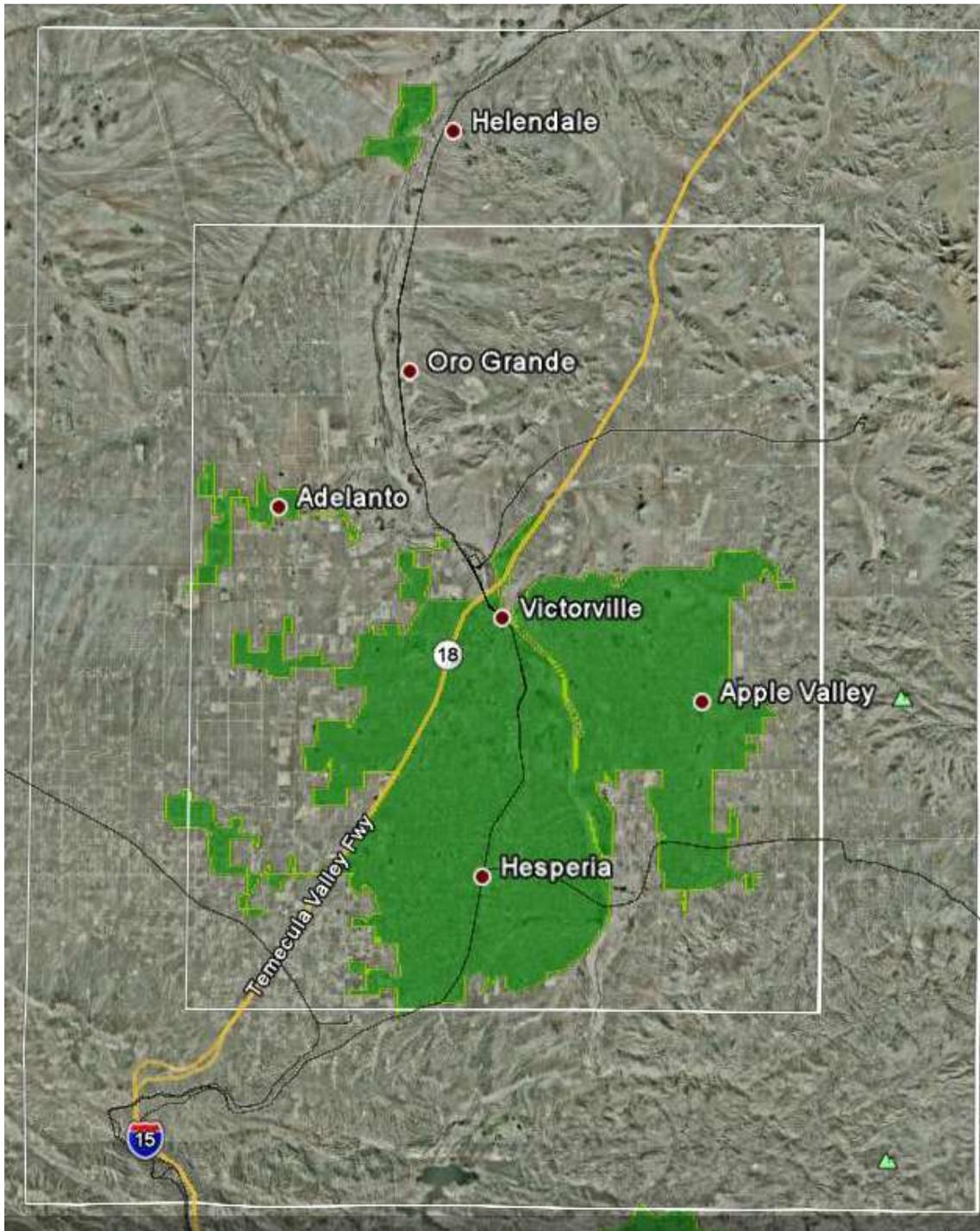
100% of the Census Block population is located in the inner-zone.



VICTOR VALLEY (VICTORVILLE), CA

Market #117

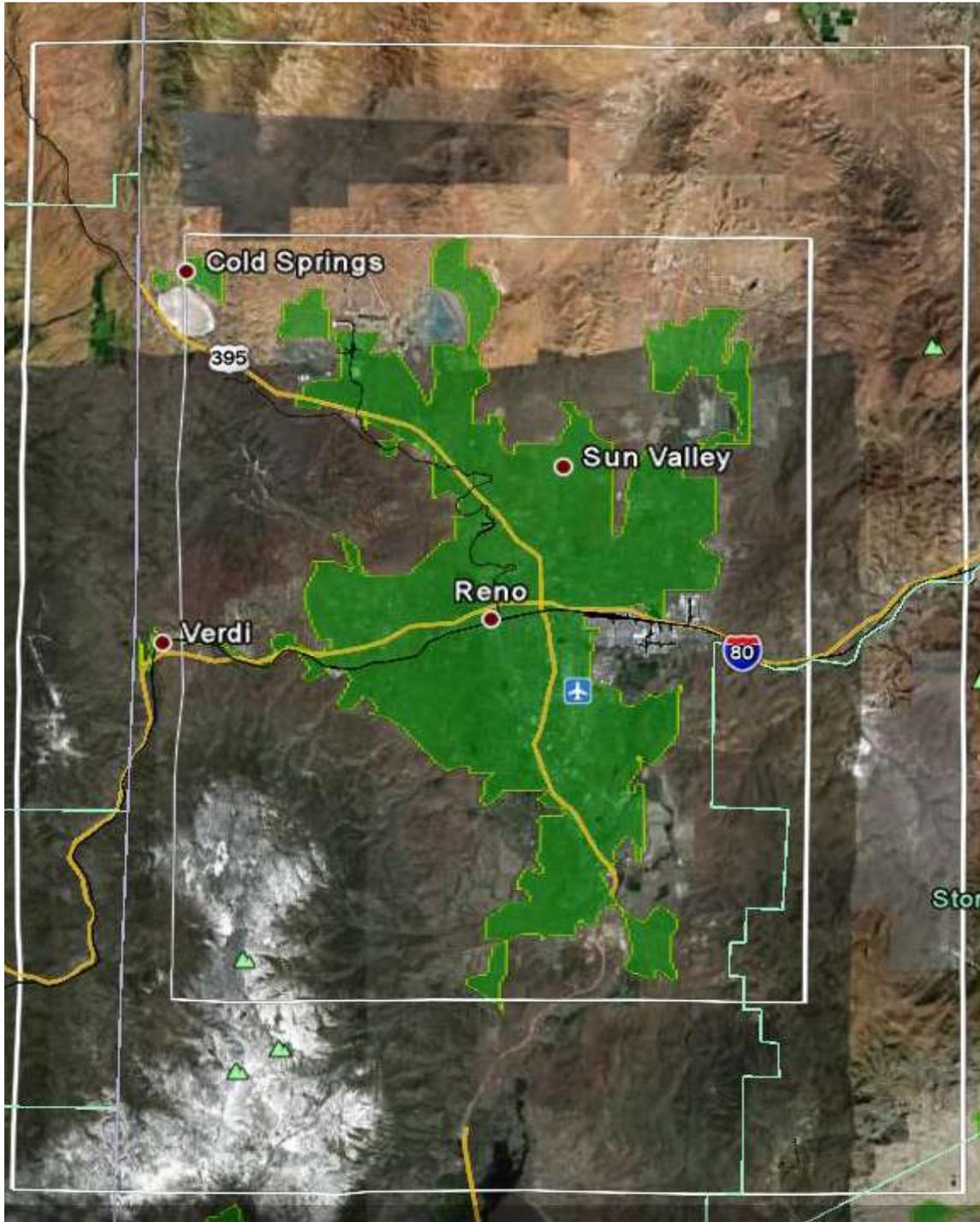
96.2% of the Census Block population is located in the inner-zone.



RENO, NV

Market #121

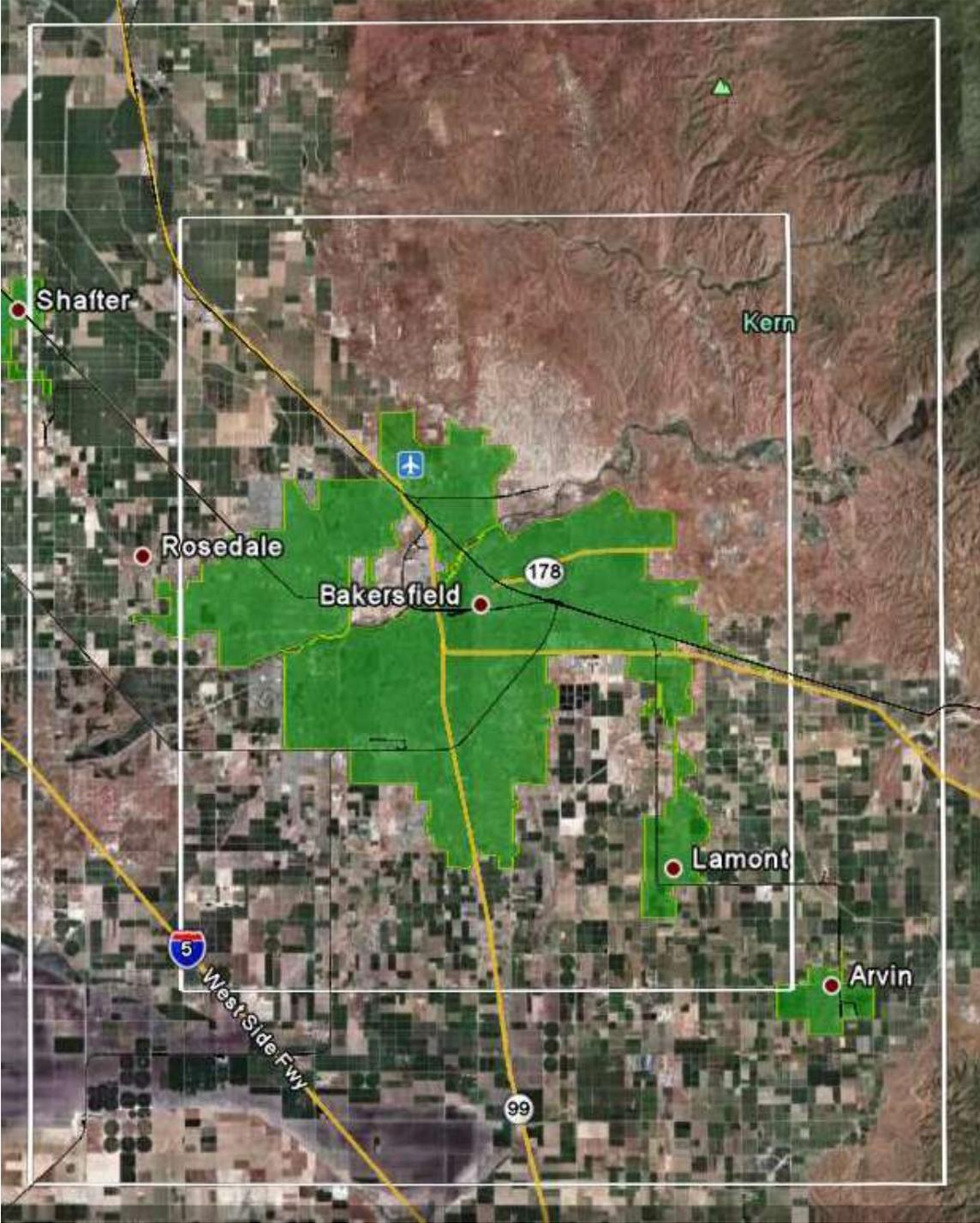
96.2% of the Census Block population is located in the inner-zone



BAKERSFIELD, CA

Market # 75

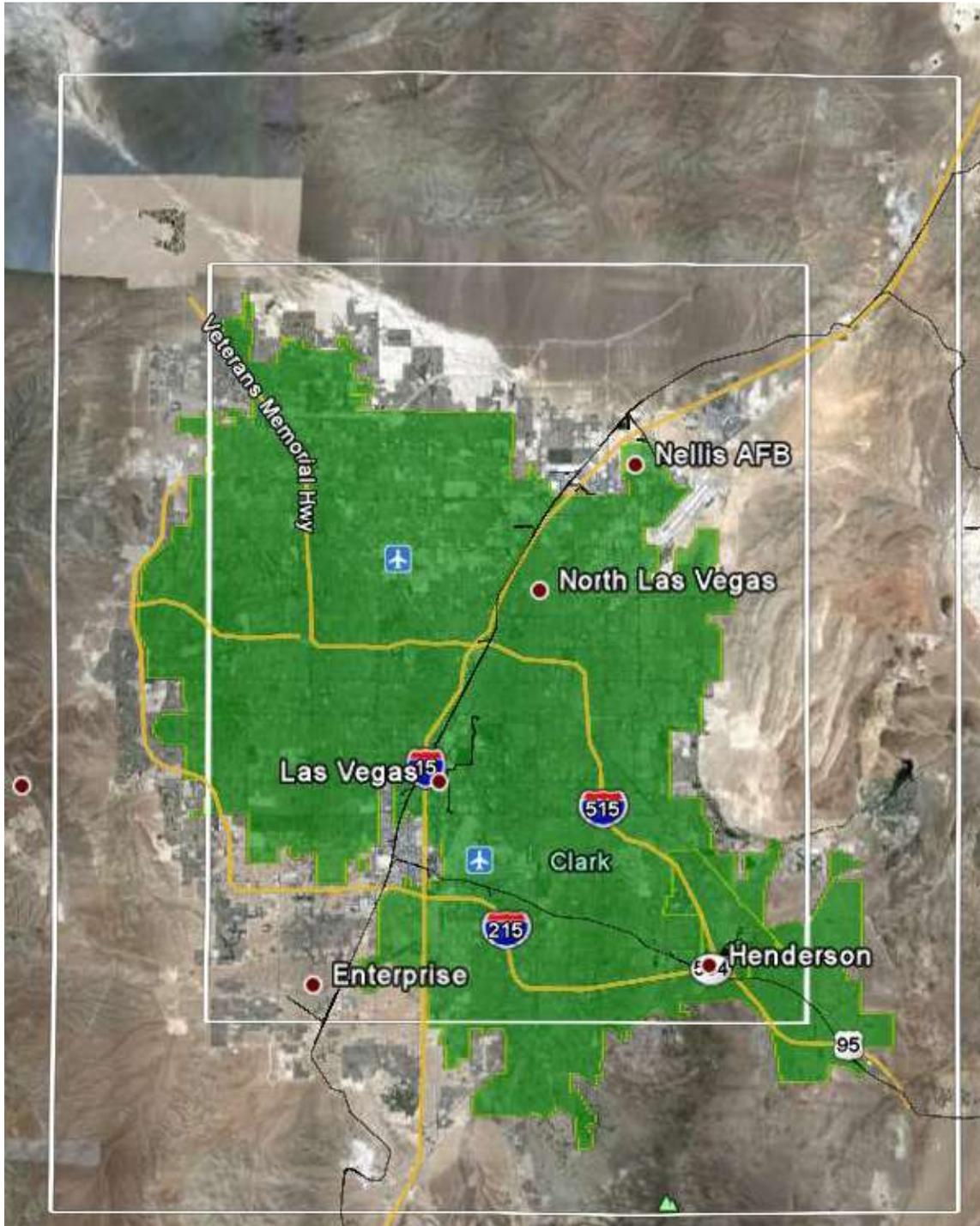
96.0% of the Census Block population is located in the inner zone.



LAS VEGAS, NV

Market # 33

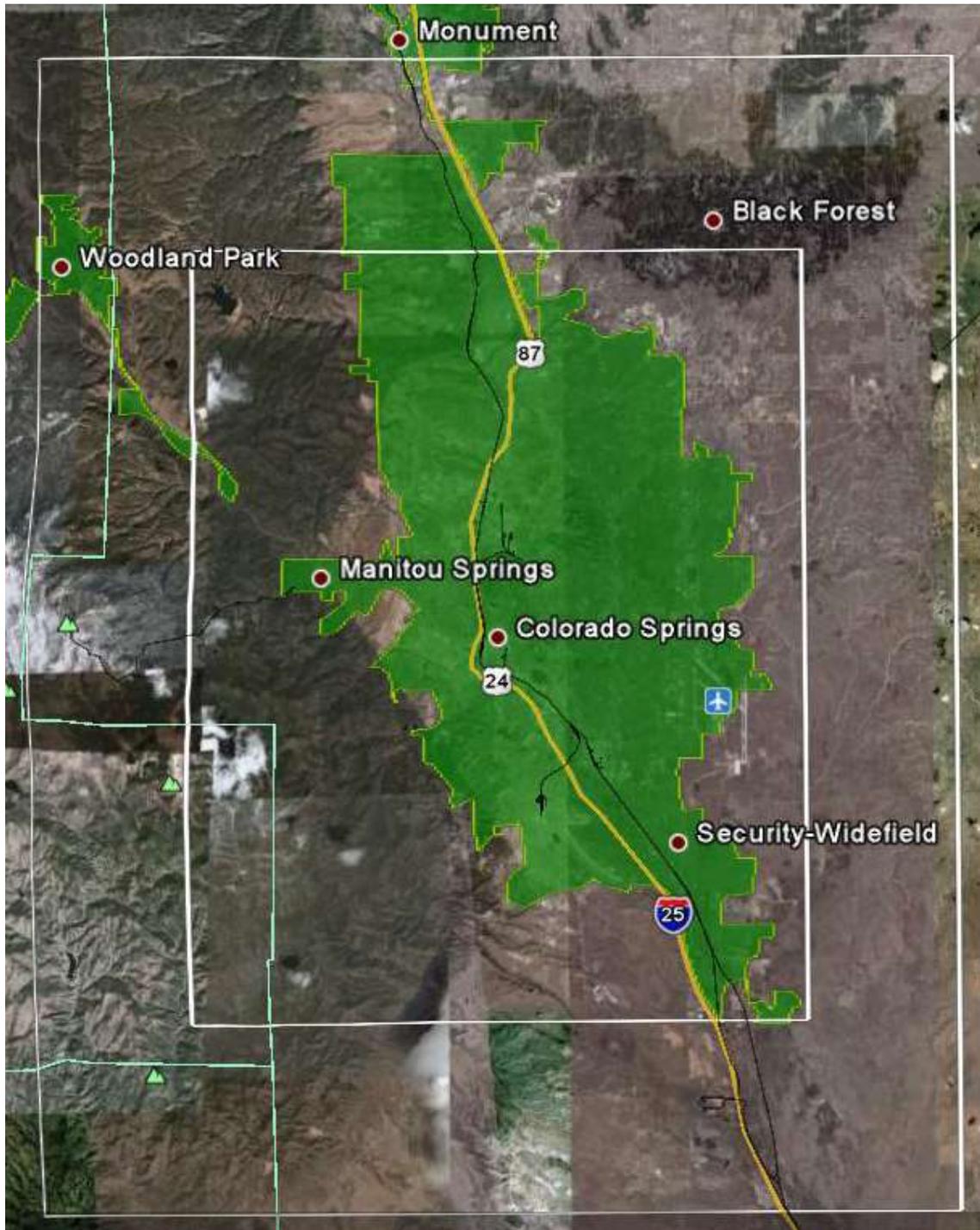
91.9% of the Census Block population is located in the inner zone.



COLORADO SPRINGS, CO

Market # 93

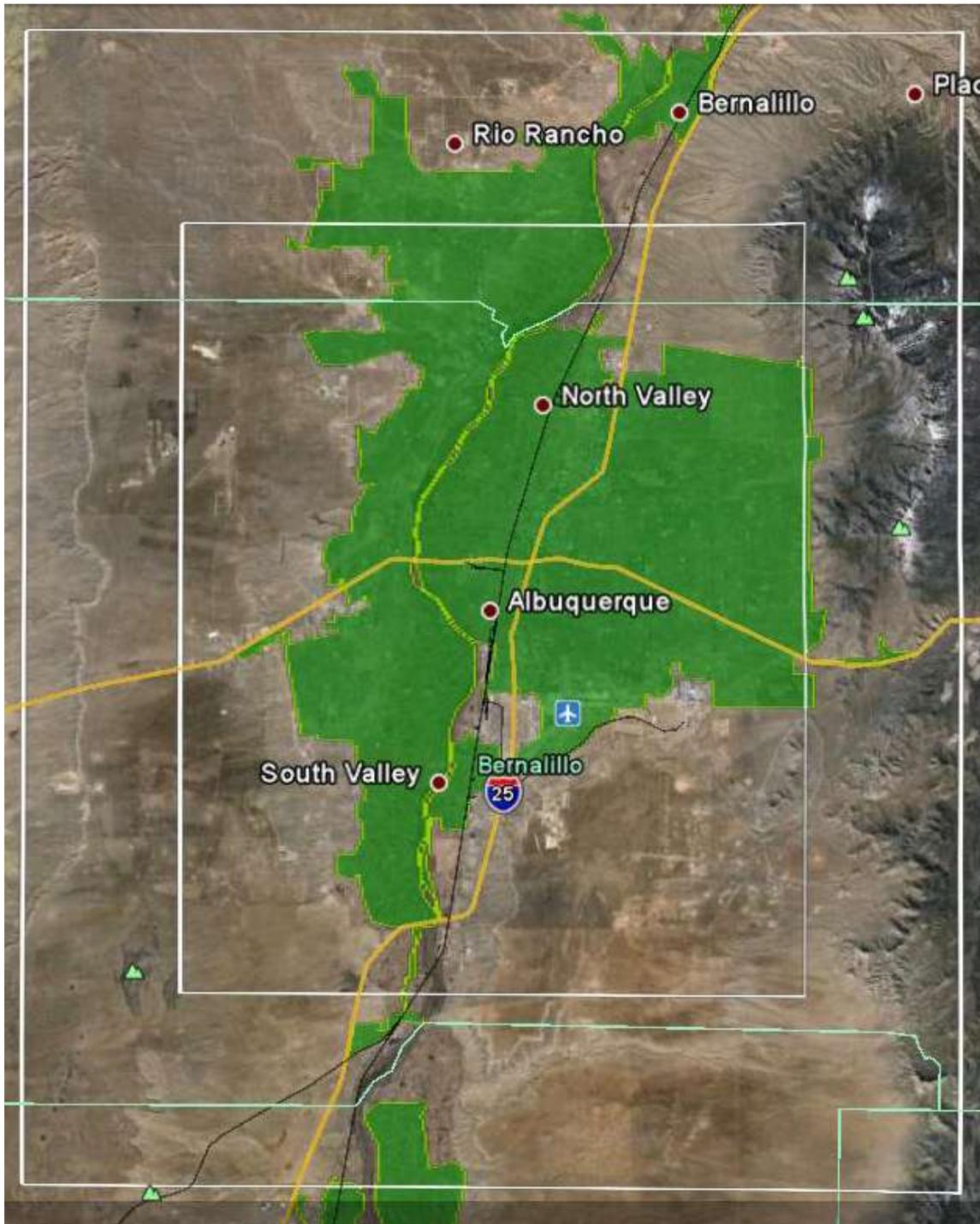
91.8% of the Census Block group population is located within the inner-zone.



ALBUQUERQUE, NM

Market # 68

91.5% of the Census Block population are within the inner zone.



TUCSON, AZ

Market #60

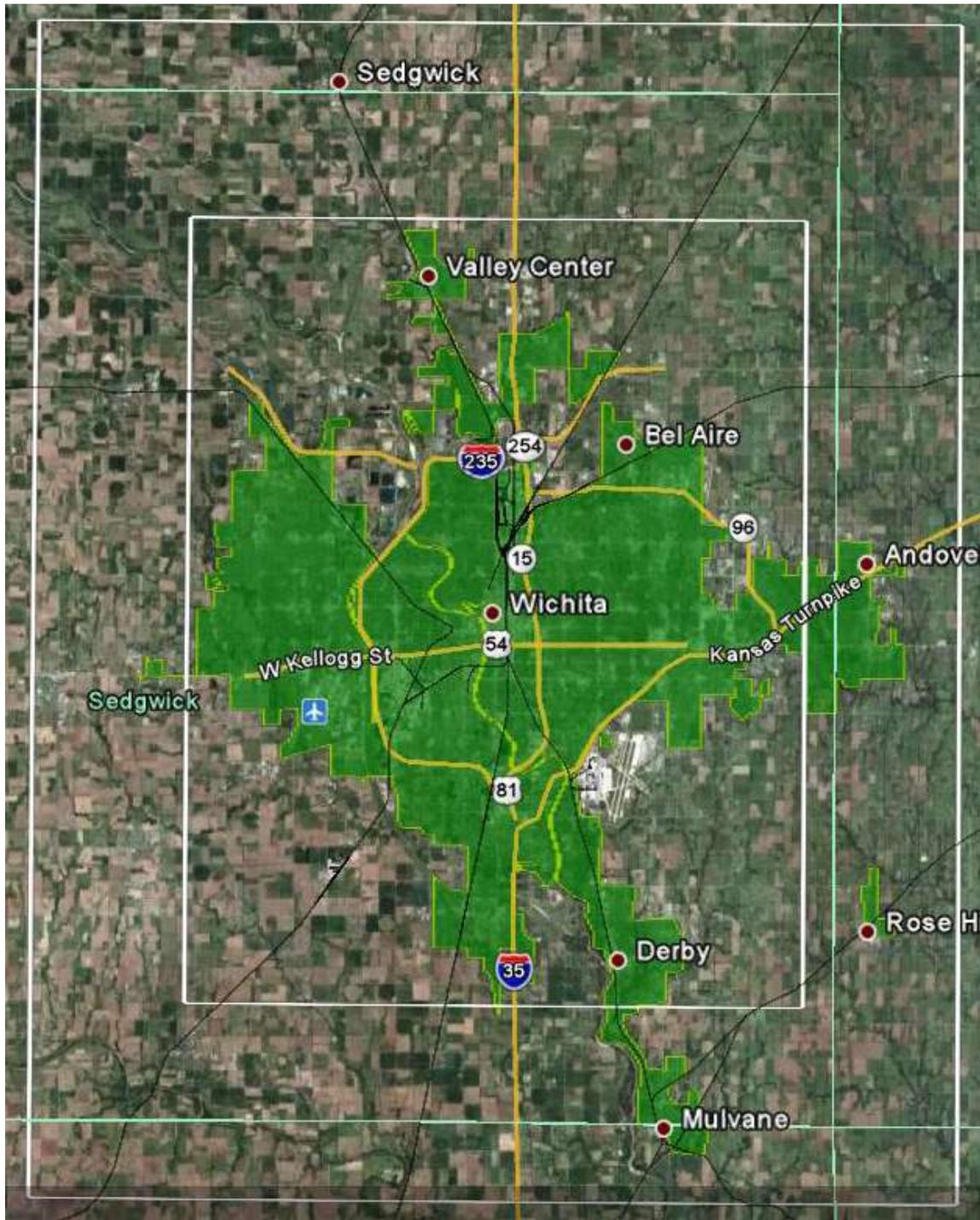
91.3% of the Census Block Group population is within the inner zone.



WICHITA, KS

Market # 96

90.8% of the Census Block Group population is within the inner zone.

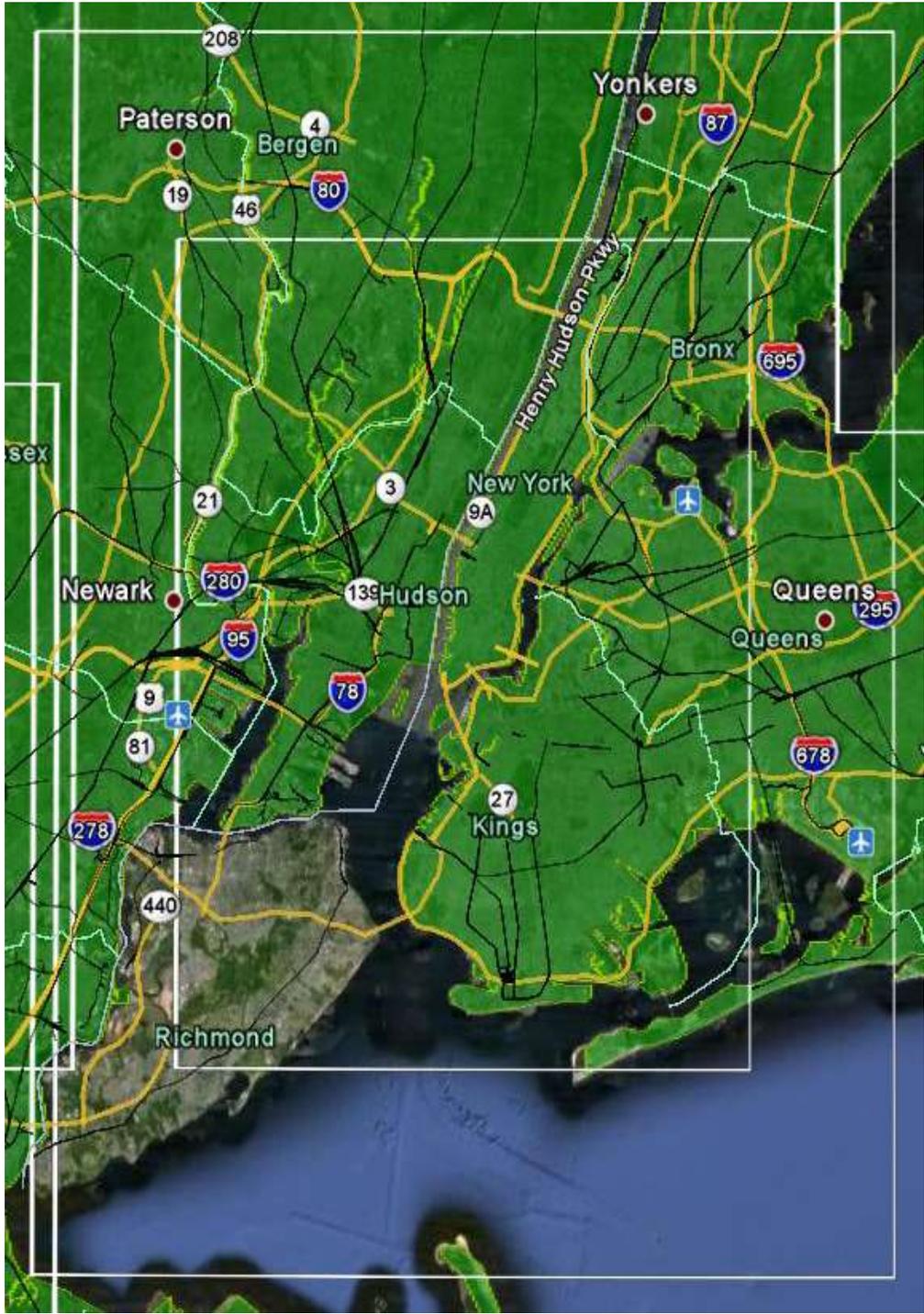


IN CONTRAST...

NEW YORK, NY

Market # 1

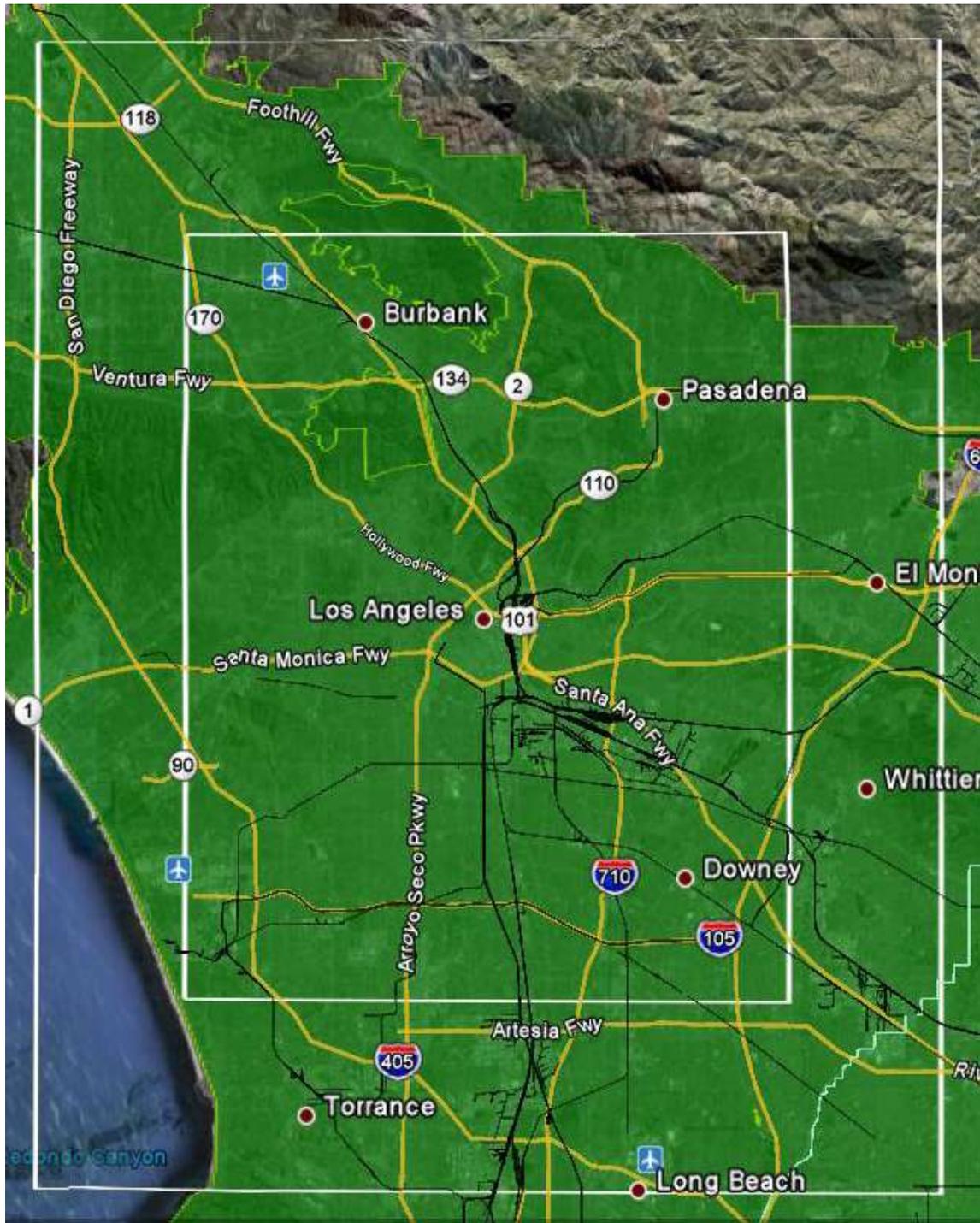
72.2 % of the Census Block group population is located within the inner zone.



LOS ANGELES, CA

Market # 2

63% of the Census Block group population is located in the inner zone.



PREPARED BY

Michi Eyre

REC Networks

<http://recnet.com>

Mapping © Google

Based on the 2000 US Census and 2000 Urban Areas and Urban Clusters.

APPENDIX C

LPFM FULL AVAILABILITY STUDY – 21 X 21 AREA

(Separate document posted in ECFS)

APPENDIX D

SUMMARY OF ALL STUDY AREAS

(Separate document posted in ECFS)

APPENDIX E

**REC NETWORKS LETTER TO SENATORS CANTWELL AND MCCAIN
REGARDING VARIOUS SUBJECTS INCLUDING THE GREAT TRANSLATOR
INVASION.**

From May 23, 2011



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REC 代表取締役
J1 ラジオ ディレクター
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May 23, 2011

Senator Maria Cantwell
311 Hart Senate Office Building
Washington, DC 20510
(delivered by electronic form and fax)

Senator John McCain
241 Russell Senate Office Building
Washington, DC 20510
(delivered by electronic form and fax)

Senators Cantwell and McCain:

I am writing to both of you because of your recent actions in favor of Low Power FM (LPFM) radio and the Local Community Radio Act. REC Networks is my entity name and I have been involved in advocacy and technical services on a donation basis to support the LPFM service since 1998.

This past weekend's "false alarm" over this alleged "rapture" that was predicted by Harold Camping of Family Stations, Inc. rekindles an issue that has been on my mind for years. That issue is related to the ownership of multiple non-commercial educational (NCE) radio broadcast stations.

In the early days, NCE broadcast stations were mainly owned and operated by colleges and high schools as a training ground for students to learn the broadcast art to proceed with a career in the industry. College radio stations were also a good source for new music and other art forms as well as provide a platform for minority voices in the community. It was more common for colleges to own one or perhaps two or three radio stations covering different areas. With the growth of public radio, some NCE stations would become operated by a statewide public radio system. One example, Minnesota Public Radio, owns and operates 44 FM radio stations and 41 FM translators covering the entire state of Minnesota and portions of nearby states.

While, organizations like MPR do operate a lot of stations, there are various “mega-ministries” that operate hundreds of full power FM broadcast stations and lower power broadcast translators. Some of the major players include:

- *Calvary Chapel of Twin Falls, Inc.* – Based out of Twin Falls, ID, the church was one of the early adopters of the use of broadcast translators, especially in metropolitan areas and are known for their extensive use of satellite delivery for translator programming, a loophole in the law originally designed to bring radio services into extremely remote areas. They are currently the licensee of 29 full power FM stations and 419 translators with pending applications for another 309 translators.
- *Educational Media Foundation* – Based out of California operates under the names “K-Love” and “Air 1”. They are currently the licensee of 294 full power FM stations and 338 translators with applications for another 678 translators. Since EMF operates two different networks, they will have more than one station in many of their markets for each station.
- *American Family Association* – Based out of Tupelo, MS, AFA operates a substantial radio network and also operates the World Net Daily website. They are the licensee of 185 full power FM stations and 34 translators with applications for another 26 translators. In addition, American Family Association has been designated as a hate organization by the Southern Poverty Law Center.
- *Family Stations* – Based out of Oakland, CA. The head of Family Stations orchestrated a prediction of the “rapture” for May 21, 2011 resulting in worldwide hysteria. This prediction was unfounded. They are the licensee of 55 FM stations, 12 AM stations, 89 FM translators as well as the licensee of WYFR, an international shortwave station.

Stations that are considered “non-commercial educational” are not required to pay any filing fees or regulatory fees to the FCC, nor do they participate in auctions. In other words, the federal government pretty much “hands out” these licenses to these organizations. With each license that these four organizations hold, it precludes local community educational organizations and even local churches and ministries from providing a voice into their community. While some of these “mega-ministry” stations may broadcast some local content, a substantial majority of the programming is fed by satellite and the same program is heard on all of the stations in the network.

In 2003, what I consider as one of the greatest fleeces of government resources and the public airwaves took place. In a short 7-day period, the FCC accepted applications for lower powered FM translator stations. These stations are required to rebroadcast another station and can’t originate their own programming. One organization operating under two different names, Radio Assist Ministries and Edgewater Broadcasting filed thousands of applications during this period. Many of those applications were granted by the FCC. Instead of building these stations, the organization instead sold the construction permits to other organizations sometimes netting as much as \$40,000 for a piece of paper that gives the recipient the privilege to build an FM translator. REC estimates that this organization has booked approximately \$2 million in revenues since 2003 through the “trafficking” of unbuilt construction permits were the government (FCC) never received a dime. At the time of the window, neither of these two entities had any full power FM broadcast holdings. They have obtained FM stations since then.

The recent “rapture” hoax instigated by Harold Camping was propagated through 55 FM stations, 12 AM stations, 89 translators and a shortwave broadcast station that can be picked up in many parts of the world as well as through outdoor advertising. The hoax was picked up by other media sources around the world and the result was worldwide panic. REC had received stories such as the Palmdale, CA

mother who slashed the throats and wrists of her children to prepare them for the rapture. We have heard about people spending their own life savings and others who have committed acts of animal cruelty as a result of this hoax. Meanwhile, Harold Camping is worth over \$100 million. Not bad for a ministry using resources pretty much given to him on a plate by the government.

While I support free speech, I do feel that a broadcast licensee has a responsibility to their local community and when free speech is abused, those “local” facilities can be used to facilitate mass-hysteria, which was the case on May 21, 2011. This irresponsible use of the broadcast spectrum is being done at the expense of local non-profit organizations, minority groups, the gay, lesbian, bisexual and transsexual/intersex communities who are trying to get their voices heard somewhere on the 100 channels that we call the FM broadcast band.

I also go back to recent transfers (sales) of non-commercial FM licenses in Houston and San Francisco. In both cases, the colleges who held the licenses were facing financial difficulties or otherwise felt they should not be in the radio business. Despite significant community objection, the license of the Houston station was transferred to another Houston area university that already had a full power FM station in the area. The San Francisco sale is still pending due to community objection.

I feel that the Federal Communications Commission needs to take accountability especially given the way that it has allowed these mega-ministries to expand, purchase failing college stations and file excessive applications in filing windows, sometimes through questionable means.

I feel that the Federal Communications Commission needs to take accountability to assure that speculation does not take place during application filing windows for broadcast licenses that are exempt from auctions as proven by the egregious behavior by a small group of applicants in the March, 2003 FM translator filing window.

I feel that the Federal Communications Commission needs to be held accountable for assuring that decisions made during the assignment (sale) of non-commercial licenses need to take into consideration the impacts on localism and the number of independent voices within a community.

Senators, it is time to finally make the FCC accountable for a broadcast service, once originally intended for schools, local religious and small community organizations to train students and educate the local community that has now become dominated by mega churches and concentrated public radio networks. I am asking that the Senate and the House look at legislation that would achieve the following for full power non-commercial educational FM stations and FM translators:

- Impose an ownership limit on non-commercial stations to no more than 10 full power FM stations and 30 translators per entity. Up to 50 full power FM stations and 60 translators upon a showing that the stations are a part of a statewide public broadcasting system (such as Minnesota).
- Full Power FM stations that exceed these ownership caps would not be permitted to obtain additional stations. Other entities can challenge the license at renewal.
- FM translator stations for entities that exceed these ownership caps would be considered secondary to current and future Low Power FM (LPFM) stations that are operated by local entities.
- Applicants who file an excessive number of applications in a non-commercial filing window (more than 5 full power FM stations or more than 10 translators) must submit financial

statements to make a showing that they will be able to construct all stations if permits are granted.

- The FCC needs to consider the overall localism impact prior to approving a transfer of control of a non-commercial educational station.
- Impose a “duopoly” rule prohibiting a single entity from owning more than one full power FM broadcast station with a significant overlap of service area. This rule should not be intended to prohibit a single entity to use two FM stations to extend coverage but have some overlap. It is intended to prevent a single entity from having more than one voice.

I want to point out here that what I am proposing is not an attack on religion or even an attack on public radio, it is an effort to call attention to accountability issues at the FCC, which caused by various abuses in the system by a small group of corporations have resulted in networks of national voices where local voices have lost their voices. This is valuable spectrum being given to these organizations free of charge. With such a subsidy, they should have accountability to the diversity of their local community.

I don't speak for the entire media justice or Low Power FM communities, but I am one person, with one entity with my opinion. I feel that it is finally time to fix the NCE-FM radio service, a service that means well but is currently being abused and in serious need of some tender loving care.

If you would like to discuss this further or if you or your staff have any questions, please feel free to contact me at (415)407-6221. I will be in Maryland, approximately 3 hours away from DC from June 8 through August 23 this year.

Thank you for your time,

Michelle (Michi) Eyre
Founder, REC Networks
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(415)407-6221