Before the
Federal Communications Commission
Washington, DC 20554

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

To: The Commission

COMMENTS OF KYLE MAGRILL AND PETITION FOR RECONSIDERATION
IN
The Fourth Report and Order & Third Order on Reconsideration

In the 4th Report and Order & 3rd Order on Reconsideration (the R & O) the FCC has ordered caps of 50 total applications nationally and 1 per market in the markets identified in Appendix A. While the idea of caps, both nationally and locally was discussed, it was always in the context of assuring spectrum was available for LPFM use. In the R & O, the Commission has taken the concept of caps and dramatically expanded their use by applying them as an anti-trafficking measure. For the reasons listed below, I believe that the 4th R & O should be reconsidered, at least in part.

1. The FCC did not propose this in the NPRM. There was no discussion of dismissing all but one application in non-spectrum limited markets. If comments had been solicited for such a proposal, there certainly would have been some made. I, like many others, was under the impression that the discussion was resolved around what to do in spectrum limited markets.

2. The Forth Report and Order & Third Order on Reconsideration is very poorly written. It is unclear from the text of the document whether the FCC intends to dismiss all but one application in all of the 156 markets identified in Appendix A or if the "markets identified in Appendix A" as noted in paragraph 59, only apply to the markets identified as "Spectrum limited". The 3rd Further NPRM called for processing all applications in non-spectrum limited markets. Many parties to these proceedings are unclear as to the FCC's intentions regarding multiple applications in non-spectrum limited markets. For example, a prominent Washington attorney was advising clients that the one to a market cap applied only to spectrum limited markets. A similar conversation with FCC engineers at the 2012 NAB show got a similar response, so it is clear that not even FCC staff is certain about this new policy. It seems clear that the public has had no real opportunity to evaluate the FCC's radical change in policy.

3. Congress did not direct the FCC to do anything more than make spectrum available. The FCC is overstepping its mission. This should be discussed in an NPRM

specifically dealing with translators, not an NPRM dealing with spectrum availability for LPFM.

4. As has been pointed out by numerous commenters and acknowledged by the FCC, speculation is not illegal. Further, the FCC has not presented any statistical analysis demonstrating that trafficking of translators is problematic or even statistically above the levels seen in other broadcast services, particularly among commercial applicants. According the R & O, in paragraph 56, a total of 700 translator applications from auction 83 have been transferred while another 1,000 were never built. 700 applications transferred (not all were sold) sounds impressive, but if we divide 700 by nine years, that's 78 per year across the entire country or only 1.5/per year, per state. Of the 1,000 not built, the FCC does not state where these were or who owned them and we do not know why they were never built. Even if, for the sake of argument, we assume that all 1,000 unbuilt translators and all 700 transfers were the result of speculation and trafficking, that's still only 189 per year or less than four per state, per year. These are not very big numbers and the FCC has not made a rational case as to why these numbers are of concern.

5. Many markets are diverse geographically. Thus it is impossible to cover them with one translator. For example, the Gainesville-Ocala, Florida market is identified as a non-spectrum limited market. The primary market consists of two counties and two population centers that are separated by almost 80 kilometers. There is no way for a single translator to cover the entire market. In fact, it would take several translators to even reach the diverse population centers. There is no reason to believe that applications in a market with non-overlapping service contours have anything to do with trafficking or speculation.

5. Many markets are diverse ethnically. By limiting the applicants to one translator app, most will choose the format or station most likely to make money and forget about serving less profitable ethnic populations. This is a form of administrative discrimination.

6. HD2, HD3 and HD4 programming have increased the need for multiple translators, covering the same regions, in each market.

7. Use by AM stations has also increased demand for multiple translators covering the same area.

8. Under the R & O, an entity can have applications in every city in a state, up to 50, and not be considered speculating. On the other hand, a local entity with 5 or 10 applications in total but that filed to cover markets that they know and wish to serve is considered a potential speculator because their applications are clustered in the markets that they wish to serve. Clearly this is not the case, yet the local applicant is faced with dismissal of the bulk of their applications. This approach by the FCC seems aimed at the biggest applicants without consideration of the devastating effects on

small entities. No consideration seems to have been given to the small broadcaster. It should be obvious that the number of applications, from a single entity, in a market is a poor test of speculative filing unless the applicant also has many applications in other communities as well so that they exceed the national cap.

9 Enforcing such a rule disproportionately hurts local service providers. Because they have only applications in a few markets, dismissing their applications effectively ends their business model while those with regional or national operations continue.

Proposal for an alternate processing system for non-spectrum-limited markets:

Despite saying that there is a need, the Commission has not established through any scientific analysis, the actual need for an application cap in non-spectrum-limited markets. Further, no real public discussion was given to establishing a one-to-a-market cap specifically for this purpose and I believe it is inappropriate to promulgate policies of this magnitude without proper public comment.

At the very least, an exception to the one-per-market cap should be made in non-spectrum-limited-markets for commercial applicants with less than 50 applications nationally.

Spectrum limited markets should also be re-evaluated after the national cap is enforced. Those markets that are no longer spectrum limited should be excused from the one-to-a-market cap. A computer analysis would be easy to complete and need not delay the implementation of the R & O in any way.

Respectfully Submitted,

Kyle Magrill