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July 30, 1999

Magalie R. Salas, Esq.  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W., Room TW-B204-F  
Washington, D.C. 20554

Reference: **MM Docket No. 99-25**  
**RM-9208**  
**RM-9242**

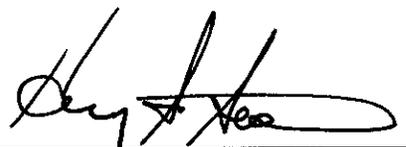
Dear Ms. Salas:

We submit herewith an original and fourteen (14) copies of the Comments of Pitkin County in the above-referenced rule making pertaining to low power FM.

If there are any questions in regard to this matter, kindly communicate directly with this office.

Respectfully submitted,

**PITKIN COUNTY**

By   
Henry A. Solomon  
Its Attorney

HAS:dh  
Enclosure

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Before The  
**Federal Communications Commission**

Washington, D.C. 20554

In The Matter Of	)	
	)	MM Docket No. 99-25
Creation of a Low Power	)	
Radio Service	)	RM-9208
	)	RM-9242
To: The Commission		

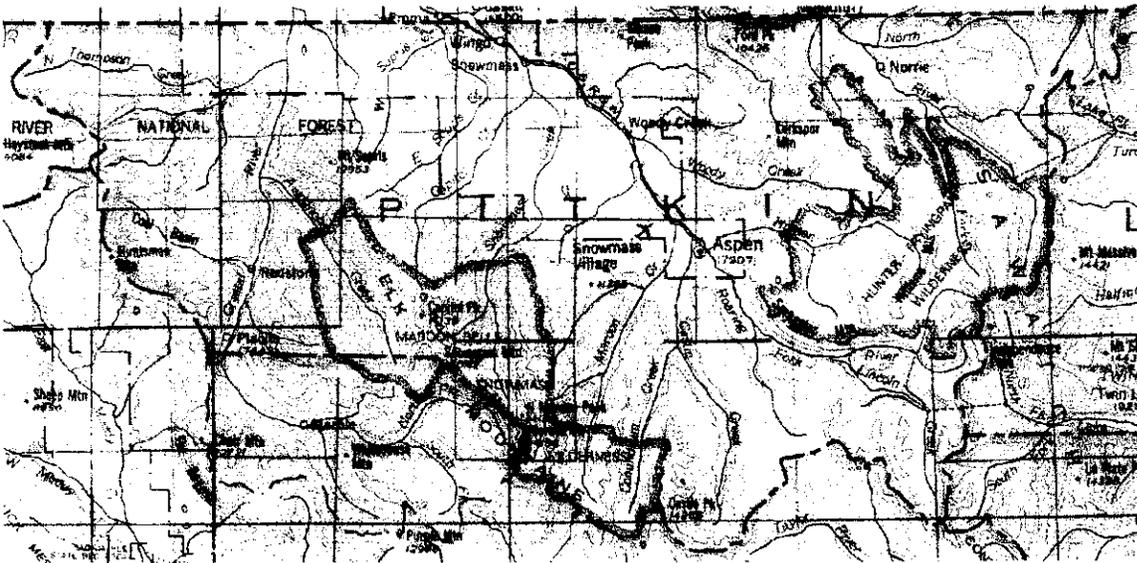
**COMMENTS OF PITKIN COUNTY**

Pitkin County, Colorado ("Pitkin County"), by its attorneys, respectfully files its comments to the *Notice of Proposed Rule Making, MM Docket No. 99-25*, released February 3, 1999 (the "NPRM"). This pleading is timely filed.

I. BACKGROUND

Pitkin County has extensive firsthand knowledge of the role FM translators play in communities and areas where reception of FM stations is marginal or in some cases nonexistent. Fig. 1 is a USGS map segment. It is provided in order to orient and familiarize the Commission with the terrain in Pitkin County.

Fig. 1.



Even a cursory review of the map confirms the important service FM translators provide to radio listeners in this part of the Rocky Mountain West and geographically comparable areas of the country. In these Comments, Pitkin County will demonstrate why translators are necessary, if not indispensable to radio listeners in rural areas and why they should be recognized as such in this proceeding. The discussion below will show how the public interest will be served if LPFM licensing rules are crafted with the specific objective of avoiding or minimizing any disruption of FM translator service.

Pitkin County is prime “translator country.” It is located in mountainous terrain approximately 150 miles from Denver, Colorado. Aspen is the county seat. Large areas of the county lie within the White River National Forest, the site of Mt. Elbert, the highest point (14,433 feet) in Colorado.<sup>1</sup>

The county’s Translator Department employs a full-time engineer who is responsible for the administration of the approximately 40 taxpayer-supported FM translators licensed to the county. For the past 24 years county residents whose homes or ranches are situated in sparsely populated areas where rugged terrain blocks direct reception of radio signals have relied on these “secondary transmitters.” Translators ensure that they have daily access to the programming of commercial and non-commercial stations from nearby Aspen

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<sup>1</sup> Pitkin is home to several ski resorts including Aspen, Snowmass Village and Aspen Heights. Interstate 70 is the main route between Denver and Grand Junction, Colorado, it connects State Route 82 and is used daily by county residents who work in communities such as Glenwood Springs, New Castle, Rifle, Silt and Eagle.

Glenwood Springs and Carbondale, and from Grand Junction. The same holds true for commuters and visitors to this popular year-round tourist area.<sup>2</sup>

Because of the area's uniformly rugged terrain it is often the case that two or more translators must be used in succession to pick up and relay a single FM signal to areas of poor reception or no reception. For instance, two translators must be used in order to deliver the signal of NCE-FM station KAJX(FM), Aspen, to places such as Redstone and Thomasville, Colorado. If service on even a single translator is disrupted an entire system segment can be adversely affected.

It should be noted that the FM translators serving Pitkin County perform dual functions that benefit the primary stations they rebroadcast. Many translators fill in so-called "dead spots" within primary stations' normally protected signal contours. For example, but for Pitkin County translators located on Sunlight Peak, communities such as Cardiff, Carbondale, New Castle, Silt, Redstone, Thomasville, Basalt and El Jebel could not receive uniformly interference-free signals of noncommercial educational station KAJX(FM). All of these communities lie within that station's 1mV/m coverage contour. In the case of non-reserved FM channels, the present allocation system relies on keeping stations spaced at minimum distances from one another. In this way, interference to the stations' normally-protected contours

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<sup>2</sup> According to USFS figures based on tourist rooms, the county enjoys 1,952,000 Recreation Visit Days ("RVDs") per annum. This figure includes hikers, bikers, skiers, hunters and nature enthusiasts. The annual RVDs for skiers is 881,000. Additionally an estimated 40,000 permanent residents rely on translators in order to receive the signals of FM stations licensed to local area communities such as Aspen, Carbondale and Glenwood Springs, as well as distant stations licensed to Grand Junction, Colorado.

at the tangent points between them is avoided. By the same token, the need to be fully-spaced limits the number of stations that can be licensed.

Consequently, where terrain is relatively uniform there are large areas located outside the normally protected contours and away from tangent points that can receive meaningful reception. In addition to performing fill-in functions, FM translators assure that service to the listening public in these outlying areas is truly interference-free.<sup>3</sup>

Demand for additional reserved FM spectrum in Pitkin County and elsewhere in the Western states is increasing. Since reserved frequencies are assigned on a contour rather than mileage separation basis, in most markets there is frequency congestion. This is the case in Pitkin County, and there is already evidence of frequency scarcity in other rural areas with low population density and significant translator operations. Indeed, approximately two years ago Pitkin County's Translator Department studied the effects of licensing two proposed full power NCE stations in the Glenwood Springs-Carbondale area. The study confirms that if such stations are activated they will permanently displace a system of 10 translators that pick up and relay the signals of two local area NCE-FM stations. Because of frequency congestion, the translators cannot migrate to other channels.

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<sup>3</sup> Frequencies are assigned to reserved frequency NCE stations on a contour rather than mileage separation basis. These stations are also capable to serve areas and populations beyond their secondary service contours. *See, e.g.*, comments of WCVE-FM, Richmond, VA, filed May 17, 1999. WCVE-FM is a noncommercial educational station and its comments state that it receives contributions from viewers who reside in counties beyond the 60 dBu contour, including Loudon, Arlington and Fairfax. According to the Fall 1998 Arbitron survey, 75,000 of the station's estimated 93,800 listeners reside in outlying counties.

In mid-May, 1999, representatives of Pitkin County's Translator Department met in Albuquerque with officials of other counties in the Rocky Mountain West as well as geographically-similar areas of the country such as New Mexico and Oregon. It was the attendees' consensus that FM translators are fast becoming an "endangered species," in danger of being permanently displaced not only by full-power FMs, but also by low power FMs.

Accordingly, Pitkin County is participating in this rule making because it is concerned that if a LPFM service is created and the FCC fails to protect incumbent FM translators, many of them will be displaced and will have to be deactivated. It firmly believes that if translator service is lost because of LPFM licensing, the public interest will be disserved. Loss of translator service will not only harm listeners, but also will harm the primary stations which translators rebroadcast. Commercial FM stations that reach a segment of their listeners via translators will suffer losses of audience and advertising revenue. Area noncommercial FM stations will lose listeners who "vote" for this valuable service by contributing dollars to public broadcasting.

## II. COMMENTS

### The FCC Should Enact Rules That Would Minimize the Likelihood That LPFM Stations Would Displace FM Translators.

The public interest requires that a net loss of FM reception service, particularly in rural areas, either be avoided or kept to an absolute minimum. Hence, the public interest will be served if LPFM rules adopted by the FCC recognize the valuable service that translators provide and afford translators

reasonable protection against displacement by low power operations. Pitkin County has identified several ways in which to preserve FM translator systems without frustrating the ownership and issue diversity goals expressed in the NPRM.

A. The Commission Should "Grandfather" all Existing FM Translator Licensees.

Viewed rationally it appears illogical for the FCC to permit any LPFM licensee to displace any FM translator that has been operating or is authorized to operate. No public interest goal is served if by adding LPFM stations in order to encourage new local broadcast "voices." The FM translators that collectively provide radio reception to thousands of members of the listening public are displaced. In fulfilling their role as disseminators of FM signals to the public, FM translators promote issue diversity and support local and locally-oriented full power stations.<sup>4</sup> Pitkin County believes that grandfathering existing translators is an administratively sound approach and would be in the public interest.

Here, the public interest is easily identified. As noted, translators exist solely to disseminate the signals of FM stations which, for the past forty years, have been licensed on the basis of class. Thus full-power FM stations employ a wide range of power (6,000 to 100,000 watts) and antenna height to service different size areas. See § 73.210 Consequently, if licensing a LPFM station

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<sup>4</sup> In questioning the public interest benefits of consolidation, the NPRM LPFM proponents ignore the fact that thousands of locally-owned and operated independent FM stations are providing service to the public, or suggest they are being snapped up by group owners. At last count there were more than 12,500 stations nationwide, 7727 of which operate in the FM band. FCC News release #92811, Apr. 13, 1999.

causes actual impermissible interference to an FM translator's input or output channel, the public is doubly harmed. Listeners who receive FM service via translators suffer a net loss of access to meaningful FM reception. Primary stations whose signals are rebroadcast by the translators lose a segment of the very audience they are licensed to serve.

Accordingly, Pitkin County respectfully urges the Commission to grant FM translator incumbents grandfather rights *vis-a-vis* LP1000s, LP100s and LP10s. Protection of existing arrangements would comport with the FM translator service goals expressed in §74.1231 of the rules. By authorizing translators for the past twenty-nine years, the FCC has consistently been faithful to those goals.<sup>5</sup>

**B. Loss of FM Translator Service Can Be Avoided or Kept to a Minimum if LPFM Applicants are Required to Coordinate with Incumbents.**

Invariably, some translators will be unable to invoke "grandfather" rights and will be displaced by primary LPFMs. For this reason, it is right and proper that LP1000 applicants whose stations will displace incumbent FM translators be required to make such licensees "whole." LP1000 applicants should be required to take into account the impact, if any, of their operations on incumbent FM translator stations. Newcomers should be required to provide monetary support or equipment or both, in order to minimize any economic

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<sup>5</sup> FM translators were first authorized in 1970 as a means of providing FM service to areas and populations that were unable to receive satisfactory FM signals. See *Notice of Proposed Rule Making* in Docket No. 17159, 34 FR 761 (1969), *Report and Order* in Docket No. 17159, 20 Rad. Reg. 2d (P&F) 1538 (1970). These goals continue in effect.

injury which may be suffered by the displaced station.<sup>6</sup> There is nothing new and novel about this regulatory approach. When, for example, the FCC allotted 120 MHz of 2 GHz spectrum or broadband PCS, it acknowledged that the new stations would interfere with data and other point-to-point transmissions by certain incumbent fixed microwave licensees. It therefore enacted rules which require frequency coordination and which recognize that in some cases incumbents will have to change frequencies and deserve to be compensated for such efforts. See §24.237 of the FCC's Rules.

Thus, in creating this new commercial communications service and awarding bidding credits and other benefits to a special class of licensees, the Commission acted to minimize any destabilization of existing operations. In the present matter, whether the Commission restricts licensing to noncommercial entities or allows purely commercial service, its goal of enabling more "local voices" to speak, will be cold comfort if for want of a coordination procedure, other local voices (those made available to radio listeners via translators), are silenced.

**C. Incumbent FM Translator Licensees Should be Permitted to Upgrade Their Currently-Authorized Facilities.**

During the 1980s the Commission concluded that "localism" would be fostered by upgrading Class A FMs from 3000 watts to 6000 watts.<sup>7</sup> In this

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<sup>6</sup> In some cases it may be impossible to protect the FM translator licensee and thus to avoid a discontinuance of service. In such instances the Commission should encourage LPFMs to fill the "gap" by entering into rebroadcast agreements with the existing local primary stations formerly rebroadcast on the translator. In discussing remedial measures, Pitkin County also urges the Commission to require LP100s and LP10s to satisfy the interference protection criteria set forth in § 74.1204 of the rules.

<sup>7</sup> Contemporaneously, the Commission created a low power television service making it possible for smaller communities, particularly those lacking full power TV stations, to have their own local television outlets.

way smaller FMs achieved parity with higher classes of stations in the band and better served their listeners.

FM translators should also be given an opportunity to upgrade their facilities. This right should not, however, be granted in perpetuity. Instead, the Commission should designate a limited window (possibly 90 days) during which existing FM translator licensees and permittees may apply for facilities upgrades with immunity from competitive filings. Pitkin County and, we believe, a fair number of operators would welcome the opportunity to improve physical facilities and levels of service. Again, the listening public will be the direct beneficiaries of these efforts. An alternative to across-the-board upgrade rights, is restricting eligibility to upgrade to translators that are providing fill-in service. Of paramount importance, however, is the Commission's willingness to afford *all* eligible FM translators the right to upgrade to *any* class of low power FM.

D. Noncommercial LPFM Mutual Exclusivity Should be Resolved Through a Point System.

As an applicant for NCE-FM stations Pitkin County participated in MM Docket No. 95-31<sup>8</sup> by which the FCC solicited comments on comparative standards for noncommercial educational broadcast applicants. It urged the Commission to use a point system to make comparative determinations. Pitkin County believes that a point system would also be appropriate to resolve noncommercial LPFM mutual exclusivity.

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<sup>8</sup> *Further Notice of Proposed Rule Making* in MM Docket No. 95-31, 13 FCC Rcd 2167 (1998).

First and foremost point credits should be awarded to LPFM applicants who demonstrate that their proposed facilities would have the minimum adverse impact on existing FM translators. Second, in light of the FCC's finding that LPFM should be a truly local service,<sup>9</sup> point credits should go to applicants who actually reside in the community of license *and* who commit to locating a main studio in the community of license.<sup>10</sup> Finally, extra credits should be awarded to LPFM applicants who have no ownership interests in radio or television stations or media of mass communication (including cable and newspapers) in the same market *and* who have no other pending LPFM applications in the market. The NPRM supports the enactment of licensing rules that would encourage parties with a genuine commitment to community radio service to file applications. The point system Pitkin County is suggesting would be consistent with the Commission's goal.

### III. CONCLUSION

For the past thirty years FM translators have been valuable national assets. Their value to the public, including licensees of the stations they rebroadcast is unquestioned. They merit being protected against actual harmful interference by other broadcasters, including LPFMs. These comments identify reasonable licensing rules the ought to FCC to adopt if it decides to

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<sup>9</sup> See *e.g.*, NPRM, Sec III.A.

<sup>10</sup> A point credit for lack of other existing or proposed media interests should discourage mass application filings by a aggressive "nonprofits," whether structured as a single applicant or by several affiliated parties. The Commission is well aware of the gridlock created by such mass filings.

establish a low power FM service. Although FM translator service is classified as a "secondary" service under the Commission's Rules, to the thousands of rural Americans they serve, these facilities are of primary importance and must not be silenced.

Respectfully submitted,

**PITKIN COUNTY**

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