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October 26, 1995

VIA HAND DELIVERY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

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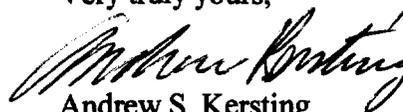
Re: MM Docket No. 93-314  
RM- 8396  
Cadiz and Oak Grove, Kentucky

Dear Mr. Caton:

Enclosed herewith on behalf of Southern Broadcasting Corporation, licensee of Station WDXN(AM), Clarksville, Tennessee, and Stations WABD(AM)/WCVQ(FM), Fort Campbell, Kentucky, are an original and four copies of its Petition for Reconsideration in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,



Andrew S. Kersting  
Counsel for  
Southern Broadcasting Corporation

Enclosure

cc: Certificate of Service (w/ encl.)

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BEFORE THE  
**Federal Communications Commission**

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OCT 26 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Amendment of Section 73.202(b) )  
Table of Allotments, )  
FM Broadcast Stations, )  
(Cadiz and Oak Grove, Kentucky) )

DOCKET FILE COPY ORIGINAL

MM Docket No. 93-314  
RM-8396

To: Chief, Audio Services Division  
Mass Media Bureau

**PETITION FOR RECONSIDERATION**

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October 26, 1995

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## SUMMARY

In Report and Order, DA 95-1993 (released September 23, 1995), (“Report and Order”), the Mass Media Bureau granted the request of Ham Broadcasting, Inc. (“Ham”), licensee of Station WKDZ-FM, Cadiz, Kentucky, to substitute Channel 293C3 for Channel 292 A at Cadiz, and reallocate Channel 293C3 to Oak Grove, Kentucky, as that community’s first local service. In granting Ham’s request, the Bureau found that although the station’s signal population coverage, and the size and proximity of the specified community to the central city in the Urbanized Area indicated that the aural services in the Clarksville, Tennessee-Kentucky Urbanized Area should be attributed to Oak Grove, Oak Grove was sufficiently independent from the Clarksville Urbanized Area that Oak Grove was entitled to a first local service preference. Accordingly, the Bureau concluded that the substitution of Channel 293C3 for Channel 292A at Cadiz and the reallocation of Channel 293C3 to Oak Grove would serve the public interest.

Nevertheless, the Bureau erred in failing to presumptively consider the Clarksville Urbanized Area to be the relevant community for Section 307(b) purposes. The Bureau also failed to recognize that a lesser showing of interdependence between Oak Grove and Clarksville was required in this case due to their size and proximity to one another.

In addition, the Bureau erred in its assessment of the evidence under the eight factors set forth in Faye and Richard Tuck, Inc., 3 FCC Rcd 5374 (1988), for evaluating the independence-interdependence between the specified community and the central city within the urbanized area. Specifically, the Bureau failed to conduct any independent analysis under each of the eight factors, and summarily concluded, without adequate explanation, that “the evidence addressing *most of the factors* relevant to this criterion supports a finding of independence.” Report and Order, ¶14

(emphasis added). In doing so, the Bureau ignored substantial evidence demonstrating the interdependence between Oak Grove and communities within the Clarksville Urbanized Area. For these reasons, the Bureau's Report and Order should be reversed.

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

**RECEIVED**  
**OCT 26 1995**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
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Amendment of Section 73.202(b) ) MM Docket No. 93-314  
Table of Allotments, ) RM-8396  
FM Broadcast Stations, )  
(Cadiz and Oak Grove, Kentucky) )

To: Chief, Audio Services Division  
Mass Media Bureau

**PETITION FOR RECONSIDERATION**

Southern Broadcasting Corporation ("Southern"), by its attorneys and pursuant to Section 1.106 of the Commission's rules, hereby requests reconsideration of the Report and Order, DA 95-1993 (released September 29, 1995) ("Report and Order"), issued in the above-captioned proceeding, which granted the request of Ham Broadcasting, Inc. ("Ham"), licensee of Station WKDZ-FM, Cadiz, Kentucky, to substitute Channel 293C3 for Channel 292A at Cadiz, and reallocate Channel 293C3 to Oak Grove, Kentucky. In support of this petition, the following is stated:

I.  
**Introduction**

At Ham's request, the Mass Media Bureau ("Bureau") issued a Notice of Proposed Rulemaking, 9 FCC Rcd 68 (1994), proposing (a) the substitution of Channel 293C3 for Channel

292A at Cadiz, Kentucky, (b) the reallocation of Channel 293C3 from Cadiz to Oak Grove, Kentucky, and (c) the modification of Station WKDZ-FM's license to specify operation on the new channel.

In its Report and Order, the Bureau found that two of the three criteria articulated in Faye and Richard Tuck, Inc., 3 FCC Rcd 5374 (1988), and RKO General, Inc. (KFRC), 5 FCC Rcd 3222 (1990) -- signal population coverage, and the size and proximity of the specified community to the central city in the Urbanized Area -- favored attributing the aural services in the Clarksville, Tennessee-Kentucky Urbanized Area to Oak Grove. However, under the third criterion concerning the independence-interdependence between the specified community and the central city in the metropolitan area, the Bureau found that Oak Grove was independent of the larger metropolitan area. Thus, because signal population coverage and the size and proximity of the specified community to the central city are less significant than the independence-interdependence criterion (see Tuck, 3 FCC Rcd at 5377), the Bureau concluded that Oak Grove was sufficiently independent from the Clarksville Urbanized Area such that the aural services licensed within the Urbanized Area should not be attributed to Oak Grove. Report and Order, ¶15. Accordingly, the Bureau found that Oak Grove was entitled to a first local service preference, and that the substitution of Channel 293C3 for Channel 292A at Cadiz and the reallocation of Channel 293C3 to Oak Grove would serve the public interest. Id. at ¶10.

Nevertheless, as demonstrated herein, the Bureau's decision is not supported by substantial evidence, contains prejudicial errors of fact and substantive law, is arbitrary and capricious, and is inconsistent with Commission precedent.

## II.

The Bureau Erred In Finding That Oak Grove Is Independent of the Clarksville Urbanized Area and In Awarding Oak Grove a First Local Service Preference

With respect to the independence-interdependence criterion, the Commission has stated that where the specified community is within an Urbanized Area, the Commission will “presumptively consider the urbanized area to be the relevant metropolitan ‘community’”. KFRC, 5 FCC Rcd at 3223, citing, Tuck, 3 FCC Rcd at 5379. Although Oak Grove is within the Clarksville, Tennessee-Kentucky Urbanized Area (see Report and Order, ¶2), the Bureau failed to apply this presumption in evaluating the evidence under the independent-interdependent criterion.

Moreover, the Commission has stated:

... [T]he required showing of interdependence between the specified community and the central city will vary depending on the degree to which the second criterion -- relative size and proximity -- suggests that the community of license is simply an appendage of a large central city. When the specified community is relatively large and far away from the central city, a strong showing of interdependence would be necessary to support a Huntington exception. *On the other hand, less evidence that the communities are interdependent would be required when the community at issue is smaller and close to the central city.*

Tuck, 5 FCC Rcd at 5378 (emphasis added).

Under the second criterion, Oak Grove has a population of 2,863.<sup>1</sup> Clarksville has a population of 75,494, which is 26 times larger. Although the Bureau found that “Oak Grove is approximately 10.5 kilometers (6.5 miles) north of [Clarksville]” (Report and Order, ¶12), this finding is not accurate. As demonstrated in Attachment 1 to Southern’s Reply Comments, filed March 4, 1994, Oak Grove is *contiguous* to Clarksville. The great differential in size between Oak Grove and Clarksville and the fact the two communities are contiguous are compelling indications of

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<sup>1</sup> Unless otherwise indicated, population figures are taken from the 1990 U.S. Census.

interdependence. See KFRC, 5 FCC Rcd at 3223. Nevertheless, the Bureau failed to acknowledge that, under Tuck, Southern was required to make a *lesser* showing of interdependence due to the size and proximity between Oak Grove and Clarksville. The Bureau's failure to apply the Urbanized Area presumption set forth in Tuck as well as its failure to recognize that only a lesser interdependence showing was required constitutes prejudicial error because, as the Bureau noted, interdependence is the most important criterion under Tuck and KFRC. See Report and Order, ¶15. Furthermore, in evaluating the evidence under the eight factors set forth in Tuck for assessing the interdependence between the specified community and the central city,<sup>2</sup> the Bureau merely lumped together selected

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<sup>2</sup> In Tuck, the Commission set forth the following eight factors for assessing the interdependence between the specified community and the central city within the Urbanized Area:

- (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community;
- (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests;
- (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area;
- (4) whether the specified community has its own local government and elected officials;
- (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code;
- (6) whether the community has its own commercial establishments, health facilities, and transportation systems;
- (7) the extent to which the specified community and the central city are part of the same advertising market; and
- (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries.

(continued...)

portions of the evidence regarding those factors in summary fashion, and, without conducting any independent analysis under each of the factors, summarily concluded that “the evidence addressing *most of the factors* relevant to this criterion supports a finding of independence.” Report and Order, ¶14 (emphasis added). The Bureau failed to explain which of the eight factors, in its view, suggested that Oak Grove was independent of the larger metropolitan area. Moreover, as demonstrated below, the Bureau committed numerous errors in its assessment of the evidence under the eight factors.

- (1) The extent to which community residents work in the larger metropolitan area, rather than the specified community.

The Bureau accepted Ham’s claim that 73% of Oak Grove’s work force are employed in Christian County, Kentucky, and only 27% are employed “out-of-state”. Report and Order, ¶14. However, this finding is not relevant to the inquiry under the first interdependent factor. The question is not in what state the residents in the specified community are employed, but, rather, the extent to which they work in *the larger metropolitan area, rather than the specified community*. Indeed, the Bureau completely ignored the fact that 90% of Oak Grove’s residents work at the Fort Campbell U.S. Army base.<sup>3</sup> See Southern Reply Comments, p. 4 (citing , Att. 2, Ex. 2, p. 2). Fort Campbell,

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<sup>2</sup>(...continued)  
Tuck, 3 FCC Rcd at 5378, ¶36.

<sup>3</sup> According to the city of Oak Grove’s Comprehensive Plan, Oak Grove is comprised of a series of mobile home parks. Manufactured mobile homes are “prevalent” in the city, and Oak Grove is economically dependent upon them as a source of affordable housing for military personnel. Southern Reply Comments, Att. 2, Ex. 3, p. 99.

The mobile home parks together with the high number of military personnel residing in the city result in Oak Grove being a transient community. Indeed, the turnover rate of Oak Grove residents is so “phenomenal” that the total population changes every five (5) years. Id., p. 75. Although city officials would like to transform Oak Grove from a “transient” to a “permanent

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a portion of which is located in Christian County, Kentucky, is adjacent to Oak Grove and within the Fort Campbell portion of the Clarksville, Tennessee-Kentucky Urbanized Area.<sup>4</sup> *Id.*, p. 3. The Army base had a 1993 U.S. Census population of 22,378, making it the second largest “community” within the Urbanized Area. Indeed, according to the Oak Grove Comprehensive Plan (“City Plan”), Fort Campbell is “the largest industry in the area.” *Id.*, p. 4 (citing Att. 2, Ex. 2, p. 104). Therefore, because uncontroverted evidence establishes that the vast majority of Oak Grove residents work within the Urbanized Area, but outside the specified community, the Bureau’s finding that the evidence under this factor supports a finding of independence is erroneous.<sup>5</sup>

(2) Whether the smaller community has its own newspaper or other media that covers the community’s local needs and interests.

Oak Grove does not have its own local newspaper. Report and Order, ¶14. Indeed, Ham admitted that Oak Grove citizens subscribe in equal numbers to the Hopkinsville and Clarksville newspapers. See Ham Comments, p. 8. In KFRC, the Commission found it “significant” that the specified community did not have its own newspaper. 5 FCC Rcd at 3224. Thus, the Bureau failed

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<sup>3</sup>(...continued)

population,” they recognize that the ability to transform the population to a viable stable community will be slow, and will occur over a period of time. *Id.*, p. 91.

<sup>4</sup> By far the largest portion of Fort Campbell is located in Montgomery County, Tennessee. See Southern Comments, Exhibit A.

<sup>5</sup> As noted above, the Bureau failed to make specific findings under each of the eight Tuck interdependence factors, making it impossible to determine which factors, in the Bureau’s view, suggested that Oak Grove was independent of the larger metropolitan area. Because the relevant “community” is presumed to be the Clarksville Urbanized Area, and Southern is required to make only a “lesser” showing of interdependence due to the size/proximity relationship between Oak Grove and Clarksville, for purposes of this petition, Southern has assumed the Bureau found that all of the factors indicated that Oak Grove was an independent community.

to accord sufficient weight to the fact Oak Grove does not have its own local newspaper, and erred in failing to find that this factor supports a finding of interdependence.

- (3) Whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area.

The Bureau credited the self-serving letters from the Mayor of Oak Grove and the County Judge Executive of Christian County stating that their respective jurisdictions are independent from the Clarksville Urbanized Area. Report and Order, ¶14. However, the Bureau failed to recognize that these letters do not address the question posed in Tuck, i.e., whether *Oak Grove*'s community leaders perceive the specified community as being an integral part of, or separate from, *the larger metropolitan area*. The letter from the County Judge Executive of Christian County should be disregarded because he is neither an Oak Grove community leader, nor a resident of Oak Grove. Although the letter from Oak Grove's Mayor supports Ham's claim that the specified community is independent from Clarksville, the Bureau erred in crediting the letter because it does not show that Oak Grove is independent from *the larger metropolitan area*, which is the fundamental inquiry under the independence-interdependence criterion. Indeed, Ham's allegations that Oak Grove residents view themselves as "Kentuckians" and are governed by Kentucky state law do not address the issue of whether Oak Grove is independent from Fort Campbell and the Clarksville metropolitan area. In this regard, the Bureau's inexplicable conclusion that the Tennessee-Kentucky state line is either relevant to, or determinative of, the interdependence criterion is not supported by Commission precedent.<sup>6</sup>

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<sup>6</sup> For example, there can be no dispute that Arlington, Virginia, which is within the Washington, D.C. Urbanized Area, is not a separate "community" for Section 307(b) purposes. Nevertheless, Arlington residents undoubtedly consider themselves residents of the State of

(continued...)

Moreover, the Bureau failed to address evidence presented by Southern demonstrating Oak Grove's interdependence with the larger metropolitan area. Sandi Lyne, who is the founder and Executive Director of the Oak Grove Chamber of Commerce, explained that Oak Grove serves as a bedroom community for the U.S. Army post at Fort Campbell. Ms. Lyne also stated, "Oak Grove's business community is directly tied to the military base", and she spends "more than half of my working time with army personnel on matters relating to the relationship between Fort Campbell and Oak Grove." See Southern Reply Comments, Att. 3. In addition, Ms. Lyne works with representatives of the Clarksville Chamber of Commerce in coordinating matters relating to Fort Campbell. She also is involved in the Tennessee/Kentucky Chapter of the Association of the U.S. Army, which promotes cooperation between Fort Campbell and its surrounding communities, including Oak Grove, Clarksville, and Hopkinsville. Id.

The declaration of Ms. Lyne, an Oak Grove community leader, constitutes strong evidence of Oak Grove's interdependence with the larger metropolitan area. The Bureau erred in failing to address this evidence in determining whether factor (3) supports a finding of interdependence.

(4) Whether the specified community has its own local government and elected officials.

The Bureau noted that Oak Grove has its own local government and elected officials. Report and Order, ¶14. However, these facts should have relatively little significance because the same would be true of any incorporated community in an urbanized area that happens to be located in

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<sup>6</sup>(...continued)

Virginia, are governed by Virginia laws, and pay their taxes to the State of Virginia. These facts, however, have little significance in determining whether Arlington is independent of the larger Washington, D.C., metropolitan area.

another state.<sup>7</sup> See KFRC, 5 FCC Rcd at 3226, n.13 (An applicant proposing to serve a lesser community within an urbanized area will not be able to establish that community's independence merely by showing the existence of a local government and ancillary municipal services). Cf. Tuck, 3 FCC Rcd at 5382, n. 3 (The fact a community provides its own fire protection is not probative of its independence from the larger metropolitan area if other evidence reflects that it is common for such communities to have separate fire departments). Therefore, this factor should have been given little, if any, weight in determining whether Oak Grove is independent of the larger metropolitan area.

(5) Whether the smaller community has its own telephone book provided by the local telephone company or zip code.

The Bureau found that Oak Grove has its own post office and zip code, but does not have its own telephone directory. Report and Order, ¶14. However, the Bureau did not accord sufficient weight to the lack of a local telephone directory. Indeed, the Commission has found the absence of a local telephone directory to be "significant." KFRC, 5 FCC Rcd at 3224. Moreover, the existence of a local post office and zip code should be of little relative significance because the same would be true of most incorporated communities in an urbanized area. See KFRC, 5 FCC Rcd at 3226, n.13; Tuck, 3 FCC Rcd at 5382, n.3.

(6) Whether the community has its own commercial establishments, health facilities, and transportation systems.

The Bureau found that Oak Grove has a variety of commercial businesses, but does not have its own hospital or public transportation system. Report and Order, ¶14. Although Oak Grove has some local businesses, this is not surprising considering the community is contiguous to Clarksville, the central city in the Urbanized Area, which has a population of over 75,000. The Oak Grove City

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<sup>7</sup> See Arlington, Virginia, example noted above.

Plan makes clear, however, that Oak Grove's local business is dependent upon Fort Campbell, which is an integral part of the Clarksville Urbanized Area: "Oak Grove is dependent upon Fort Campbell and the related retailers who have established business to serve the Fort Campbell market."<sup>8</sup> Southern Reply Comments, pp. 7-8, quoting Att. 2, Ex. 3, p. 115.

Although Oak Grove has an ambulance service, the City Plan notes that the service is provided by the Christian County Ambulance Service, and there is only one ambulance located in Oak Grove. Southern Reply Comments, Att. 2, Ex. 3, p. 94.<sup>9</sup> According to the City Plan, the need for medical facilities is low, and a medical facility is not presently viable. Id. Oak Grove is surrounded by medical facilities in Hopkinsville, Clarksville, and the Fort Campbell military base. Indeed, because the majority of Oak Grove's population are military, their health care needs are taken care of by the Fort Campbell medical facilities. Id. at 93-94. As noted above, Fort Campbell is an integral part of the Clarksville Urbanized Area, and Oak Grove's complete dependence upon the military base affirmatively demonstrates its dependence upon the larger metropolitan area. Therefore, although the Bureau failed to make an explicit finding concerning factor (6), the evidence demonstrates that Oak Grove is not independent of the Clarksville metropolitan area.

(7) The extent to which the specified community and the central city are part of the same advertising market.

The Bureau erred in finding that Oak Grove is located in a separate advertising market from the Clarksville metropolitan area. See Report and Order, ¶14. In smaller advertising markets such as Clarksville, Tennessee-Hopkinsville, Kentucky, Arbitron splits its ratings surveys into county

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<sup>8</sup> The Oak Grove Chamber of Commerce identifies the city as the "Gateway to Fort Campbell." Southern Reply Comments, Attachment 2, Ex. 4.

<sup>9</sup> See also Southern Reply Comments, Att. 4.

surveys instead of establishing a “metro” survey area. The size of the market, not the interdependence of the communities within a geographic area, determines whether Arbitron establishes a metro survey area. In this case, one ratings survey is conducted for Montgomery County, Tennessee, and another one is taken for Christian County, Kentucky.<sup>10</sup> Southern Reply Comments, p. 4. Indeed, Southern demonstrated that over 50 Oak Grove businesses have advertised on Stations WABD/WCVQ, Fort Campbell, Kentucky, over the past few years. Southern Reply Comments, Att. 2, Ex. 6. Station WCVQ is a 100 kilowatt FM facility which provides city-grade service to the entire Clarksville-Hopkinsville market. Southern Reply Comments, p. 9. If Ham’s proposal were to be adopted, Station WKDZ-FM’s 60 dBu signal would provide service to the entire population (97,581 persons) within the Urbanized Area, and its city-grade contour would cover 58,549 persons within the Urbanized Area. Report and Order, ¶11. In light of Oak Grove’s small population of 2,863, it is ludicrous to believe that WKDZ-FM could serve as an “Oak Grove radio market” facility in any meaningful sense. Cf. KFRC, 5 FCC Rcd at 3225, n.12 (Because the San Francisco radio market encompassed over four million persons, the Commission found it unlikely that the proposed wide-area station could serve as a “Richmond radio market” facility). Thus, the Commission erred in finding that this factor indicated Oak Grove’s independence from the Clarksville metropolitan area.

- (8) The extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries.

Although the Bureau noted that Oak Grove has its own police department, fire department, and water system (Report and Order, ¶14), it failed to address the specific evidence regarding the

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<sup>10</sup> Southern subscribes to both Arbitron county surveys in order to ascertain its rankings in the entire market. Southern Reply Comments, p. 4.

close working relationships between these municipal services and those of other communities within the Clarksville metropolitan area. In a letter dated March 1, 1994, Milton D. Perry, the Chief of Police of Oak Grove, stated as follows:

We have always enjoyed a close working relationship with Ft. Campbell, with many of our Officers and Dispatchers being former military personnel.

\* \* \*

*Our relationship with Clarksville, Tennessee is often even closer, because we are physically closer to that city. It is often just a matter of one phone call to have an Officer from Clarksville meet with an Oak Grove unit to help settle a problem on or near the State line. . . . Often Detectives from both our City and Clarksville will work hand in hand to solve crimes that have occurred in each City.*

Southern Reply Comments, Att. 2, Ex. 9 (emphasis added).

Similarly, Oak Grove's Fire Chief, Robert M. Celing, has stated:

. . . [I]f it were not for the military personnel from Ft. Campbell volunteering their time, [the Oak Grove fire department] would not be operating today. *Approximately 80% of our membership is on active duty and the other 20% are connected in some way with Ft. Campbell.*

\* \* \*

In general, we rely on Ft. Campbell for support, but [do] not limit our outside assistance to them. Hopkinsville and Clarksville also assist this City and this Department as a whole. *Oak Grove, Ft. Campbell, Hopkinsville, and Clarksville are not separate, but one large community helping each other.*

Southern Reply Comments, Att. 4 (emphasis added).

As demonstrated above, Oak Grove officials work with and are dependent upon surrounding jurisdictions, and consider their city part of the larger Clarksville metropolitan area. Accordingly, the above statements by Oak Grove's police and fire department officials affirmatively establish Oak Grove's interdependence with the larger metropolitan area. The Bureau erred in failing to address

these statements in its summary assessment of the interdependence criterion. See KFRC, 5 FCC Rcd at 3226, n.13 (an applicant proposing to serve a lesser community within an urbanized area will not be able to establish that community's independence merely by showing the existence of a local government and ancillary municipal services).

Furthermore, despite having an estimated 380 existing school-age children, Oak Grove does not have a public school (Southern Reply Comments, Att. 2, Ex. 3, p. 93), nor does the city have a public library. Report and Order, ¶14. These facts also demonstrate Oak Grove's interdependence with the larger metropolitan area. Therefore, the Bureau erred in finding that the evidence under factor (8) indicates that Oak Grove is independent of the Clarksville Urbanized Area.

As demonstrated above, with the possible exception of the third interdependence factor, which should be given little, if any, weight (see KFRC, 5 FCC Rcd at 3226, n.13), the evidence under the remaining seven factors establishes Oak Grove's interdependence with the Clarksville Urbanized Area. Therefore, because Southern has satisfied all three criteria articulated in Tuck and KFRC for applying the exception set forth in Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951), the Bureau erred in awarding Oak Grove a first local service preference.

As an additional basis for rejecting Southern's position concerning the allotment of Channel 293C3 to Oak Grove, the Bureau noted that there was no basis under Commission precedent for consideration of "Southern's concerns" about increased competition in the Clarksville Urbanized Area. Report and Order, ¶19. However, the statements in paragraph 19 are the result of another factual error by the Bureau. Southern has never alleged that Ham's proposal should be denied because of increased competition to Southern's Clarksville and Fort Campbell stations. Indeed, the only reference to an "economic motive" was raised in Ham's Reply Comments. See Ham Reply

Comments, p. 3, filed March 4, 1994. Although potential economic injury may provide Southern with standing to challenge Ham's proposal, see FCC v. Sanders Brothers Radio Station, 309 U.S. 470 (1940), Southern has opposed the allotment of Channel 293C3 to Oak Grove solely because it expects the Commission to require licensees attempting to move into an urbanized area to meet the standards which were established in Tuck and KFRC.

### III.

#### Ham's Proposal Would Not Result In a Preferential Arrangement of Allotments

As demonstrated above, the Bureau erred in awarding Oak Grove a first local service preference and a third allotment priority. Under the fourth allotment priority, retaining Station WKDZ-FM at Cadiz, Kentucky, would continue to provide the community with its first nighttime transmission service and first competitive aural transmission service.<sup>11</sup>

In contrast, Ham's proposal would result in service to a net gain in population of 159,881 persons. Report and Order, ¶17. However, approximately 55% of these persons reside within the Clarksville Urbanized Area, which already has six radio stations.<sup>12</sup> Southern Reply Comments, p. 2, and Att. 1. Moreover, Ham has acknowledged that the entire gain area already receives more than five aural services. Ham Comments, p. 3. Thus, because the proposed gain area population is concentrated within the Clarksville Urbanized Area, Ham's proposed Channel 293C3 upgrade affords no cognizable additional reception service benefits, and is the type of urban "move-in" which the Commission has consistently discouraged.

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<sup>11</sup> Cadiz is the seat of Trigg County, Kentucky, which has a population of 10,361.

<sup>12</sup> The existing stations licensed to communities within the Urbanized Area are Stations WAPX-FM, WCTZ(AM), and WJCM(AM), all Clarksville, Tennessee, and Southern's Stations WDXN(AM), Clarksville, and WABD(AM)/WCVQ(FM), Fort Campbell, Kentucky.

Furthermore, with respect to changes in community of license, the Commission has stated:

The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from [sic] reallocation of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both. *Removal of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service* [footnote omitted].

Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7094, 7097 (1990) (emphasis added). In this case, there is no countervailing public interest benefit which outweighs the loss of Cadiz' (and Trigg County's) only nighttime and FM service. Therefore, contrary to the Bureau's findings, the provision of a seventh aural service to the Clarksville Urbanized Area would not serve the public interest.

#### IV. Conclusion

As demonstrated herein, the Bureau erred in failing to apply the presumption set forth in Tuck that where the specified community is within an urbanized area, the Commission "presumptively" considers the urbanized area to be the relevant community for Section 307(b) purposes. In addition, the Bureau failed to recognize that Southern was required to make only a lesser showing of interdependence due to the size and proximity between Oak Grove and Clarksville.

The Bureau also erred in its assessment of the evidence under the eight factors set forth in Tuck for evaluating the independence-interdependence between the specified community and the central city within the urbanized area. Specifically, the Bureau failed to conduct any independent analysis under each of the eight factors, and summarily concluded, without adequate explanation, that "the evidence addressing *most of the factors* relevant to this criterion supports a finding of

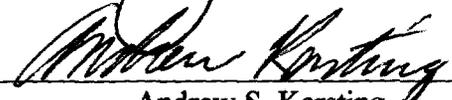
independence.” Report and Order, ¶14 (emphasis added). In doing so, the Bureau ignored substantial evidence demonstrating the interdependence between Oak Grove and communities within the Clarksville Urbanized Area. For these reasons, the Bureau’s Report and Order should be reversed.

WHEREFORE, In light of the foregoing, Southern Broadcasting Corporation respectfully requests the Commission to RECONSIDER its Report and Order, released September 29, 1995, retain its present allotment scheme, and DENY Ham Broadcasting, Inc.’s request to allot Channel 293C3 to Oak Grove, Kentucky, through the deletion of Channel 292A at Cadiz, Kentucky.

Respectfully submitted,

SOUTHERN BROADCASTING CORPORATION

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October 26, 1995

**CERTIFICATE OF SERVICE**

I, Nancy Evans, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that true copies of the foregoing "Petition for Reconsideration" were sent this 26th day of October, 1995, by first-class United States mail, postage pre-paid, to the following:

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