

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Lincoln and Sherman, Illinois))

MM Docket No. 01-120
RM-10126

To: Chief, Audio Division, Media Bureau¹

OPPOSITION TO PETITION FOR RECONSIDERATION

Saga Communications of Illinois, Inc. ("Saga"), by its attorneys, and pursuant to Section 1.429(f) of the Commission's Rules, respectfully opposes the Petition for Reconsideration filed April 22, 2002, by Long Nine, Inc. ("Long Nine")² that seeks reversal of the action of the Chief, Allocations Branch, taken in the Report and Order, *Lincoln and Sherman, IL*, DA 02-687, 67 Fed. Reg. 16652, published April 8, 2002 (herein "R&O"). The R&O re-allotted FM Channel 230B1 from Lincoln, Illinois, to Sherman, Illinois, as its first local service and modified the license of Saga's Station WMHX(FM) to reflect the changes.

Saga requested the changes pursuant to Section 1.420(i) of the Rules that authorizes the Commission to modify the license or permit of an FM station to specify a

¹ Long Nine, Inc., addressed its petition to the Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau, a position that has been abolished. The position of Assistant Chief, Audio Division, has replaced the former position of Chief, Allocations Branch.

² Under Section 1.429(f) of the Rules, Saga has until 15 days following publication in the Federal Register of the filing of the Petition for Reconsideration. That action has not yet occurred; however, Saga, in an attempt to expedite this proceeding is filing its opposition within 15 days of the filing of Long Nine's petition.

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new community of license where the amended allotment would be mutually exclusive with the station's present allotment. In considering a reallocation proposal, the Commission compares the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments based on the FM allotment priorities in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 91 (1988).³

Over the opposition of Long Nine, the Commission granted the change of community because, under Priority 3 of the FM Allotment Priorities, the reallocation of Channel 230B1 to Sherman as the community's first local transmission service would be preferred to the retention of the channel at Lincoln since Lincoln has two other transmission services; i.e., WLNX(FM) and WLLM(AM)⁴.

Long Nine's prolix and strained petition boils down to one argument; i.e., that the "decision of the Allocations Branch in this case does not comply with Commission policies concerning the allotment of FM channels to communities or with Section 307(b) of the Communications Act because Sherman, a community adjacent to, and entirely interdependent with the much larger Springfield Urbanized Area, is not entitled to a service preference over the independent community of Lincoln." Long Nine argues that "the Allocations Branch has ignored much of the evidence before it and has made errors of fact and substantive law that are inconsistent with Commission precedent."

³ The priorities are (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3).

⁴ At ¶8, R&O, the Commission stated that even if WLNX were off the air, it would consider a station such as WLLM(AM) to "constitute local transmission service."

Long Nine's position is simply incorrect. It apparently filed its petition in some fit of pique because of its principal's past dealings with Saga.⁵ It appears that Long Nine has abused the Commission's processes for the purpose of delaying final Commission action on the R&O. The Commission should recognize for what it is Long Nine's attempt at "manipulation" of the Commission's processes in filing its abusive petition, reject such "gamesmanship" and "disingenuous tactics" and deny Long Nine's petition for reconsideration. Even a cursory review of Long Nine's petition reveals that it is based on nothing more than speculation and surmise.

Long Nine blasts the Allocations Branch for acting in a "nonsensical" manner and ignoring Commission precedent, but Long Nine cites only three precedents; i.e., *Modification of FM and TV Authorizations*, 5 FCC Rcd 7094, 7096 (1990) (the Commission will not inflexibly apply its first local service preference policy); *RKO General, Inc.* 5 FCC Rcd 3222, 3223-3224 (1990); and *Eatonton and Sandy Springs, Georgia*, 6 FCC Rcd 6580 at ¶¶ 24,25 (1991). Long Nine claims those cases resulted in denial of a first local service preference based "in part" on the much smaller size of community relative to the larger central city of an urbanized area. Long Nine's arguments are without merit. In *RKO General, Inc.*, the Commission disposed of a comparative hearing proceeding and discussed *Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D. C. Cir. 1951) and its corollary, *Faye & Richard Tuck*, 3 FCC Rcd 5374

⁵ In its Consolidated Reply Comments filed August 14, 2001, Saga exposed Long Nine's motive in opposing Saga's proposal, i.e., that Long Nine's president has orchestrated "an obsessive commercial vendetta against Saga." Saga explained that Long Nine's Comments filed July 30, 2001, could "only be in retaliation for Saga's filing of a petition to deny Long Nine's acquisition of Station WLUI, Petersburg, Illinois, a station in the Springfield Market." Long Nine's current Petition for Reconsideration seems to be evidence of more of the same abusive conduct.

(1988). The Commission found that Richmond, California, was interdependent on San Francisco and refused to grant Richmond a Section 307(b) preference. The evidence showed that the Richmond applicant proposed a facility that duplicated the facilities relinquished by Station KFRC, San Francisco. This factor indicated that San Francisco metropolitan service was intended by the facilities applied for rather than service to Richmond. In *Eatonton and Sandy Springs, Georgia*, the Chief, Mass Media Bureau, refused to award a first local service preference to a proposal to re-allocate an FM channel from Anniston, Alabama, to Sandy Springs, Georgia, because Sandy Springs was not independent from Atlanta, Georgia. This decision was the result of many factors that supported this finding.⁶ Long Nine has not shown that the factors in this case are even remotely similar to those in the cited cases. All the information Long Nine presented in an attempt to show that Sherman does not merit a “307(b) preference” was contained in Long Nine’s Comments filed July 30, 2001, to which Saga replied on August 14, 2001. The Commission rejected Long Nine’s argument, and Long Nine has advanced nothing new in its petition for reconsideration that would justify reversal of the R&O.

What Long Nine does avoid completely is any discussion of *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995), the leading case on the subject of preferences awarded under Section 307(b). The Commission does not require showings under *Faye & Richard Tuck, supra*, in cases where a station seeks to reallocate its channel and modify its license from a rural community to another community that is

⁶ There was evidence that (1) the Sandy Springs Chamber of Commerce listed virtually all its members at Atlanta addresses; (2) a Georgia Power Company profile described Sandy Springs as “Atlanta’s second downtown;” (3) Sandy Springs is unincorporated and, therefore, has no municipal government; and (4) Sandy Springs receives all government services either from Atlanta or from Fulton County.

located closer to but outside of an Urbanized Area. Beginning with *Headland, Alabama*, the Commission has required stations seeking to move from rural communities to suburban communities located outside but proximate to Urbanized Areas to make the same showing previously required only of stations seeking to move into Urbanized Areas if they would place a city-grade (70 dBu) signal over 50% or more of the Urbanized Area. The Commission stated its belief that such an approach strikes a reasonable balance between ensuring that rural stations do not migrate to urban areas in a manner inconsistent with the goals of Section 307(b) of the Communications Act and at the same time providing stations with the opportunity to change their communities of license if this would serve the public interest.⁷ In Saga's case, the WMHX reference coordinates are not within the Springfield Urbanized Area and a station operating from those coordinates would not place a 70 dBu contour over 50% or more of the Springfield Urbanized Area. In its July 26, 2001, Comments Saga stated that "Sherman would warrant a first local service preference even if [Saga] were required to make the showing set out in ...*Tuck*."

In the *Notice of Proposed Rulemaking*, 16 FCC Rcd 12000 (2001), the Commission requested that Saga provide information on the relative population gains and losses resulting from the reallocation. This Saga did in its Comments filed July 26, 2001. If the Commission had any concerns as to whether Sherman warrants a first local service preference, it most certainly would have directed Saga to file a *Tuck* showing. The Commission did not do so, apparently because it was satisfied that none was necessary.

⁷ In *Rose Hill, Trenton, Aurora and Ocracoke, North Carolina*, 11 FCC Rcd 21223(1996), *recon. den.* 15 FCC Rcd 10739 (2000); *review den.* 16 FCC Rcd 15610 (2001), the Commission was asked to expand its policy concerning *Huntington* and *Tuck* issues and raise similar issues for proposals not within Urbanized Areas. The Commission refused to do so.

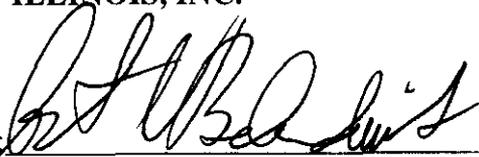
In its "Consolidated Reply Comments" filed August 14, 2001, Saga reiterated why Sherman deserves a first local service preference. Long Nine never provided any probative evidence to show why a *Tuck* analysis is necessary, or if one were done, what it would reveal. In its Comments, Long Nine merely submitted 40 pages printed from the Internet that support the undisputed fact that Lincoln is a community for allotment purposes—but nothing to show that Sherman cannot meet the test set out in *Tuck*. Saga showed that Sherman was entitled to a Section 307(b) preference over keeping Channel 230B1 in Lincoln. That fact has never been rebutted.

That Long Nine doesn't like the result of simple application of the current law to the facts is immaterial to whether the Commission's decision was, to use Long Nine's characterization, nonsense. By contrast, the R&O is well reasoned and supported by ample precedent.

Long Nine has utterly failed to present any evidence that would justify reversal of the action of the Allocations Branch. Long Nine's petition for reconsideration should be denied.

Respectfully submitted,

**SAGA COMMUNICATIONS
OF ILLINOIS, INC.**

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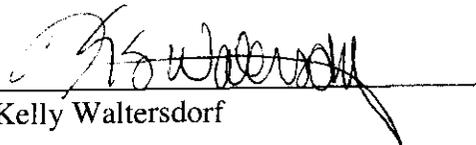
I, Kelly Waltersdorf, a legal assistant in the law offices of Smithwick & Belendiuk, P.C., hereby certify that on May 7, 2002, a copy of the foregoing "Opposition to Petition for Reconsideration" was sent by first class mail, postage prepaid, addressed to the following:

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