

sought was not located within the urbanized area. As the Commission itself explained in both *KFRC* and *Tuck*, there is less of a showing of independence required if the community of license is not located within the urbanized area. Second, and perhaps more significantly, the fact that the Commission staff has given credit to two proponents for first local service in cases in which the proposed communities are a small fraction of the size of the core communities actually provides further evidence of the need for the Commission to reverse the Commission staff in this case for it has now become abundantly clear that the Commission staff is not correctly applying the standards established by the Commission in the *Community of License Modification Rule Making, KFRC* and *Tuck*. *KFRC* is particularly significant in this regard. In that case, the Commission found that the Relative Size and Proximity criterion of *Tuck* "strongly" favored denying a Section 307(b) preference to the Richmond proponents because Richmond was only 1/9th the size of San Francisco and only 16 miles from San Francisco. In the present case, Shalimar is 1/25th the size of Fort Walton Beach and only ½ mile across from the Bay from Fort Walton Beach. Once again, the conclusion is inescapable that this second *Tuck* criterion also "strongly favors" not giving a Section 307(b) preference to WPGG(FM) for providing service to Shalimar.

C. The Interdependence Criterion.

In both the *Report and Order* and the *Memorandum Opinion and Order*, the Commission staff admits that Shalimar does not have its own local newspaper or other media providing news and advertising for Shalimar, admits that Fort Walton Beach and Shalimar are part of the same advertising market and admits that Shalimar relies on the larger metropolitan area for municipal services. As a result, the Commission staff is forced to acknowledge that it is unable to find in favor of the relocation of WPGG(FM) to Shalimar on the basis of the second, seventh, and eighth factors under the *Tuck* criteria. As a result, even before the Commission staff's review of the

Tuck criteria is subjected to any scrutiny whatsoever, those criteria, even looked at in the light most favorable to the relocation, evidence that only a bare majority of the *Tuck* criteria can be cited in support of the relocation of WPGG(FM) to Shalimar and the withdrawal of service from Evergreen and its environs. When the Commission's analysis is subject to such scrutiny, however, it becomes even more apparent that application of the *Tuck* Interdependence criterion factors do not support the decisions below.

The first *Tuck* criterion is "the extent to which the community residents work in the larger metropolitan area, rather than the specified community." The *Memorandum Opinion and Order* acknowledges that "there is no data on the percentage of Shalimar residents who work in Shalimar."³² Because of this failure of data, the Commission staff is forced to rely upon a surrogate. Namely, the Commission takes data from the 2000 US Census that indicates that the mean commuting time for Shalimar workers is 16.3 minutes and concludes therefrom that "a significant number of Shalimar residents work in or very near Shalimar."³³ This is not only sheer speculation, but it is contradicted by the facts. Fort Walton Beach is approximately 1.5 miles from Shalimar by car. A commuter traveling from Shalimar at only 20 miles per hour is just 4.5 minutes from Fort Walton Beach. Moreover, a review of the map reveals that Shalimar is approximately 1 mile long and ½ mile wide at its widest point. As a result, any Shalimar resident driving at 20 miles per hour and traveling along the entire length of Shalimar at its longest point would have left Shalimar only three minutes into the commute. Given the Commission's recitation of a mean commuting time for Shalimar workers of 16.3 minutes and given the fact that three minutes or less of that time would be spent in Shalimar, it is obvious that the vast majority of Shalimar residents work outside of Shalimar. As a result, the Commission's

³² *Memorandum Opinion and Order* at para. 8.

³³ *Id.*

analysis under the first of the factors under the Interdependence criterion simply cannot withstand scrutiny.

The *Memorandum Opinion and Order's* analysis in the case of the third Interdependence factor is also faulty. That factor seeks to determine “whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area.” The only evidence adduced in this regard is a letter from the Shalimar town manager referring to Shalimar's “strong sense of community.” This evidence is of little probative value. Any town manager who claimed that the community for which he worked did not have a “strong sense of community” would not be on the town payroll for very long. Moreover, it is significant that the town manager himself acknowledges that he does not even reside in Shalimar. The Commission staff also finds it significant that Shalimar has its own local government and elected officials. This is true insofar as it goes. Left unmentioned by the Commission staff is the fact that the local government consists of five unpaid part-time members. If the mayor or the Commissioners are needed to assist a resident, they must be located by their staffs at their full-time jobs. Thus, while Shalimar is to be credited with having its own local government, that credit must necessarily be diminished.

In a like vein, the Commission finds in favor of the abandonment of Evergreen because Shalimar has its own post office and zip code. In fact, however, the relevant *Tuck* factor (factor 5) looks at more than just the existence of a post office or a zip code. It also looks at whether the community has its own telephone book provided by the local telephone company. Shalimar does not have its own telephone book. Shalimar listings are listed in the Fort Walton Beach telephone book. Thus, as was true with respect to the fourth factor, the credit to be afforded to WPGG(FM) under the fifth factor is a diminished one.

Finally, the last of the *Tuck* criteria with respect to which the Commission staff finds in WPGG(FM)'s favor is "whether the community has its own commercial establishments, health facilities, and transportation systems." The Commission staff finds in WPGG(FM)'s favor with respect to this criterion because the proponent had identified local businesses, medical offices and a local bus service. This places Shalimar in no different a position than Richmond, California, found itself in the *KFRC* case, however. In that case, the Commission freely acknowledged that Richmond had a "number of cultural and recreational facilities, houses of worship, medical facilities and civic and other organizations." The Commission nevertheless found that the Richmond proponents were not to be given credit for providing first local service to Richmond because Richmond did not have a major public hospital and did not have a local public transportation system.³⁴ As Qantum pointed out to the Commission staff, Shalimar has neither a major public hospital nor a local public transportation system. Shalimar residents must travel to Fort Walton Beach or Niceville, Florida, to reach a hospital or large treatment center. Qantum also pointed out that Shalimar operates no public transportation system. In fact, the 2000 US Census indicates that only one Shalimar resident uses public transportation (including taxi cabs) to travel to work. Accordingly, on the basis of the Commission's *KFRC* decision, the Commission staff should not have credited WPGG(FM) for compliance with the sixth *Tuck* interdependence factor.

In summary, the Commission staff itself acknowledged that WPGG(FM) was entitled to no credit under the second, seventh, and eight *Tuck* Interdependence factors. As is demonstrated above, no credit should have been awarded under the first and sixth criteria -- with the result that less than a majority of the factors under the *Tuck* Interdependence criterion can be resolved in

³⁴ 5 FCC Rcd at 3224.
DC_DOCS:651112.2 [21290-00100]

WPGG(FM)'s favor. Of the remaining three factors, WPGG(FM) can be awarded only partial credit.

As a result, applying the three *Tuck* criteria, as implemented by the Commission in *KFRC* and adopted by the Commission in the *Community of License Modification Rule Making*, WPGG(FM) was entitled to no credit under the Coverage criterion, was entitled to no credit under the Relative Size and Proximity criterion and was entitled to no credit under the Interdependence criterion since it satisfied less than a majority of the factors under that criterion and would be entitled to a diminished credit for those few factors that it partially satisfied. Under such circumstances, the staff's decision to nevertheless permit WPGG(FM) to abandon Evergreen, to create new underserved areas and to withdraw service from tens of thousands of residents is simply inexplicable.

CONCLUSION

In adopting the *Community of License Modification Rule Making*, the Commission attempted to ensure that its simplified procedure for changing communities of license would not result in an abandonment of rural communities in favor of the urban population centers. Strict standards were established by the Commission for adherence to its then-recent decisions in *KFRC* and *Tuck* so as to require the Commission staff to engage in a careful analysis to ensure that any change in community of license would truly serve the public interest and would not inappropriately result in a withdrawal of service from rural communities. Unfortunately, the Commission staff has been loathe to apply either *KFRC* or *Tuck* in the manner specified by the Commission. No better example of the staff's failure to observe *KFRC* and *Tuck* can be found than in the decision for which Qantum here seeks review. In that decision, the Commission has permitted a station to abandon its rural community of license, withdraw the second local transmission service from that community, and create underserved areas encompassing

thousands of people -- all so that Fort Walton Beach, which is an area that is already well-served, can receive service from yet another FM station. There is simply no support for the *Shalimar Decision*. Application of the *Tuck* criteria and comparison of the Commission's application of those criteria in *KFRC* to the staff's application of those criteria in the present case inevitably leads to the conclusion that the decision below is contrary to established precedent and thus must be reversed. Accordingly, Qantum respectfully requests that the Commission review and reverse the decision below.

Respectfully submitted,

Qantum of Ft. Walton Beach License Company, LLC

By: 
John M. Pelkey
Garvey Schubert Barer
1000 Potomac Street, N.W.
Fifth Floor, Flour Mill Building
Washington, DC 20007
(202) 965-7880

Date: April 14, 2006

651112.1

ENGINEERING STATEMENT

Prepared on Behalf of
Qantum of Ft. Walton Beach License Company, LLC
In response to
Memorandum Opinion and Order
MM Docket 04-219
RM 10986

April 2006

We have been asked by Qantum of Ft. Walton Beach License Company, LLC to respond to the FCC's Memorandum Opinion and Order regarding the move of WPGG from Evergreen, Alabama to Shalimar, Florida.

We have conducted a loss of service study. The proposed 60 dBu contour of the Shalimar facility has no area in common with the existing 60 dBu contour of the licensed Evergreen station. Therefore the entire existing 60 dBu contour is to be considered "loss" area.

In the MO&O, the Commission contends that the number of persons who will receive less than 5 full time services after the removal of Evergreen is 105. By our evaluation, that total is actually 13,600¹. Based on a total population of 166,073 within the total loss area, this represents 8.2 % of the maximum class served population. The total population within 60 dBu contour of the current licensed facility is 97,195, with 14% being underserved. There are 510 persons who will receive a total of only 3 services after the proposed move.

The population was calculated using V-Soft Communications' Probe 3 software. After outlining each underserved area with a polygon tool, the program then uses population centroids to calculate the number of people within the polygon. Each polygon is then added to the total.

In preparing this study, the equivalent circle (72.3 km) contour for the maximum Class C1 (Evergreen) was used to designate the loss area. This is in accordance with instructions provided to counsel by FCC staff. The maximum class equivalent circles for all licensed or authorized FM facilities with protected service contours overlapping the loss area were then overlaid on the map. The distances to the maximum class equivalent circles are:

¹ Based on 2000 US census (SF1) block data.

Class	Distance to Max Class Equivalent Circle
A (3kW)	24.2
A (6 kW)	28.3
C3	39.1
C2	52.2
C1	72.3
C0	83.4
C	Variable – See Table, Attachment A, Pg 2 ²

There are no full-time, Class A AM stations which provide a 0.5 mV/m service to the loss area. There is one Class D station, WIJK (AM) which serves part of the loss area. WIJK is not considered a full time, full service AM station, as the nighttime power is only 0.177 kW and is unprotected. Based on our understanding of past studies, the 0.5 mV/m contour is then not relevant to predicting service to the loss area. Therefore the 36.0 mV/m nighttime interference free contour was used for this purpose.

The Loss Area study is found in Attachment A, with the list of stations included and the distances to maximum class equivalent circles is found as Page 2 of that attachment.

Page #3 of this engineering statement is a declaration by its preparer, attesting to her qualifications.

Kate Michler,
Technical Consultant

Doug Vernier Telecommunications Consultants

² See *Greenup, Kentucky and Athens, Ohio*, 2 FCC Rcd 4319 (MMB 1987), recon., 4 FCC Rcd 3843 (MMB 1989), aff'd in relevant part, 6 FCC Rcd 1493 (1991), erratum, 6 FCC Rcd 1841 (1991), appeal dismissed sub nom. *WATH, Inc. v. FCC*, D.C. Cir. No. 91-1268 (Sept. 26, 1991).

Declaration:

I, Katherine A. Michler, have received a Bachelor of Science degree from the University of Northern Iowa, and;

That, I declare that I have received training as a technical consultant as a member of the staff of Doug Vernier Telecommunications Consultants, and;

That, I have apprenticed under Douglas Vernier for over eight years, and;

That, he has been active in broadcast consulting for over 30 years, and;

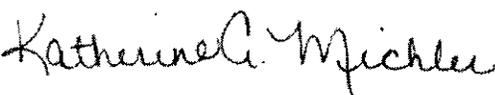
That, his qualifications are a matter of record with the Federal Communications Commission, and;

That, I am an Associate Member (#20792) of the Society of Broadcast Engineers, Indianapolis, Indiana, and;

That, the consulting firm of Doug Vernier Telecommunications Consultants has been retained by Qantum of Ft. Walton Beach License Company, LLC, and;

That, I have personally prepared these engineering showings, the technical information contained in same and the facts stated within are true to my knowledge, and;

That, under penalty of perjury, I declare that the foregoing is correct.

 — Katherine A. Michler

Executed on April 12, 2006

WPGG - Loss of Service Area

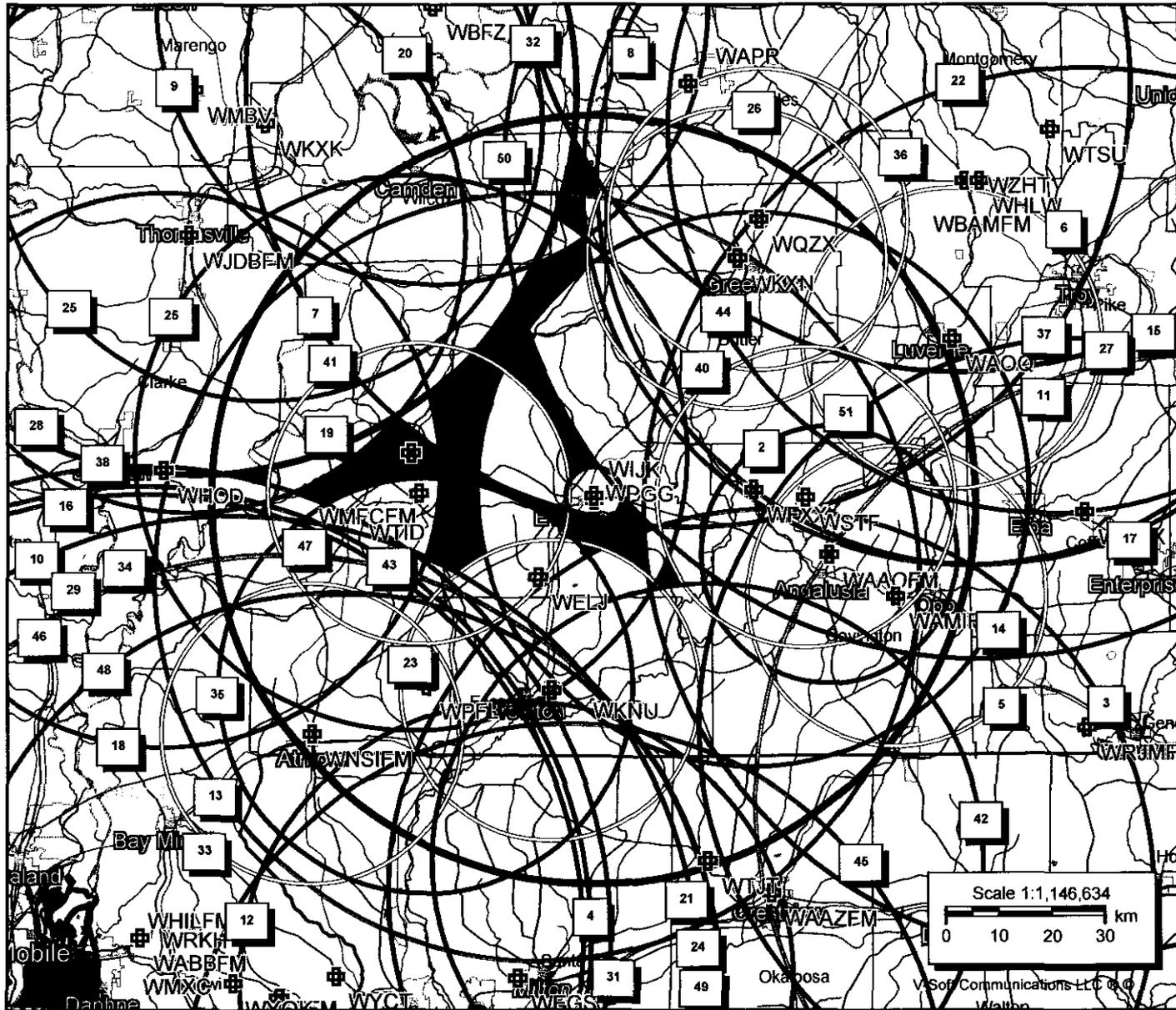
WPGG

Class C1 - 72.3 km
 BLH19960314KD
 Latitude: 31-26-04 N
 Longitude: 086-56-07 W
 ERP: 100.00 kW
 Channel: 227
 Frequency: 93.3 MHz
 AMSL Height: 212.0 m
 HAAT: 127.0 m
 Horiz. Pattern: Omni
 Vert. Pattern: No

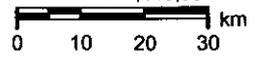
- Class A (3kW) - 24.2 km
- Class A - 28.3 km
- Class C3 - 39.1 km
- Class C2 - 52.2 km
- Class C1 - 72.3 km
- Class C0 - 83.4 km
- Class C - See Table
- AM - 36 mV/m
- Loss of Service Area

- Areas of only 4 services
- Areas of only 3 services

4/12/2006



Scale 1:1,146,634



VSoft Communications LLC ©

#	Call	City	St	Channel	Class	Height for Class C	Distance to 60 dBu Equivalent Circle (km)
1	WPGG-Ref	Evergreen	AL	227	C1		72.3
2	WAAOFM	Andalusia	AL	279	A		24.2
3	WAAZFM	Crestview	FL	284	C1		72.3
4	WABBFM	Mobile	AL	248	C	473	85
5	WAMIFM.C	Opp	AL	272	A		28.3
6	WAOQ	Brantley	AL	262	A		28.3
7	WAPR	Selma	AL	202	C	451	83.5
8	WBAMFM	Montgomery	AL	255	C1		72.3
9	WBFZ	Selma	AL	287	C2		52.2
10	WBLXFM	Mobile	AL	225	C	521	88
11	WDJR.C	Enterprise	AL	245	C0		83.4
12	WEGS.C	Pensacola	FL	219	C2		52.2
13	WELJ.C	Brewton	AL	215	C1		72.3
14	WFX	Georgiana	AL	299	C2		52.2
15	WHHYFM	Montgomery	AL	270	C0		83.4
16	WHILFM	Mobile	AL	217	C	451	83.5
17	WHLW	Luverne	AL	282	C1		72.3
18	WHOD	Jackson	AL	233	C2		52.2
19	WINL	Linden	AL	253	C1		72.3
20	WJDBFM.C	Thomasville	AL	238	C2		52.2
21	WJLQ	Pensacola	FL	264	C	521	88
22	WKMX	Enterprise	AL	294	C	451	83.5
23	WKNU	Brewton	AL	292	A		28.3
24	WKSJFM.C	Mobile	AL	235	C	521	88
25	WKXK.C	Pine Hill	AL	244	C2		52.2
26	WKXN	Greenville	AL	240	A		28.3
27	WLWIFM	Montgomery	AL	222	C	451	83.5
28	WMBV	Dixons Mills	AL	220	C1		72.3
29	WMEZ	Pensacola	FL	231	C0		83.4
30	WMFCFM	Monroeville	AL	257	C2		52.2
31	WMXC	Mobile	AL	260	C	535	88.8
32	WMXS	Montgomery	AL	277	C	451	83.5
33	WNSIFM.C	Atmore	AL	290	A		28.3
34	WPCS	Pensacola	FL	208	C0		83.4
35	WPFL.C	Century	FL	286	C3		39.1
36	WQZX	Greenville	AL	232	A		28.3
37	WRJMFM	Geneva	AL	229	C1		72.3
38	WRKH.C	Mobile	AL	241	C	535	88.8
39	WSTF	Andalusia	AL	218	C3		39.1
40	WTID	Repton	AL	266	A		28.3
41	WTJT	Baker	FL	211	C2		52.2
42	WTKXFM	Pensacola	FL	268	C	451	83.5
43	WTSU.C	Montgomery	AL	210	C1		72.3
44	WUWF	Pensacola	FL	201	C1		72.3
45	WXBMF	Milton	FL	274	C	451	83.5
46	WYCL.C	Pensacola	FL	297	C0		83.4
47	WYCT	Pensacola	FL	254	C1		72.3
48	WYOK	Atmore	AL	281	C	521	88
49	WZHT	Troy	AL	289	C	558	90
50	WIJK (AM)	Evergreen	AL	1470	D	Nighttime int. free contour 36.0 dBu	

CERTIFICATE OF SERVICE

I, Yvette J. Graves, an employee of Garvey Schubert Barer, hereby certify that I have on this 14th day of April, 2006, sent copies of the above "Application for Review" by first-class, United States mail, postage prepaid, to the following:

Marlene H. Dortch*
Secretary
Federal Communications Commission
445 12th Street, S.W.
TW-A325
Washington, D.C. 20554

The Honorable Deborah Taylor Tate*
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Kevin J. Martin*
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

John A. Karousos*
Assistant Chief
Audio Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20555

The Honorable Kathleen Q. Abernathy*
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Lauren A. Colby, Esq.
10 E. Fourth Street
P.O. Box 113
Frederick, Maryland 21705-0113

The Honorable Michael J. Copps*
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Jonathan S. Adelstein*
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

* Via Hand Delivery


Yvette J. Graves