

Docket

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

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In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MB Docket No. 04-219
FM Broadcast Stations.)	RM-10986
(Evergreen, Alabama, and Shalimar, Florida))	

FCC

**MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)**

Adopted: September 5, 2008

Released: October 31, 2008

By the Commission: Commissioners Copps and Adelstein dissenting and issuing a joint statement.

I. INTRODUCTION

1. The Commission has before it an Application for Review filed by Qantum of Fort Walton Beach License Company, LLC ("Qantum") directed to the *Memorandum Opinion and Order* in this proceeding.¹ Star Broadcasting, Inc., successor in interest to Gulf Coast Broadcasting Company, Inc. ("Petitioner"), filed an Opposition to Application for Review and Qantum filed a Reply to Opposition. For the reasons discussed below, we deny the Application for Review.

II. BACKGROUND

2. Pursuant to Section 1.420(i) of the Commission's rules, a station authorization may be modified to specify a new community of license without affording other interested parties an opportunity to file a competing expression of interest.² Any reallocation proposal must result in a preferential arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³ A first local service under FM allotment priority (3) will further this goal by providing a community with a local broadcast voice. In awarding priority (3) preferences, the Commission is concerned with the potential migration of stations from lesser-served rural areas to well-served urban areas. For this reason, the Commission will not blindly apply a first local service

¹ *Evergreen, Alabama, and Shalimar, Florida*, Memorandum Opinion and Order, 21 FCC Rcd 1636 (MB 2005) ("Memorandum Opinion and Order").

² See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Community of License"), Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

³ *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

preference when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. In such circumstances, the Commission requires the city of license modification proponent to submit a *Tuck* showing.⁴ In evaluating these showings, the Commission considers the extent to which the station will provide service to the entire Urbanized Area, the relative populations of the suburban and central city, and, most important, the extent to which the suburban community is independent of the Urbanized Area. In considering a reallocation proposal, the Commission takes into account the well established *Huntington* doctrine which operates as a limited exception to the normal Section 307(b)⁵ presumption that every separate community deserves at least one local transmission service.⁶

3. At the request of Gulf Coast Broadcasting Company, former licensee of Station WPGG, Channel 227C1, Evergreen, Alabama, the Media Bureau substituted Channel 272C2 for Channel 272C1 at Evergreen, reallocated Channel 272C2 to Shalimar, Florida, and modified the Station WPGG license to specify operation on Channel 272C2 at Shalimar.⁷ In this situation, the reallocation resulted in Shalimar (with a population of 718 persons according to the 2000 U.S. Census) having its first local service while Evergreen (with a population of 3,630 persons according to the 2000 U.S. Census) will continue to receive local service from AM Station WIJK. Shalimar is located within the Fort Walton Beach Urbanized Area. Consistent with the guidelines set forth in *Tuck*, the *Report and Order* determined that Shalimar is independent of the Fort Walton Beach Urbanized Area and entitled to consideration as a first local service.⁸ The staff *Memorandum Opinion and Order* denied a Petition for Reconsideration filed by Qantum directed against that *Report and Order*.

4. In its Application for Review, Qantum again argues that Shalimar is dependent upon the Fort Walton Beach Urbanized Area and not entitled to consideration as a first local service. In this regard, Qantum discusses each of the eight factors set forth in *Tuck* used in assessing the independence of a suburban community.⁹ In doing so, it contends that the staff "failed to correctly apply" the *Tuck*

⁴ See *Faye and Richard Tuck*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988) ("*Tuck*"); see also *Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D.C. Cir. 1951) ("*Huntington*"); *RKO General, Inc. (KFRC)*, Memorandum Opinion and Order, 5 FCC Rcd 3222 (1990) ("*RKO*").

⁵ 47 U.S.C. § 307(b).

⁶ *Huntington*, *supra* note 4. (entire metropolitan area treated as one community, when specified community is dependent on central city, the applicant proposes to serve metropolitan area and other conditions are met). See also *Tuck*, *supra* note 4, at 5376.

⁷ *Evergreen, Alabama, and Shalimar, Florida*, Report and Order, 20 FCC Rcd 6300 (MB 2005).

⁸ *Id.* at 6301-03, citing *Tuck*, *supra* note 4.

⁹ *Tuck*, *supra* note 4, at 5378, ¶ 36. The eight factors are: (1) the extent to which the 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 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 local telephone book provided by the local telephone company or zip code; (whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and 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. We have considered a community as independent when a majority of these factors demonstrate that the community is distinct from the Urbanized Area. *Parker and St. Joe, Florida*, Report and Order, 11 FCC Rcd 1095 (MMB 1996); *Jupiter and Hobe Sound, Florida*, Report and Order, 12 FCC Rcd 3570 (MMB 1997).

criteria.¹⁰ Quantum also states that this reallocation from a rural to an Urbanized Area would result in the removal of a second local service from Evergreen and a withdrawal of service to 97,195 persons with 9,062 of these potential listeners receiving fewer than five aural services. In addition, Quantum notes that the reallocation of Station WPGG to Shalimar would result in Cumulus Media, Inc., the "largest broadcaster" in Fort Walton Beach, having an additional outlet in the Fort Walton Beach Urbanized Area.¹¹ Finally, Quantum argues that the staff decision was inconsistent with the Commission decision in *RKO* and the staff action in *Green Valley Broadcasters, Inc.*¹²

III. DISCUSSION

5. We deny the Application for Review. The Shalimar reallocation will result in a preferential arrangement of allotments as required under *Community of License*.¹³ In reaching this determination, we compared the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*. While we concur, in substantial part, with the data set forth in the engineering exhibit included with the Quantum Application for Review, we reject the Quantum argument that the reallocation proposal is contrary to the public interest. Using the block centroid data available from the 2000 U.S. Census, the Shalimar allotment will result in a loss of service to 164,459 persons¹⁴ and provide new service to 227,324 persons. This results in a net gain in service to 62,865 persons. Except for 15,199 persons receiving four aural services and 5,538 persons receiving three aural services, the population losing aural service will continue to be served by five or more aural services.¹⁵ It is our view that a net gain in aural service to 62,865 persons coupled with a first local service to Shalimar (FM allotment Priority 3) outweighs the loss of a fifth aural service to 15,199 persons and the loss of a fourth aural service to 5,538 persons, factors that are considered under FM allotment Priority 4.¹⁶

¹⁰ Application for Review at 5.

¹¹ *Id.* at 4.

¹² *Green Valley Broadcasters, Inc.*, Memorandum Opinion and Order, 20 FCC Rcd 19411 (MB 2005), *app. for review pending* ("Green Valley").

¹³ *Community of License*, *supra* note 2.

¹⁴ In its engineering exhibit, Quantum states that 97,195 persons would lose service instead of the 164,459 persons noted above. Quantum derives this population total on the basis of the licensed Station WPGG facilities. In determining the overall net population gain, we assume maximum facilities for both the existing allotment at Evergreen and the proposed allotment at Shalimar. See *Greenup, Kentucky, Athens, Ohio*, Report and Order, 2 FCC Rcd 4319 (MMB 1987), *recon.*, Memorandum Opinion and Order, 4 FCC Rcd 3843 (MMB 1989), *aff'd in relevant part*, Memorandum Opinion and Order, 6 FCC Rcd 1493 (1991), *aff'd in relevant part*, Memorandum Opinion and Order, 6 FCC Rcd 1841 (1991), *appeal dismissed sub nom. WATH, Inc. v. FCC*, D.C. Cir. No. 91-1268 (Sept. 26, 1991).

¹⁵ The Commission has considered five or more reception services to be "abundant." *Family Broadcasting Group*, 53 RR 2d 662 (Rev. Bd. 1983), *rev. denied* FCC 83-559 (Comm'n Nov. 29, 1983); see also *LaGrange and Rollingwood, Texas*, Memorandum Opinion and Order, 10 FCC Rcd 3337 (1995).

¹⁶ Cf. *Cross Plains, Allen, Benbrook, Brownwood, et al.*, Report and Order, 15 FCC Rcd 5506 (MMB 2000) (approving a city of license modification based on a first local service and net population gain notwithstanding loss of third aural service to 63 persons, a fourth aural service to 176 persons, and a fifth aural service to 3,727 persons); *Arlington, The Dalles, Moro, et al.*, Report and Order, 19 FCC Rcd 12803 (MB 2004), *app. for review and petition for recon. pending*, (approving a first local service to Gladstone, Oregon, with a net gain in aural service notwithstanding the loss of a third aural service to 132 persons and a fifth aural service to 4,510 persons); (continued....)

6. After careful consideration of the entire record in this proceeding, we affirm the Media Bureau determination that a reallocation of Channel 227C2 to Shalimar is entitled to consideration as a *first local service*. We recognize that Shalimar is located in the Fort Walton Beach Urbanized Area. In affirming the Media Bureau action, we apply the *Tuck* criteria to this reallocation proposal.

7. The first area of inquiry concerns the extent to which a station will provide service to an entire Urbanized Area. As a Class C2 facility, Station WPGG would invariably serve a large area and a significant portion of the Fort Walton Beach Urbanized Area. We see no public interest benefit in downgrading any allotment merely to reduce coverage to an Urbanized Area. Because Station WPGG is a Class C2 facility, this coverage does not preclude the proposed service to Shalimar from entitlement to consideration as a first local service. Our second area of inquiry involves the relative populations of Shalimar and Fort Walton. The 2000 Shalimar population of 718 persons is less than four percent of the 19,973 person population of Fort Walton Beach. However, a percentage of less than one percent has not precluded favorable consideration as a first local service.¹⁷ The third inquiry is the independence of the suburban community. In *Tuck*, the Commission set forth eight factors to assess the independence of a suburban community.¹⁸ These are objective criteria that enable us to determine the independence of a suburban community. As discussed below, we agree with the staff that a majority of the factors supports a determination that Shalimar is independent of the Fort Walton Beach Urbanized Area and entitled to consideration as a first local service.

8. The first factor is the work patterns of the Shalimar residents. The purpose of this factor is to ensure that the residents of the suburban community are not reliant upon the Urbanized Area for employment. In this regard, the Petitioner notes that the Shalimar workforce consists of 363 people and that Shalimar is a "net importer of workers" due to the fact that a majority of the Shalimar residents are retired. While there is no data on the percentage of Shalimar residents who work in Shalimar, we do note that data from the 2000 U. S. Census indicates that the mean commuting time for Shalimar workers is 16.3 minutes. From this, we conclude that a significant number of Shalimar residents work in or very near Shalimar and that there are significant employment opportunities for these residents who would wish to work in Shalimar. For these reasons, we find that the residents of Shalimar do not rely on the Fort Walton Beach Urbanized Area for employment. We agree with the staff that this is sufficient to support a favorable finding on this factor.¹⁹ In regard to the second factor, whether the smaller community has its own local newspaper or other media providing news and advertising for Shalimar, we cannot make a finding that Shalimar is independent.

9. The third factor, perception of community leaders and residents, and the fourth factor, local government and elected officials, clearly support the staff determination concerning the independence of Shalimar. Gulf Coast submitted a letter from the Shalimar Town Manager referring to the "strong sense of community." Shalimar, incorporated in 1944, is governed by a mayor and four commissioners.

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Wallace, Idaho, and Bigfork, Montana, Memorandum Opinion and Order, 19 FCC Rcd 15267 (MB 2004) (approving a first local service to Bigfork, Montana, with a net gain in aural service even though 25 percent of the 19,094 persons losing service would receive fewer than five aural services).

¹⁷ See *Ada, Newcastle and Watonga, Oklahoma*, Report and Order, 11 FCC Rcd 16896 (MMB 1996).

¹⁸ See n.9, *supra*.

¹⁹ See *Anniston and Ashland, Alabama, and College Park, Covington, Milledgeville and Social Circle, Georgia*, Memorandum Opinion and Order, 16 FCC Rcd 3411 (MMB 2001) (16% of workforce employed in community sufficient to support a favorable finding on this factor).

Shalimar also has a Special Projects Commissioner, a Finance and Administration Commissioner, a Town Attorney, a Town Manager, a Deputy Town Clerk, a Police Chief and a Maintenance Supervisor. *We also concur with a favorable finding under the fifth factor because Shalimar has its own post office and zip code (32579).*

10. We affirm the favorable finding under the sixth factor regarding commercial establishments, health facilities and transportation system. The Petitioner has identified numerous local businesses, medical offices and a local bus service. On the other hand, we are unable to make a favorable finding on the seventh factor because it appears that Fort Walton Beach and Shalimar are part of the same advertising market. Finally, we are unable to make favorable finding regarding the eighth factor, the extent to which Shalimar relies on the larger metropolitan area for municipal services. While Shalimar does have a Police Chief, two town parks and a nearby library, a majority of municipal services are not provided by the town of Shalimar.

11. We disagree with Qantum's contention that awarding Shalimar a preference as a first local service was inconsistent with the Commission decision in *RKO*. Following the Commission's clarification of the Huntington doctrine in *Tuck*, the Commission determined in *RKO* that applicants proposing Richmond, California, were not entitled to dispositive Section 307(b) preferences over the San Francisco applicants in a comparative proceeding for the facilities of former AM Station KFRC, San Francisco, California, where all of the applicants proposed coverage and facilities identical to Station KFRC, San Francisco, California, where all of the applicants proposed coverage and facilities identical to Station KFRC and would serve the entire metropolitan area. A marginal *Tuck* showing by the applicants designating Richmond as their community of license, in which only two factors clearly supported a finding of independence, was deemed insufficient to overcome the fact that population and signal coverage, as well as the size and proximity of Richmond to the San Francisco Urbanized Area, were compelling reasons to apply Huntington and award no Section 307(b) preference to the Richmond applicants.²⁰ The Commission clarified that "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."²¹

12. This action is also distinguishable from the staff action in *Green Valley*. In that decision, the staff determined that, under Priority 4, a 26th local service to Las Vegas, Nevada, would not be preferred over a second local service to Sahuarita, Arizona, even though the Las Vegas proposal would have served substantially more persons. While we concur that serving a larger number of persons is not always dispositive under Priority 4, the *Green Valley* decision would not be applicable in this proceeding because, as discussed above, we are reallocating Channel 227C2 to Shalimar as a first local service under Priority 3.

13. Finally, Qantum notes that Star Broadcasting, Inc., immediately after acquiring Station WPGG from Gulf Coast Broadcasting Company, entered into a contract to sell Station WPGG to Cumulus Licensing, LLC ("Cumulus"). As a result, Cumulus would be the "largest broadcaster in the Fort Walton Beach Urbanized Area, based either on revenue or audience share." Qantum's arguments are prematurely raised. It remains established policy not to consider such issues in conjunction with an

²⁰ *RKO*, *supra* note 4, at 3223-24, ¶¶ 12-20.

²¹ *Id.* at 3224, n.13.

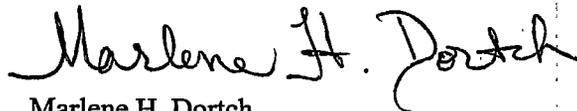
allotment rulemaking proceeding.²² Ownership issues relating to a reallocation are considered in conjunction with the implementing application.²³ As the staff has previously stated, this policy is intended "...to achieve an efficient and orderly transaction of both the rulemaking and the application process" and recognizes that "a rulemaking proceeding involves a technical and demographic analysis of competing proposals in the context of Section 307(b) of the Act."²⁴

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, That the aforementioned Application for Review filed by Qantum of Fort Walton Beach License Company, LLC IS DENIED.

15. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

²² See *Chillicothe and Ashville, Ohio*, Report and Order, 17 FCC Rcd 20418, 20420 (MB 2002), recon. denied, Memorandum Opinion and Order, 18 FCC Rcd 22410 (MB 2003), app. for rev. pending; see also *Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota*, Memorandum Opinion and Order, 16 FCC Rcd 22581 (MMB 2001), recon., Memorandum Opinion and Order, *Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota*, 17 FCC Rcd 25055 (MB 2002); and *Letter from Peter H. Doyle, Acting Chief, Audio Services Division, to Paul A. Cuelski, Esq. et al.*, File No. BAPH-20011001ABD (May 24, 2001).

²³ In this regard, Qantum filed a Petition to Deny raising these arguments directed against the application to assign the Station WPGG license to Cumulus Licensing (File No. BALH-20050503AAW). On March 23, 2006, the staff denied the Qantum Petition to Deny. *Letter from Peter H. Doyle, Chief, Audio Division, to Qantum of Fort Walton Beach License Company, LLC, et al.*, 21 FCC Rcd 2998 (MB 2006), app. for rev. pending.

²⁴ *Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota*, supra note 21, 17 FCC Rcd at 25059-60.

JOINT DISSENTING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS
AND
COMMISSIONER JONATHAN S. ADELSTEIN

Re: *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Evergreen, Alabama and Shalimar, Florida), MB Docket No. 04-219; In the Matter of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Lincoln and Sherman, Illinois), MM Docket No. 01-120.*

One of the more tangible ways in which the Commission's arcane allotment policies have an impact on localism is how we address the migration of radio stations from rural to urban markets.

Not to make light of a serious matter, but this has almost become a parlor game. The goal of the game—whether you're applying for a new station or a station currently licensed to a rural area—is to move as close to a big market as possible. The closer you get to a big market, the more potential listeners you can reach and hence the more advertising dollars you can attract.

But there's a catch—at least there's supposed to be. The Commission is required by Section 307(b) of the Communications Act "to provide a fair, efficient, and equitable distribution of radio service" to "the several States and communities." The FCC cannot simply permit radio stations to relocate from rural areas to well-served urban markets without violating that mandate.

That's when the game gets interesting. Under our FM allotment rules, the Commission will give a preference to any applicant that proposes to serve a community with *no* current licensees—*i.e.*, not that the community doesn't receive radio service (it could receive service from dozens of stations) but that no station lists that particular community as its "community of license." That's where a good atlas comes in handy. The next step is to scour the maps to find a community near an urban area that doesn't yet have any stations licensed to it. You win the game if you get the FCC to grant you a preference for providing "first service" to a close-in suburban community while being able to cover the larger market.

On their face, these cases certainly seem to fit that pattern. Why else would Saga want to change its community of license from Lincoln, Illinois (population 15,369) to the much smaller Sherman, Illinois (population 2,871)—other than Sherman's adjacency to the Springfield urban market? Similarly, why else would Gulf Coast seek to change its community of license from Evergreen, Alabama (population 3,630) to tiny Shalimar, Florida (population 718)—other than Shalimar's proximity to the Ft. Walton urban market?

The Commission is supposed to keep the game honest by declining to grant "first service" preferences for communities that are not truly independent of the nearby urban market. This determination is made by applying the three-pronged *Tuck* test.¹ It is not so much the *Tuck* test itself but the majority's lax application that causes me concern. As described below, the majority's *Tuck* analysis

¹ The *Tuck* standard examines: (1) the station's proposed signal coverage over the urbanized area (the "Coverage Factor"); (2) the relative population size and distance between the suburban community and the urban market (the "Relative Size and Distance Factor"); and (3) the independence of the suburban community, based on various factors that would indicate self-sufficiency (the "Independence Factor"). See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

is so feeble that it scarcely amounts to a test at all.²

The Coverage Factor. The majority finds that the Sherman station could serve most, if not all, of the Springfield Urbanized Area, and that the Shalimar station would “invariably” serve a significant portion of the Ft. Walton Urbanized Area. Nevertheless, the majority “sees no public benefit” in encouraging stations to reduce their coverage areas in order to satisfy *Tuck*, and thus simply ignores this factor. The majority misses the point. To some extent, we are trying to assess the intent of the stations involved. Are they primarily interested in serving the smaller community or the broader urban market? Signal coverage may not be determinative on that question, but it is not irrelevant.

The Relative Size and Distance Factor. Sherman is 6.7 miles from the center of Springfield with a population less than 3% of Springfield’s size (2,871 vs. 111,454). Shalimar is less than 1.5 miles from Ft. Walton Beach—the communities actually are separated by only six-tenths of a mile across Choctawhatchee Bay—and its population is less than 4% its size (718 vs. 19,973). In light of *RKO*—in which the Commission made an unfavorable finding based on a smaller community that was 16 miles from the urban market and 11% of its size—one would think that the majority would make an unfavorable finding here. But the majority ignores the distance factor altogether and relies on a staff decision for the astonishing proposition that a community with *less than 1%* of the relative population of the larger market is not enough to justify an unfavorable finding. If that is true, the second *Tuck* factor may as well be eliminated entirely.

The Independence Factor. In both of these cases the majority concludes that a majority of the eight indicia of “independence” support a favorable finding—5 1/2 out of 8 favorable in *Sherman*, and 5 out of 8 favorable in *Shalimar*.³ But these findings do not withstand scrutiny.

One indicia is work patterns: do the residents of the smaller community remain in the community for work or do they commute to the larger market? The majority speculates that up to 40% of Sherman residents work in Sherman “or its immediate environs” based on the fact that (1) the driving time from Sherman to the center of Springfield is approximately 15-25 minutes, and (2) census data shows that 40% of Sherman residents commute 15 minutes or less to work. But there’s no reason to suppose that all Springfield jobs are located in the center of the city. The Springfield airport, for instance, is closer to Sherman than the city center. Moreover, Sherman is only about 3 miles long and

² At one time, the Commission took the *Tuck* standard seriously. In *RKO General*, 5 FCC Rcd 3222 (1990), the Commission refused to give an applicant credit for providing “first local service” to Richmond, California, a community of 74,676 residents located 16 miles northeast of San Francisco across the San Francisco Bay. The Commission found that the three *Tuck* factors weighed against a granting a Section 307(b) preference to Richmond because of its interdependence with the San Francisco urban market. First, the Commission found that the proposed Richmond facilities were identical to facilities other applicants had proposed to serve the broader San Francisco market. Second, the Commission found that Richmond was located only 16 miles from San Francisco and only had 11% of the population. Finally, applying the eight indicia of independent communities set forth in *Tuck*, the Commission found that there was insufficient evidence that Richmond was truly independent of San Francisco (e.g., only 35.1% of Richmond residents worked in Richmond, Richmond did not have a major public hospital or a local public transportation system, and Richmond was served by 25 other radio stations licensed to San Francisco).

³ The majority does not give full credit for one of the indicia in *Sherman* because while Sherman has its own zip code it does not have its own phone book.

3.1 square miles in total area.⁴ Given its size, any Sherman resident with a commute longer than ten minutes is unlikely to work in the community, thus making the likely number of residents who work in Sherman closer to 7.8% (the Census Bureau estimate of Sherman residents who work less than ten minutes from home).

The Shalimar facts are even more compelling. Shalimar is only about one mile long. At 30 miles per hour, it would take only two minutes to drive the length of the community. The average commute time for Shalimar residents is 16.3 minutes. Somehow, the majority concludes from these facts "that a significant number of Shalimar residents work in or very near Shalimar." This astonishing assertion is unsupported in the record and contrary to common sense.

Another indicia is the "perception of community leaders and residents." The majority makes a favorable finding in *Shalimar* based on a letter from the Town Manager referring to "the strong sense of community." If this is sufficient, we may as well just permanently assign this factor to the favorable column and save the postage.

A third indicia is whether the smaller community has its own commercial establishments, health facilities, and transportation systems. The idea is to assess whether the community is self-sufficient or whether it relies on the larger community to meet its basic needs. Here, neither of these communities has the types of businesses one would expect to find in a truly independent community. For instance, there is no indication that either community has a grocery store, a hospital, a department store, a dry cleaner, or a drugstore. Nevertheless, the majority finds this factor is met in both cases based on a hodgepodge of "local businesses" that just about any community could satisfy.

Thus, it appears that neither of these applications should have passed muster under *Tuck* (although Sherman is a somewhat closer case). If the majority wants to change the *Tuck* standard, it should do so openly rather than maintaining the pretense of a test but draining it of any practical effect. I am not proposing that we eliminate *Tuck*, only that we enforce it. At the same time, I recognize that we have sought comment on a proposal to authorize a station to change its community of license to any community within the same market, provided that if the community being vacated is left without a radio station, the vacating licensee must underwrite the cost of a new LPFM station in the vacated community for the period of one year.⁵ I express no view on that proposal, but believe strongly that whatever rules we adopt in this area must actually be enforced. Creating rules without adequate enforcement only invites cynicism about the Commission's processes and unduly favors Washington insiders who understand the way the game is played.

⁴ See http://www.shermanil.org/images/village_map/VILLAGE_MAP.pdf

⁵ See *Report and Order and Third Notice of Proposed Rulemaking*, 23 FCC Rcd 5922 (2008), ¶ 98.

In the end, of course, this is no game. The residents of Lincoln, Illinois have lost one of their three local stations (and only commercial FM station), and the residents of Evergreen, Alabama have lost one of only two local stations (and their only FM station). Those stations were allowed to pack up and leave because the Commission *no longer provides a meaningful check under Section 307(b)*. The pay-off for station owners can be swift. Gulf Coast Broadcasting has already sold its Shalimar station to radio giant Cumulus and the station is now part of Cumulus's four-station cluster in the Ft. Walton market. So Gulf Coast won a big payday and Cumulus was able to further consolidate its holdings in Ft. Walton.

Game over.