

ORIGINAL

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

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Evergreen, Alabama, and Shalimar, Florida))

MB Docket No. 04-219
RM-10986

FILED/ACCEPTED

JAN 28 2009

Federal Communications Commission
Office of the Secretary

TO: The Secretary
For transmission to: The Commission

**OPPOSITION TO PETITION FOR RECONSIDERATION OF
QANTUM OF FORT WALTON BEACH LICENSE COMPANY, LLC**

Frank R. Jazzo
Howard M. Weiss
Michael W. Richards
*Counsel for American Media Services, LLC
and Contours Inc.*

Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street - 11th Floor
Arlington, Virginia 22209
(703) 812-0400

January 28, 2009

No. of Copies rec'd 0714
List ABCDE

**OPPOSITION TO PETITION FOR RECONSIDERATION OF
QANTUM OF FORT WALTON BEACH LICENSE COMPANY, LLC**

TABLE OF CONTENTS

Summary.....	i
Introduction.....	1
Discussion.....	2
Conclusion.....	15

SUMMARY

American Media Services [and other parties] (the "Petition Opponents") oppose the Petition for Reconsideration (the "Petition") of the Commission's *Memorandum Opinion And Order* ("MO&O") in *Evergreen, Alabama and Shalimar, Florida*, 23 FCC Rcd 15846 (2008), filed by Quantum of Ft. Walton Beach License Company, LLC ("Quantum") on December 22, 2008. The MO&O granted an application to relocate Station WNCV(FM), Evergreen, Alabama, to Shalimar, Florida. In order to defeat the community switch, the Petition asks the Commission to ignore two decades of analytic evolution when applying the tests enunciated in *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988), for award of a first local service preference to a licensee seeking to change community of license.

The Petition Opponents urge the Commission to reject Quantum's approach and uphold the MO&O in light of the dynamic radio marketplace in suburban and exurban markets and improved communications technology. The rapid growth in these areas over the past two decades requires that station moves to more efficiently serve listeners in these areas be evaluated flexibly under Section 307(b). Quantum's strict, literal interpretation of the *Tuck* factors would lock out new service in these markets at the expense of diversity, quality of service, and fair competition. Further, it would prevent enhanced rural service by broadcasters applying for stations in smaller communities to exploit the spectrum opened up by the relocation of outlets to communities within Urbanized Areas. While denial of the Petition may not serve Quantum's monopolistic, pecuniary interest in excluding competition, it will result in a preferential arrangement of allotments under Section 307(b).

Opponents analyze the application of the *Tuck* tests by Quantum and the Joint Dissenting Opinion in the MO&O. They demonstrate that, in many cases, the *Tuck* factors are obsolete or

without rational basis in the real world of broadcasting of 2009. Accordingly, Opponents propose that the Commission revisit *Tuck*, or at the very least, apply the *Tuck* tests in a manner designed to accommodate the economic and demographic changes described. Only in this way will the Commission achieve a fair distribution of service in harmony with Section 307(b).

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

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

TO: The Secretary
For transmission to: The Commission

**OPPOSITION TO PETITION FOR RECONSIDERATION OF
QANTUM OF FORT WALTON BEACH LICENSE COMPANY, LLC**

American Media Services, LLC and Contours, Inc. (the "Petition Opponents") hereby oppose the Petition for Reconsideration (the "Petition") filed on December 22, 2008, by Qantum of Fort Walton Beach License Company, LLC ("Qantum") in the above-referenced proceeding.¹

INTRODUCTION

1. In the Petition, Qantum seeks reconsideration of the Memorandum Opinion and Order in *Evergreen, Alabama, and Shalimar, Florida*, 23 FCC Rcd 15846, 73 FR 70282 (2008) ("Evergreen"). Qantum asserts that the Commission wrongly applied the first service preference analysis required as a result of *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*"). Qantum asks the Commission to reverse nearly two decades of analytic evolution under *Tuck*, in which the Commission responded to well-documented demographic, market and technical changes. Instead, Qantum argues that the Commission decide this 2009 case by reinvigorating precedents from two decades ago. Qantum, thus, proposes to roll back the regulatory evolution

¹ Insofar as this proceeding is a rulemaking, as defined by the Administrative Procedure Act, 5 U.S.C. Sec. 553, this Opposition to Petition for Reconsideration (the "Opposition") is properly filed. It is also timely filed pursuant to 47 C.F.R. Sec. 1.4(b) and the Commission's Public Notice of Jan. 6, 2009, Report No. 2881, 74 Fed. Reg. 1686 (rel. Jan. 13, 2009).

of *Tuck*, despite fundamental differences making those decades-earlier cases so dissimilar from the situation today that they are irrelevant and obsolete.

2. Above all, this is not a fight over the welfare of radio listeners in rural Alabama. Both Qantum and Cumulus Licensing LLC ("Cumulus"), the licensee awarded the community change at issue, are simply garden-variety consolidated radio owners² seeking competitive advantage.³ The Petition Opponents file this Opposition, not to take sides in the battle between Fort Walton broadcast titans, but because of the potential long-term effects this case may have on diversity and overall service.

3. Should the Commission accept Qantum's analysis and rule in its favor, doors will be further closed to new broadcast entrants. As new broadcast entrants are the fount of diversity, the net result will be diminished diversity of voices available on the nation's airwaves. This is but the first of several unintended and harmful consequences that will arise.

DISCUSSION

4. As an increasing number and percentage of Americans have moved to close-in suburban and exurban areas, the Commission has responded by updating the relative criteria used to determine when a community is sufficiently independent to qualify for a first local service preference. In making this determination, the Commission must keep in mind the statutory

² In an ownership report filed for its Fort Walton Beach market stations, Qantum Communications Corporation disclosed interests in no fewer than six concentrated market clusters. A copy is attached hereto at Exh. A.

³ The Petition Opponents take no position as to the relative merits of Qantum's maintenance of its current market position, or the expansion of the number of Cumulus outlets that the change of community at issue portends. Qantum's and Cumulus' success or failure will turn on how well each serves its listeners. The point here is that Qantum's proposed interpretation of *Tuck* principles would lock out new voices in places where growth and change are the norm. Making matters worse, Qantum's *Tuck* interpretation would create the unintended consequence of precluding many additional rural service opportunities.

requirement in Section 307(b) of the Communications Act,⁴ which mandates “fair distribution” of broadcast service, and then apply that mandate in light of current communications technology and listener behavior.

5. The Section 307(b) analysis premised on *Tuck* has continually evolved as the U.S. Census reported population shifts over the past two decades. Indeed, the entire *Tuck* regime, central to this case, rests on a Census-defined structure known as the Urbanized Area (“UA”).⁵

6. With each successive Census since *Tuck*, both the percentage of Americans residing in UAs, and the amount of territory defined as UA, have dramatically increased. Had the FCC ignored these demographic facts, the results would have been perverse. Broadcast resource distribution would have been out of alignment with actual population migration and failed to reflect the changing needs for broadcast service needs created by demographic changes. Rolling the *Tuck* interpretation back to a time some twenty years ago – pre-internet, pre-HD Radio, pre-mobile-Smartphone – as Quantum asks, would now impose on all broadcasters the fossilized spectrum allocations that the Commission has worked so hard to prevent. If Quantum prevails, the precedent set will make it difficult for new entrants, especially small and minority-run businesses, to get a piece of the pie; they will face particular difficulty becoming licensees in the areas where growth is taking place and the prospects for success are good. These are also places where, through both domestic migration and immigration, segments of the population have shown an appetite for the kind of diversity new entrants tend to provide.

7. Quantum’s position would also undermine the creation of new stations, even in rural areas. This is evident in proposals for new stations currently before the Commission. For instance, a new allotment has been proposed on FM Channel 230A in Camden, Alabama. This

⁴ 47 U.S.C. Sec. 307(b).

⁵ *Tuck* at paras. 27-28.

allotment would be impossible but for the move of WPGG-FM (now WNCV-FM) that Quantum opposes in this proceeding. An engineering analysis reveals that at least one additional full-service facility could be allotted in the same spectrum space once WPGG-FM completes its relocation to Shalimar. This sort of station multiplier is common when a rural station is slated to move closer to developing population centers. Spectrum is freed up so that it can be repurposed for use in creating new services. In this way, relocating stations can better serve the public interest by creating opportunities for multiple additional voices to be heard – not only in UAs, but also in rural locales.

8. In addition to establishing precedent that will deprive rural areas of future new services, should Quantum prevail here, it will succeed in strengthening its own monopoly market position. This, in a market where population has increased by more than six percent over just the past five years. The total projected population increase in the area, since 2002, is expected to approach 14% by 2012! Only 18 stations currently operate in this growing FCC Market. These include three licensed to Quantum.⁶ Supply and demand dictate that a rapidly growing market, coupled with a fixed pool of outlets competing in that market, will lead to increased revenue and/or increased appraised values for those operating there. Absent additional outlets, Quantum's stations in the Fort Walton Beach Market will be worth more.

9. In this context, it is certainly understandable that Quantum would want to prevent a new radio station from moving onto its turf and into the hands of a competitor, Cumulus. But as much as it might help Quantum's current business objectives, adopting the underlying public policy that Quantum proposes would disserve the public interest.

⁶ Source: BIA. A BIA market study is attached at Exh. B. This exhibit also includes demographic information concerning the stations attributed to Quantum in the market.

10. In a tragic unintended consequence, a less accommodative policy, such as Quantum attempts to justify, would stifle opportunity everywhere. This policy would do the most harm in America's largest markets. In almost all of the top twenty-five Arbitron Markets, a single consolidated operator may own five FMs and three AMs. In 13 years of consolidation, all of the good coverage stations have been spoken for. This horse is already out of the barn. Even if incumbent stations are offered for sale, they will carry price tags reflecting the protected monopoly regime. So while the populations living within the present UA boundaries – and every Arbitron Market encompasses one or more UAs – are growing in actual and percentage terms, the availability of new broadcast outlets to serve them would be restricted. This is very good news if you, like Quantum, own one or more of the incumbent signals. But unless the FCC plans to compel divestiture – something it has been reluctant to do in the past – Quantum's proposal would result in a static number of voices and no diversity to complement growing populations. For new entrants to gain a foothold in the largest broadcast markets, it is imperative that the FCC foster the multiplier effect, described above, in which migration of stations to UAs opens competitive opportunities for new entrants while releasing spectrum for new stations in outlying areas. Enforcement of *Tuck* criteria as if nothing has changed in two decades (as Quantum proposes), will frustrate this process, and anoint incumbent consolidated operators with royal warrants protecting them from competition. Surely this cannot be the Commission's intent.

11. Complicating matters, between 1990 and 2000, the U.S. Census added 76 new UAs.⁷ These additions re-defined any number of small rural communities, further raising the bar for 307(b) community independence determinations. The net result has been that hundreds of outlying towns were suddenly re-defined as bedroom communities, making it even more difficult

⁷ See, e.g., 67 FR 21962 (2002).

to bring diverse new voices to air. It can be reasonably presumed that the 2010 Census will add more UAs, as the U.S. population continues to grow. If the FCC returns to 20-year-old rubrics to *apply Tuck criteria, broadcast service enhancement will be more restricted, even impossible, in most places in which the U.S. population is increasing.* Such a development would be contrary to Section 307(b), which is at the core of this matter. As noted, it mandates fair distribution of broadcast services. It does not require fossilization of another era's analysis of fair distribution. It can only measure fairness by current needs; simply as a matter of logic, fair distribution means fair to those who are listeners today, not to those who would have been listeners during the Reagan administration.

12. In sum, Quantum appears to advocate a regulatory world in which locked-up spectrum around rapidly growing urban and suburban areas becomes prohibitively expensive, through FCC-mandated artificial scarcity. Quantum wants the government to keep the newbies out, thereby restricting supply and increasing monopoly profitability. These developments would be clearly contrary to the public interest.

13. While concerns over provision of broadcast service in rural areas resonate, both in Section 307(b) and in dissenting Commissioners' statements accompanying the decision at issue here, such concerns are best addressed not with institutionalization of any particular calcified spectrum allocation scheme, but in creative re-engineering that can bring new service to rural areas. Such re-engineering is seen, as noted, in Evergreen, Alabama, where the relocation of a single station opened up two additional spectrum slots for new stations. *See, supra*, para. 7. The Commission has proposals for fostering such re-engineering under consideration. *See, e.g., Petition for Partial Reconsideration, Revision of Procedures Governing Amendments to FM Table of Allotments*, MB Docket No. 05-210, RM-1060, jointly filed by Minority Media and

Telecommunications Council, American Media Services, Inc. and Mattox Broadcasting, Inc., (filed Jan. 19, 2007). Whether through reconsideration in that matter, or through initiation of a separate rule making, the Commission should engage technology and engineering to better address the policy issues that Qantum raises – not to strengthen monopolies and stifle diversity, but to increase diversity and listener choice. In brief, the type of station move that Qantum opposes here, as a function of physics, will make room for additional stations. Such technical efforts, combined with timely and regular application opportunities and FCC auctions, provide the obvious solution to improve broadcast service in both urbanized and rural areas.

14. The Commission must not be complicit in efforts, such as Qantum's, to keep new voices shut out of broadcast ownership. Such exclusion would certainly undermine the strong public interest in diversity and, as a result, fail to fully honor both section 307(b) and other significant and longstanding public interests. *See Report on Broadcast Localism and Notice Of Proposed Rulemaking*, 23 FCC Rcd 1324 (2008) ("Localism Report") ("seeking to promote diversity by increasing and expanding broadcast ownership opportunities for minority- and women-owned businesses and small businesses . . . [to] allow greater diversity in what is seen and heard over the airwaves, and ensure that communities have access to valuable, locally responsive programming").

15. A host of other factors also militate against Qantum's 'just-say-no' approach. First, it would ignore the views of state and local officials. Qantum treats with derision the statement from the political leadership of Shalimar, the community that will gain a first local service, that Shalimar has a strong sense of its own community. *Petition for Reconsideration at* 16. Instead, Qantum would have federally-employed Commission staff set aside such local leadership views as "so meaningless as to be without any value." *Id.* This, despite the Florida

legislature's determination that Shalimar is a municipality entitled to its own government and the clearly stated views of that community's political leadership that Shalimar maintains a civic and community identity separate from that of a nearby larger city. Consultation with local leaders has long been recognized as a key element of localism. As FCC Commissioner Michael Copps asked, when concurring in part and dissenting in part with the *Localism Report* "do these [consolidated] owners meet regularly with local leaders and the public to receive feedback? Why don't we make sure that's done before we allow more consolidation?" *Localism Report*, 23 FCC Rcd at 1402-1403.

16. Quantum would have the Commission, acting in the name of localism, ignore what local leaders think and replace their on-the-ground knowledge and understanding with a perception of "local" created by FCC employees from their desks in Washington. In essence, Quantum wants the FCC to declare that such federal experts better understand what "local" means than do the locals themselves.⁸ In this respect, Quantum proposes that the Commission adopt nothing less than Orwellian doublespeak. The Commission must not do so. *Tuck* analysis should not place the appointed officials at the FCC in the uncomfortable position of telling the representatives of an incorporated community that theirs is not a worthy place.

17. When civic leaders and elected officials write to confirm that the town's citizens consider themselves to be an independent community, this should be dispositive. Indeed, even if a respectable number of individual citizens living in a place affirm their belief that theirs is an independent community, the FCC should take these statements at face value.⁹ This is entirely

⁸ As an example, Shalimar's median household income is more than 50% greater than that of Fort Walton Beach. The value of homes is almost twice that of Fort Walton Beach. Surely matters of budgeting and taxation might be different for Shalimar residents than for others in the metropolitan area.

⁹ This is evident from the record of *Holt, Florida*, MM Docket 00-17.

consistent with the plain language meaning of the word "community." And, it is consonant with a significant duty in local broadcasting: to identify and explore issues of importance to a community by airing programs tailored to speak to those issues. Can the FCC presume to know that the issues in Shalimar are the same as those of the larger market? Can it presume that they are any less important?

18. Quantum offers other evidence irrelevant to the matter at hand. By citing Census-derived average commute time statistics Quantum suggests that Shalimar residents actually depend on bigger neighbors for their livelihoods – and are therefore undeserving of their own broadcast station. *Petition* at 15. The problem with such time-and-distance calculations here is that they are misleading. Commute times are self-reported by Census participants. The data are not gathered from scientific sources. No measurements are taken of actual traffic flow. No one has put stopwatches or GPS to work to gather this data. Further, times are only recorded for those who work outside of the home. No allowance is made for those who might be self-employed telecommuters¹⁰ or disabled.

19. Florida contains 295 incorporated places and Census Designated Places ("CDP") similar in area to Shalimar.¹¹ Of these, 187 are contiguous to or lie entirely within UAs. The mean travel time to work for these communities is 24.7 minutes. It is inconceivable that *all* these communities are populated by people who work elsewhere. But the arithmetic would suggest that the average commuter travels about 13 miles at the assumed 30 miles per hour. Still, how does one explain the similar commute times for the remaining 108 tiny Florida towns lying

¹⁰ 2005 article in the Wall Street Journal, attached at Exh. C, documents the growing trend this decade toward telecommuting.

¹¹ This analysis studied cities, towns, villages and CDPs of 2 square miles area or less. SOURCE: 2000 U.S. Census.

outside UAs? These townspeople report a mean commute time of 25.3 minutes, only 48 seconds longer on average than their city cousins. This hardly represents a meaningful difference. Are these commuters from outlying towns getting to the nearest Urbanized Area in just another 48 seconds? If so, what do we make of those small towns that lie far from any UA?¹² Residents from these places report mean commute times of 24.6 minutes. At the 30 mile per hour speed that Qantum assumes, this would allow bring these populations no closer than the frontier with the nearest UA, *assuming no traffic delays from accidents, storms or school bus stop generated traffic tie-ups.*¹³

20. By contrast, Shalimar reports a comparatively short 16.3 minutes commute time. This is the second shortest commute time of any similarly-sized Florida community. The only community reporting a shorter average commute time is Fisher Island, at 15 minutes. Fisher Island is, however, is only accessible by ferry. As a ferry journey would require more time in transit than the commute time reported, the average worker residing on Fisher Island must also work there. Insofar as Fisher Island and Shalimar are almost identical in area and their average commute times are only 78 seconds minutes different, a reasonable deduction is that the average Shalimar commuter, like his fellow Floridian on Fisher Island, does not leave town. Thus, it is not unreasonable to assume that Shalimar's 16.3 minute commute time similarly represents a pattern of travel where the majority of commuters work in their hometown.

21. Qantum nevertheless misleadingly couples this Census commute time data with geographical information to claim that, given Shalimar's size, it only takes two minutes to drive

¹² "Far," for these analytic purposes, is defined as 12 or more miles from the nearest UA boundary.

¹³ Other states show similar patterns. The shortest commute times are found in South Dakota. In South Dakota, the average town or CDP covers a geographic area of 1.83 square miles. South Dakotans average 15.2 minutes of commute, just a minute less than the average commute time in Shalimar. Source: U.S. Census.

from one end of the city to the other. A more careful analysis, as is detailed here, would reasonably credit this *Tuck* factor to Shalimar. Instead Qantum is again derisive, dismissing the notion with simple time and distance arithmetic. Such an offhand approach simply is not consistent with sound public policy.

22. Any Commission use of such mischaracterized information would violate a core requirement of administrative law: Commission action must be based on evidence. *See Motor Vehicle Mfrs. Assn'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983)

23. Qantum also failed to analyze actual workplace information about Shalimar. A simple scan of online current job postings shows many jobs in Shalimar – even in these difficult economic times. A number of openings have been posted by military and other government vendors with facilities in Shalimar.¹⁴ Qantum also ignores other facts that do not go its way, for instance the presence of other media, including newspapers, Shalimar's city government publishes a quarterly, *Shalimar Tidbits*, delivered to all town residents. Qantum ignores this, even though it constitutes one of the tests under *Tuck*.¹⁵

24. Qantum also gets other verifiable facts wrong. For instance, it wrongly reports to the Commission that Shalimar has no tourism facilities, save "...the local gas station." *Petition* at 6. This would no doubt surprise the operator of the Fairfield Inn at 1280 Eglin Parkway North in Shalimar.

25. Qantum also makes much of the fact that Shalimar has no hospital within its municipal limits. But, over-reliance on the presence of a single institution misleads. Hospitals and health care facilities continue to undergo consolidation everywhere, in part because people

¹⁴ Web-based job postings are attached at Exh. D.

¹⁵ The Commission should re-evaluate this analytic element altogether. Why set a requirement of existing media as a condition for the introduction of a new media outlet when the clear mandate of 307(b) is to allocate services in an equitable manner? This appears absurd.

tend to go home more rapidly after surgery today than they did two decades ago. Moreover, many services are now provided at non-traditional venues. One can now get routine immunizations at the supermarket-based pharmacy. Supermarkets and convenience stores offer a wide array of over-the-counter remedies previously available only by prescription. Quantum's over-reliance on the lack of a Shalimar general hospital poignantly shows how much times have changed. Its proposed reliance on 1980s models provides little insight about how and where people actually go about their lives – and how those realities interact with the need for broadcast services. The Florida Hospital Association lists 408 members today – many of which do not resemble the community hospitals of old. They include acute care, psychiatric, rehabilitation and specialty hospitals. As one might expect, they are disproportionately located within UAs. But exactly where within the UA has less to do with the particular town and more to do with the availability of land for parking lots, office space for physician's private practices, proximity to arterial roads for ambulance access, and other operational factors.

26. Similarly, *Tuck* analysis based on the availability of publicly operated transit systems seems anachronistic in an age of edge cities and sprawl. Private cars are the way most Americans get around. Roads are the community's transportation system. Perhaps the extent to which the community is responsible for building, maintaining and cleaning its roads might be indicative. But whether a municipality runs its own trolley or bus line hardly tells the story.

27. Other *Tuck* factors similarly fail to accurately measure interdependence. *Tuck* factor five, the existence of a local telephone directory or zip code, is quaintly anachronistic – reminiscent of the time when people looked for a phone booth containing an un-vandalized phonebook in order to find something on Main Street. Today, people use cell phones – many

equipped with web browsers that allow them to avoid the frustration arising when someone has ripped the needed yellow pages listing out of the phone booth down by the soda shoppe.

28. These days, the Yellow Pages business is nearly extinct except in the largest metropolitan markets. The cost of printing and delivery can only be recaptured by bundling directories across large regional areas, encompassing many communities. Emerging technologies continue to erode the use and practicality of printed directories. This erosion, in turn, makes dubious the use of phonebooks as a proxy for "communityness." The disappearance of phonebooks also reflects the current trend toward greener distribution technologies. Surely the FCC does not want to encourage the continued existence of paper phonebooks simply as evidence of a community's independence?

29. In the same vein, federal commissions through the years have studied and recommended the closure of myriad post offices, with varying degrees of success. In any event, the geographers and demographers at the Census are surely better qualified to establish what constitutes an independent community than is the U.S. Postal Service. Indeed, schools, hotels, office buildings and prisons sometimes have their own zip code. The White House and the FCC do, as well.

30. *Tuck* factor eight also misses significant aspects of the way people live today. Municipalities are often served by a county school system or a consolidated school district unaffiliated with any particular local government. Equally common are regional fire departments and rescue squads with independent boundaries and separate taxing authority. Such services are provided on a consolidated basis because of efficiencies that can be gained. To penalize communities that cooperate with neighboring communities in the pursuit of efficiencies and cost saving hardly seems like a rational approach to assessing community independence.

31. Incumbent monopolies are also assisted by FCC technical standards for evaluating where new stations may be sited. Qantum, by making much of archaic coverage prediction methods embedded in the FCC's traditional F[50,50] curves, alleges that the move of WPGG-FM to the Fort Walton Beach Market has created an area that is no longer well served. But, by relying on the flat earth policy underlying such traditional contour measures, Qantum fails to provide the Commission with important context to evaluate the issues at hand.

32. The traditional contour measures fail to explain why WZHT-FM, Troy, Alabama, a station home to the Arbitron Montgomery Market, draws a five percent ratings share in Dothan, Alabama – a place in which there is almost no predicted interference-free coverage under the traditional contour calculation.¹⁶ Plenty of Montgomery stations would be delighted with a five percent audience share! Interestingly, Evergreen, the community from which Qantum is trying to prevent a move-in to the Fort Walton Beach area, lies about the same distance from Montgomery as does Dothan. The terrain is similar. Common sense alone indicates that Montgomery stations of a similar power and reach will also enjoy loyal listenership in the Evergreen area. Yet, such reception service is invisible due to limitations the traditional measurement method imposes. This is not just an Alabama anomaly. Examples exist widely. KKDA-FM, Dallas, TX provides no predicted interference-free service to the Waco, TX Arbitron market or to the Waco UA. Yet, historically, KKDA-FM has enjoyed as much as a 10 percent share of measured Waco radio listenership.

33. It is, of course, not surprising that the old contour assumptions no longer reflect reality. Since the FCC FM coverage models were developed, technology has graduated from vacuum tubes to highly-selective, phase-locked-loop tuning and receiver IF stages with nearly

¹⁶ Source: BIA, reporting Arbitron 12+ listenership.

square sideband selectivity response. This is particularly true in cars, where most FM sets also employ diversity antenna schemes. These radios are an order of magnitude or better in their ability to extract a listenable signal from the static. When Quantum claims listeners in and around Evergreen will be deprived of the service that is rightfully theirs, its reliance on antiquated contour determinations ignores the real level of service that will be left when Fort Walton Beach gains a station that used to be licensed to Evergreen.

34. Insofar as Quantum's efforts are nothing more than an attempt by an incumbent, with a growingly lucrative monopoly franchise, to keep another incumbent from adding another station to a consolidated market, it is not surprising that Quantum would promote such unreality over reality. But, the FCC is not in the business of protecting sweet deals. It has a mandate to protect the public interest. The Commission must look at reality and not be swayed by specious and misleading arguments that dress up purely private concerns as if they served the public interest.

CONCLUSION

35. The Commission should reject attempts to promote maintenance of the competitive *status quo* whenever and wherever population growth, migration and other factors militate for greater diversity. It must do so here to support the true public interest, which lies in the fair and equitable distribution of radio services so that growing populations are not underserved and places with diminishing populations still receive service from the nation's broadcast system. Given the proven unreliability of the many tired *Tuck* factors that Quantum wants imposed as black letter law, the Commission should continue to exercise an accommodative discretion when assessing the independence of communities proposed for first broadcast service. For the future, it should also review the continuing validity of the *Tuck* rubric

in light of the demographic and listening trends described. Although this proceeding may not be the place to do so, two decades of dramatically changed circumstances militate for such review as soon as possible.

36. More immediately, it is clear that Qantum's suggested return to the methodology of decades long passed, however self-serving, does not serve the public interest. It will further entrench monopolies, diminish diversity and leave many people with unmet broadcast needs.

37. Such an outcome is clearly contrary to the public interest. For all the reasons stated, the PETITION SHOULD BE DENIED.

Respectfully submitted,



Frank R. Jazzo
Howard M. Weiss
Michael W. Richards
*Counsel for American Media Services, LLC
and Contours Inc.*

Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street - 11th Floor
Arlington, Virginia 22209
(703) 812-0400

January 28, 2009

EXHIBIT A
Qantum Ownership Report

Federal Communications Commission Washington, D.C. 20554 <p style="text-align: center;">FCC 323</p>	Approved by OMB 3060-0010 (June 2002) FOR FCC USE ONLY
<p>OWNERSHIP REPORT FOR COMMERCIAL BROADCAST STATIONS</p> <p>Read INSTRUCTIONS Before Filling Out Form</p>	FOR COMMISSION USE ONLY FILE NO. BOA - 20070831AEJ

Section I - General Information

1.	Legal Name of the Applicant QANTUM OF FT. WALTON BEACH LICENSE COMPANY, LLC		
	Mailing Address 3 STAMFORD LANDING, SUITE 210 46 SOUTHFIELD AVENUE		
	City STAMFORD	State or Country (if foreign address) CT	ZIP Code 06902 -
	Telephone Number (include area code) 2033880048	E-Mail Address (if available)	
	FCC Registration Number: 0008725160	Call Sign WMXZ	Facility ID Number 60811
2.	Contact Representative (if other than Licensee/Permittee) JOHN M. PELKEY, ESQ.		Firm or Company Name GARVEY SCHUBERT BARBR
	Telephone Number (include area code) 2029657880	E-Mail Address (if available) JPELKEY@GSBLAW.COM	
3.	Name of entity, if other than licensee or permittee, for which report is filed		
	Mailing Address		
	City	State or Country (if foreign address)	ZIP Code
	Telephone Number (include area code)	E-Mail Address (if available)	
4.	If this application has been submitted without a fee, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114): <input type="radio"/> Governmental Entity <input type="radio"/> Fee-exempt Report <input type="radio"/> Other <input checked="" type="radio"/> N/A (Fee Required)		

Section II - Ownership Information

5. a. <input checked="" type="radio"/> Biennial	b. <input type="radio"/> Transfer of Control or Assignment of License/Permit	c. <input type="radio"/> Other
d. <input type="radio"/> Amendment to pending application		
for the following stations:		
[Enter Station Information]		

Station List

This Report is filed for the following stations:

Call Letters	Facility ID Number	Location (City/State)	Class of service
WMXZ	60811	VALPARAISO FL	FM

Call Letters	Facility ID Number	Location (City/State)	Class of service
WWAV	19473	SANTA ROSA BEACH FL	FM

Call Letters	Facility ID Number	Location (City/State)	Class of service
WFFY	19475	DESTIN FL	FM

All of the information furnished in this Report is accurate as of 08/30/2007 (Date must comply with 47 C.F.R. Section 73.3615(a), i.e., information must be current within 60 days of filing of this report, when 5(a) below is checked.)

This Report is filed for (check one)

6. Respondent is:

- Sole proprietorship
 Not-for-profit corporation
 Limited partnership
 For-profit corporation
 General partnership
 Other

If "Other", describe nature of the respondent in an Exhibit. [Exhibit 1]

7. List all contracts and other instruments required to be filed by 47 C.F.R. Section 73.3613. (Only licensees, permittees, or a reporting entity with a majority interest in or that otherwise exercises de facto control over the subject licensee or permittee shall respond.)

[Enter Contract/Instrument Information]

Contracts/Instruments Information

List all contracts and other instruments required to be filed by 47 C.F.R. Section 73.3613. (Only licensees, permittees, or a reporting entity with a majority interest in or that otherwise exercises de facto control over the subject shall respond.)

Description of contract or instrument	Name of person or organization with whom contract is made	Date of Execution	Date of Expiration
CERTIFICATE OF FORMATION	STATE OF DELAWARE	05/09/2003	

Description of contract or instrument	Name of person or organization with whom contract is made	Date of Execution	Date of Expiration
LIMITED LIABILITY COMPANY AGREEMENT	MEMBER	05/09/2003	

Description of contract or instrument	Name of person or organization with whom contract is made	Date of Execution	Date of Expiration
AMENDED AND RESTATED CREDIT AND GUARANTY AGREEMENT	LENDERS	10/15/2004	

Description of contract or instrument	Name of person or organization with whom contract is made	Date of Execution	Date of Expiration
AMENDED AND RESTATED PLEDGE AND SECURITY AGREEMENT	LENDERS	10/15/2004	

Description of contract or instrument	Name of person or organization with whom contract is made	Date of Execution	Date of Expiration
SECOND AMENDMENT TO AMENDED AND RESTATED CREDIT AND GUARANTY AGREEMENT AND AMENDMENT TO MAKEWELL AGREEMENT	LENDERS	07/27/2005	

Description of contract or instrument	Name of person or organization with whom contract is made	Date of Execution	Date of Expiration
THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AND GUARANTY AGREEMENT AND SECOND AMENDMENT TO MAKEWELL AGREEMENT	LENDERS	05/22/2007	

8. Capitalization (Only licensees, permittees, or a reporting entity with a majority interest in or that otherwise exercises de facto control over the subject licensee or permittee shall respond.)

[Enter Capitalization Information]

Capitalization

Capitalization (Only licensees, permittees, or a reporting entity with a majority interest in or that otherwise exercises de facto control over the subject licensee or permittee shall respond.)

Class of stock (preferred, common or other)	Voting or Non-voting	Number of Shares			
		Authorized	Issued and Outstanding	Treasury	Unissued
NA					

9. (a.) List the respondent, and, if other than a natural person, its officers, directors, stockholders and other entities with attributable interests, non-insulated partners and/or members. If a corporation or partnership holds an attributable interest in the respondent, list separately its officers, directors, stockholders and other entities with attributable interests, non-insulated partners and/or members. Create a separate row for each individual or entity. Attach supplemental pages, if necessary.

[Enter Owner Information]

Owner Information

List the respondent, and, if other than a natural person, its officers, directors, stockholders and other entities with attributable interests, non-insulated partners and/or members. If a corporation or partnership holds an attributable interest in the respondent, list separately its officers, directors, stockholders and other entities with attributable interests, non-insulated partners and/or members. Create a separate row for each individual or entity. Attach supplemental pages, if necessary.

(Read carefully - The numbered items below refer to line numbers in the following table.)

1. Name and address of respondent and each party to the respondent holding an attributable interest (if other than individual also show name, address and citizenship of natural person authorized to vote the stock or holding the attributable interest). List the respondent first, officers next, then directors and, thereafter, remaining stockholders and other entities with attributable interests, and partners.
2. Gender (male or female).
3. Ethnicity (check one).
4. Race (select one or more).
5. Citizenship.
6. Positional interest: Officer, director, general partner, limited partner, LLC member, investor/creditor attributable under the Commission's equity/debt plus standard, etc.
7. Percentage of votes.
8. Percentage of total assets (equity debt plus).

1. Name and Address	QANTUM OF FT. WALTON BEACH LICENSE COMPANY, LLC, 3 STAMFORD LANDING, SUITE 210, 46 SOUTHFIELD AVENUE, STAMFORD, CT 06902
2. Gender (male or female)	N/A
3. Ethnicity (check one)	<input type="radio"/> Hispanic or Latino <input type="radio"/> Not Hispanic or Latino
4. Race (select one or more)	<input type="radio"/> American Indian or Alaska Native <input type="radio"/> Asian <input type="radio"/> Black or African American <input type="radio"/> Native Hawaiian or Other Pacific Islander <input type="radio"/> White
5. Citizenship	US
6. Positional Interest	RESPONDENT
7. Percentage of votes	0.00
8. Percentage of total assets (equity debt plus)	0.00

1. Name and Address	FRANK D. OSBORN, 3 STAMFORD LANDING, SUITE 210, 46 SOUTHFIELD AVENUE, STAMFORD, CT 06902
2. Gender (male or female)	Male
3. Ethnicity (check one)	<input type="radio"/> Hispanic or Latino