

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 01-120
FM Broadcast Stations.)	RM-10126
(Lincoln and Sherman, Illinois))	

MEMORANDUM OPINION AND ORDER

Adopted: December 1, 2004

Released: December 3, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a Petition for Reconsideration filed by Long Nine, Inc. (“Long Nine”) directed to the *Report and Order* in this proceeding proposing.¹ Saga Communications Inc. (“Saga Communications”) filed an Opposition to Petition for Reconsideration and a Response to Request for Supplemental Information. For the reasons discussed below, we deny the Petition for Reconsideration.

Background

2. At the request of Saga Communications, licensee of Station WMHX, Channel 230B1, Lincoln, Illinois, the *Report and Order* reallocated Channel 230B1 from Lincoln to Sherman, Illinois, and modified the Station WMHK license to specify operation on Channel 230B1 at Sherman. The Sherman allotment was adopted pursuant to Section 1.420(i) of the Commission’s Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.² *Community of License* requires that any reallocation proposal result in a preferential arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³ In this situation, the reallocation resulted in Sherman (with a population of 2,871 persons) receiving its first local service while Lincoln (with a population of 15,369 persons) would continue to receive local service from AM Station WLLM and noncommercial educational FM Station WLNK. The *Report and Order* did not require Saga Communications to submit a showing pursuant to *Faye and Richard Tuck* to demonstrate that Sherman is independent of the Springfield Urbanized Area and entitled to consideration as a first local service.⁴ This

¹ *Lincoln and Sherman, Illinois*, 17 FCC Rcd 5328 (MMB 2002).

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

³ 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).

⁴ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

was because based on then-available Census information Sherman was not to be located within the Springfield Urbanized Area and Station WMHX would not provide more than 50 percent of the Urbanized Area with a 70 dBu signal.⁵

3. In the Petition for Reconsideration, Long Nine reiterates its earlier argument that reallocation proposal is not entitled to a preference as a first local service because Sherman is interdependent with the Springfield Urbanized Area. Long Nine also states that Sherman is now located within the Springfield Urbanized Area and that there are transmitter sites available that would enable Station WMHX to provide a 70 dBu signal to more than 50 percent of the Urbanized Area.

4. In regard to this reallocation proposal, the subsequently-released 2000 U.S. Census includes Sherman in the Springfield Urbanized Area. We also concur with Long Nine that as a Sherman station, it is now possible to locate the Station WMHX transmitter to a site that would serve most, if not all, of the Springfield Urbanized Area with a 70 dBu signal. Had we been aware of the fact that Sherman is located within the Springfield Urbanized Area and/or had Saga Communications proposed such a transmitter site in its petition for rule making, we would have required a showing pursuant to *Faye and Richard Tuck* to demonstrate that Sherman is independent of the Urbanized Area and therefore entitled to consideration as a first local service. The potential transmitter site relocation was noted by Long Nine and the *Report and Order* was specifically predicated on the reallocation being a first local service for Sherman. In the event the licensee of Station WMHX subsequently proposes to relocate its transmitter site to a location that would serve more than 50 percent of the Springfield Urbanized Area, the procedure of first proposing only a change in community of license and subsequently proposing a transmitter site significantly closer to an Urbanized Area would effectively circumvent a specific Commission requirement that the licensee submit a showing pursuant to *Faye and Richard Tuck*. Accordingly, the staff issued a *Request for Supplemental Information* requesting that Saga Communications submit a showing that Sherman is entitled to consideration as a first local service under *Faye and Richard Tuck*.⁶ Thereafter, Saga Communications filed a Response to Request for Supplemental Information.

5. After careful consideration of the entire record in this proceeding, we affirm our earlier determination that a reallocation of Channel 230B1 to Sherman is entitled consideration as a first local service. In doing so, we remain concerned with the potential for stations to migrate from relatively underserved rural areas to well-served urban areas. For this reason, we will not blindly apply a first local service preference to a proposal for a community proximate to an Urbanized Area.⁷ The *Report and Order* provided Sherman with a first local service. This represents a significant public interest benefit notwithstanding the fact that Sherman is located within the Springfield Urbanized Area. We generally presume that a station will, in fact, provide a first local service to a community of license. However, as stated earlier, when a proposed community of license is located within an Urbanized Area or the proposed facility will provide a 70 dBu signal to more than 50 percent of the Urbanized Area, we require that the rulemaking proponent to submit a showing that the proposed community of license is independent of the Urbanized Area and entitled to consideration as a first local service.

⁵ See *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) (required a *Tuck* showing when a 70 dBu signal was provided to more than 50 percent of the Urbanized Area).

⁶ *Lincoln and Sherman, Illinois*, 19 FCC Rcd 17446 (MB 2004).

⁷ See e.g. *Huntington Broadcasting Co. v. FCC*, 192 F 2d 33 (D.C. Cir. 1951); *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990).

6. In evaluating a proposal under *Faye and Richard Tuck*, the first area of inquiry concerns the extent to which a station will provide service to an entire Urbanized Area. As stated earlier, we recognize that Station WMHX could relocate its transmitter site to a location that would serve most, if not all, of the Springfield Urbanized Area. This does not support a conclusion that Sherman is not entitled to consideration as a first local service. As a Class B1 facility, Station WMHX will serve a large area and any transmitter site closer to Springfield will invariably serve a large portion of the Springfield Urbanized Area. Our second area of inquiry involves the relative populations of Sherman and Springfield. The 2000 Sherman population of 2,871 persons is substantial even though it is less than three percent of the 111,454 person population of Springfield. However, a percentage of less than one per cent has not precluded favorable consideration as a first local service.⁸ Our third, and most important, inquiry is the independence of the suburban community. As discussed below, a majority of the eight *Tuck* factors that the Commission has set forth for assessing the independence of a suburban community support a determination that Sherman is independent of the Springfield Urbanized Area and entitled to consideration as a first local service.⁹

8. The first factor is the work patterns of the Sherman residents. In this regard, Saga Communications notes that while there is no formal data regarding where Sherman residents work, data from the 2000 U.S. Census sets forth the travel time to work of the 1,411 working residents of Sherman who do not work at home. Saga Communications refers to the fact that Sherman and Springfield are 6.7 miles apart and that it is a 15 to 25 minute commute from Sherman to Springfield. Data from the 2000 U. S. Census indicates that 7.8 percent of the Sherman workforce works less than ten minutes from their homes, 8.6 percent work 10 to 15 minutes from their homes and 31.3 percent work 15 to 19 minutes from their homes. From this, we conclude that a substantial number of the Sherman workforce do not rely on Springfield for their livelihood. This, coupled with the numerous local businesses identified by Saga Communications in its Response to Request for Supplemental Information, is sufficient to support a favorable finding on this factor.¹⁰ In regard to the second factor, whether the smaller community has its own local newspaper or other media providing news and advertising for Sherman, we cannot make a favorable finding. Sherman relies upon the State Journal Register and the Illinois Times.

⁸ See *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (MMB 1996).

⁹ The Commission set forth the following eight factors: (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; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such a 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*, 11 FCC Rcd 1095 (MMB 1996); *Jupiter and Hobe Sound, Florida*, 12 FCC Rcd 3570 (MMB 1997).

¹⁰ See *Anniston and Ashland, Alabama, and College Park, Covington, Milledgeville and Social Circle, Georgia*, 16 FCC Rcd 3411 (MMB 2001), *recon. denied* 19 FCC Rcd 1603 (2004) (16 percent of workforce employed in community sufficient to support a favorable finding on this factor); *Chillicothe and Ashville, Ohio*, 18 FCC Rcd 2240 (MB 2003), *app for review pending* (39 percent of workforce employed in community sufficient to support a favorable finding on this factor).

9. The third factor, perception of community leaders and residents, and the fourth factor, local government and elected officials, clearly support a determination concerning the independence of Sherman. Saga Communications has submitted a letter from the Mayor of Sherman attesting to fact that Sherman was incorporated in 1959 and is a separate and distinct community. Sherman is governed by a mayor and a six elected trustees. According to the Mayor, Sherman has its own businesses, churches and civic organizations and does not rely on Springfield for police, fire protection, schools and libraries. Even though Sherman has its own zip code, we are unable to make a favorable finding under the fifth factor because Sherman does not have its own phone book. In this regard, approximately two thirds of Sherman residents receive telephone service from Verizon and are listed in the Lincoln phone book along with other smaller communities while the remaining residents receive telephone service from SBC and are listed in the Springfield phone book.

10. We are making a favorable finding under the sixth factor regarding commercial establishments and health facilities. Saga Communications has identified numerous local businesses including banks, grocery stores, restaurants and a public golf course. On the other hand, we are unable to make a favorable finding on the seventh factor because Sherman and Springfield are part of the same advertising market. Finally, we are making a favorable finding regarding the eighth factor, the extent to which Sherman relies on Springfield for municipal services. Sherman has its own police and volunteer fire department and, as stated earlier, does not rely on Springfield for other municipal services.

11. This document is not subject to the Congressional Review Act. The Commission is, therefore, not required to submit a copy of this *Memorandum Opinion and Order* to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)A), because the petition for reconsideration was denied.

12. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by the Long Nine, Inc. IS DENIED.

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

14. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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