

**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
(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 Long Nine, Inc. (“Long Nine”) directed to the staff *Memorandum Opinion and Order* in this proceeding.¹ Saga Communications Inc. (“Saga Communications”) filed an Opposition to Application for Review and Long Nine filed a Reply to Opposition to Application for Review. 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 Section 1.420(i) and the FM allotment priorities were adopted to further the Commission’s longstanding policy goal to provide a fair and equitable distribution of radio service.⁴ 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

¹ *Lincoln and Sherman, Illinois*, Memorandum Opinion and Order, 19 FCC Rcd 23581 (MB 2004) (“*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). See also 47 C.F.R. § 1.420(i).

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).

⁴ See 47 U.S.C. § 307(b). See also *Community of License*, *supra*, 5 FCC Rcd at 7095.

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 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.⁵ In evaluating these showings, the Commission considers the extent 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.

3. At the request of Saga Communications, licensee of Station WMHX, Channel 230B1, Lincoln, Illinois, the Media Bureau reallocated Channel 230B1 from Lincoln to Sherman, Illinois, and modified the Station WMHX license to specify Sherman as the community of license.⁶ In this situation, the reallocation resulted in Sherman (with a population of 2,871 persons) gaining its first local service while Lincoln (with a population of 15,369 persons) retained local service from AM Station WLLM and noncommercial educational FM Station WLNX.⁷ Long Nine noted the proximity of Sherman to the Springfield Urbanized Area and suggested that the 2000 U.S. Census, that was released later in the year, may establish that Sherman is now located within the Springfield Urbanized Area. However, based on the Saga Communications representation that Sherman was not located within the Springfield Urbanized Area and because Saga Communications specified an allotment reference site from which Station WMHX would not provide a 70 dBu signal to more than 50 percent of the Urbanized Area, the staff did not request a *Tuck* showing.⁸ The *Report and Order* modified the city of license of Station WMHX based on the staff's determination that Sherman was entitled to a priority (3) preference.

4. In its Petition for Reconsideration, Long Nine argued that the reallocation proposal is not entitled to a preference as a first local service because Sherman is interdependent with the Springfield Urbanized Area.⁹ Long Nine also disputed the Saga Communications claim that Sherman is not located within the Springfield Urbanized Area. It also demonstrated 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.

5. In regard to this reallocation proposal, the 2000 U.S. Census became available and confirmed the fact that Sherman is located in the Springfield Urbanized Area. The staff noted that had it been aware of the fact that Sherman is located within the Springfield Urbanized Area, it would have required a *Tuck* showing.¹⁰ Accordingly, Saga Communications was requested to submit a *Tuck* showing.¹¹ After evaluating the additional information submitted by Saga Communications, the Bureau found that Sherman is independent of the Springfield Urbanized Area, and determined that the Sherman reallocation

⁵ 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*").

⁶ *Lincoln and Sherman, Illinois*, Report and Order, 17 FCC Rcd 5328 (MB 2002) ("*Report and Order*").

⁷ *Id.* at 5329.

⁸ See *Headland, Alabama, and Chattahoochee, Florida*, Report and Order, 10 FCC Rcd 10352 (MMB 1995) (required a *Tuck* showing when a 70 dBu signal of a station operating at the specified allotment reference site would cover more than 50 percent of the Urbanized Area).

⁹ Petition for Reconsideration at 2.

¹⁰ *Lincoln and Sherman, Illinois*, Request for Supplemental Information, 19 FCC Rcd 17446 (MB 2004).

¹¹ *Id.*

proposal is entitled to consideration as a first local service. Accordingly, the Bureau denied Long Nine's Petition for Reconsideration.

6. On review, Long Nine argues that the *Tuck* analysis in this proceeding was erroneous. Based on its own analysis, Long Nine again concludes that Sherman is dependent upon the Springfield Urbanized Area and not entitled to consideration as a first local service. Long Nine asserts that Saga Communications would "undoubtedly" relocate the Station WMHX transmitter to a site that would provide a 70 dBu signal to Springfield. Finally, Long Nine contends that the Bureau decision was inconsistent with prior precedent.¹²

III. DISCUSSION

7. After careful consideration of the entire record in this proceeding, we affirm the staff determination that a reallocation of Channel 230B1 to Sherman is entitled to consideration as a first local service. Here, we find that the staff correctly requested a *Tuck* showing once it was determined that Sherman is located within the Springfield Urbanized Area.

8. In evaluating a proposal under *Tuck*, the first area of inquiry concerns the extent a station will provide service to an entire Urbanized Area. Although Station WMHX could specify a transmitter site that would permit Station WMHX to serve most, if not all, of the Springfield Urbanized Area, this does not compel us to find that Sherman is not entitled to consideration as a first local service. As a Class B1 facility, Station WMHX will serve a large area. Any transmitter site closer to Springfield will invariably serve a large portion of the Springfield Urbanized Area. We see no public interest benefit in downgrading an allotment or restricting the location of a transmitter site merely to reduce coverage of an Urbanized Area.¹³ 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.¹⁴ Our third inquiry is the independence of the suburban community. In *Faye and Richard Tuck*, we set forth eight factors in assessing the independence of a suburban community.¹⁵ Long Nine discusses each of the eight *Tuck*

¹² See Long Nine Application for Review at 9 citing *RKO, supra*, and *Romar Communications, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 23128 (2004).

¹³ Providing a 70 dBu signal to an Urbanized Area, or promoting the fact that it serves an Urbanized Area, does not establish that a station will not meet its primary obligation to serve its community of license.

¹⁴ See *Ada, Newcastle and Watonga, Oklahoma*, Report and Order, 11 FCC Rcd 16896 (MMB 1996).

¹⁵ 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; (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 as a police, fire protection, schools, and libraries. We have considered a community as independent when a majority of these factors demonstrates that the community is distinct from the urbanized area. *Parker and St. Joe, Florida*, Report and (continued....)

factors and concludes that only three of these factors demonstrate that Sherman is independent of the Springfield Urbanized Area. As discussed below, we find that the staff correctly determined that a majority of the factors support the conclusion that Sherman is independent of the Springfield Urbanized Area and, therefore, entitled to consideration as a first local service.

9. The first factor is the extent to which community residents work in the larger community rather than the specified community. Saga Communications identifies numerous businesses located in Sherman that provide an opportunity for employment. It also estimates, based on data in the 2000 U.S. Census regarding commuting times of the Sherman workforce, that forty percent work in Sherman or its immediate environs rather than in Springfield.¹⁶ Such a showing represents a significant employment base in Sherman and thus a finding of independence on this first factor under Commission precedent.¹⁷ In making this finding, we reject the Long Nine contention that the substantial employment opportunities in Sherman, and outside of Springfield, are insufficient to support this finding. *Tuck* does not require that a majority of the workforce be employed in the specified community. Employment of a majority of the workforce in the specified community is not required to demonstrate a significant employment base and the community's independence under *Tuck*.

10. The third factor, perception of community leaders and residents, and the fourth factor, local government and elected officials, also 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. Saga Communications has also submitted 54 Declarations from local residents stating that Sherman is a separate and distinct community from Springfield. Sherman is governed by a mayor and 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.

11. The staff properly determined that Sherman has sufficient commercial establishments and health facilities to support an independence finding under factor six. Saga Communications has identified numerous local businesses including banks, restaurants and a public golf course. Under factor eight, Sherman does not rely 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. Finally, Saga Communications's proposal merits a favorable finding regarding the fifth factor insofar as

(Continued from previous page) _____

Order, 11 FCC Rcd 1095 (MMB 1996); *Jupiter and Hobe Sound, Florida*, Report and Order, 12 FCC Rcd 3570 (MMB 1997).

¹⁶ In its Response to Request for Supplemental Information, Saga Communications states that there is no published information regarding the extent to which Sherman residents work in Springfield rather than Sherman. According to the 2000 U.S. Census, 7.8 percent of the Sherman residents work less than ten minutes from their homes, 31 percent work 15 to 19 minutes from their homes and 28.6 percent work 20 to 24 minutes from their homes. Saga Communications notes that Sherman is 6.7 miles from Springfield, the commute is approximately 15 to 25 minutes, and that Springfield is the only major employment base in this radius. From this, Saga Communications states that 60 percent of the 1,411 working residents of Sherman may be working in Springfield, the remaining 40 percent work either in Sherman or its immediate environs.

¹⁷ 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).

Sherman has its own zip code. Full credit is not warranted, however, given that Sherman does not have a separate phone book.

12. While a majority of the factors supports a finding that Sherman is independent of the Springfield Urbanized Area, two factors do not support this finding. The second factor, whether the smaller community has its own local newspaper or other media providing news and advertising for Sherman, does not support an independent finding because Sherman relies upon the State Journal Register and the Illinois Times. Under the seventh factor, Sherman and Springfield are part of the same advertising market.

13. We disagree with Long Nine's contention that awarding Sherman a preference as a first local service was inconsistent with either the *Huntington* doctrine or the Commission's decision in *RKO*.¹⁸ *Huntington* involved mutually exclusive applications for a five kilowatt AM facility. The court affirmed the Commission decision not to award dispositive Section 307(b) preferences for first local services to applicants that proposed either Huntington Park or Monrovia as their community of license over a third applicant that proposed Los Angeles, where all three applicants would provide technically comparable service to the Los Angeles metropolitan area and the applicants for Huntington Park and Monrovia proposed power in excess of what was needed to serve their proposed communities of license. Thus, *Huntington* is a limited exception to the usual Section 307(b) presumption that every community needs at least one local transmission service where competing applications are filed for separate communities that are interdependent with a central city. 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 renewal proceeding for AM spectrum long assigned to 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-Oakland Urbanized Area, were compelling reasons to apply *Huntington* and award no Section 307(b) preference to the Richmond applicants.¹⁹ 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."²⁰ In contrast, Saga Communications proposes to serve less than fifty percent of Springfield and, as noted above, its proposal warrants favorable findings on a majority of the *Tuck* factors.

14. Long Nine's reliance on the Commission's decision in *Romar Communications, Inc.* is also misplaced.²¹ That case involved mutually exclusive AM applications that proposed new AM broadcast stations for two suburbs of Ithaca, New York, Lansing and South Hill, New York. The Commission found that, under *Tuck*, the proposed communities were interdependent with the Ithaca Urbanized Area

¹⁸ *Huntington*, *supra* note 5, and *RKO*, *supra* note 5.

¹⁹ *RKO*, 5 FCC Rcd at 3223-24, ¶¶ 12-20.

²⁰ *Id.* at 3224, n. 13.

²¹ *Romar Communications, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 23128 (2004), *recon. denied*, 23 FCC Rcd 2512 (2008).

and that the Ithaca Urbanized Area should be treated as a single community for purposes of Section 307(b). Because the applicants for Lansing and South Hill effectively proposed to serve the same community, the Commission resolved the mutually exclusive AM license applications by auction rather than “blindly award a first local service preference to proposed communities in well-served urbanized areas, or where granting the preference would lead to an anomalous result.”²² Contrary to Long Nine’s suggestion,²³ the key consideration in *Romar Communications* was the finding of interdependence under *Tuck*, not the proposed communities’ location in, or the applicants’ proposed service to, the Urbanized Area. In contrast to the subject proceeding, where a majority of the *Tuck* factors demonstrates Sherman’s independence from Springfield, the staff in *Romar Communications* determined and the Commission agreed that a majority of the eight *Tuck* factors did not support a finding that either Lansing or South Hill is independent of the Ithaca Urbanized Area. In this proceeding, Long Nine has not set forth any basis to conclude that the staff’s analysis of the eight *Tuck* factors in *Romar Communications* undermines the staff’s determination in this case that a majority of the *Tuck* factors supports a finding that Sherman is independent of the Springfield Urbanized Area.

15. Throughout this proceeding, Long Nine has argued that Saga Communications intends to serve the Springfield Urbanized Area and not provide a local service to Sherman. At this juncture, we cannot deny the proposed reallocation on the basis of speculation that Station WMHX will not provide a local service to Sherman. Notwithstanding the fact that as a Class B1 facility, Station WMHX promotes itself as providing service to a large area, Station WMHX is required to provide a local service to Sherman.²⁴ While we no longer require a licensee to adhere to detailed ascertainment procedures, meet non-entertainment programming guidelines or maintain detailed programming logs, various Commission rules are designed to ensure that broadcast stations serve their licensed communities. Each licensee is required to list in its public inspection file the programs that have addressed the most significant community issues during the previous three months.²⁵ These lists are retained in the public inspection file until final action on the station’s renewal application. This represents a significant and meaningful requirement for Saga Communications to serve Sherman. This also provides a tangible means for the residents of Sherman and the Commission staff in considering a Station WMHX application for renewal of license, to determine whether Station WMHX is, in fact, serving Sherman and operating in the public interest.

16. 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.

IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED, That the aforementioned Application for Review filed by the

²² *Romar Communications, Inc.*, 19 FCC Rcd at 23130, ¶6 & n.13, *citing* *RKO*, 5 FCC Rcd at 3223.

²³ Long Nine Reply to Opposition, n. 2.

²⁴ *See, e.g., In the Matter of Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425 (2004).

²⁵ *See* 47 C.F.R. § 73.3526(e)(12). *See also* *Deregulation of Radio*, Report and Order, 84 FCC 2d 968 (1981), *recon. granted in part*, 87 FCC 2d 796 (1981), *aff’d in relevant part, Office of Communication of United Church of Christ v FCC*, 707 F.2d 1413, 1435 (D.C. Cir. 1983).

Long Nine, Inc. IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**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.