

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

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MB Docket No. 02-212
FM Broadcast Stations.)	RM-10516
(Vinton, Louisiana, Crystal Beach, Lumberton)	RM-10618
and Winnie, Texas))	

MEMORANDUM OPINION AND ORDER

Adopted: September 24, 2008

Released: May 22, 2009

By the Commission: Commissioners Copps and Adelstein concurring and issuing separate statements.

I. INTRODUCTION

1. The Commission has before it an Application for Review and Supplement to Application for Review filed by Charles Crawford directed to the staff *Memorandum Opinion and Order* in this proceeding.¹ Tichenor License Corporation (“Tichenor License”) filed an Opposition to Application for Review and Charles Crawford filed a Reply. For the reasons discussed below, we deny the Application for Review.

II. BACKGROUND

2. At the request of Charles Crawford, the *Notice of Proposed Rule Making* in this proceeding proposed the allotment of Channel 287A at Vinton, Louisiana, as a first local service.² In response to the *Notice*, Tichenor License, licensee of Station KOBT, Channel 264C, Winnie, Texas, and Station KLTO, Channel 287C2, Crystal Beach, Texas, filed a Counterproposal. In the Counterproposal, Tichenor License proposed the reallocation of Channel 264C from Winnie to Lumberton, Texas, and modification of its Station KOBT license to specify Lumberton as the community of license. In order to replace the loss of the sole local service at Winnie, Tichenor License also proposed the reallocation of Channel 287C2 from Crystal Beach to Winnie, and modification of its Station KLTO license to specify Winnie as the community of license. The reallocation of Channel 287C2 to Winnie conflicted with the proposed Channel 287A allotment at Vinton.

3. The *Report and Order* granted the Tichenor License Counterproposal. This action was taken 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

¹ *Vinton, Louisiana, Crystal Beach, Lumberton and Winnie, Texas*, 19 FCC Rcd 22660 (MB 2004) (“*Vinton M&O*”).

² *Vinton, Louisiana*, 17 FCC Rcd 15191 (MB 2002).

opportunity to file competing expressions of interest.³ *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*.⁴ In this situation, the reallocation resulted in Lumberton gaining its first local service while preserving a first local service at Winnie by modifying the Station KLTO license. The reallocation of Channel 264C to Lumberton does not involve any change in the technical facilities of Station KOBT. On the other hand, the reallocation of Channel 287C2 to Winnie will result in a net gain in service to 269,619 persons. Tichenor License provided a showing pursuant to *Faye and Richard Tuck* demonstrating that Lumberton is independent of the Beaumont Urbanized Area. In granting the Tichenor License Counterproposal, we denied the conflicting Charles Crawford proposal requesting a Channel 287A allotment at Vinton, Louisiana, as a first local service. That action was premised on the public interest benefit of a first local service to the larger community of Lumberton (population of 8,731) compared to a first local service to the smaller community of Vinton (population of 3,338). The *Vinton M&O* denied Crawford's Petition for Reconsideration.

4. In his Application for Review, Charles Crawford again argues that his Vinton proposal for a first local service in a rural area should be preferred over a "contrived proposal" for a first local service in a "tiny community in a corner" of an Urbanized Area. In this regard, Charles Crawford also contends that the finding that Lumberton was deserving of a first local service preference under *Faye and Richard Tuck* was "impermissibly subjective" and was "arbitrary and capricious, lacking reasoned decision making as required by law." In addition, Charles Crawford contends that the *Tuck* procedure does not provide any means of ensuring that the proposed station will be a "meaningful local outlet" and not an additional service to the Urbanized Area. Finally, Charles Crawford claims that the reallocation of Station KLTO from Crystal Beach to Winnie created a combination of Tichenor License stations which would become a "powerhouse" in the Houston and Beaumont Urbanized Areas.

III. DISCUSSION

5. We deny the Application for Review. At the outset, we concur with the staff determination that Lumberton is entitled to consideration as a first local service under the guidelines set forth in *Faye and Richard Tuck*.⁵ Nevertheless, we remain concerned with the potential for stations to migrate from relatively underserved rural areas to well-served urban areas.⁶ For this reason, we will not blindly apply a first local service preference to a proposal proximate to or located within an Urbanized Area. Contrary to Crawford's assertion, a finding that a particular proposal is entitled to consideration as a first local service under *Tuck* is not "impermissibly subjective." As detailed below, *Faye and Richard Tuck* sets forth specific and objective criteria which enable us to determine whether the Lumberton reallocation proposal warrants the award of a first local service preference.

³ 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).

⁴ 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).

⁵ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁶ In this regard, we note that Vinton and the area that would be served by a Class A FM allotment receives at least five aural services. We consider five or more aural services to be "abundant." See *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*, 10 FCC Rcd 3337 (1995).

6. The first area of inquiry concerns the extent to which a station will provide service to an entire Urbanized Area. In this instance, Station KOB T already provides the entire Beaumont Urbanized Area with a 70 dBu signal and Tichenor License does not propose to relocate the Station KOB T transmitter site. The fact that Station KOB T will continue to cover the entire Beaumont Urbanized Area with a 70 dBu signal does not preclude a determination that Station KOB T will, in fact, provide a first local service to Lumberton.⁷ Our second area of inquiry involves the relative populations of Lumberton and Beaumont. According to the 2000 U.S. Census, the Lumberton population of 8,731 persons is substantial even though it is eight per cent of the 113,866 population of Beaumont. Such a percentage does not preclude favorable consideration as a first local service.⁸ Our third, and most important inquiry is the independence of the suburban community. In *Faye and Richard Tuck*, the Commission identified eight factors to be considered in assessing the independence of a suburban community.⁹ The Lumberton reallocation proposal was evaluated using each of these factors. For the reasons discussed below, the majority of the *Tuck* factors supports the staff determination that Lumberton is independent of the Beaumont Urbanized Area and entitled to consideration as a first local service.

7. According to the U.S. Census, 19 percent of the Lumberton workforce works in Lumberton. This is consistent with previous actions in which we made a favorable finding regarding the employment of community residents within the specified community.¹⁰ The Hardin County News, with offices located in Lumberton, covers local news and sports. Lumberton also has its own webpage. We also find that the residents of Lumberton perceive Lumberton as a separate community. This is evidenced by the Lumberton Chamber of Commerce, the Lumberton Lions Club, the Lumberton Men's Civic Club and the Lumberton Civic Women's League. Lumberton was incorporated in 1973 and is governed by an elected mayor and six council members. With an annual budget of \$2,131,671 and 30 positions, the Lumberton city government includes a secretary, city attorney, municipal court, a planning

⁷ See *East Los Angeles, Long Beach and Frazier Park, California*, 10 FCC Rcd 2864 (MMB 1995) (did not require a *Tuck* showing when a proponent sought to change a community of license from one community to another community in the same Urbanized Area).

⁸ *C.f. Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (MMB 1996) (the population of the suburban community was less than one percent of the central city population); *Scotland Neck and Pinetops, North Carolina*, 7 FCC Rcd 5113 (MMB 1992) (the population of the suburban community was three percent of the central city population).

⁹ 3 FCC Rcd at 5377. The eight factors are: (1) the extent to which the community residents work in the larger metropolitan area, rather than in 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 the community leaders and residents perceive the specified community as being 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 phone book 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 police, fire protection, schools and libraries. We have considered a community to be 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 per cent of the workforce employed in a community sufficient to support a favorable finding on the work patterns factor).

and zoning commission, a public library and a police and fire department. Lumberton is located in Hardin County, and receives no governmental services from Beaumont, located in Jefferson County. Lumberton has its own zip code and local post office. The Lumberton Independent School District, headquartered in Lumberton, provides public educational services for area residents. Lumberton also has its own local businesses, health care facilities, churches and civic organizations. In summary, the record plainly establishes that Lumberton is a significant and substantial community and sufficiently independent of Beaumont to warrant consideration as a first local service. Contrary to Crawford's suggestion, there is nothing "impermissibly subjective" about the *Tuck* factors for evaluating the independence of a suburban community generally or as applied to the proposed reallocation of Channel 246C to Lumberton.¹¹

8. As noted earlier, the Tichenor License Counterproposal contained two reallocation proposals. First, Tichenor License proposed the reallocation of Channel 246C from Winnie to Lumberton and modification of the Station KOBT license to specify Lumberton as the community of license. To replace the loss of the sole local service at Winnie, Tichenor License proposed the reallocation of Channel 287C2 from Crystal Beach, Texas, to Winnie and modification of its Station KLTO license to specify Winnie as the community of license. This was the aspect of the Counterproposal that conflicted with Charles Crawford's underlying Channel 287A proposal at Vinton. The staff properly concluded that the proposed reallocation of Channel 246C to Lumberton provided a significant and decisional public interest benefit by bringing first local service to a community with a population of 8,731. By comparison, Crawford's proposal will provide first local service to the smaller community of Vinton with a population of only 3,338. Thus, the resolution of this proceeding was properly based on a comparison of first local services at Lumberton and Vinton. As an additional public interest benefit, the reallocation of Channel 287C2 to Winnie also resulted in a population coverage gain of 269,619 persons. Moreover, there is no merit to Crawford's entirely unsubstantiated claim that Tichenor's Lumberton proposal was not bona fide and intended merely to preclude Crawford's conflicting Vinton proposal.

9. In regard to the reallocation of Channel 246C to Lumberton, we reject Crawford's speculative argument that Station KOBT will serve the Beaumont Urbanized Area and not Lumberton. As part of the renewal process, the staff evaluates the extent to which a station has served as a meaningful local outlet. In this regard, the Commission's rules no longer require that licensees adhere to detailed ascertainment procedures, meet nonentertainment programming guidelines or maintain detailed programming logs. Various Commission rules, however, ensure that broadcast stations serve their licensed communities. Each licensee is expected to be responsive to the issues facing its community of license.¹² To this end, each licensee is required to list in its public inspection file the programs that have addressed the most significant issues during the previous three months.¹³ These lists are retained in the public inspection file until final action on the renewal application. This represents a significant and meaningful requirement to serve its community of license. This also provides a tangible means for local residents and the Commission staff, in considering applications for renewal of license, to determine

¹¹ In his Study, Charles Crawford merely lists 53 decisions along with maps in which we made a determination that a proposal was entitled to consideration as a first local service under *Faye and Richard Tuck*. But Crawford has not identified any deficiency in the analysis in those cases or explained why a different approach is warranted here.

¹² See *Deregulation of Radio*, 84 FCC 2d 968 (1981), *recon. granted in part*, 87 FCC 2d 797 (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).

¹³ 47 C.F.R. § 73.3526(e)(12).

whether the station is serving the local community.¹⁴ Moreover, broadcast stations must maintain main studios in or near their communities of license to assure adequate public access to the station. Our technical rules also require that each full service broadcast station place a city-grade signal over most or all of its community of license. Finally, to the extent Charles Crawford's reference to a Tichenor License "powerhouse" in the Beaumont Urbanized Area suggests a violation of the multiple ownership rules, it is established policy that we do not consider multiple ownership issues in conjunction with an allotment rulemaking proceeding.¹⁵

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, That the aforementioned Application for Review filed by the Charles Crawford IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁴ 47 U.S.C. § 309(k).

¹⁵ See *Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota*, 17 FCC Rcd 25055 (MMB 2002); see also *Letter from Peter H. Doyle, Acting Chief, Audio Services Division, to Paul A. Cuelski, Esq., et al*, File No. BAPH-200112AIA (May 24, 2001).

**CONCURRING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Vinton, Louisiana, Crystal Beach, Lumberton and Winnie, Texas), MM Docket 02-212.*

In prior statements, I have noted my concerns with the Commission's lax application of the *Tuck* standard for determining when a proposal is entitled to consideration as a first local radio service. *See, e.g., Table of Allotments for FM Stations in Evergreen, Alabama and Shalimar, Florida, released October 31, 2008.* Those concerns remain. The facts before us here, however, are a close call and it is not clear that the outcome would be affected by a more rigorous examination. I am pleased, however, that my colleagues have agreed to examine our radio allotment and assignment criteria, including the application of the *Tuck* standard to city of license modification proposals such as the one here at issue, as part of the recently released Rural Radio Service Notice of Proposed Rulemaking.¹⁶ This case follows current precedent and I therefore concur in the result.

¹⁶ *Policies to Promote Rural Radio Service and Streamline Allotment and Assignment Procedures*, Notice of Proposed Rule Making, FCC 09-30, (rel. Apr. 20, 2009).

**CONCURRING STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Vinton, Louisiana, Crystal Beach, Lumberton and Winnie, Texas), MM Docket No. 02-212.*

I concur in this item, because the reallocation proposal we adopt today will provide new FM radio service to more than a quarter of a million people. So without question, that is a substantial public interest benefit.

However, I continue to believe that the Commission needs to re-examine our entire licensing and allotment process, especially our application of the *Tuck* factors. While our procedures and criteria may not be “impermissibly subjective,” as the petitioners in this case argue, there is some validity to the contention that our *Tuck* analysis does not provide any means of ensuring that the proposed station will be a meaningful local outlet and not just an additional service to the urbanized area.

As I have said before, the Commission is supposed to keep the allotment/re-allotment “parlor game” honest, particularly because we know interested parties have a significant incentive to relocate radio stations from relatively underserved rural areas to suburban communities that are closer to well-served urban markets.

I am pleased the Commission is re-examining our licensing and allotment process, especially our application of the *Tuck* factors, to ensure that we are meeting our statutory obligation to distribute radio service throughout the United States in a fair, efficient and equitable manner.