

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

In the Matter of)	
)	
Threshold Communications)	File No. BNPH-20110630AHJ
Application for Construction Permit)	Facility ID No. 189494
Station KVNW(FM), Napavine, Washington)	

ORDER ON RECONSIDERATION

Adopted: May 29, 2019

Released: May 29, 2019

By the Commission:

I. INTRODUCTION

1. Before us is a case involving a comparison of communities for an allotted but unbuilt FM station under section 307(b) of the Communications Act of 1934, as amended (Section 307(b)).¹ In April 2017, the Commission affirmed a Media Bureau (Bureau) decision granting a community change proposed by a prevailing auction bidder.² A Petition for Reconsideration was filed against the Commission’s affirmation.³ For the reasons set forth below, we grant in part, deny in part and otherwise dismiss the Petition and again affirm the grant of the community change.

II. BACKGROUND⁴

2. This case involves the application of what is known as the “urbanized area service presumption” (UASP), which is part of the Commission’s methodology used to fulfill its Section 307(b) mandate to equitably distribute radio spectrum.⁵ The Commission adopted the UASP to help ensure radio station licenses are not awarded to well-served urbanized areas at the expense of rural communities.⁶ The

¹ 47 U.S.C. § 307(b) (“In considering applications for licenses, and modifications and renewals thereof . . . the Commission shall make such distribution of licenses . . . among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same . . .”).

² *Threshold Communications*, Memorandum Opinion and Order, 32 FCC Rcd 3656 (2017) (*Order*), affirming *Donald E. Martin, Esq. and Meredith S. Senter, Esq.*, Letter Order, Ref. 1800B3-AD (MB Sept. 13, 2016) (*2016 Letter Decision*).

³ Petition of Premier Broadcasting, Inc. for Reconsideration (filed May 22, 2017) (Petition).

⁴ A thorough recitation of the facts and allegations underlying the proceeding are contained in the Commission’s underlying *Order* and thus are not repeated here.

⁵ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556, 2567, para. 20 (2011) (*Rural Radio or Rural Radio Second R&O*).

⁶ The Commission adopted the UASP to forestall the movement of radio service from rural areas to more urban areas absent a compelling showing of need. The UASP is a rebuttable presumption that, when the community proposed for a radio allotment is located in an urbanized area or the station would, or could through a minor modification application, provide principal community-strength coverage to more than 50 percent of an urbanized area, we will treat the application, for Section 307(b) purposes, as proposing service to the entire urbanized area rather than service to the less urban named community of license. The UASP is designed to prevent applicants from claiming to provide the first local transmission service to a smaller community when in fact the station will focus on service to an adjacent urbanized area.

UASP analysis arises when parties propose new allotments, seek to change allotments, or seek to move station assignments. In these cases, the Commission compares the characteristics of the community where the station operates or originally proposed to operate (the “move-out community”) to those of the community to which the applicant proposes to move (the “move-in community”). As part of this Section 307(b) analysis, the Commission examines four allotment “Priorities” to determine the relative importance of the proposed radio service to the move-out and move-in communities.⁷

3. In this case, Threshold Communications (Threshold) was the winning bidder in Auction 91 for an FM allotment on Channel 225C3 at Clatskanie, Oregon (the “move-out” community). Its amended long-form application (Amended Application) proposed to change the allotment’s community of license to Napavine, Washington (the “move-in” community) based on a showing that it was a higher 307(b) priority than Clatskanie.⁸ In an informal objection to the Amended Application, Premier Broadcasters, Inc. (Premier) argued that Clatskanie had a greater need for a new radio station than Napavine. The Bureau disagreed. In the *2015 Letter Decision*, the Bureau granted the Amended Application, determining that, as the first station that would be licensed at Napavine, the proposed allotment warranted a Priority (3) preference as a first local transmission service. In contrast, the Clatskanie allotment was considered as Priority (4) because, under the UASP, the Clatskanie station would be treated as an additional service to the nearby Longview Urbanized Area.⁹ The Bureau concluded that, when an auction winner proposes to change its community of license in its post-auction long-form application, the UASP determination at the move-out community is based on predicted signal coverage on the basis of maximum class facilities calculated from the allotment reference coordinates of the proposed facilities.¹⁰

4. In its October 17, 2016, Application for Review (AFR), Premier reiterated its earlier arguments and also argued for the first time that the Bureau’s *White Salmon*¹¹ decision controlled the analysis of this matter. On April 20, 2017, the Commission dismissed in part and otherwise denied the

⁷ In implementing Section 307(b), the Commission adopted the following allotment Priorities: (1) First fulltime aural service (the first radio signal that can be received in a community), (2) Second fulltime aural service (the second radio signal that can be received in a community), (3) First local transmission service (the first station licensed to a community), and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 F.C.C.2d 88 (1982).

⁸ Under section 73.3573(g) of the Commission’s rules (Rules), applicants seeking to change the community of license of an FM station must demonstrate that the proposed community change constitutes a preferential arrangement of allotments under Section 307(b). Threshold submitted evidence that showed the Napavine allotment was Priority (3), whereas Clatskanie was Priority (4), which is less preferable than Priority (3).

⁹ Using the allotted reference coordinates for Channel 225C3 at Clatskanie, a station would provide a 70 dB μ signal to 100 percent of Clatskanie and would cover more than 50 percent of the Longview Urbanized Area, thus triggering the UASP. Therefore, the Clatskanie allotment is presumptively treated as an additional service to the Longview Urbanized Area under Priority (4) rather than first local service to Clatskanie under Priority (3). *Rural Radio Second R&O*, 26 FCC Rcd at 2567, para. 20.

¹⁰ *Donald E. Martin, Esq. and Meredith S. Senter, Esq.*, Letter Order, 30 FCC Rcd 7152, 7154 (MB July 7, 2015) (*2015 Letter Decision*). The Bureau rejected Premier’s contention that signal coverage should be based solely from actual, existing tower sites in the area. Had the Bureau calculated signal coverage at the move-out community from actual, existing tower sites in the Clatskanie area rather than the allotment reference coordinates, Premier argued the Bureau: 1) would have found that a Clatskanie station would not cover over 50 percent of the Longview Urbanized Area, 2) would have therefore determined that the Clatskanie facility was a first local transmission service under Priority (3), and 3) thus would have found that the proposed Napavine facility was not a preferential arrangement of allotments. *Id.* at 7154-55. Premier repeated this argument in its August 6, 2015, Petition for Reconsideration (August 2015 Petition). The Bureau denied the August 2015 Petition finding Premier had misapplied the UASP. Further, the Bureau held that, even if the UASP was not triggered for the Clatskanie allotment as Premier suggested,

(continued...)

AFR, finding that the Bureau properly analyzed Threshold's Amended Application.¹² The Commission also reaffirmed that a move-out community's signal coverage should be calculated from the allotment reference coordinates of the proposed facilities. Moreover, the Commission found Premier's *White Salmon* argument violated Section 1.115(c) of the Rules, having not been presented to the Bureau.¹³ On alternative and independent grounds, the Commission disagreed with Premier's reliance on *White Salmon*.¹⁴ The Commission also rejected Premier's attempts to rebut the UASP as applied to Clatskanie, stating that a "rebuttal showing is not relevant" and "there is no burden of proof to assign" because *Rural Radio*'s procedures cannot be used to bar Threshold's community of license change.¹⁵ Finally, the Commission rejected Premier's contention that, even if Clatskanie and Napavine were compared under Priority (3), *Rural Radio* requires consideration of more than raw population differences in determining which community establishes a preferential arrangement of allotments.¹⁶ Citing "long-standing precedent," the Commission explained that when comparing two communities under Priority (3), the more populous community prevails.¹⁷

5. On May 22, 2017, Premier filed for reconsideration of the Commission's *Order*.¹⁸ Premier maintains that the Bureau's 307(b) analysis in *White Salmon* is controlling and requires applying the UASP in a different manner. Premier argues that a 307(b) analysis should be the same for move-in and move-out communities in scenarios involving an auction winner's initial long-form application proposing a community of license change.¹⁹ Premier contends that the UASP should not be applied based on the allotment coordinates at the move-out community. Additionally, Premier contends that the Commission ignored precedent that the UASP can be rebutted to show the proposed community is independent from the urbanized area. Premier also contends that, assuming that both Napavine and Clatskanie were to be considered under Priority (3), the Commission erred when it concluded that Napavine would prevail solely because it is the more populous community and that, in any event, the population difference is *de minimis*.²⁰

(Continued from previous page) _____

both Clatskanie and Napavine would be warranted a Priority (3) preference (first local transmission service), with Napavine (population 1,766) establishing a preferential arrangement of allotments due to its larger population than Clatskanie (population 1,737). *2016 Letter Decision* at 4-5.

¹¹ *A. Wray Fitch III, Esq. and Carrie Ward, Esq.*, Letter Order, 31 FCC Rcd 7117, 7120 (MB 2016) (*White Salmon*). *White Salmon* narrowly stated that in the factually rare case of an auction winner's initial long-form application proposing a community of license change pursuant to section 73.3573 that results in hypothetical white or gray areas, that is, an area with no reception services or only one reception service, "the Section 307(b) analysis will be the same as that which we use when comparing proposals and counterproposals in an FM allotment rulemaking proceeding." *White Salmon* at 2. A comparison of mutually exclusive allotment proposals would involve the progressive three-step UASP analysis of the competing proposals, which in some cases might include an assessment of service from existing area towers to determine if the proposed allotment facilities "could be modified" to serve the majority of an urbanized area. See *Rural Radio Second R&O*, 26 FCC Rcd at 2575-76, paras. 34-35; see also AFR at 9.

¹² *Order*, 32 FCC Rcd at 3656.

¹³ *Id.* at 3657 n.10.

¹⁴ The Commission found that *White Salmon* did not involve the same issues as the present case. *Order*, 32 FCC Rcd at 3657 n.10.

¹⁵ *Id.* at 3659 n.17.

¹⁶ *Id.* at 3658 n.16.

¹⁷ *Id.*

¹⁸ Citing section 1.106(b)(2) of the Rules, Premier claims that the Commission decision that the UASP is irrebuttable is a *sua sponte* change in the law that constitutes a changed circumstance that it could not have previously anticipated. Petition at 3-5.

6. In cases where an auction winner proposing a community change for an allotted but unbuilt new station seeks to invoke the UASP and an opponent of the change seeks to rebut it, we affirm that signal coverage is analyzed from the allotment reference coordinates²¹ when determining whether the UASP is triggered at the move-out community. In addition, we clarify that the Bureau must consider record evidence, if any, submitted to rebut the UASP at the move-out community. After considering the evidence herein, we affirm that the proposed station at Clatskanie would serve as an additional service to the Longview, Washington-Oregon, Urbanized Area (Longview Urbanized Area) and thus should be considered under Priority (4). Accordingly, we affirm the grant of the community change from Clatskanie (Priority (4)) to Napavine (Priority (3)) because it constitutes a preferential arrangement of allotments under Section 307(b).

III. DISCUSSION

7. We affirm the finding that the proposed community change from Clatskanie to Napavine constitutes a preferential arrangement of allotments under Section 307(b), as Clatskanie is appropriately considered under Priority (4).

8. *Triggering of the UASP.* We dismiss the Petition to the extent that Premier again argues that signal coverage should be analyzed from existing towers and not from the allotment reference coordinates when determining whether the UASP is triggered at the move-out community.²² In the *Order*, the Commission fully considered and rejected Premier's contention that the Commission should not consider proposed service from the allotment reference coordinates but should rely instead on the assumption that the station would have transmitted from one of the existing towers in the area, and therefore that only those tower sites should be used to determine whether the presumption should apply at the move-out community.²³ Because Premier does not offer relevant new facts or changed circumstances in its Petition on the issue of whether signal coverage should be analyzed from existing towers when determining whether the UASP is triggered at the move-out community, we dismiss the Petition with respect to this issue as repetitious.²⁴

(Continued from previous page) _____

¹⁹ *Id.* at 2-3.

²⁰ *Id.* at 5-9.

²¹ Unless otherwise specified by the applicant, allotment reference coordinates are the coordinates at the center of the community of license.

²² A petition for reconsideration of the Commission's denial of an application for review will be entertained only if: (1) the petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters, or (2) the petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity. 47 CFR § 1.106(b)(2)(i) and (ii).

²³ The *Order* explained that under section 73.3573(g) of the Rules, an auction winner requesting a community of license change in its post-auction long form must use the allotted reference coordinates and maximum facilities at the move-out community for comparison to its proposed new facilities. *Order*, 32 FCC Rcd at 3659, para. 6.

²⁴ See 47 CFR § 1.106(b)(3) ("A petition for reconsideration of an order denying an application for review which fails to rely on new facts or changed circumstances may be dismissed by the staff as repetitious"). We also dismiss pursuant to section 1.106(c) Premier's claim that the Commission should have addressed its argument that the Bureau's *White Salmon* section 307(b) analysis controls this case. Premier made its *White Salmon* argument for the first time in its AFR. In its AFR, it did not explain why it had not raised this argument before the Bureau, and its attempts to do so now in the Petition are impermissibly late. Premier offers no changed circumstances since its AFR was filed or an explanation as to why its arguments were unknown at the time of the AFR. 47 CFR § 1.106(c). While Premier contends that sections 1.106(b)(2)-(3), which applies to a *denial* of an AFR, does not apply to its *White Salmon* argument because the Commission *dismissed* this argument in the AFR, we rely here on section 1.106(c), not sections 1.106(b)(2)-(3). See 47 CFR § 1.106(c) (stating that in the case of any order "other than an order denying an application for review" a petition for reconsideration which relies on facts or arguments not

(continued....)

9. On alternative and independent grounds, we deny Premier's claims on the merits and affirm the previous determination that signal coverage is analyzed from the maximum class facilities at the allotment reference coordinates when determining whether the UASP is triggered at the move-out community. We find no policy support or precedent to apply Premier's construction of the UASP. As the Bureau previously explained in this proceeding, sound policy concerns regarding manipulation of the allotment priorities are why the UASP analysis is different between the move-in and move-out communities.²⁵ The UASP was established based on concerns regarding community of license changes from smaller communities and rural areas toward urbanized areas.²⁶ Applying the UASP to community of license changes was intended to safeguard the interests of listeners in less well-served areas.²⁷ These procedures are designed to prevent a community of license change applicant from claiming first local transmission service at a move-in community near an urbanized area, only to use that application ultimately to provide coverage to all or a substantial portion of the urbanized area, either through the community of license change application itself or through a subsequent minor technical modification.²⁸ Premier's suggestion to analyze coverage from existing towers at the move-out community would have the opposite effect. It would allow an auction winner seeking to relocate an allotted but unbuilt station to select only those towers that emphasize the urban nature of the move-out community to bolster its argument in favor of the application to change communities, a perverse result for a methodology designed to *deter* manipulation. Requiring the parties to use the allotment reference coordinates, which are fixed at the time of allotment and cannot be manipulated by the parties, prevents this gamesmanship. For example, assuming the allotment reference coordinates (a fixed location) do not have sufficient overlap with an urban area to trigger the USAP but one of several existing tower sites in the area has sufficient overlap to trigger the USAP, the auction winner could focus on that one tower site to successfully petition to move to a new community even though it has no intent to build a station at that one identified tower site in the "move out" community. Similarly, someone opposing a community change could game the system if allowed to select the existing tower in the move-out community that provides the least overlap with the urbanized area to argue the move-out community has a higher preference than the proposed

(Continued from previous page)

previously presented "may be granted *only*" if certain circumstances exist) (emphasis added); Petition at 2. On alternative and independent grounds, we affirm the Commission's decision to dismiss Premier's *White Salmon* argument pursuant to section 1.115(c) of the rules because it was not presented to the Bureau. We find *Echostar* and *ICO*, cited by Premier in support of its contention that the Bureau had an "opportunity to pass" on its *White Salmon* argument, to be inapposite. Petition at 2-3 (citing *Echostar Satellite, L.L.C. v. FCC*, 704 F.3d 992, 996 (D.C. Cir. 2013) (*Echostar*); *ICO Global Commc'n (Holdings) Ltd. v. FCC*, 428 F.3d 264, 269 (D.C. Cir. 2005) (*ICO*) (citing *Melody Music, Inc. v. FCC*, 345 F.2d 730, 732-33 n.4 (D.C. Cir. 1965)). The Bureau did not have an "opportunity to pass" on Premier's *White Salmon* argument because that case involved a fundamentally different section 307(b) analysis than that in the instant case, one not involving the UASP or the "could be modified" coverage analysis. Thus, we reject the contention that the holding in *White Salmon* "necessarily implicated" the Bureau's holding that the "could be modified" analysis did not apply to a move-out allotment.

On alternative and independent grounds, we reject on the merits Premier's claim that the Bureau's *White Salmon* section 307(b) analysis controls this case. As an initial matter, *White Salmon* is a Bureau-level case and thus not binding on the Commission. See *Comcast Corp. v. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008) (*Comcast Corp.*) (citing *Vernal Enters., Inc. v. FCC*, 355 F.3d 650, 660 (D.C. Cir. 2004)). In addition, *White Salmon* involved a fundamentally different section 307(b) analysis than that in the instant case. Here the UASP precludes the award of a Priority (3) preference to a small community when in fact the proposed service covers a nearby urbanized area. *White Salmon* did not address the UASP, but rather clarified the application of the rarely implicated bar on the creation of hypothetical gray and white areas when an auction winner proposes a new community of license in its long form application.

²⁵ The Bureau stated that the "asymmetrical treatment" between move-in and move-out communities is based on the Commission's concern that an applicant seeking to change its community of license could specify a transmitter site for the move-in community that would not trigger the UASP but, once authorized, the applicant could increase service to the urbanized area through a minor change application to operate at an existing tower site in the area. The Bureau explained that such an opportunity for manipulation (i.e., moving to a different transmitter site) are not present when an auction winner's allotment coordinates are used for 307(b) comparative analysis. *2015 Letter*

(continued....)

move-in community.²⁹ Requiring that the community change opponent analyze the priorities using the fixed allotment reference coordinates will eliminate that manipulation problem and avoid the situation where the UASP is not triggered based on the flawed assumption that the station would move to an existing tower that *reduces* its coverage over the urbanized area.³⁰

10. In the *Rural Radio* proceeding, the Commission was focused on move-in community issues rather than the move-out community when it adopted the UASP's "could be modified to cover an urbanized area" criterion.³¹ Indeed, when the UASP was established in the *Rural Radio* proceeding, the "could be modified to cover an urbanized area" analysis was uniformly referenced in connection with proposed move-in facilities, not move-out facilities or allotments.³² It was not the Commission's objective to consider whether a station theoretically could have covered an urban area in the move-out community because the application to change communities establishes the applicant has no intention to do so. Since the inception of the UASP, the Bureau and the Commission have consistently maintained that *Rural Radio*'s "could be modified" analysis applies only to the concern the applicant will make a change in the proposed move-in community after receiving authorization to relocate.³³ Ultimately, there is no support, in *Rural Radio* or elsewhere, for Premier's attempt to apply the "could be modified" analysis to the move-out community.

11. *Rebuttal Evidence.* We are persuaded to modify the *Order* to the extent it held that the Bureau was not required to consider evidence submitted by Premier to rebut the UASP at the move-out community.³⁴ Such a holding is inconsistent with the recognition in *Rural Radio* that a community could be independent of the urban area despite meeting the signal coverage threshold of the UASP.³⁵ As discussed below, after considering the record, including the evidence submitted by Premier, we find that the proposed station at Clatskanie would serve as an additional service to the Longview Urbanized Area and thus should be considered under Priority (4). Thus, Threshold has met its burden of demonstrating

(Continued from previous page) _____
Decision, 30 FCC Rcd at 7154.

²⁶ *Rural Radio*, 26 FCC Rcd at 2563.

²⁷ *Id.* at 2577.

²⁸ *Rural Radio* established that a proposed move-in community is not entitled to a first local transmission service under Priority (3) if: (1) the proposed new community *is* located within an urbanized area or (2) the proposed facilities *would* provide daytime principal community coverage to more than 50 percent of an urbanized area *or* (3) there is an existing tower in the area to which, at the time of filing, its antenna *could* be relocated pursuant to a minor modification application to serve 50 percent or more of an urbanized area. This third factor is known as the "could be modified" standard. If *any* of the three steps yields signal coverage to more than 50 percent of an urbanized area, the UASP is triggered, and the applicant may not claim a first local transmission service preference under Priority (3). *Id.* at 2575, para. 35 & n.97.

²⁹ *See supra* note 4. As established by the Commission, the UASP is triggered if there is 50 percent or greater coverage of an urbanized area from any of the sites, including the allotment coordinates. *See Rural Radio Second R&O*, 26 FCC Rcd at 2572, 2575, paras. 30, 34 & n.97. Premier attempts to twist the presumption by insisting that the UASP would not be triggered as long as 50+ percent urbanized area coverage does *not* exist from existing area towers.

³⁰ To the extent that Premier would argue that a UASP triggered by allotment coordinates should only be disregarded if *no* existing towers can be found from which the applicant could cover 50+ percent of the urbanized area, we maintain our position. First, allotment coordinates form the basis for determining proper FM spacing and community coverage and, as the Bureau stated, establish core rights for the auction participant, thus they may not be disregarded, contrary to Premier's contention. *2015 Letter Decision*, 30 FCC Rcd at 7154. Second, given that there are no allotment coordinates at a move-in community, the move-in equivalent of allotment coordinates is the applicant's proposed transmitter site. Premier's argument would prevent us from recognizing a UASP at the move-in community even if the applicant's proposed site would, or could be modified to, provide 50+ percent urbanized area coverage, as long as there were no existing sites from which such coverage could be achieved. This, again, defeats the purpose underlying the UASP.

that the community change from Clatskanie (Priority (4)) to Napavine (Priority (3)) constitutes a preferential arrangement of allotments under Section 307(b).

12. In noting that the UASP was rebuttable when it instituted the presumption, the Commission found that circumstances may arise in which a proposed allotment community is truly independent from the urbanized area.³⁶ Thus, to the extent the UASP is applied, in whatever context, it may be rebutted in accordance with the methodology set forth in *Rural Radio*.³⁷ Consistent with precedent and Section 73.3573(g), the proponent of the community change (in this case, Threshold) has the burden to demonstrate that the change constitutes a preferential arrangement of allotments under Section 307(b).³⁸ In support of this change, Threshold has demonstrated that, using the allotment reference coordinates for Channel 253C3 at Clatskanie, full class C3 facilities would provide a 70 dBμ signal to 50 percent or more of the Longview Urbanized Area.³⁹ Thus, Threshold demonstrated that the UASP is triggered, that is, the allotment is presumed to be an additional service at the Longview Urbanized Area, under Priority (4) of the allotment priorities.⁴⁰ Unless this presumption is rebutted, the proposed move to Napavine, to become that community's first local transmission service under Priority (3), represents a preferential arrangement of allotments.

13. We note, however, that the Commission has not been presented before with a case in which the proponent of a community change invokes the UASP at the move-out community but an opponent of the change seeks to rebut the UASP.⁴¹ Given that this is factually a case of first impression, we take this opportunity to clarify the respective evidentiary burdens of parties in such situations. Once the UASP is triggered, the opponent of the change in community of license—in this case, Premier—has the burden of production, *i.e.*, to come forward with evidence that meets or rebuts the presumption that the allotment at the move-out community will serve an urbanized area.⁴² Consistent with the *Rural Radio* procedures,⁴³ the opponent must come forward with evidence on each of the following factors in order to

(Continued from previous page)

³¹ *Rural Radio Second R&O*, 26 FCC Rcd at 2567, para. 20 (“[W]e adopt a rebuttable presumption that, when the community proposed is located in an urbanized area or could, through a minor modification application, cover more than 50 percent of an urbanized area, we will treat the application, for Section 307(b) purposes, as proposing service to the entire urbanized area....”).

³² *Rural Radio Second R&O*, 26 FCC Rcd at 2572-73, para. 30. (“The determination of whether a *proposed* facility ‘could be modified’ to cover 50 percent or more of an urbanized area will be limited to a consideration of rule-compliant minor modifications to the proposal”); at 2575, para. 35 (“The determination of whether a *proposed* facility ‘could be modified’ to cover 50 percent or more of an urbanized area will be made based on an applicant’s certification that there are no existing towers in the area to which, at the time of filing, the applicant’s antenna could be relocated pursuant to a minor modification application to serve 50 percent or more of an urbanized area.”); at 2577, para. 38 (“The presumption may be rebutted in the same manner as set forth at paragraph 30, above, and will be subject to the same determinations, described in paragraphs 30 and 35 above, as to whether the *proposed* facility could be modified to cover over 50 percent of an urbanized area.”) (emphasis added).

³³ See, e.g., *James P. Riley, Esq.*, Letter Order, 27 FCC Rcd 12318, 12320 (MB 2012) (“In *Rural Radio*, the Commission emphasizes that the ‘would or could’ showing that triggers the service presumption applies only to proposed or potential service to the new community. The Commission neither specifies nor suggests that the ‘would or could’ test should be applied to the move-out community.”). Moreover, we agree with the Bureau that authorized service is the best measure of service at the move-out community, which is not applicable to a long-form new station application. *2015 Letter Decision*, 30 FCC Rcd at 7154.

³⁴ *Order*, 32 FCC Rcd at 3659 n.17. Because we conclude rebuttal evidence must be considered in this context, Premier’s contention that consideration of rebuttal evidence is compelled by *National Ass’n of Telecomm. Officers and Advisors v. FCC*, 862 F.3d 18 (D.C. Cir. 2017) is moot. See Premier, Supplement to Petition for Reconsideration (July 28, 2017).

³⁵ *Rural Radio Second R&O*, 26 FCC Rcd at 2571. *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Order on Reconsideration, 27 FCC Rcd 12829, 12834, para. 9 (2012) (*Rural Radio Second Order on Reconsideration*) (“[T]he UASP is a presumption, not a hard-and-fast rule.”).

rebut the presumption as applied to the move-out community: (1) whether the move-out community is truly independent of the urbanized area; (2) whether the move-out community has a specific need for an outlet for local expression separate from the urbanized area; and (3) the ability of the proposed station to provide that outlet.⁴⁴ In the analogous situation where the proponent of a community change seeks to rebut the UASP at the move-in community, it must satisfy all three *Rural Radio* factors.⁴⁵ In other words, if the proponent cannot demonstrate that the move-in community is independent of the urbanized area under the first *Rural Radio* factor, it cannot prevail no matter how compelling its showing of the move-in community's need for an outlet for local expression under second *Rural Radio* factor. Similarly, when the opponent of a community change seeks to rebut the UASP at the move-out community, as in the present case, the presumption will not be rebutted if the opponent fails to meet its burden of production on any of the three *Rural Radio* factors. Rather, the opponent must meet its burden of production on each of the three factors.

14. If the opponent of the community change satisfies its burden of production with respect to each of the three factors, the UASP drops out of the case and the burden of persuasion then lies with the proponent of the community change (here, Threshold) to demonstrate that the move-out community should be considered under Priority (4) because the proposed station would serve an urbanized area.⁴⁶ If the proponent meets its burden of persuasion with respect to one or more of three factors (*e.g.*, it shows under the first factor that the move-out community is *not* truly independent of the urbanized area), it will prevail.

15. As explained below, we conclude that the UASP has not been rebutted because Premier has failed to meet its burden of production on the second *Rural Radio* factor.⁴⁷ Because the UASP at

(Continued from previous page) _____

³⁶ *Rural Radio Second R&O*, 26 FCC Rcd. at 2572.

³⁷ The basis for such a rebuttal showing is the longstanding test first set forth in *Faye and Richard Tuck*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988) (*Tuck*). See *infra* note 52. See also *Rural Radio Second R&O*, 26 FCC Rcd at 2572-73, para. 30.

³⁸ See *Rural Radio Second R&O*, 26 FCC Rcd at 2576, para. 36 (“[T]he applicant must demonstrate that the facility at the new community represents a preferential arrangement of allotments (FM) or assignments (AM) over the current facility.”). See also 47 CFR § 73.3573(g)(1); AFR at 12 n.27.

³⁹ Threshold Opposition to Petition for Reconsideration, Technical Exhibit at Exhibit B (filed May 10, 2013) (Threshold May 2013 Opposition).

⁴⁰ Noting that the Bureau in 2005 allotted Channel 225C3 at Clatskanie, Oregon as the community's first local service, Premier contends that the Bureau thus “implicitly found that the urbanized area service presumption has been rebutted.” See Premier, Supplement to Petition for Reconsideration (July 28, 2017), at 3-4 (citing *Clatskanie, Oregon and Long Beach and Ilwaco, Washington*, Report and Order, 20 FCC Rcd 8811 (MB 2005)). We reject this contention. The staff's allotment decision was made six years *before* the Commission established the UASP. Thus, there was no presumption at the time to be rebutted.

⁴¹ As the proponent of the change in community of license to Napavine, Threshold has no cause to put forth evidence to rebut the UASP at the Clatskanie allotment reference coordinates.

⁴² See *Verizon Tel. Cos. et al.*, Memorandum Opinion and Order, 26 FCC Rcd 15849, 15863, para. 20 (2011) (“a
(continued....)”)

Clatskanie has not been rebutted, the proposed move to Napavine, to become that community's first local transmission service under Priority (3), represents a preferential arrangement of allotments. On alternative and independent grounds, even assuming that Premier met its burden of production on all three *Rural Radio* factors, we conclude that the record evidence demonstrates that Clatskanie is not independent of the Longview Urbanized Area under the first *Rural Radio* factor. Thus, Threshold has met its burden of demonstrating that the community change from Clatskanie (Priority (4)) to Napavine (Priority (3)) constitutes a preferential arrangement of allotments under Section 307(b).

16. Although we conclude that Premier has met its burden of production under factor one of the *Rural Radio* rebuttal evidence ("whether the community at issue is truly independent of the urbanized area"),⁴⁸ we conclude that Premier has failed to meet its burden of production under factor two of the *Rural Radio* rebuttal evidence ("whether the community has a specific need for an outlet for local expression separate from the urbanized area").⁴⁹ To establish this factor, a party must produce evidence such as the community's rate of growth, the existence of substantial local government necessitating radio coverage, and/or the presence of physical, geographical, or cultural barriers separating the community from the remainder of the urbanized area.⁵⁰ Premier offered no evidence as to Clatskanie's rate of growth. The record reflects that Clatskanie has a local government, but Premier offers no evidence that this largely volunteer local government is "substantial" or that it warrants radio coverage. Premier has also failed to provide evidence of "physical, geographical, or cultural barriers" separating Clatskanie from Longview.⁵¹ As Premier has not provided evidence that Clatskanie is growing, that there are physical, geographic, or cultural barriers separating Clatskanie from the Longview Urbanized Area, or that Clatskanie has substantial government that needs radio coverage, it has failed to meet its burden of production under factor two of the *Rural Radio* rebuttal evidence.⁵² Because the UASP has not been rebutted at Clatskanie,⁵³ the proposed move to Napavine, to become that community's first local

(Continued from previous page)

rebuttable presumption does not shift the burden of proof to defendants; rather, it requires defendants to come forward with evidence that rebuts or meets the presumption.") (citing *Cablevision Sys. Corp. et al. v. FCC*, 649 F.3d 695, 716 (D.C. Cir. 2011) ("Under the APA, agencies may adopt evidentiary presumptions provided that the presumptions (1) shift the burden of production and not the burden of persuasion, and (2) are rational.") (citations omitted)).

⁴³ *Rural Radio Second R&O*, 26 FCC Rcd at 2572-73, para. 30.

⁴⁴ See *Rural Radio Second Order on Reconsideration*, 27 FCC Rcd at 12836, para. 12.

⁴⁵ The three *Rural Radio* factors are written in a conjunctive rather than a disjunctive manner. See *Rural Radio Second R&O*, 26 FCC Rcd at 2572-73, para. 30 ("The urbanized area service presumption may be rebutted by a compelling showing (1) that the proposed community is truly independent of the urbanized area, (2) of the community's specific need for an outlet for local expression separate from the urbanized area and (3) the ability of the proposed station to provide that outlet.") (emphasis added). See also *id.* ("In addition to demonstrating independence, a compelling showing sufficient to rebut the urbanized area service presumption must also include evidence of the community's need for an outlet for local expression."); *James P. Riley, Esq.*, Letter Order, 27 FCC Rcd 169, 172 (MB 2012) (*Boone, Iowa*) ("Our finding that Johnston is interdependent with the Des Moines UA precludes rebuttal of the urbanized area presumption based on a specific need for an outlet of separate local expression, because the first requirement for such rebuttal is that the proposed community must be truly independent of the urbanized area.").

⁴⁶ See *Harlem Taxicab Ass'n v. Nemes*, 191 F.2d 459, 461 (D.C. Cir. 1951) ("When *substantial* evidence contrary to a presumption is introduced, ... the presumption falls out of the case....") (citations omitted).

transmission service under Priority (3), represents a preferential arrangement of allotments.

17. On alternative and independent grounds, even assuming Premier met its burden of production on all three *Rural Radio* factors, we conclude that Threshold met its burden of persuasion and has demonstrated that Clatskanie is *not* truly independent of the Longview Urbanized Area under the first *Rural Radio* factor (“whether the community at issue is truly independent of the urbanized area”). Factor one of the *Rural Radio* rebuttal evidence relies on the existing three-pronged *Tuck* test to demonstrate independence of the community from the urbanized area.⁵⁴ In *Rural Radio* the Commission clarified that it “will place primary emphasis on the first two prongs of the *Tuck* test” (*i.e.*, the station’s signal strength over the urbanized area and the size and proximity of the proposed community relative to the central city of the urbanized area).⁵⁵ Moreover, the Commission further stated that “the *Tuck* factors, especially the eight-part test of independence, will be more rigorously scrutinized than has sometimes been the case in the past.”⁵⁶

18. We find that the first two prongs of the *Tuck* test, which the Commission accords “primary emphasis,”⁵⁷ strongly support a finding that Clatskanie is not independent of the Longview Urbanized Area. Under prong one of the *Tuck* test (“the degree to which the proposed station will provide coverage to the urbanized area”), Threshold has demonstrated using the allotment reference coordinates for Channel 225C3 at Clatskanie that a station would provide a 70 dB μ signal to over 50 percent of the Longview Urbanized Area.⁵⁸ A staff engineering analysis confirmed that the actual overlap percentage is 86.34 percent. Under prong two of the *Tuck* test (“the size and proximity of the proposed community of license relative to the central city of the urbanized area”),⁵⁹ the population of Clatskanie (1,737 persons) is 4.74 percent of the population of Longview (36,648 persons)⁶⁰ and Clatskanie is located approximately 12.47 miles⁶¹ from the center of Longview and 8.4 miles from the city limits.⁶² Based on the significant disparity in size and the close proximity of the two communities, we find that Clatskanie cannot be treated as a major, distinct population center from the Longview Urbanized Area. The record demonstrates that Clatskanie is not geographically isolated from Longview.⁶³ Our analysis

(Continued from previous page) _____

⁴⁷ As explained above, Premier’s failure to meet its burden of production with respect to just one of the three *Rural Radio* factors means the UASP has not been rebutted.

⁴⁸ As discussed in further detail below, factor one of the *Rural Radio* rebuttal evidence relies on the existing three-pronged *Tuck* test. We find that Premier met its burden of production by offering evidence under the second and third prongs of the *Tuck* test. *See infra* paras. 16-19.

⁴⁹ August 2015 Petition at 7; Premier August 2015 Reply at 8.

⁵⁰ *Rural Radio Second R&O*, 26 FCC Rcd at 2573, para. 30 (“[A] compelling showing sufficient to rebut the urbanized area service presumption must also include evidence of the community’s need for an outlet for local expression. For example, an applicant may rely on factors such as the community’s rate of growth; the existence of substantial local government necessitating coverage; and/or physical, geographical, or cultural barriers separating the community from the remainder of the urbanized area.”).

⁵¹ Premier’s mere assertion without supporting evidence that mountainous terrain, a river, and a state line create “barriers” that geographically separate Clatskanie from Longview is insufficient to meet its burden of production on the issue of whether Clatskanie has a “specific need for an outlet for local expression” under *Rural Radio* factor two. August 2015 Petition at n.28. Even if it were sufficient, the record evidence demonstrates that Clatskanie is not geographically separated from Longview. *See infra* notes 58, 60 (Clatskanie and Longview are close and easily accessible via US Route 30).

⁵² We note that Clatskanie is well-served by other stations, with no populated area receiving fewer than five services. *Family Broadcasting Group*, 53 RR 2d 662 (Rev. Bd. 1983), *rev. denied*, FCC 03-559 (Nov. 29, 1983) (The Commission has considered five or more services to be “abundant.”). In accordance with the methodology prescribed by the Commission, we determine the number of reception services in the alternative service areas, using the signal strength set forth in section 73.215(a)(1) for FM stations, considering actual terrain, and generally use the 2.0 mV/m groundwave contour for AM stations. *Second Order on Reconsideration*, 27 FCC Rcd at 12836-40.

(continued....)

under these two prongs, therefore, demonstrates that Clatskanie is not independent of the Longview Urbanized Area.

19. Turning to the third prong of the *Tuck* test (“independence of the proposed community of license from the urbanized area”), we find the record overall is insufficient to overcome our finding under prongs one and two.⁶⁴ There is some evidence that might support the position that Clatskanie is an independent community.⁶⁵ Under *Tuck* factor (1), Premier provides evidence, albeit from 2004, that 38 percent of Clatskanie residents work in Clatskanie.⁶⁶ Clatskanie has a locally published weekly newspaper, *The Chief* (factor (2)).⁶⁷ The city provides some municipal services, such as public works, trash collection, water and sewer, and a library, although it contracts with the Columbia County Sheriff’s Office for police protection (factor (8)).⁶⁸ Clatskanie has a council/manager form of city government (factor (4)): a city council is elected, one of whom is appointed mayor for a two-year term. The council and mayor, however, are unpaid volunteers who receive no benefits.⁶⁹ Other *Tuck* factors are less persuasive. With regard to local commercial establishments, health facilities, and transportation systems (factor (6)), Premier states only that Clatskanie has a Chamber of Commerce.⁷⁰ The Chamber’s Website lists only approximately 13 local for-profit businesses.⁷¹ The City’s Website only lists health facilities located in Longview and in Astoria, Oregon.⁷² Under *Tuck* factor (3), “whether community leaders and residents perceive the specified community as being an integral part of or separate from, the larger metropolitan area,” Premier claims that Clatskanie residents and community leaders “feel” separate and distinct from Longview.⁷³ To the extent this claim is based on letters from town officials or business leaders, the Commission has previously explained that it will not accept “self-serving statement[s] to that effect from town officials or business leaders.”⁷⁴ To the extent this claim is based on three letters from residents of Clatskanie, these letters do not address the issue of Clatskanie’s independence from Longview.⁷⁵ Presumably to establish *Tuck* factor (7), “the extent to which the specified community and the central city are part of the same advertising market,” Premier cites to one public notice comment that states that Clatskanie does not receive radio service from other communities, which is inaccurate and does

(Continued from previous page) _____

While several letters submitted by Premier suggest that these other stations do not serve the needs of Clatskanie, these are primarily self-serving statements from town or other business leaders. *See infra* note 63. In light of our finding below that Clatskanie is not independent of the Longview Urbanized Area, *see infra* para. 19, its needs are met by stations serving the Longview Urbanized Area.

⁵³ In light of this finding, we need not address whether Premier has met its burden of production on the third *Rural Radio* factor (“whether the proposed station is able to provide [the outlet for local expression]”). *See supra* para. 12 (the UASP at the move-out community is not rebutted if the opponent of the move fails to meet its burden of production on any one of the three *Rural Radio* factors). Indeed, evidence that Threshold was “able to provide” an outlet for local expression in Clatskanie standing alone would not preclude the move here. The *Rural Radio Order* did not contemplate reliance on only this one rebuttal factor to bar an auction winner long-form applicant from proposing a rule-compliant move from the originally allotted community, as in this case. As discussed above and in the underlying staff decisions, even assuming Threshold could theoretically provide Clatskanie with an outlet for local expression, its coverage of the Longview Urbanized Area indicates that it would provide urbanized area coverage. Threshold has shown that its proposed move to Napavine to provide it with a first local transmission service, that does not cover most of an urbanized area, represents a preferential arrangement of allotments.

⁵⁴ *Tuck*, 3 FCC at 5378. The three prongs are: (1) the degree to which the proposed station will provide coverage to the urbanized area; (2) the size and proximity of the proposed community of license relative to the central city of the urbanized area; and (3) the independence of the proposed community of license from the urbanized area. The eight factors for determining independence of a community from the urbanized area under the third prong 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

(continued....)

not address the advertising market.⁷⁶

20. Thus, under factor one of the *Rural Radio* rebuttal evidence (“whether the community at issue is truly independent of the urbanized area”), the record reflects that the first two prongs of the *Tuck* test strongly support a finding that Clatskanie is not independent of the Longview Urbanized Area. Although Premier has offered some evidence in support of the position that Clatskanie is an independent community under the third prong of the *Tuck* test,⁷⁷ we find the record overall is insufficient to overcome our finding under prongs one and two. Thus, we conclude that Clatskanie is *not* truly independent of the Longview Urbanized Area under the first *Rural Radio* factor.

21. Based on the foregoing, we affirm the Commission’s decision finding that the proposed community change from Clatskanie to Napavine constitutes a preferential arrangement of allotments. We conclude that the UASP has not been rebutted because Premier has failed to meet its burden of production with respect to the second *Rural Radio* factor. On alternative and independent grounds, even assuming that Premier met its burden of production on all three *Rural Radio* factors, we conclude that the record evidence demonstrates that Clatskanie is not independent of the Longview Urbanized Area under the first *Rural Radio* factor. Thus, because the proposed station at Clatskanie would serve the Longview Urbanized Area, we affirm that it should be considered under Priority (4). Accordingly, we conclude that Threshold has met its burden of demonstrating that the proposed community change from Clatskanie (Priority (4)) to Napavine (Priority (3)) constitutes a preferential arrangement of allotments under Section 307(b). Therefore, we affirm the Commission’s decision to uphold the grant of Threshold’s application proposing a community of license change to Napavine.

22. Finally, we need not decide here Premier’s contention that, if Napavine and Clatskanie were considered under Priority (3), the Commission erred when it decided that Napavine would prevail because it is the more populous community, given that the population difference is *de minimis*.⁷⁸ We

(Continued from previous page) _____
advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services.

⁵⁵ *Rural Radio Second Order on Reconsideration*, 27 FCC Rcd at 12836, para.12; *Boone, Iowa*, 27 FCC Rcd at 169 (finding that the urbanized area service presumption had not been rebutted based on signal coverage of the urbanized area, the size and proximity of the proposed community relative to the central city of the urbanized area, and the lack of compelling evidence of independence).

⁵⁶ *Rural Radio Second R&O*, 26 FCC Rcd at 2573, para. 30.

⁵⁷ *Rural Radio Second Order on Reconsideration*, 27 FCC Rcd at 12836, para.12.

⁵⁸ Threshold Opposition to Petition for Reconsideration at Technical Exhibit, Exhibit B. *See 2015 Letter Decision*, 30 FCC Rcd at 7153.

⁵⁹ *Faye and Richard Tuck*. 3 FCC Rcd at 5378, pare. 43 (“Although interdependence is the most important consideration under *Huntington*, the required showing of interdependence between the specified community and the central city will vary depending on the degree to which the second criterion—relative size and proximity—suggests that the community of license is simply an appendage of a large central city. When the specified community is relatively large and far away from the central city, a strong showing of interdependence would be necessary to support a *Huntington* exception. On the other hand, less evidence that the communities are interdependent would be required when the community at issue is smaller and close to the central city.”).

⁶⁰ Population figures are determined by the U.S. Census Bureau; *see* <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited March 29, 2019).

⁶¹ Premier contends that the distance is 25 miles. August 2015 Petition at n.20. This distance appears to be the

(continued....)

conclude above that Clatskanie would serve the Longview Urbanized Area, and thus should be considered under Priority (4), meaning that the change to Napavine (Priority (3)) constitutes a preferential arrangement of allotments under Section 307(b). This renders moot any Priority (3) vs. Priority (3) analysis of the two communities.⁷⁹

23. Accordingly, **IT IS ORDERED** that pursuant to Sections 4(i) and 405(a) of the Communications Act of 1934, as amended,⁸⁰ and Section 1.106(b)(2)-(3) and (c) of the Commission's rules,⁸¹ the petition for reconsideration filed by Premier Broadcasters, Inc. **IS GRANTED IN PART,**

(Continued from previous page) _____

largest distance stated by one commenter (the Clatskanie Chamber of Commerce) in this proceeding. *Id.* Four commenters, for example, stated the distance from Clatskanie to Longview is 20 miles. According to staff's calculations using Google Maps, the distance is approximately 15 miles via US Route 30 between the two city centers. Based on the staff's calculations, using MapInfo, straight-line distance is 12.47 miles from Clatskanie to Longview city center and 8.4 miles from Clatskanie to the Longview city limits.

(Continued from previous page) _____

⁶² See, e.g., *Boone, Iowa*, 27 FCC Rcd at 171 (UASP applied when move-out community population was 8.5 percent of the central city of the urbanized area and was located 13.5 miles from the center of the central city); *Anne Goodwin Crump, Esq.*, Letter Order, 27 FCC Rcd 10877, 10879 & n.7 (MB 2012) (*Mexia, Texas*) (UASP applied when move-out community population was 7.9 percent of the central city of the urbanized area).

⁶³ Premier asserts that mountainous terrain, a river, and state line make Clatskanie geographically distinct from Longview. August 2015 Petition at n.28. However, US Route 30 connects Clatskanie and the Longview city limits. Moreover, Premier's "state line" assertion to establish isolation is disingenuous, as the urbanized area itself here is a state hyphenated designation (*i.e.* the U.S. Census Bureau has designated it the Longview, Washington-Oregon urbanized area). See https://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua51283_longview_wa--or/DC10UA51283.pdf (last visited March 29, 2019).

⁶⁴ While Premier provided evidence on certain factors under the third prong of the *Tuck* test, it failed to provide any evidence on other factors under the third prong. For some factors, we cite information available on the City of Clatskanie web site. Even without this information and relying solely on the evidence under the third prong put forth by Premier, we find that the record overall is insufficient to overcome our finding under prongs one and two of the *Tuck* test. *Rural Radio Second Order on Reconsideration*, 27 FCC Rcd at 12836, para. 12 ("We clarify . . . that our analysis of showings rebutting the UASP will place primary emphasis on the first two prongs of the *Tuck* test, namely, the degree to which the proposed station will provide coverage to the urbanized area, and the size and proximity of the proposed community of license relative to the central city of the urbanized area.").

⁶⁵ Threshold explains that Premier's rebuttal showing relied on 17 letters that it purportedly aligned with the *Tuck* factors, 10 of which were from government officials and four of which were from representatives of civic/business groups, written in response to the newspaper public notice of the proposed change in community of license. Opposition to Request for Clarification and Petition for Reconsideration at 6-8 (filed August 19, 2015) (Threshold August 2015 Opposition).

⁶⁶ Reply to Opposition to Request for Clarification and Petition for Reconsideration at 9 (filed Aug. 31, 2015) (Premier August 2015 Reply). See *Anniston and Ashland, Alabama*, Memorandum, Opinion, and Order, 16 FCC Rcd 3411, 3413 (MMB 2001) (*Tuck* factor (1) satisfied where percentage of local residents working in the community is 16 percent).

⁶⁷ Premier August 2015 Reply at 8.

⁶⁸ See <http://www.cityofclatskanie.com/citydepartments/police.html> (last visited March 29, 2019). A portion of Columbia County is physically located in the Longview Urbanized Area.

⁶⁹ See <http://www.cityofclatskanie.com/citygovernment/mayor.html> (last visited March 29, 2019). See also *Greenfield and Del Rey Oaks*, Report and Order, 11 FCC Rcd 12681, 12684, para. 9 (MMB 1996) (part-time mayor, city council, and police department counted against a finding of community independence under *Tuck* test).

⁷⁰ Premier August 2015 Reply at 8.

⁷¹ See <http://nebula.wsimg.com/caa21330a9244e31bc7fe9878503308c?AccessKeyId=EE465739DC6967BED29E&disposition=0&alloworigin=1> (last visited March 29, 2019).

⁷² See <http://www.cityofclatskanie.com/aboutclatskanie/communityprofile.html> (last visited March 29, 2019).

⁷³ August 2015 Petition at 8.

⁷⁴ *Rural Radio Second R&O*, 26 FCC Rcd at 2573, para. 30 ("...the record should include actual evidence that the community's residents perceive themselves as separate and distinct from the urbanized area, rather than merely self-serving statements to that effect from town officials or business leaders."). See *supra* note 63 (explaining that Premier's rebuttal showing relied on 17 letters, 10 of which were from government officials and four of which were from representatives of civic/business groups).

⁷⁵ Threshold August 2015 Opposition at 6-8.

⁷⁶ August 2015 Petition at 8 & n.27 (filed Aug. 6, 2015) (*citing* Gina Dines, President of Clatskanie Chamber of Commerce Comment (filed Feb. 27, 2015)). In fact, as discussed above, Clatskanie is well served with no populated area receiving fewer than five services. See *supra* note 50.

DENIED IN PART and DISMISSED IN PART, to the extent indicated herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

(Continued from previous page) _____

⁷⁷ *Mexia, Texas*, 27 FCC Rcd at 10880-81 (*Tuck* prong three showing insufficient to overcome prongs one and two, when community of Bellmead had own local government and provided own municipal services; however, urbanized area provided bus service to Bellmead, most residents were not employed in Bellmead, and Bellmead and urbanized area were in the same advertising market).

⁷⁸ AFR at 5-9.

⁷⁹ *Blanchard, Louisiana, and Stephens, Arkansas*, Memorandum Opinion and Order, 10 FCC Rcd 9828 (1995).

⁸⁰ 47 U.S.C. §§ 154(i) and 405(a).

⁸¹ 47 CFR § 1.106(b)(2)-(3) and (c).