

DONTRON, INC.  
KPBC, Garland, Texas

MM DOCKET  
NO. 83-218  
File No.  
BP-810511AP

For Construction Permit for a New AM  
Station

*Appearances*

*Kathryn R. Schmeltzer*, on behalf of Faye & Richard Tuck, Inc.; *Robert B. Jacobi* and *Mark L. Pelesh*, on behalf of Marcos A. Rodriguez; *Harry C. Martin* and *Cheryl A. Kenny*, on behalf of Bluebonnet Radio Broadcasters, Inc.; *John C. Quale*, *James R. Bayes*, and *Anne D. Neal*, on behalf of Century Broadcasting Corporation; and *Mark E. Fields*, on behalf of Dontron, Inc.

DECISION

Adopted: April 18, 1986; Released: May 9, 1986.

BY THE REVIEW BOARD: MARINO (CHAIRMAN), JACOBS, AND  
BLUMENTHAL. BOARD MEMBER BLUMENTAL CONCURRING IN  
THE RESULT AND ISSUING A SEPARATE STATEMENT.

BOARD MEMBER JACOBS:

1. This proceeding purports to present a novel variation in the cases arising under Section 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 307(b), which examine whether any of a group of competing applicants is entitled to a grant solely because authorization of a broadcast station in their proposed community of license would significantly foster a "fair, efficient, and equitable distribution of radio service" in the area. If no "meaningful" choice of community is possible, *Cosmopolitan Enterprises, Inc.*, 15 FCC 2d 650, 655, 14 RR 2d 1029, 1034 (Rev. Bd. 1968), or if a community choice is made but more than one applicant proposes to serve that community, the ultimate selection of a licensee is based on a comparison of applicant credentials using the media diversification and ownership integration criteria of the *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 5 RR 2d 1901 (1965). Here, presiding Administrative

Law Judge (ALJ) Joseph P. Gonzalez held that the proposals for the communities of Carrollton, Plano, and Garland, Texas would offer such similar highpowered, regional AM service in the Dallas-Fort Worth Urbanized Area that no genuine Section 307(b) distinctions could be made, but that the community of Waxahachie, Texas, which is outside the Urbanized Area, involved a "local service" and was otherwise distinguishable so that it deserved a determinative Section 307(b) preference. Initial Decision (I.D.), FCC 85D-63, released October 7, 1985, paras. 27-37. Hence, he granted the application of Faye & Richard Tuck, Inc. (Tuck).<sup>1</sup>

2. The four remaining applicants — Marcos A. Rodriguez (Rodriguez), Bluebonnet Radio Broadcasters, Inc. (Bluebonnet), Century Broadcasting Corporation (Century), and Dontron, Inc. (Dontron) — have filed exceptions and reply briefs, as has Tuck. The Board has reviewed the I.D. in light of these pleadings, the oral argument held February 28, 1986, and our examination of the record.<sup>2</sup> We adopt the findings of fact and conclusions of law in the I.D., except as modified herein. However, contrary to Tuck, Century, Dontron, and the ALJ, we do not believe that a determinative Section 307(b) preference ought to be awarded to any of the applicants and, instead, affirm grant of Tuck's application under the contingent comparative issue. See note 1, *supra*.

3. The impetus for the subject applications was *Clear Channel AM Broadcasting*, 78 FCC 2d 1345, 47 RR 2d 1099, *recon. granted in part*, 83 FCC 2d 216, 48 RR 2d 1077 (1980), *aff'd sub nom. Loyola University FCC*, 670 F.2d 1222 (D.C. Cir. 1982), which made the 770 kHz frequency at issue here available as a Class II-B wide area or localized service. *Id.* at 1351-52, 47 RR 2d at 1103. What created an illusory Section 307(b) dilemma is that Tuck, the first-filed applicant, proffered an avowedly "local" service (Tuck Exhs. 5, p. 1, and 6, pp. 1-3), while the three remaining subsequent applicants outlined wide area, regional proposals. The ALJ examined all of the proposals under a tripartite Section 307(b) mode of analysis — transmission service, reception service, and technological efficiency (service to more people overall) — see *Kaldor Communications, Inc.*, 98 FCC 2d

<sup>1</sup> Consistent with *Voce Intersectario Verdad America, Inc.*, 100 FCC 2d 1607, 1609 n. 2, 58 RR 2d 445, 447 n. 2 (Rev. Bd. 1985), the ALJ also provided findings and conclusions on the contingent comparative issue, which likewise supported grant of Tuck's application.

<sup>2</sup> On April 14, 1986, Rodriguez requested dismissal of its application. That request will be granted, and its exceptions will not be considered herein.

292, 56 RR 2d 137 (Rev. Bd. 1984), and concluded that while the Tuck proposal was "clearly less efficient" than the others, this inefficiency was outweighed by Tuck's substantial transmission service preference as the first full-time broadcast station in Waxahachie. I.D., para. 37. Although the Carrollton and Garland applicants also proposed first full-time local services, this was disregarded by the ALJ, using the "suburbanite" model of *Debra D. Carrigan*, 100 FCC 2d 721, 58 RR 2d 96 (Rev. Bd.), *recon. denied*, 101 FCC 2d 218, 58 RR 2d 111 (Rev. Bd. 1985), because all four of the other proposals were treated essentially as Dallas-Fort Worth stations. As the ALJ put it, "The Dallas-Ft. Worth areas has a plethora of local broadcast service whereas Waxahachie has a single, daytime only AM station." I.D., para. 33.

4. The exceptions challenge the validity and appropriateness of the *Carrigan* "suburbanite" model, arguing either that such proposed community of license is distinct and that the "traditional" Section 307(b) community-comparison model should be applied, or that the inefficiency of Tuck's proposal destroys any Section 307(b) preference that it might otherwise deserve.<sup>3</sup> Not surprisingly, every applicant except Bluebonnet believes that it deserves a dispositive "traditional" Section 307(b) preference.<sup>4</sup> On the other hand, Bluebonnet is the only applicant who agrees with the ALJ that the non-Waxahachie proposals are all regional and do not allow a meaningful Section 307(b) choice among them; hence, Bluebonnet favors awarding the license under the contingent comparative issue (and believes itself the winner thereunder). We agree with Bluebonnet's Section 307(b) conclusion, except that we hold that *all* of the subject proposals — including Tuck's — are regional in nature and are subsumed within the *Carrigan* "suburbanite" model.

5. The *Carrigan* "suburbanite" model is exemplified by, and rooted in, *Huntington Broadcasting Co.*, 5 RR 721 (1949), *reh. denied*, 6 RR 569 (1950), *aff'd*, 192 F.2d 33 (D.C. Cir. 1951), and holds that no Section 307(b) preference will be awarded where an applicant (or applicants) has specified a "community" that is determined to be a mere appendage of a much larger urbanized

<sup>3</sup> Bluebonnet goes so far as to urge that Tuck's application should be denied without comparative consideration because of its alleged inefficiency, but cites no case precedent for such a draconian result in a Section 307(b) multiple application context.

<sup>4</sup> Since there is already a full-time AM station licensed to Plano — KTNS (formerly KXVI) — Bluebonnet realizes that it cannot qualify for a "traditional" first local service Section 307(b) preference.

area, and the frequency sought is a high-power class intended for "regional" rather than local coverage needs. *Carrigan, supra*, 100 FCC 2d at 728, 58 RR 2d at 101. Specifically, the model focuses on power and class of station; independence or interdependence of specified community to central city of urbanized area; size and proximity of specified community to central city of urbanized area; and signal population coverage and relevant advertising market. *Id.* at 729, 58 RR 2d at 102. Recently commenting on the continued vitality of the "*Huntington doctrine*," as expounded in *Carrigan, supra*, the Court of Appeals in *Beaufort County Broadcasting Co. v. FCC*, No. 84-1265, slip op. at 13-21 (D.C. Cir. April 11, 1986), emphasized that the doctrine has a metropolitan area, central city-suburban context, and refused to order the Commission to apply it in a non-metropolitan situation.<sup>5</sup> In so ruling, the Court was mirroring the Board's own view that geographical contiguity between central city and suburb is not a prerequisite, although, as the Court opined in *Miners Broadcasting Service, Inc. v. FCC*, 349 F.2d 199, 201 n. 6 (D.C. Cir. 1965), "[t]here is some indication that the distance of the suburb from the central city is significant . . . ." Similarly, while *Carrigan* uses the phrase "urbanized area" several times in its "suburbanite" model, the Board did not intend thereby either to adopt as its Section 307(b) metropolitan area standard the U.S. Census Bureau's "Urbanized Area" definition<sup>6</sup> or to prejudge the Commission's still-pending rulemaking proceeding, *Section 307(b) Preferences within Metropolitan Areas* (MM Dkt. No. 83-403), 48 Fed. Reg. 19428 (1983), which seeks to codify the appropriate geographic area for a metropolitan "community" concept under Section 307(b). Indeed, in both *Carrigan* and *Voce*, the Board utilized the Census Bureau's Las Vegas Standard Metropolitan

<sup>5</sup> The *Beaufort County* and *Carrigan* cases also note that the *Huntington doctrine* and "suburbanite" model have traditionally been perceived as addressing an "exceptional" Section 307(b) factual situation. However, recent Commission experience indicates a marked increase in central city-suburban proposals, probably signaling that the economic viability of still-unlicensed broadcast frequencies is more dependent on non-local urban centers than previously, *i.e.*, desirable frequencies outside of large central cities are now rare. *See, e.g.*, *Hispanic Owners, Inc.*, 99 FCC 2d 1180, 57 RR 2d 695 (Rev. Bd., 1985); *Carrigan, supra*; *Voce Intersectario Verdad America, Inc., supra* note 1.

<sup>6</sup> According to the Census Bureau, "An urbanized area consists of a central city or cities, and surrounding closely settled territory ("urban fringe") . . . [It] comprises an incorporated place and adjacent densely settled surrounding area that together have a minimum population of 50,000." 1980 Census of Population, Vol. 1, Chap. A, Part 45 (Texas), Rept. PC 80-1-A45 at A-3.

Statistical Area (SMSA),<sup>7</sup> not “urbanized area” data, to support its application of the “suburbanite” Section 307(b) model to the various communities at issue. Until the Commission establishes a precise metropolitan area standard, the Board will continue to weigh all relevant available data bearing on the social, political, and economic relationships between central cities and their suburbs in making “suburbanite” Section 307(b) determinations.

6. With these precepts in mind, we now return to the exceptions to the ALJ’s Section 307(b) analysis, outlined in paragraph 4, *supra*. Using the *Carrigan* criteria, the “suburbanite” Dallas-Fort Worth regional nature of the Carrollton, Plano, and Garland proposals is clearcut. The three communities are all separate and distinct political entities under Section 73.1120(a) of the Commission’s Rules, 47 CFR 73.1120(a), and have significant 1980 populations ranging from 40,595 for Carrollton to 138,857 for Garland. I.D., para. 29. However, they are all relatively close to the Dallas-Fort Worth dominant urban area (15–19 miles away), and all lie within the Dallas-Fort Worth Urbanized Area. I.D., paras. 14, 16, 20, 29. In addition, the four applicants for these communities intend to use a Class II-B wide area or local channel (see paragraph 3, *supra*) in a clearly high-power regional manner, proposing 5–10 kilowatt daytime operations with primary service areas of 45,645 — 61,981 square miles and populations of 3,644,543 — 4,165,270 persons.<sup>8</sup> I.D., paras. 8, 25. Finally, we note ample evidence in the record of the interdependence of the three communities with the Dallas and Fort Worth central cities. *E.g.*, Bluebonnet Ex. 7 and attachments thereto.

<sup>7</sup> As to SMSA’s, the Census Bureau says: “The general concept of a metropolitan area is one of a large population nucleus, together with adjacent communities which have a high degree of economic and social integration with that nucleus . . . Each SMSA has one or more central counties containing the area’s main population concentration: an urbanized area with at least 50,000 inhabitants. An SMSA may also include outlying counties which have close economic and social relationships with the central counties. The outlying counties must have a specified level of commuting to the central counties and must also meet certain standards regarding metropolitan character, such as population density, urban population, and population growth.” 1980 Census of Population, *supra* note 6, at A-4.

<sup>8</sup> Although the stations’ proposed nighttime operations are much less significant, we do not share Century’s view that our *Hispanic Owners* decision requires maximum regional service at night to qualify under the “suburbanite” model, especially where, as here, AM service is involved and the engineering strictures on nighttime coverage are much more severe than during the day. The breadth of the daytime coverage amply demonstrates the focus of the applicants’ intentions and programming efforts. See *Policy Statement on Section 307(b)*, 2 FCC 2d 190, 192–93, 6 RR 2d 1901, 1906 (1965).

7. As to Waxahachie, the regional nature of Tuck's proposal is less obvious but sufficiently proven to warrant treating it in the same manner as the other applications and not awarding a Section 307(b) preference. The record facts belie Tuck's avowedly "local" (see paragraph 3, *supra*) service proposal. First, we note that Waxahachie is the least significant of the communities at issue, having a 1980 population of only 14,624. I.D., para 10. This, plus the fact that it is 30 miles away from Dallas, *id*, essentially explains why Waxahachie is not included in the Dallas-Fort Worth Urbanized Area. See note 6, *supra*. On the other hand, we attach importance to its inclusion in the Dallas-Fort Worth SMSA, along with the other three communities. I.D., para. 27. This helps demonstrate that Waxahachie's somewhat greater distance from the SMSA central cities has not diminished its "close economic and social relationships" therewith. See paragraph 5 and note 7, *supra*. This reality is strengthened by examining Tuck's engineering proposal, which, while admittedly much more modest than the others, nevertheless encompasses 27,149 square miles and 1,138,170 persons. I.D., para. 25. We balk at characterizing this *relatively* small coverage as purely "local." Indeed, Joint Exh. 1, Figure 8, shows that Tuck's *present* primary service 0.5 mV/m contour<sup>9</sup> encompasses Dallas, Fort Worth, and most of Dallas and Tarrant Counties (in which the central cities are located) and its *proposed* enlarged 0.5 mV/m contour essentially mirrors the 0.5 mV/m contour of Dontroni's *present* AM facilities, which are licensed to Dallas, rather than Garland. Finally, we note that while Tuck's proposed power of one kilowatt is also considerably lower than the other proposals, it is akin to Dontron's previous power as a Dallas station and is double the existing power of the Tuck station. In light of all of the above factors, we reject Tuck's claim to a Section 307(b) preference for Waxahachie and hold that no meaningful Section 307(b) choice can be made amongst the four "regional" Dallas-Fort Worth proposals presently before us.<sup>10</sup> Cf. *Buena Vista Telecasters of Texas*, 94 FCC 2d 625, 54 RR 2d 562 (Rev. Bd.

<sup>9</sup> Tuck is the licensee of AM daytime-only Station KBEC, Waxahachie, which has been on the air since 1955. Its subject application proposes to change frequencies from 1390 kHz to 770 kHz and to add nighttime service.

<sup>10</sup> Because we are not according Tuck a Section 307(b) preference, we need not reach the several exceptions which urge that the alleged inefficiency of its engineering proposal constitutes a wasting of the 770 kHz frequency which fatally undermines any preference to which Tuck might otherwise be entitled. The relative efficiencies of the various engineering proposals will be considered, for positive preference purposes only, under the comparative coverage aspect of the contingent comparative issue. See paragraph 10, *infra*.

1983) (no Section 307(b) preference in television case involving Dallas-Fort Worth suburbs of Garland and Richardson). This result is also consistent with *Miners Broadcasting Service, Inc. v. FCC, supra*, in which the Commission was criticized for using the *Huntington* doctrine to create Section 307(b) inequalities, rather than to destroy them. Using the *Carrigan* "suburbanite" model to favor Waxahachie over the other Dallas-Fort Worth suburbs would, under the facts of this case, smack of the *Miners* vice. Thus, we now consider the ALJ's treatment of the contingent comparative issue.

8. *Contingent Comparative Issue.* Under this issue, the ALJ assessed media diversification demerits against Century and Dontron, based on a number of attributable broadcast interests that each holds outside Texas, and totally discredited the ownership integration proposals of all of the applicants except Tuck and Bluebonnet. As to them, the ALJ gave Tuck 50% full-time quantitative integration credit and Bluebonnet, 11% part-time credit. He concluded that Tuck deserved a substantial integration preference against all of its competitors and a substantial diversification preference against Century and Dontron. Hence, the ALJ declared Tuck the clear winner on a comparative basis, as well as under Section 307(b), I.D., para. 106. No exceptions have been raised concerning Tuck's diversification preferences over Century and Dontron, and we agree with the ALJ that, under *Vacationland Broadcasting Co., Inc.*, 58 RR 2d 439 (1985), *reaff'd*, FCC 86-200, released April 29, 1986, at paras. 11-14, not even a slight diversification demerit should be assessed against Tuck because of its present ownership of the AM facilities that it is attempting to upgrade in this proceeding (see note 9, *supra*). However, we will reduce the magnitude of its diversification preference over Century and Dontron to moderate. See *Focus Television Co.*, 98 FCC 2d 546, 56 RR 2d 1335 (Rev. Bd. 1984).

9. Little need be said about the ownership integration exceptions submitted by Century and Bluebonnet. Even if Century received the 40% *part-time* integration credit that it seeks and Bluebonnet, the 60% *part-time* credit, neither proposal would surpass the 50% *full-time* credit that the ALJ awarded to Tuck or the 40% full-time credit that Tuck would retain if Century's challenge to 10% out of Tuck's 50% credit (the 10% full-time integration proposal of Tuck's program director, Sandra Howell) were granted. See *Daytona Broadcasting Co., Inc.*, 97 FCC 2d 212, 55 RR 2d 1326 (Rev. Bd. 1984), *rev. denied*, 101 FCC 2d 1010 (1985) (7.2% full-time and 12% part-time integration proposals

exceeds 80% part-time integration credit); *Van Buren Community Service*, 87 FCC 2d 1018, 1022 n. 1, 50 RR 2d 115, 119 n. 1 (Rev. Bd. 1981), *rev. dismissed*, 50 RR 2d 1433 (1982) (quantitative integration credit decreases more sharply than proportionally with a corresponding decrease in the number of hours of participation per week). However, even though Tuck enjoys a "clear quantitative difference" in integration credit vis-a-vis Century and Bluebonnet, *Van Buren Community Service, supra*, we will reduce Tuck's integration preference to a moderate one because integration proposals are not entitled to maximum credit where less than a majority of stock ownership is fully integrated. *See Pittsfield Community TV Ass'n*, 94 FCC 2d 1320, 56 RR 2d 134 (Rev. Bd. 1983), *rev. denied*, FCC 84-459 (Comm'n 1984).

10. As to signal coverage matters, we agree with Bluebonnet that it is entitled to a slight comparative coverage preference over Tuck for providing radio service to three and one-half times as many persons as Tuck, even though five or more aural services are already available throughout the proposed service area. *See Daytona Broadcasting Co., supra*. However, Bluebonnet's coverage advantages over its other competitors are too slight to deserve any preferences against them. *Id.* By the same token, we decline to assess a comparative coverage *demerit* against Tuck for having an allegedly "inefficient" coverage proposal, as requested by Century. The *Policy Statement, supra*, 1 FCC 2d at 398, 5 RR 2d at 1913, makes it clear that the "efficient use of frequency" may result in a comparative *preference* to the most efficient applicant; however, no demerits are assessed for inefficiency. *Cf. New Continental Broadcasting Co.*, 88 FCC 2d 830, 844 n. 15, 50 RR 2d 1117, 1129 n. 15 (Rev. Bd. 1981) (subsequent history omitted) (improper to assess "demerits" for the absence or small quantity of qualitative integration enhancing factors). As to Century's contention that the ALJ erred in refusing to disqualify Tuck and Bluebonnet for failure to provide minimum nighttime interference-free primary service to their entire cities of license, as required by Sections 73.24(j) and 73.188(b) of the Rules, 47 CFR 73.24(j) and 73.188(b), see Memorandum Opinions and Orders, FCC 84M-552, released February 1, 1984, and FCC 84M-588, released February 2, 1984, we hold that the subject rulings properly concluded that the engineering proposals substantially complied with the rules in question and that an evidentiary hearing on Century's allegations was unnecessary. *See Andy Valley Broadcasting System, Inc.*, 12 FCC 2d 3, 4-5, 12 RR 2d 691, 693 (1968).

11. *Final Comparative Evaluation.* All decisionally significant exceptions have been considered by the Board. Under the *Policy Statement, supra*, Tuck's moderate diversification and ownership integration preferences make it the clear winner over Bluebonnet, the runner-up, who has gleaned only the slight comparative coverage preference that it requested. See *Louisiana Super Comm. Ltd. Partnership*, 102 FCC 2d 1293, 59 RR 2d 761 (Rev. Bd. 1985) (substantial integration preference significantly outweighs slight coverage preference). Hence, we affirm the ALJ's ultimate conclusion that grant of Tuck's application will best serve the public interest, convenience, and necessity.<sup>11</sup>

12. ACCORDINGLY, IT IS ORDERED, That the petitions for leave to amend filed by Marcos A. Rodriguez on October 3, 1985; by Century Broadcasting Corporation on December 10, 1985, February 6, 1986, and March 14, 1986; and by Faye & Richard Tuck, Inc. on December 30, 1985 (as supplemented on January 8, 1986) ARE GRANTED, and the amendments ARE ACCEPTED;

13. IT IS FURTHER ORDERED, That the motion to dismiss filed by Marcos A. Rodriguez on April 14, 1986 IS GRANTED, and the application of Marcos A. Rodriguez (File No. BP-810511AJ) IS DISMISSED; and

14. IT IS FURTHER ORDERED, That the application of Faye & Richard Tuck, Inc. (File No. BP-810127AJ) for authority to operate an AM broadcast station on 770 kHz at Waxahachie, Texas IS GRANTED, and the applications of Bluebonnet Radio Broadcasters, Inc. (File No. BP-810511AL), Century Broadcasting Corporation (File No. BP-8105411AM), and Dontron, Inc. (File No. BP-810511AP) ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

JEROLD L. JACOBS, *Member, Review Board*

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<sup>11</sup>Even if we were to grant Dontron's request for a moderate comparative preference based on its existing Dallas station's past broadcast record, an issue which the ALJ refused to add, it could not prevail over Tuck. Cf. *Communications Properties, Inc.*, FCC 83-320, released July 7, 1983, note 1, *aff'g* 92 FCC 2d 45, 52 RR 2d 981 (Rev. Bd. 1982) (even substantial preferences for past broadcast record and ownership integration cannot outweigh a substantial diversification preference). Here, Tuck's diversification and integration preferences clearly exceed Dontron's *arguendo* moderate past broadcast record preference.

Statement of Board Member  
Norman B. Blumenthal  
Concurring In Result

With sincere respect to my colleagues, I cannot join in their analysis of the Section 307(b)<sup>1</sup> issue of this case; and, but for the fact that the Waxahachie applicant prevails here under the comparative issue in any event, this statement would likely have been in dissent.

While indeed sympathetic to the majority's difficulty in reaching close judgments under Section 307(b) until the Commission concludes its proceeding in *Section 307(b) Preferences Within Metropolitan Areas*, MM Docket No. 83-403, 48 Fed. Reg. 19428 (1983), *see ante*, para 5, and sharply cognizant of the problems that attend a case-by-case analysis when competing applicants seek Section 307(b) preferences under the looming shadow of a nearby metropolitan area,<sup>2</sup> I nonetheless believe that the majority's Section 307(b) result in this case stretches the *Huntington* doctrine<sup>3</sup> (or "suburbanite model"<sup>4</sup>) beyond what the law allows.

The majority's review commences accurately by noting that Section 307(b) judgments involve "a tripartite Section 307(b) mode of analysis — transmission service, reception service, and technological efficiency. . . ." *Ante*, at para. 3. It also sets out the *Huntington*-inspired criteria used to determine whether an applicant specifying a nearby suburban community cannot be meaningfully distinguished from its competitors.<sup>5</sup> And, finally, it correctly notes that, whereas *Huntington*-type decisions (*i.e.*, suburban community not entitled to § 307(b) preference) were at one time

<sup>1</sup> 47 U.S.C. § 307(b).

<sup>2</sup> *See Debra D. Carrigan*, 100 FCC 2d 721, 725-727 (Rev. Bd. 1985) (applications for Comm'n review pending). There the Board noted that phenomena such as "population growth, population shifts, urban sprawl, megalopolae" have all conspired to make these § 307(b) judgments much more difficult. *Id.*, at 726.

<sup>3</sup> *See Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951).

<sup>4</sup> *See Debra D. Carrigan*, *supra* note 2, 100 FCC 2d at 728-731.

<sup>5</sup> Relying on *Carrigan's* "suburbanite model" discussion, the majority opinion states:

Specifically, the model focuses on power and class of station; independence or interdependence of specified community to central city of urbanized area; size and proximity of specified community to central city of urbanized area; and signal population coverage and relevant advertising market.

*Ante*, at para. 5.

the "exception", *ante*, n. 5,<sup>6</sup> such cases have recently proliferated. *See id.*

However, it is in the application of the Section 307(b) principles that I believe the majority may have strayed too far afield in applying *Huntington*. Nobody disputes that Waxahachie has the indicia of a "separate community" within the Commission's lexicon. It is self-governing; has a population of over 14,000; is over 30 miles away from Dallas-Ft. Worth and not in its "Urbanized Area";<sup>7</sup> and, the Waxahachie applicant proposes only a 1000 watt AM station, not a 50,000 watt "clear channel" operation. *See ante*, para. 7.<sup>8</sup>

But, relying chiefly (if not entirely) on the "reception" aspects of the Waxahachie proposal, the majority has determined, in effect, that Waxahachie is a suburb of Dallas-Ft. Worth, or at least its functional equivalent. In focusing almost exclusively on the "reception" leg of our usual tripartite mode, I fear that the majority may have slipped into precisely the territory shelled by the courts in *Miners Broadcasting Service, Inc. v. FCC*, 349 F.2d 199 (D.C. Cir. 1965) and *Pasadena Broadcasting Co. v. FCC*, 555 F.2d 1046 (D.C. Cir. 1977).

Inasmuch as this is merely a concurring statement, no further critique of the instant Section 307(b) portion of the decision is necessary. It is sufficient to note my disagreement in the brief

<sup>6</sup> *See also WHW Enterprises, Inc. v. FCC*, 753 F.2d 1132, 1135-1137 (D.C. Cir. 1985) (aff'g refusal to apply *Huntington* to Portage or Kalamazoo, Michigan applications). There, the applicant losing a Section 307(b) determination had argued that the two cross-river cities were, in essence, a "single community." Relying on the Commission's determination that Portage and Kalamazoo were "separate communities," with Portage having a greater need for a new *transmission* service, the court affirmed our refusal to invoke *Huntington*.

<sup>7</sup> Compare, e.g., *Arizona Number One Radio, Inc.*, FCC 86R-16, released March 26, 1986 (no § 307(b) preference given where all applicants for "regional" Class C frequency were co-adjacent to Phoenix and within the Phoenix "Urbanized Area"). While Waxahachie is in the Dallas-Ft. Worth "Standard Metropolitan Statistical Area," *ante*, para. 7, the Board has recognized that this classification is not determinative. *See Carrigan, supra*, 100 FCC 2d 736 n. 45 (citing *Suburban Policy Statement*, 93 FCC 2d 436, 457 (1983), *aff'd sub nom. Beaufort County Broadcasting Co. v. FCC*, No. 84-1384 (D.C. Cir. decided April 11, 1986).

<sup>8</sup> In fact, it was specifically to provide additional local "transmission" service (and particularly at night) that the Commission further broke down its "clear channel" AM frequencies in *Clear Channel AM Broadcasting*, 78 FCC 2d 1345 (1980), *reconsideration*, 83 FCC 2d 216, *aff'd sub nom. Loyola University v. FCC*, 670 F.2d 1222 (D.C. Cir. 1982). It is salient, therefore, that the instant Class II-B AM frequency was created by our 1980 rulemaking; and that the Waxahachie applicant here is now one of those daytime-only AM licensees seeking to take advantage thereof. *See ante*, paras. 3 and 7.

discussion above, and to join in the ultimate award to the Waxahachie applicant.