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Copps/Adelstein Tut-tut *Tuck*
FM market move analysis criticized by FCC Dems

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Radio folks who have a hankering to move stations around – usually in the direction of larger, more lucrative markets – were reminded recently that clouds are forming on the horizon.

Commissioners Copps and Adelstein issued joint dissents in two recent decisions involving FM channel moves. In their dissents, they were harshly critical of the manner in which the majority applied the *Tuck* analysis which has been utilized for the last couple of decades in the evaluation of proposed city-of-license changes. According to Copps/Adelstein, the *Tuck* analysis has degenerated into a “parlor game” for “Washington insiders”, a game that (a) facilitates rather than discourages the flight of rural stations to urban areas and (b) leads to greater media ownership concentration. (For those readers who may just be waking from a several-year coma, the notion of greater media ownership concentration is not viewed as a good thing by Copps/Adelstein.)

The two cases at issue involved moving (a) a channel to Shalimar, Florida (pop. 718) from Evergreen, Alabama (pop. 3,630), and (b) a second channel to Sherman, Illinois (pop. 2,871) from Lincoln, Illinois (pop. 15,369). At first blush these proposed moves might seem reasonable. After all, in each case a smaller community is getting a first local FM service while the communities they are leaving would retain their own local radio service. What’s not to like about that? Ah, but if you drill a little deeper, you find that the Shalimar allotment will mean that that station would be serving the considerably larger Ft. Walton market, and similarly, the Sherman allotment would be in the Springfield urban market. Copps/Adelstein presumably suspect that little old Shalimar and little old Sherman may just be allotment flags of convenience enabling those licensees to serve the larger markets rather than their small communities of license.

Since 1988 the Commission has invoked the *Tuck* analysis to try to sort out the public interests plusses and minuses of proposed city-of-license changes, particularly when the proposed move would take a station out of a rural area and dump it into an urbanized area. The *Tuck* analysis is intended to serve as a brake on such migratory patterns.

The Copps/Adelstein dissent was not intended to criticize *Tuck* or its underlying goals. Rather, they would prefer a more rigorous application of the showing required to gain a preference under the various factors considered in a *Tuck* analysis, and they accused the majority of eviscerating the principles underlying *Tuck*. According to their dissents, Copps/Adelstein yearn for those days of yesteryear when the FCC “took the *Tuck* standard seriously”.

The preference for strict enforcement of the *Tuck* standard by Commissioners Copps and Adelstein is part and parcel of the ongoing localism debate. In their view, a rigorous application of the *Tuck* standard could and should serve as a check against homogenization of radio programming by ensuring that stations focus on the communities to which they are licensed, rather than on some distant, potentially more lucrative, market. This underlying assumption is highly questionable, of course. The Commission itself has recognized that radio stations tend to serve markets rather than specific communities. And in any event, the FCC’s own authority to direct a licensee’s programming in any substantive manner is severely limited by the Communications Act and (let’s think about this for a minute – oh yes, now I remember) the First Amendment.

Nevertheless, the recent Presidential election puts the Democrats firmly in control of the country, and Copps and Adelstein both happen to be Democrats. As a result, we can expect that they may be hanging around for some time to come. In view of their clearly-stated and highly jaundiced view of city-of-license changes, applicants looking to go that route will likely face much tougher sledding. While it is possible that an appeals court may have the opportunity to set the Commission straight on some of these issues, there is no guarantee that that will happen in the near term, or even at all. Stay tuned.