

December 7, 2000

## **Separate Statement of Commissioner Susan Ness**

*Re: In the Matter of Definition of Radio Markets, Notice of Proposed Rulemaking*

The Commission's current method of defining local radio markets suffers from a number of flaws that can and should be remedied in this proceeding. That said, I fear that the final rules we issue may be the gilded padlock on the proverbial barn door, with the horse of consolidation galloping over the horizon.

As this Notice points out, current radio market definition methods use different contour overlap schemes to define commonly owned stations, on the one hand, and total stations in a market, on the other, often leading to uneven results that bear no resemblance to market realities. For example, under our current contour overlap method, two competing groups operating in the same city may be limited by two different station caps. Since the Commission first implemented the radio ownership changes mandated by Congress, *see In Re: Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996*, 11 FCC Rcd 12368 (1996), I have highlighted the need to remedy this problem, *see, e.g., Joint Statement of Commissioners Susan Ness and Gloria Tristani, KBYB(FM), El Dorado, Arkansas*, 13 FCC Rcd 15685 (1998). Over the last four years, however, the radio broadcast industry has consolidated considerably, with transactions consummated under our current, flawed system of defining markets. I hope we can quickly conclude this proceeding so that we do not compound the problem with further delay.

I also believe that, in the spirit of improving the law, we should be mindful of the law of unintended consequences. Any remedy we adopt must be applied prospectively and fairly, with cognizance of the reasonable market expectations of parties who hold combinations lawfully assembled under our existing rules. Finally, whatever definition we adopt should be consistent with the intent of Congress in the Telecommunications Act of 1996 in relaxing radio ownership restrictions.