

December 7, 2000

SEPARATE STATEMENT OF COMMISSIONER GLORIA TRISTANI

*Re: In the Matter of Definition of Radio Markets, Notice of Proposed Rulemaking
MMB Docket No. 00-244*

While today's Notice represents progress, it is only a small step on a long road. It has come so late, and at such great cost, that it is appropriate to reflect for a moment on the damage that the Commission's delay has inflicted on the listening public.

On August 14, 1998 – almost two and a half *years* ago – Commissioner Ness and I issued a statement raising the two identical issues that today's item implies could only recently be discerned: (1) that the Commission's rules prevent a meaningful assessment of market concentration because they do not apply a consistent definition of radio "market"; and (2) that the practice of treating any station whose principal community contour intersects with any mutually overlapping station in the proposed combination as being in the same "market" can lead to unrealistic results.¹ Since that time, I have repeatedly banged the drum that our rules denied justice to listeners and their communities.² Finally, in its June 20, 2000 Biennial Review Report, the Commission tentatively concluded that "our definitions and methodologies in this area may be having

¹ See Joint Statement of Commissioners Susan Ness and Gloria Tristani, *In Re Applications of KIXK, Inc., et al. for Assignment of License of KBYB(FM), El Dorado, Arkansas*, FCC 98-166 (rel. Aug. 14, 1998).

² See, e.g., Concurring Statement of Commissioner Gloria Tristani, *Re: Application of Great Empire Broadcasting, Inc. and Journal Broadcast Corp. for Transfer of Control of Omaha Great Empire Broadcasting, Inc., Licensee of WOW(AM) and WOW(FM), Omaha, Nebraska; File Nos. BTC-980831GH, BTCH-980831GI*, 14 FCC Rcd 11145 (1999); Press Statement of Commissioner Gloria Tristani, *Re: Mass Media Bureau Approval of Radio License Transfer in Wichita, Kansas* (rel. March 24, 2000); Press Statement of Commissioner Gloria Tristani, *Re: Mass Media Bureau Approval of Radio License Transfers in Youngstown-Warren, Ohio and Lafayette, Louisiana* (rel. March 20, 2000); Press Statement of Commissioner Gloria Tristani re: *Re: Mass Media Bureau's granting of applications to transfer radio licenses from Pilot Communications to Citadel Communications Corp. in Augusta-Waterville, Maine* (rel. Feb. 28, 2000); Press Statement of Commissioner Gloria Tristani *Re: Mass Media Bureau's granting of applications to transfer radio licenses from Fuller-Jeffrey Broadcasting to Citadel Broadcasting in Portland, Maine* (rel. Aug. 24, 1999); Dissenting Statement of Commissioners Susan Ness and Gloria Tristani, *In re Applications of Pine Bluff Radio, Inc. and Seark Radio, Inc. File Nos. BAL-970103EA, BALH-970103EB, BALH-970103EC* (rel. April 12, 1999); Joint Statement of Commissioners Susan Ness and Gloria Tristani, *In re Station KBYB(FM), El Dorado, Arkansas*, 13 FCC Rcd 15685 (1998).

effects inconsistent with what Congress intended” and promised a Notice of Proposed Rulemaking to correct the problem.³ Regrettably, it has taken the Commission an additional six months to issue today’s 8-page Notice.

This is not simply a matter of the Commission ignoring congressional directives and common sense. Real listeners in real communities have been harmed by a consolidation of the airwaves that should not have been permitted to take place. Across America, in cities like Omaha (Nebraska), Wichita (Kansas), Youngstown (Ohio), Portland (Maine), Pine Bluff (Arkansas) and Augusta (Maine) listeners have been deprived of the broadcast diversity to which they are entitled and which the Commission is duty-bound to ensure. For those communities, today’s notice of proposed rulemaking will provide cold comfort. We must now move with dispatch to spare other communities a similar fate.

³ See *Biennial Review Report*, FCC 00-191 (rel. June 20, 2000) at para. 68.