NEWS

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PRESS STATEMENT OF COMMISSIONER GLORIA TRISTANI

Re: Approval of Radio License Transfers in Erie, Pennsylvania; Killeen, Texas; Columbus, Georgia; and Columbus/Starkville, Mississippi

In another series of license transfer approvals that ignore Commission precedent and our obligations under the Communications Act, the Commission has approved deals in four markets each with local duopoly advertising revenue control exceeding 75%.[1] These levels of control over local radio markets cannot be justified by reference to prior Commission precedent and cannot be said to serve the public interest under any recognizable characterization of that standard.

Today's approvals highlight again the Commission's recent and repeated departure from a principled public interest analysis.[2] Due to the procedural posture of these transfer requests, no letter ruling from the Bureau exists. We may never know by what legal or factual theory these decisions were reached. Leaving aside the absence of prior precedent, approval of control of nearly 95% of a local radio market by two owners, as in the Erie, Pa. case, should stun anyone concerned with maintaining a vibrant marketplace of ideas.[3] It defies common sense to claim control of almost all of the radio waves in a city by two owners serves the public interest. In high-concentration cases such as these, the Commission has previously found it:

> [H]as an independent obligation to consider whether a proposed pattern of radio ownership that complies with the local ownership limits would otherwise have an adverse competitive effect in a particular radio market and thus, would be inconsistent with the public interest.[4]

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[1] The figures are Erie, Pa.: 94.8%; Killeeen, Tx.: 75.3%; Columbus, Ga.: 78%; and Starkville, Ms.: 75.8%.

[2] *See* my press statements on similar Bureau level action issued on *4/13/01* and *3/12/01*.

[3] In similar cases, the Bureau has repeatedly cited *Shareholders of AMFM, Inc.*, 15 FCC Rcd. 16062 (2000) for the proposition that duopoly concentrations of 82.6% have been approved by the Commission. While the 82.6% figure appears in the *AMFM* decision at 16070, there is absolutely no public interest analysis supporting it. Only a single commissioner voted to approve both the outcome and the rationale in that case. Citation to the *AMFM* case is best described as citation to precedent that never was.

[4] *CHET-5 Broadcasting L.P.*, 14 FCC Rcd 13041, 13043 (1999). The courts have long agreed that competition is a component of the Commission's public interest review of broadcast

Meaningful analysis of competition may lead to ownership limitations to both preserve competition and ensure divergent points of view can freely compete for the attention of those in power and of those to whom the powerful must account. It is viewpoint diversity our rules seek to encourage, not viewpoint popularity. The U.S. Supreme Court,

> [H]as recognized an interest in obtaining diverse broadcasting viewpoints as a legitimate basis for the FCC, acting pursuant to its "public interest" statutory mandate, to adopt limited measures to increase the number of competing licensees and to encourage licensees to present varied views on issues of public concern.[5].

In the absence of any evidence to believe these transfers either promote competition or increase diversity, designation for hearing under Section 309 of the Communications Act would be appropriate. Fidelity to the law, to the principle of *stare decisis,* and to the bounds of delegated authority, should foreclose Bureau action where concentration levels exist that have not been previously approved by the full Commission.

In an era of nearly uncontrolled consolidation in the radio industry, this Commission persists in the unprincipled, incremental subversion of its obligation to ensure broadcast license transfers serve the public interest. If the Commission wishes to alter its approach, it should wait for Congress to change the statute or the U.S. Supreme Court to alter its construction of the "public interest" language in the Communications Act. Until such time, the use of the Bureau's delegated authority undermines the principles upon which FCC and U.S. Supreme Court cases, and indeed our government, are based.

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applications. *See, e.g., FCC v. RCA Communications, Inc.,* 346 U.S. 86, 94 (1953)("There can be no doubt that competition is a relevant factor in weighing the public interest."); *Mansfield Journal Co. v. FCC,* 180 F.2d 28, 33 (D.C. Cir. 1950)("Monopoly in the mass communications of news and advertising is contrary to the public interest, even if not in terms proscribed by the antitrust laws."); *Rogers Radio Communications Services, Inc. v. FCC,* 593 F.2d 1225, 1230 (D.C. Cir. 1978)(The "effect on competition [is] clearly a proper factor for the Commission to consider under the public interest, convenience and necessity standard. . . .").

[5] *See Metro Broadcasting, Inc. v. FCC,* 497 U.S. 547, 617 (1990) (O'CONNOR, J., dissenting) citing *FCC v. National Citizens Committee for Broadcasting,* 436 U.S. 775 (1978*); Red Lion Broadcasting Co. v. FCC,* 395 U.S. 367 (1969); *United States v. Storer Broadcasting Co*., 351 U.S. 192 (1956); *Associated Press v. United States,* 326 U.S. 1 (1945); *National Broadcasting Co. v. United States,* 319 U.S. 190 (1943).