



NEWS

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August 24, 1999

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.

I have previously described how the Commission's current method of applying the local radio ownership caps is illogical and unreasonable.¹ This is one of those cases, however, in which application of the Commission's approach appears to cross the line between being illogical and being unlawful. Congress provided in the Telecommunications Act of 1996 that:

in a radio market with 45 or more commercial radio stations, a party may own, operate, or control up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM).²

Thus, the plain language of the statute requires us to look at the *same market* -- i.e., to use the same definition of "market" -- when determining the number of radio stations in the market and when counting the number of stations that an entity owns, operates, or controls within that market.³

¹See, e.g., *Concurring Statement of Commissioner Gloria Tristani, In re Applications of Great Empire Broadcasting, et al.*, FCC No. 99-142 (rel. June 11, 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).

²See 1996 Act, Section 202(b)(1)(A) (emphasis added).

³We cannot ignore Congress' directive to apply a single definition of "market" in cases such as this until the conclusion of a future rulemaking. Indeed, we have already amended our rules to reflect Congress' directive. While the Commission still retains the

Here, it appears that whatever "market" is examined, Citadel would violate the statute. For instance, based on a signal contour overlap approach, there are 45 stations in Market 3 for purposes of establishing the statutory cap.⁴ Of those 45 stations, Citadel will own 8 FM stations -- 3 more than permitted.⁵ Similarly, in the 22-station Portland Arbitron market (the definition of market actually used in the economic marketplace), Citadel will own 6 FM stations -- 2 more than permitted under the statute.

The only way this deal can be approved is through the definitional shell game to which I have objected repeatedly. Although Citadel will own 8 FM stations in Market 3, the Commission does not count all of those stations against the 5-station limit. We only count those stations in Market 3 with mutually overlapping signal contours against the cap. But then we do not deduct those stations without mutually overlapping signal contours from the count of the overall number of stations in the market, which could reduce the cap itself. So, accordian-like, we expand and contract the size of the "market" to suit our purposes.⁶ Because this regulatory sleight-of-hand is at odds with the statute, my initial view is that I disagree with the Bureau's decision to grant the proposed license transfer.

discretion to decide *which* single-market definition to apply, it no longer has the discretion to decide *whether* to apply a single-market approach.

⁴(See attachment).

⁵Specifically, Citadel will own WCYI(FM), WCYY(FM), WHOM(FM), WOKQ(FM), WJBQ(FM), WCLZ(FM), WBLM(FM), and WPKQ(FM).

⁶Notably, the Commission's practice of shrinking the market when assessing the number of stations that will count against the cap has never been codified as a Commission rule. Thus, when Congress directed the Commission to change its rules, the only market definition rule it had before it was the rule defining the total number of stations "in a market." See 47 CFR § 73.3555(a)(4)(ii).

**ENGINEERING STATEMENT
RADIO MULTIPLE OWNERSHIP ANALYSIS
CITADEL LICENSE, INC.**

Tabulation of Stations in Radio Markets

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Information relevant to Markets 1 and 2 intentionally omitted.

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Market 3	
Number	Station
AM Stations	
1	WGAN, Portland, ME, 560 kHz
2	WJTO, Bath, ME, 730 kHz
3	WLAM, Gorham, ME, 870 kHz
4	WJJB, Brunswick, ME, 900 kHz
5	WZAN, Portland, ME, 970 kHz
6	WBNC, Conway, NH, 1050 kHz
7	WSME, Sanford, ME, 1220 kHz
8	WTME, Lewiston, ME, 1240 kHz
9	WFAU, Gardiner, ME, 1280 kHz
10	WLOB, Portland, ME, 1310 kHz
11	WIDE, Biddeford, ME, 1400 kHz

Market 3	
Number	Station
12	WJAE, Westbrook, ME, 1440 kHz
13	WKTO, South Paris, ME, 1450 kHz
14	WZOU, Lewiston, ME, 1470 kHz
15	WBAE, Portland, ME, 1490 kHz
FM Stations	
1	WCDQ, Sanford, ME, Channel 221
2	WMMEFM, Augusta, ME, Channel 222
3	WOXOFM, Norway, ME, Channel 224
4	WMGX, Portland, ME, Channel 226
5	WMWV, Conway, NH, Channel 228
6	WCYI, Lewiston, ME, Channel 230
7	WCYY, Biddeford, ME, Channel 232
8	WHOM, Mt. Washington, NH, Channel 235
9	WXGLFM, Topsham, ME, Channel 238
10	WRED, Saco, ME, Channel 240
11	WLOBFM, Rumford, ME, Channel 242
12	WCME, Boothbay Harbor, ME, Channel 244
13	WOKQ, Dover, NH, Channel 248
14	WJBQ, Portland, ME, Channel 250
15	WCLZFM, Brunswick, ME, Channel 255
16	WBQQ, Kennebunk, ME, Channel 257
17	WMWX, Auburn, ME, Channel 260
18	WYNZ, Westbrook, ME, Channel 265
19	WKCG, Augusta, ME, Channel 267
20	WPORFM, Portland, ME, Channel 270
21	WBLM, Portland, ME, Channel 275
22	WPKQ, Berlin, NH, Channel 279
23	WABKFM, Gardiner, ME, Channel 282
24	WBNCFM, Conway, NH, Channel 283
25	WQEZ, Kennebunkport, ME, Channel 284
26	WBCI, Bath, ME, Channel 290
27	WBQW, Scarborough, ME, Channel 292
28	WLAMFM, North Windham, ME, Channel 294
29	WSCY, Moultonborough, NH, Channel 295
30	WTHT, Lewiston, ME, Channel 298

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Information relevant to Markets 4 through 7 intentionally omitted.

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