

**STATEMENT OF
COMMISSIONER JAMES H. QUELLO
DISSENTING IN PART**

Re: Amendment of Part 90, Subparts M and S of the Commission's Rules (PR Docket No. 86-404).

After reviewing the Petitions for Reconsideration in this proceeding, I am convinced that expanding SMR eligibility to allow federal government agencies and individuals to be end-users is poor public policy. Therefore, I am dissenting to that aspect of the Memorandum, Opinion and Order reaffirming the Commission's earlier action that expanded SMR eligibility to include federal agencies and individuals. As I have stated previously in this proceeding, the majority is now approving what the Commission previously rejected to do on the basis that such action would increase the costs of existing services.¹

The majority would have the public believe that by expanding end-user eligibility in the SMR service we would be making new communication options available to these two groups. This is not so. Under the previous Part 90, Subparts M and S rules, individuals and government agencies could have sought waivers of the rules to be eligible end users.

The majority argues that by expanding eligibility of end users to include government agencies and individuals, the Commission would encourage greater use of SMR frequencies in remote areas. I have no problem with amending our rules to promote use of spectrum in remote areas, however, the amendments reaffirmed by the majority are applicable in all areas, rural and urban. Unfortunately, it is in the urban areas where the demand for spectrum is the greatest and the amendments to Part 90, Subparts M and S will exasperate an already difficult situation.

Finally, as I said before, I believe the Commission is seriously undermining the private carrier status of this service by expanding the end-user eligibility categories. The majority would prefer to focus the argument on the issue of resale rather than the issue of eligibility. As the majority states, Congress did grant the Commission authority to "add, modify, and delete services as the need arises." (See, Section 331(a) of the Act) The majority, however, is taking great liberty in redefining eligibles to allow everyone except foreign governments or their representatives to become Part 90, Subparts M and S eligibles. I believe such action is inconsistent with the intent of Congress.

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Throughout this proceeding I have been able to demonstrate inconsistent public policy decisions. It is important to recognize that these decisions may have ramifications on land mobile services' ability to demonstrate need for additional spectrum.

1/ See, Concurring Statement of Commissioner James H. Quello, Report and Order, PR Docket No. 86-404, 3 FCC Rcd 1856, 1858 (1988).