

STATEMENT BY COMMISSIONER JAMES H. QUELLO

Re: WNCN(FM)

I disagree with the concurring statement in this case issued by my respected colleague, Commissioner Hooks. While I recognize divergent views and philosophies in matters considered by the Commission, I cannot acquiesce in an argument which seeks to misconstrue the intent of the majority in its decision.

Commissioner Hooks argued vigorously his view that the Commission should approve the so-called "option agreement," with particular emphasis in approval of reimbursement of citizen group petitioners' expenses. However, the majority concluded that it would not evaluate the specific terms of the agreement in light of its recently adopted Statement of Policy re: Agreements Between Broadcast Licensees and the Public, FCC 75-1359, 35RR 2d 1177(1975), wherein we stated that we will not prescribe or prohibit any particular agreement terms so long as they are not unlawful nor violative of particular Commission rules or policies. The majority in this case explicitly stated that it neither approved nor disapproved the terms of the agreement, in whole or in part, and this position was voted by the majority of my colleagues and myself.

The concurring statement now apparently attempts to accomplish indirectly what was unable to be accomplished directly; i. e., to impute "approval" of the option agreement and the reimbursement provisions therewith. I flatly disagree with the argument that the majority has in essence "approved" the agreement simply because it did not clearly "disapprove" it. Based on this rationale, it might likewise be argued that by not specifically "approving" the agreement, we have thereby "disapproved" it. And this is certainly not the case. The simple facts are, as I stated earlier, the majority voted to neither approve nor disapprove the terms of the agreement and any imputation of approval is incorrect.

I wish to make it clear that had there been any doubt in my mind that our action would be construed as approval of the agreement, I would have dissented. Therefore, I reiterate to any and all concerned that the option agreement in this case, including the provisions for reimbursement for petitioners' expenses has not been approved--nor disapproved--by any vote of this Commission.