

February 24, 1984

CONCURRING STATEMENT
of
FCC COMMISSIONER JAMES H. QUELLO

In re: Exceptions to the Initial Decision of Chief Administrative
Law Judge Lenore G. Ehrig in MCI Cellular Telephone Co.
(Pittsburgh Cellular Proceeding), CC Docket No. 82-796; and

Exceptions to the Initial Decision of Acting Chief Administrative
Law Judge Thomas B. Fitzpatrick in Rogers Radiocall, Inc.
(Chicago Cellular Proceeding), CC Docket No. 82-721.

In both of these cases, I believe that the Commission has correctly affirmed the Initial Decisions of Chief Judge Ehrig and Acting Chief Judge Fitzpatrick. The judges found distinctions among the applicants which, in my opinion, fully justified their conclusions.

It has never been claimed that the comparative process is able to determine with absolute clarity that one applicant will better serve the public interest than another applicant. The process must rely upon the more modest assertion that the Commission, after considering the comparative qualifications of the applicants, can make a reasoned judgment that better service is likely to follow the selection of one applicant over another. Greater precision in foretelling future events is neither expected nor required.

The orders assert that the comparative process significantly delays service to the public which is to suggest that alternatives are available which would avoid such delays without damage to the public interest. The orders assert: "...we believe that the inherent flexibility of the cellular concept would allow any of the applicants to reconfigure its system in order to meet the requirements of the marketplace." (Emphasis added.) They further assert that "...any of the applicants is capable of providing cellular service to the public." And, they reach the unsupported conclusion that system design is not a valid consideration in the comparative process.

Thus, while selecting two applicants based upon comparisons, the Commission seems bent on denigrating the comparative process. By modifying the Initial Decisions to minimize or eliminate differences among applicants, the Commission is adding to whatever infirmities the process now bears. While ostensibly attempting to fashion an expedited comparative process to speed service to the public, the Commission appears to be undermining its own objective by casting doubt as to the efficacy of that same process.

The comparative process is certainly not without fault. It is often time-consuming, wasteful, contentious, mechanical and, at times, exasperating. Still, it is a time-tested mechanism whereby the Commission bestows valuable privileges among competitors. Unless and until the Commission has at hand an alternative

which not only avoids the faults of the process but, also, approximates its virtues, I would urge caution and restraint. It might be that we are chopping the bottom out of the only boat capable of carrying the burden of deciding these controversies so central to the Commission's mandate.

While I cannot support many of the conclusions reached in these orders, I do support affirmation of the Initial Decisions. Therefore, I concur.