

**Concurring Statement
of
Commissioner James H. Quello**

In re: Resolution of Interference Between UHF Channels 14 and 69 and Adjacent Land Mobile Operations.

I fully agree that we should move forward with allocating and licensing stations on Channels 14 and 69. For the past several years, these channels have been relegated to the status of defacto guard bands. As the Council for UHF Broadcasting in its Petition for Rule Making points out, the Commission's freeze on allocating Channel 69 without halting the authorization and expansion of land mobile operations on adjacent frequencies is inequitable. Moreover, permitting the land mobile community to fill frequencies adjacent to Channel 69 during this moratorium merely serves to exacerbate the interference problems between the two services. The Commission's decision to solicit comment on solutions to this problem is commendable. However, there are several aspects of the proposal, particularly the Notice of Inquiry (NOI), that I find troublesome, thereby, causing me to issue this statement.

Recently, we deferred action in our land mobile sharing proceeding because of its effect on the development of an advanced television (ATV) system. It would appear that the same considerations should be applicable to the NOI. Accordingly, I believe it is appropriate to examine carefully not only television to land mobile interference, but also possible interference to ATV systems operating on these channels from land mobile operations. In this regard, we should receive information on the present status of land mobile assignments and use on channels that are directly adjacent to Channels 14 and 69.

I am most concerned, however, with the simultaneous issuing an NOI that contemplates, in some situations, the reallocation of Channels 14 and 69 for nonbroadcast use. As a general matter, I am uneasy about the concept of using spectrum that has been allocated to broadcasting for nonbroadcast purposes. As I have observed on numerous occasions, the land mobile community has failed to document a need for additional spectrum. This observation applies to the instant case as well, and argues against even proposing to use this spectrum for nonbroadcast purposes.

Beyond my general concerns, however, the entire thrust of the NPRM is to foster private negotiated settlements between broadcast permittees and land mobile operators. The NOI, however, proposes to permit nonbroadcast uses on Channels 14 and

69 where "it is impossible or impracticable to comply with our technical criteria or to reach an accord with affected land mobile licensees." NOI at para. 24. Assuming arguendo that there is a need for additional spectrum on the part of land mobile operators, then the fact that the Commission is even discussing the possibility of a nonbroadcast reallocation of these channels may influence the negotiations between broadcasters and land mobile operators. At first blush, one would expect the potential for such a reallocation to significantly enhance the bargaining position of land mobile operators.

Alternatively, one can certainly question the need for proceeding with the NOI at this time. Because of the current freeze on television allocations in the top 30 markets, the proposals contained in the NOI would have an immediate effect only in the medium and small markets. However, there is no evidence to suggest that spectrum demand of land mobile operators in these markets is significant enough to justify going forward with the NOI at this time.

Conventional wisdom states that it never hurts to ask a question. In the instant case, however, I am concerned that the NOI, in and of itself, may send the wrong signals. It may potentially effect private negotiations between broadcasters and land mobile operators. We should avoid issuing spectrum decisions, especially NOI's that contemplate flexible use of broadcast spectrum, unless there is a demonstrated need for going forward.

I am faced with one of those rare instances where merely asking the question may have an adverse impact. I do not believe my concerns can be rectified by merely asking additional questions in the item itself. However, because the item offers the possibility of assigning new broadcast facilities on Channel 69, I concur with the Commission's decision.