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Concurring Statement
of
Commissioner James H. Quello

Re: Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations (MM Docket No. 87-68).

I generally agree with the decision to eliminate the Carroll doctrine. It is true that Carroll doctrine issues are rarely designated for a hearing. Moreover, there appears to be no instance where the Commission has denied an application relying on the doctrine. In this respect, I agree that the Carroll doctrine disserves the public interest. In its present formulation, the doctrine merely delays service to the public. Therefore, I would eliminate the doctrine for this narrow, essentially procedural, reason.

Our decision in this proceeding, however, goes further, purporting to eliminate the underlying premise of the doctrine. I disagree. In some instances, the economic ramifications of increased competition may play an important part in our public interest analysis. I am not convinced that the Commission can blind itself to the possibility of harmful competition and remain faithful to Section 309 of the Act.[1]

I do not dispute that as a matter of general economic theory increased competition is beneficial. Competition generally fosters consumer welfare by forcing firms to produce their products more efficiently. Fostering consumer welfare, as

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defined strictly by economists, through increased competition does not always correlate with the public interest.[2] Broadcasting is not like other industries. Because of the Commission's licensing and allocation policies, traditional economic analysis is not necessarily an adequate measure of industrial performance. Indeed, the Supreme Court has held that pursuit of competition should not be the controlling element in broadcast policy.[3] The Commission, unlike the Antitrust Division of the Department of Justice, should not have as its single goal the development of competition.[4] This is particularly true where the Commission imposes obligations on broadcasters that are not natural by-products of the market. For example, our issue responsive programming requirements for radio[5] and television[6] were adopted precisely because the market would not necessarily produce sufficient amounts of this type of programming.

Pursuit of a competitive model, in and of itself, should not be our ultimate policy objective.[7] Our public interest obligations under the Communications Act require that the Commission consider all factors that may affect broadcast service to the public.[8] In certain circumstances the effect of increased competition, whether it be positive or negative, should be taken into consideration. I believe it is folly to preclude consideration of economic impact as one element in our public interest analysis.

The decision states that the concept of ruinous competition is no longer valid as an economic theory.[9] According to this line of reasoning, additional stations serve to expand advertising inventories and do not adversely effect existing stations.[10] The rapid expansion of new broadcast facilities is used as empirical proof of this phenomenon. I disagree.

The argument that additional stations will not detract from existing facilities is denied by the existence of various exemptions to the multiple ownership rules. For example, our terrestrial satellite policies are predicated on the theory that, in some instances, the market cannot support a full service facility.[11] If advertising markets are always able to accommodate new services without affecting existing facilities, then there would be no need for our satellite policies. This is especially true for those cases where a "primarily" satellite operation is placed in a market with a competing full-service station. The Commission receives and acts on numerous applications that are premised on the theory that particular markets are unable to support additional full service stations.[12] The logic of the Commission's decision in the instant case would deny the existence of these situations.

A related issue is whether it makes an appreciable difference for existing broadcasters to compete with new technologies, which are not subject to the Carroll doctrine, as opposed to new broadcast entrants.[13] It is precisely because broadcasting faces a new highly-competitive market that the Commission should consider carefully the impact of additional competition from broadcasters. Unlike other media participants, broadcasters are still subject to licensing and public interest responsibilities. I believe we have an obligation to ensure that a stable economic environment exists for the provision of such service. While cable television is rapidly recognizing the importance of local advertising, most alternate electronic technologies do not compete for local advertising dollars. Additional broadcast stations compete directly for this revenue, thereby having a greater impact on the viability of an existing station.

The Commission's decision is unlike other deregulatory actions taken in the past. Where appropriate, the Commission has relied on marketplace forces to act as the means of achieving our public interest duties.[14] In these cases, the Commission retained a continuing obligation to survey the marketplace to make sure it was functioning properly. Today's decision, however, contemplates removing from our consideration, the potential effects of the marketplace on a licensee's performance.

The decision appears to construe broadly the teachings of FCC v. WNCN Listener's Guild.[15] In that case, the Supreme

Court held that "the Commission should be alert to the consequences of its policies and should stand ready to alter its rule if necessary to serve the public interest more fully."[16] Our Order interprets this language as further support for the need to eliminate regulation given changed circumstances in the broadcast marketplace.[17] However, taken in context, the Court is actually cautioning the Commission to "stand ready to alter its rule" if its assumptions about the marketplace prove to be incorrect. Subsequent decisions support this view of the WNCN case.[18] Taken together, these cases hold that the Commission may lawfully rely on marketplace forces to further its public interest goals in the context of processing specific individual applications. These cases do not support the wholesale abandonment of economic considerations. To the extent the decision is a harbinger of the Commission's desire to withdraw altogether from economic considerations in broadcast licensing, then I must disagree.

By concluding that economic considerations are no longer relevant for regulatory purposes, the decision contradicts the very premise for our deregulatory policies. Thus, I essentially agree with Tri County's position that the Commission should retain a "safety valve" procedure. We should not make the *a priori* judgment that additional stations in a market will always serve the public interest. I believe we should reserve judgment on this fundamental issue and address it in the context of specific factual circumstances.

I have similar concerns with the elimination of the UHF Impact Policy Statement. No one can question the tremendous growth in the UHF service during the last decade. The service has become an important participant in today's marketplace. While it may be no longer necessary to take specific affirmative steps to stimulate growth in the UHF band, I continue to believe that we should consider the unique disadvantages facing UHF broadcasters, compared with VHF facilities, when crafting new policies or proposing to allocate new broadcast services. This is not a novel approach. When we adopted our new national multiple ownership rules, we took into account the limitations of UHF stations and treated them differently for the purpose of calculating their audience reach.[19] The Commission recognizes the economic problems confronting UHF stations by employing different standards, as compared with VHF stations, for waivers of the one-to-a-market rule.[20] In addition, when attempting to fashion interim must-carry rules, we waived the audience requirements for certain stations in order to assist new, primarily UHF, facilities.[21] Also, it is generally accepted in the practical marketplace that the great majority of UHF stations are lower valued than comparable VHF facilities in the same market. One reason for this is that the propagation of UHF signals is generally weaker than VHF signals.[22] Moreover, unlike the <u>Carroll</u> doctrine, the UHF impact policy encompasses more than allegations of adverse economic impact in the context of a comparative hearing. The policy is far more generic and has been a consideration in both allocation and rulemaking proceedings. Therefore, I do not believe it is appropriate, at this time, to completely abandon consideration of the unique economic circumstances facing UHF broadcasters.

Ultimately, the issue is not whether the industry as a whole is currently prosperous, nor is it the fact some broadcast stations will inevitably fail in the marketplace. The real issue in this proceeding is whether the Commission should limit the scope of its public interest analysis by excluding consideration of economic impact resulting from increased competition. Given a rapidly changing broadcast market, I believe it makes sense to retain the ability to consider the effects of increased competition on service to the public. Therefore, for the narrow reasons stated herein, I must concur.

FOOTNOTES

1 See National Association of Broadcasters v. FCC, 740 F.2d 1190, 1220 (D.C. Cir. 1984).

2 In the strict economic sense "consumer welfare" generally refers to the efficiencies associated with the competitive model. See, e.g., B. Owen, J. Beebe and W. Manning, Television Economics, at 56 (1974). The term, however, does not necessarily include other "non-market" considerations which may be deemed socially valuable. The term "public interest" is broader, encompassing not only the positive benefits of competition, but also other societal values. See generally W. Nicholson, Micro Economic Theory, at 541 (1978).

3 F.C.C. v. RCA Communications, Inc., 346 U.S. at 93.

4 National Association of Independent Television Producers and Distributors v. FCC, 516 F.2d 526, 542 (2nd Cir. 1975).

5 Report and Order in BC Docket No. 79-219, 84 F.C.C.2d 968 (1981), recon. denied 87 F.C.C.2d 797, remanded on other grounds sub nom. Office of Communications United Church of Christ v. FCC, 707 F.2d 1413, 1426 (D.C. Cir. 1983).

6 Report and Order in MM Docket No. 83-670, 98 F.C.C.2d 1076, 1091, recon. denied 104 F.C.C.2d 358, 372 (May 28, 1986), remanded in part on other grounds. Action for Children's Television v. FCC, No. 86-1425, slip op. (D.C. Cir. June 26, 1987).

7 FCC v. RCA Communications, Inc., 346 U.S. 86, 93 (1953). See also FCC v. Sanders Brothers Radio Station, 309 U.S. 470, reh'g denied 309 U.S. 642 (1940).

8 Cf. Johnston Broadcasting Co. v. FCC, 175 F.2d 351, 359 (D.C. Cir. 1949). (Commission must consider all material factors in selecting between broadcast applicants.)

9 It is far from clear that theories of ruinous competition have been discredited. In surveying the literature on the subject of destructive competition, Sherer states:

> This view [ruinous competition] was widespread around the turn of the century, but even in recent years has been propounded by a few American economists and by many prominent scholars abroad. F. M. Sherer, Industrial Market Structure and Economic Performance, Second edition (Chicago, Ill. 1980), pp. 216.

For a discussion of the theory of destructive competition see generally, Alfred E. Kahn, The Economics of Regulation, Volume 2, (New York, NY 1971), pp. 172-178. Mr. Kahn states: "The possibility must be conceded, then, that competition may in certain circumstances be excessively strong and that restrictions on it can produce improved performance." Id.

10 Data relied on by the Commission merely demonstrate that additional radio stations are likely to attract 50 to 70 percent of their revenues from "new" advertising sources. James A. Brown, Jr., "Statistical Determinants of Radio Stations Revenues and Trading Prices," Federal Communications Commission Office of Plans and Policy, August 1982, pp. 3-4. The data do not disprove the fact that the amount of income diverted from existing stations, <u>i.e.</u> 30-50 percent of new station revenues, may impair a stations ability to provide public interest programming. Moreover, the growth in radio revenues as a whole does not address the potential for harmful competition in particular markets or possible declines in service to the public.

11 47 C.F.R. Section 73.3555 Note 5 (1986).

12 <u>See</u>, <u>e.g.</u>, <u>Pete J. Stathakas</u>, 59 R.R.2d 169 (1985).

13 It is important to recognize that the Commission must consider the economic impact of new technologies on broadcasters through the rule making process. <u>See</u>, <u>e.g.</u>, <u>National Association of Broadcasters v. FCC</u>, 740 F.2d at 1220.

14 <u>See</u> <u>Report in Order</u> in BC Docket No. 79-219, <u>supra</u>, note 7; <u>Report and Order</u> in MM Docket No. 83-670, <u>supra</u>, note 8.

15 450 U.S. 582 (1981).

16 Id. at 603.

17 <u>Order</u> at para. 24.

18 <u>See</u> <u>Citizens Committee to Save WEAM v. FCC</u>, 808 F.2d 113, 117 (D.C. Cir. 1986).

19 <u>Memorandum Opinion and Order</u> in Gen. Docket No. 83-1009, 100 F.C.C.2d 74, 92 (February 1, 1985), appeal docketed sub nom. <u>National Association of Black Owned Broadcasters, Inc. v. FCC,</u> No.85-1139, (D.C. Cir. March 4, 1985).

20 47 C.F.R. Section 73.3555, note 4 (1986).

21 <u>Report and Order</u> in MM Docket No. 85-349, 1 FCC Rcd 864, 888, recon. granted in part, 2 FCC Rcd 3593 (1987), <u>rev'd</u> <u>Century Communications Corp., v. FCC</u>, No. 86-1683, slip op. (D.C. Cir. December 11, 1987).

22 <u>Report and Order</u> in Gen. Docket No. 78-391, 90 F.C.C.2d, 1121 (1982).