

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

**In Re: Potential Uses of Certain Orbital Allocations by  
Operators in the Direct Broadcast Satellite Service**

I am both intrigued and concerned about allowing non conforming uses of DBS spectrum. While I support the concept of non conforming uses on DBS spectrum on a temporary basis, I am uncertain whether non conforming uses on a permanent basis from western orbital positions is in the best interest of the DBS service. Allowing DBS applicants to use these slots for other services may provide a second income stream, thereby enhancing the economic viability of the DBS video service. Alternatively, allowing permanent non conforming uses from western orbital positions raises difficult legal questions that go to the heart of our decision to allocate spectrum to DBS. Therefore, I must distance myself from the majority's tentative conclusion that permanent non conforming uses should be allowed from the western orbital positions.

Fundamentally, I believe in a strong viable DBS system that will serve the entire nation not simply the contiguous states. Our initial decision allocating spectrum to DBS contemplated service to the entire country. Accordingly, the Commission has an obligation to insure that DBS video service to Alaska and Hawaii take precedence over other non conforming uses. Such alternate uses from western orbital positions should be secondary and allowed only after the needs of Alaska and Hawaii have been met. I am concerned that allowing non conforming uses on the western satellites provides a disincentive to serve Alaska and Hawaii with DBS video service. I am happy to see that the Notice of Proposed Rule Making solicits comment on this issue.

Finally, I simply do not see the reason why we must address these issues at this time. They are premature at best. DBS applicants are currently allowed to provide non DBS service on a temporary basis. None of the fifth round applicants proposed a permanent non conforming service from western orbital positions. It appears that the issue is self generated by the Commission. Therefore, commenters should address the issue of whether there is a need to resolve this issue at this time.

I believe DBS will make an important contribution to the telecommunications marketplace. I will examine these comments to make sure that the proposals do not jeopardize or undermine the service. There is a possibility that the approach taken in the Notice of Proposed Rule Making may assist in the development of the service. To the extent that a discussion of these issues may ultimately help the DBS service, I concur with the decision.