

CONCURRING STATEMENT OF COMMISSIONER JAMES H. QUELLO

In Re: Nondiscrimination in the employment policies
and practices of broadcast licensees

This document outlines a policy which I accept with some reluctance. The substance of the policy is, I believe, both reasonable and just. My concerns lie with its implementation as I outlined when we issued the Notice of Inquiry and Notice of Proposed Rule Making in Docket 20550, FCC 75-849, 54 FCC 2d 354 (1975). In concurring with the Notice, I questioned whether the Commission's approach produced the clarity and certainty that would facilitate compliance and maximize implementation. I suggested that the Commission consider a simple, clear-cut procedure for receiving and processing complaints, the establishment of a threshold standard for evaluation of complaints and the prescription of a simple, straightforward response procedure for licensees. I also suggested that we develop a recognizable "zone of reasonableness" standard to spell out as clearly and straightforwardly as possible exactly what we expect of licensees in this area.

While I recognize the budgetary constraints upon our investigative efforts, I also recognize the general public expectation that we will enforce our own rules and policies. Without an increased capacity for investigation and direct action, it seems to me, the necessary swift response to legitimate complaints of discrimination cannot be accomplished.

I also continue to be dismayed by our inability to provide some clarity with regard to our "zone of reasonableness" standard of compliance with our rules and policies. Our continued reliance upon the "I'll know it when I see it" standard is, in my view, unnecessarily ambiguous. If our goal is parity we should say so. If it is more or less than parity we should say so. The dynamism in the ratio of minority employment relied upon by the majority surely must operate under some constraints of reason and justice. If this range shifts over time, as suggested, perhaps it is not unthinkable that the Commission could perceive the change and share that perception with the public. Granted, the ratio is only one of the factors considered in assessing a licensee's performance, but I fail to understand why that fact enhances the virtue of ambiguity. The Report and Order promises a new processing standard for assessing minority and female employment. I hope and trust that this new standard will be clearly stated and widely understood.

Therefore, I concur.