

CONCURRING STATEMENT
of
COMMISSIONER JAMES H. QUELLO
IN WHICH COMMISSIONER JOSEPH R. FOGARTY JOINS

In re: "Application for certification" filed by T. C. Industries, Inc., proposed operator of a cable television system at Columbia, Missouri.

There are occasions where laws and rules of general applicability produce inequitable and unjust results in specific instances. This, in my opinion, is a classic example of such an occasion.

The principle of "grandfathered" status is firmly based upon equitable grounds. Ironically, it is usually conferred to avoid specific inequities in rules of general applicability. In this instance, our grandfathering of three distant network signals at Columbia has no discernible equitable base. The problem arises because of the language of Section 76.65 of FCC Rules and Regulations which grandfathers "...signals which a cable television system was authorized to carry or was lawfully carrying prior to March 31, 1972..." (emphasis added) While authorized, of course, the signals were never carried and, thus, no public-viewing habits favoring those channels were established.

Formal economic analysis notwithstanding, it seems clear that the additional signals provided by cable must have some significant impact upon the local television service in Columbia. It also seems clear that a local UHF network affiliate which has lost money three out of the past four years is fighting for survival by any industry standard. To whatever extent audience fractionalization exists without the grandfathered signals, logic compels the inference that it must increase with three additional signals. Thus, to the extent there are equitable considerations here, our own rules force us away from equity. Common sense and reason must be sacrificed to the sanctity of the law.

An awareness of the specific language of Section 76.65, affirmed and reaffirmed in Petition of the City of Columbia, Missouri, FCC 74-302, 46 FCC 2d 108 (1974), recons. denied, FCC 74-712, 47 FCC 2d 783 (1974), forces the conclusion that the law would not be served by what I consider to be an equitable resolution of this matter.

Therefore, I must reluctantly concur.

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