

CONCURRING STATEMENT  
OF  
COMMISSIONER JAMES H. QUELLO

RE: Nationwide Wireless Network Corp.  
Mtel Narrowband PCS License

Because I have consistently contended that pioneer's preference grantees were never intended to take their spectrum for free in a post-auction world, it may seem curious that I am not giving my unqualified support to a Commission decision that endorses that principle. Two aspects of today's decision, however, trouble me.

The first is the prospect that, as the decision candidly admits, Mtel could in fact wind up paying nothing for its spectrum if the spectrum's auction value turns out to be \$3 million or less. To me, this result is inconsistent with the basic reason for having auctions, which is to capture the value of spectrum for the public. Even at an unexpectedly low auction price, no one could plausibly argue that narrowband PCS spectrum would have no value for Mtel. For this reason, I cannot endorse a payment plan that could allow Mtel, or any pioneer's preference holder, to take its spectrum for free. I do believe, however, that the current pre-auction estimates of the value of narrowband PCS spectrum are more likely to be too low rather than too high, and therefore Mtel will ultimately make a substantial payment for its spectrum. On this basis, and this basis alone, I can concur with this aspect of the Commission's decision.

The other facet of today's decision that I find problematic is our statutory basis for imposing this payment requirement on Mtel. Our legal analysis, although plausible, certainly entails what may best be described as an aggressive interpretation of Section 4(i) of the Communications Act. Should this decision be appealed, I trust that the reviewing court will agree with our interpretation in light of the case law we cite - but it would be unrealistic to suggest that reviewing courts are lately in the habit of extending us this sort of benefit of the doubt. And if for any reason today's decision does not stand, with the result that we are unable to require payment from pioneer's preference holders, I for one would seriously question whether we should grant such preferences in the future.