

March 7, 1977

DISSENTING STATEMENT OF COMMISSIONER ROBERT E. LEE
IN WHICH COMMISSIONER JAMES H. QUELLO JOINS
IN RE: VHF DROP-INS, DOCKET 20418

THE STENCH

I thought we had laid VHF drop-ins to rest at Congress' insistence back in 1963 when then Chairman E. William Henry cast what he considered to be the most important vote of his career, the deciding vote against drop-ins for Knoxville, Johnstown and a few other markets. It was a hard decision then. Former Chairman Minow had earlier called denying drop-ins the hardest vote of his career because the survival of the ABC network was claimed to be at issue.¹ But no network's survival is at issue here; ABC has done well with a large number of UHF affiliates, and well-managed UHF stations with good facilities have brought the industry a long way. It shouldn't be a hard decision today.

Some say this is just a rulemaking notice, a bone, perhaps, tossed to forces unknown to me. Others see this as a real blow to UHF, and I agree. In spite of my colleagues' strong statements of commitment to UHF, I don't see how any UHF

¹ Concurring statement of Newton N. Minow, Television Assignments -- Third Service, 41 FCC 1119, 1126 (1963), reconsideration denied FCC 63-1168.

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commitment is renewed in this Notice. Two markets were picked for study because a VHF drop-in might replace UHF service! A third was picked for comment in part because VHF might develop faster than UHF and remove the chance for a UHF station in that market!

Indeed, this may be just the beginning of a serious erosion of UHF service. With the criteria used in this Notice, it may be extremely difficult to limit drop-in interest to the four proposed markets. We have seen but the tip of the iceberg. An engineer has already promised UHF licensees a 50% chance of a VHF "drop-in" in exchange for \$1,200 a month and a \$100,000 finders fee. The lawyers and engineers will prosper, and the Commission will struggle with petitions for "drop-ins" all over the land.

This Notice is also a blow to our television standards. I have tried with little success to explain that television interference is subtle and pernicious. Like pollution it builds up slowly until it permeates the atmosphere. Interference does not stop or start at the service contours -- it is everywhere, and our engineers accepted this fact of life when they set the standards that said "No more." Now some seek to say "Just a

little bit more." The late T. A. M. Craven, a distinguished engineer and Commissioner, referred to the substandard VHF drop-in as "an island of service in a sea of interference."

What information will this proceeding give us that we do not already have -- in abundance? I know of no competent engineer who will not answer this question in the negative, including almost the entire engineering staff of the F. C. C.

This Notice would be less of a blow to UHF and our technical standards if it proposed moving some VHF channels. By taking VHF channels out of markets with only one VHF channel and moving them to markets such as those proposed in this Notice, the Commission could increase competition in a larger number of markets -- and preserve the integrity of its standards.

We have all heard the story of UHF, but it is worth repeating again to remind us why UHF is important and why UHF has had so many problems in the past.

Back in the early 1940's, when the FCC authorized the first commercial VHF station, it had a vision of a nationwide competitive television system. The VHF band was too crowded and UHF technology was in its infancy. But the FCC believed technological advances would soon make an all-UHF television

system possible.

This was obviously a controversial position. More VHF stations were being built in large cities. The public was buying VHF receivers. The vested interests didn't want to give up their investments.

In the years up until about 1952, the Commission repeatedly restated its all-UHF television goal, but, by the time it finally adopted its master allocations plan with the Sixth Report and Order in 1952, it had abandoned this idea. The vested interests were simply too strong and, in 1952, UHF still had a long way to go technically. Rather than disturb existing VHF stations, or even suggest that they would be disturbed at some future time, the Commission built a Table of Assignments around those stations. VHF was to be the backbone of the United States' television system and UHF was to fill in the gaps to provide the nationwide competitive service.

At the time the Commission set forth two basic objectives: distribution of VHF channels to as many communities as possible and wide area service so that people in remote areas could receive television service. These objectives were

inconsistent: There could certainly be more stations in cities if higher levels of interference were accepted, but there could be service to rural areas if interference was restricted by limiting the number of stations. The balance was reached in the technical standards. By prescribing antenna height and power restrictions and protecting the Grade B contour against interference, the Commission insured service to rural areas which have as much right to television service as more densely populated areas and the Commission was able to allocate a reasonably large number of VHF channels.

The Commission has never deviated from these technical standards or the public interest basis for them to drop-in inferior channels. From the perspective of VHF television service these standards have worked well to achieve the desired objective.

However, from the perspective of UHF television service and the FCC's goal of a nationwide competitive television service, the Sixth Report and Order was a disaster. As a direct result of that decision, the fourth television network went out of business, UHF development was stifled, and the maximum number of possible stations has never been reached. The DuMont

television network, which was weaker than ABC, CBS, and NBC, was left with no viable outlets in almost every major market. UHF, in its early stage of development, couldn't compete on equal terms with VHF. VHF had advertiser support, network affiliations, and access to millions of VHF-only receivers. Advertisers, networks, and receiver manufacturers weren't interested in speculating in UHF, and they didn't.

The few gamblers who tried to build UHF stations found the obstacles overwhelming. They couldn't gain access to audiences in VHF dominated markets and they couldn't attract the advertiser support or network affiliations which depended on that access. Most gave up in the early years.

In retrospect, many people concluded the Commission's 1952 decision to rely on VHF was really a judgment that UHF would never be adequate. It created a long-lasting pessimism about UHF.

The Commission tried a number of remedies. It increased the ownership ceiling to create an investment incentive. It adopted the satellite policy to encourage construction. It increased power and antenna height limits to create technical

parity. It limited network exclusivity practices to make more programming sources available. It funded construction of a UHF station in New York City (WUHF) to prove UHF could serve the city. In desperation it proposed to deintermix some markets and, in response to pro-VHF pressure, it proposed to drop some of those VHF channels into Knoxville, Johnstown, and six other markets. It even revived the all-UHF idea for a short time, but, again, found the vested interest problem overwhelming.

Finally, the Commission asked Congress to deal with the heart of the problem, access to audiences, through tuner legislation. Congress quickly agreed. However, when it passed the All-Channel Bill in 1962, it insisted that the Commission not tamper further with the Table of Allocations. If the public was to pay for all-channel tuners, the public was to have UHF.

In response to Congress' direction, the Commission dismissed its pending deintermixture proceedings, including the VHF drop-in proceedings for Knoxville and Johnstown. At the same time it made a strong commitment to UHF.

The All-Channel Act did not resolve the access problem overnight. Manufacturers needed time to sell existing

television sets, design new tuners, and tool up for the manufacturing process. The Commission allowed them to convert to comparable tuners in a number of steps, the last of which was not required until the summer of 1976. Even with the present standard, however, comparable tuning won't be achieved until receivers meeting this standard are in the majority of homes - another five to seven years.

During the past few years UHF has made remarkable strides. More stations are in operation than ever before. More are profitable. More programming has become available. More advertisers are using UHF. Most important, UHF stations are offering more diversity to the public with independent, foreign language, and other specialty programming.

Rather than undermine this progress, the Commission should encourage UHF stations with inferior facilities to upgrade them. It should help to develop an improved receiver. It should remove once and for all the spectre of inferiority.

If the public is to have a nationwide competitive television service, we need UHF. We don't need protracted comparative proceedings for a few inferior VHF drop-ins. We don't need drop-in standards which may be applied to markets not studied

here. We don't need to encourage an exodus from UHF. If the Commission is serious about UHF development, it must build confidence in UHF, not officially declare UHF to be so inadequate it will breach good technical standards to drop-in second-rate VHF channels in response to political pressure. We have an excellent television system in this country; we should be working to make it better.

I have but one parting comment. Some proponents may be operating under the illusion that, if this appalling exercise succeeds, they will somehow be the ultimate winner for what they regard as their bounty. No way -- they have no leg up and will have to compete with all comers for the "prize": educators, minority groups, etc.

Quelle perte de temps. Or, as Shakespeare said: "Oh what a tangled web we weave when first we practice to deceive."