March 9, 1978

CONCURRING STATEMENT OF
FCC COMMISSIONER JAMES H. QUELLO

(WEZE)

In re: Application of McCormick Communications, Inc., licensee of Station WEZE, Boston, Massachusetts, to assign the license to New England Continental Media, Inc., (BAL-9136); and, a petition to deny this application filed by Media Advocacy Center

> "Have the appellants alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions? This is the gist of the question of standing." Baker v. Carr, 369 U.S. at 204.

In this instance, I have no way of knowing whether the petitioner's "personal stake in the outcome of the controversy" is such as to "insure that concrete adverseness which sharpens the presentation of issues...". My ignorance of his qualifications is shared, with unbecoming equanimity, by the majority. Petitioner has utterly failed to meet any Section 309(d)(1)*/ standard to establish standing as a party in interest. The majority is content that petitioner has listed his address as Boston. If he lives in Boston, reasons the majority, he could be a listener to WEZE and, ipso facto, he is entitled to standing under Hale v. FCC, 425 F. 2d 558 (D. C. Cir., 1970). I strongly suspect that reading of Hale's rather cryptic footnote on the subject is overbroad. In any event, the quality of public intervention under such a non-policy is hardly guaranteed; in fact, it is ignored. Furthermore, it has led us to today's ludicrous finding that the mere fact of petitioner's residence--or, at least, post office box--is sufficient to confer standing.

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Even assuming that the individual granted standing has been determined to be a local resident and listener to WEZE, his personal views and objections to the McCormick application are not representative of the general listening public, but rather expression of a private concern.

The blame for this folly lies not so much with the courts as with this agency. The landmark case upon which Hale relied and upon which the majority relies in this instance observed: "In order to safeguard the public interest in broadcasting, therefore, we hold that some 'audience participation' must be allowed in license renewal proceedings. We recognize this will create problems for the Commission but it does not necessarily follow that 'hosts' of protesters must be granted standing to challenge a renewal application or that the Commission need allow the administrative processes to be obstructed or overwhelmed by captious or purely obstructive protests. The Commission can avoid such results by developing appropriate regulations by statutory rulemaking." United Church of Christ v. FCC, 359 F. 2d 994, 1005 (D. C. Cir., 1966). The court further stated: "The usefulness of any particular petitioner for intervention must be judged in relation to other petitioners and the nature of the claims it asserts as a basis for standing." Ibid, at 1006. (Emphasis added)

*/ Communications Act of 1934, as amended.

In that same case, the court further concluded: "We are aware that there may be efforts to exploit the enlargement of intervention, including spurious petitions from private interests not concerned with the quality of broadcast programming, since such private interests may sometimes cloak themselves with a semblance of public interest advocates. But this problem, as we have noted, can be dealt with by the Commission under its inherent powers and by rulemaking." Ibid, at 1006.

The Commission, then, has not been forestalled by the courts from establishing reasonable standards for standing. On the contrary, the court appeared to be inviting the Commission to set such standards. Instead, we have taken refuge in cryptic footnotes and self-generated precedents to formulate the ad hoc anything-goes-policy we have today. That the court has mandated a liberalization of the former qualifications for establishing standing as a party in interest there can be no question; that it has abandoned the concept--as has the Commission--is quite another matter.

The Court of Appeals stated that we can develop "...formalized standards to regulate and limit public intervention to spokesmen who can be helpful... The responsible and representative groups eligible to intervene cannot here be enumerated or categorized specifically; such community organizations as civil associations, professional societies, unions, churches and educational institutions or associations might well be helpful to the Commission. These groups are found in every community; they usually concern themselves with a wide range of community problems and tend to be representatives of broad as distinguished from narrow interests, public as distinguished from private or commercial interests. The Commission should be accorded broad discretion in establishing and applying rules for such public participation, including rules for determining which community representatives are to be allowed to participate and how many are reasonably required to give the Commission the assistance it needs in vindicating the public interest." Ibid, at 1005.

It is clear that the court intended that groups, representative of broad as distinguished from narrow interests, public, as distinguished from private or commercial interests, should be eligible to intervene in those cases deemed to affect the public interest. I cannot agree more. However, I cannot accept the view that standing is automatically conferred upon each and every individual who views or listens to television or radio broadcasts. These individuals may advance private interests or personal philosophies but are not representative of broad interests unless they make positive showings to that effect. The majority admits such was not the case here.

The individual objector may voice his private concerns in the form of personal complaints directed to this Commission. The Commission can institute further investigation or inquiry as is deemed warranted in such situations. Such individuals are not deprived of the right of recourse as they may file complaints or letters in matters pertaining to private interests and concerns. When the interests of a substantial number of individuals coalesce, a matter of concern arises which affects a representative segment of the general public and then standing to intervene should be conferred.

I have stated before and state again that this Commission should institute a rulemaking proceeding to codify more efficient and equitable regulations governing standing.

With respect to the instant application, I am in full agreement that "...the petitioner has failed to raise a substantial or material question of fact which establishes that a grant of the captioned application would be prima facie inconsistent with the public interest", to quote the majority opinion.

Therefore, while I concur in the result, I strongly disagree with the premise under which this matter rose to the level of formal controversy in the first place.