

Dec. 21 1978

Concurring Statement of  
FCC Commissioner James H. Quello

Re: Petitions for Special Relief filed by Citizens Communications Center  
requesting approval of reimbursement provisions contained in certain  
licensee-citizens group agreements.

I reluctantly concurred because (1) I believe the entire subject of legal reimbursement raises serious questions that should be resolved by comprehensive rulemaking not by an ad hoc special exception; (2) the intrusion of the FCC into this particular agreement violates the spirit and intent of our 1975 policy statement stating the FCC would maintain neutrality and neither prescribe nor prohibit any particular agreement terms; and (3) I question the propriety and legality of reimbursing legal expenses for longtime adversary activist groups who do not represent the overall public but use legal processes to promulgate their own private, self-serving version of public interest.

I am particularly concerned about Commission sanction of private agreements and reimbursements because the overall real public is usually unaware of the agreement provisions which significantly affect what it sees and hears on television and radio. I remain concerned that a single, highly vocal group, with an indeterminate constituency can exert disproportionate influence over programming for the entire community.

The preferences of one group might well be antithetical to a far greater majority of others. If many minority, civic or citizens groups all prevailed upon a station for special agreements, (with the added inducement of reimbursement for litigation), the resulting chaos could threaten the quality and stability of broadcast service.

Public interest law firms enjoy tax exempt status under Section 501(c)(3). The IRS has ruled that "... public interest law firms are charities only so long as they provide representation in cases of important public interest that are not economically feasible for private firms." Revenue Rule 75-76 notes that "... the likelihood or certainty of an award of fees is a factor affecting the appropriateness of the particular litigation for a public interest law firm... As legal precedent is developed indicating the strong possibility of the recovery of fees, certain issues may become economically feasible for private litigants and thus inappropriate for public interest law firm participation."

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I would, again, like to make the point that "public interest law firms" is often a misnomer. These firms represent private groups who often seek special treatment and consideration for their own viewpoints at the overall public's expense. It is questionable whether tax exemption is valid for some "public interest" groups that promote their own narrow, private version of public interests.

I will be watching with interest as further requests are made for express "approval" of reimbursement agreements. If such requests are granted in the future they will serve to further develop the precedent spoken of in Revenue Rule 75-76. Once it becomes obvious that a "likelihood or certainty of an award of fees" does, in fact, exist, then I would expect that the IRS will review the charitable status of the petitioners.

Therefore, I reluctantly concur in this result.