September 10, 1980

DISSENTING STATEMENT OF
FCC COMMISSIONER JAMES H. QUELLO

In re: Establishment of Standards for Standing as Petitioners to Deny

The Commission majority continues to refuse to establish any criteria for determining the legal standing of a petitioner to deny. It has reduced the "test" of legal standing to "residence in the station's service area." Thus, for practical purposes, there is no test at all. The Court of Appeals in Office of Communications of United Church of Christ v. FCC, 359 F 2d 994 (1966) recognized the danger of "spurious petitions from private interests not concerned with quality of broadcast programming" who "may sometimes cloak themselves with a semblance of public interest advocates" (p. 1006), and it suggested that the Commission use broad discretion to formulate rules to avoid this danger. Not only has the Commission failed to take the initiative, it has now formally denied a petition for rulemaking to establish reasonable criteria for determining the legal standing of a petitioner to deny. Accordingly, I dissent.

In its petition for rulemaking, NAB stated succinctly that "the establishment of a formal standard for standing to file a petition to deny would regulate and limit intervention by petition to those spokespersons or groups that legitimately represent local interests and concerns, would discourage the filing of such petitions by parties who only seek to further their private interests rather than to further the goals and desires of the local populace, and would provide broadcasters and the Commission with information necessary to make a determination concerning a petitioning group's legitimate interest." Certainly no legitimate, broadly-based public interest group has anything to fear from the reasonable requests of the NAB petition. Clearly the establishment of effective rules to weed out the professional trouble-makers and opportunists could only serve to enhance the position of legitimate parties in interest. For the life of me I cannot understand why the majority refuses to accept such a common sense proposal!

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NAB has made crystal clear its concern that the result of the Commission's present lax policy on standards for standing is that broadcasters will continue to defend themselves before the Commission against petitions to deny prepared by non-local groups which need only enlist the support and assistance of one local resident to serve as a front in order to achieve standing. Such groups are anything but representative of the community and there is no way of determining whether the "straw man" with local residence is representative of community interests or merely pressing his personal views. See my concurring statement in McCormick Communications, Inc., 68 FCC 2d 507, 510.

The majority notes that nothing in the Act or the applicable case law requires the FCC to allow only spokesmen for representative groups with significant

community roots to qualify as parties in interest, and rules flatly excluding all but such parties would be improper under Section 309(d)1. NAB does not seek to exclude any class of parties, but rather proposes that any party petitioning to deny an application supply simple factual information sufficient to establish the party's qualifications as a party in interest. This does not exclude any party seeking to qualify as a party in interest. I agree with NAB's position that parties who seek standing to file petitions to deny, alleging they also represent local organizations, should be required by rules to substantiate their relationship with each cited group. NAB suggests an affidavit setting forth the group's address, names of its officers, date of formation, its purpose, how it is funded (not the extent of its funding as the majority suggests), the size and location of its membership, and whether (if so, how) the group authorized the filing of a petition to deny. The majority refuses to require any of these informational elements. Apparently the majority is not concerned with whether a petitioning party in fact represents any identifiable segment of the general public in the listening/viewing community.

Metromedia, Inc., in its supporting comments in this proceeding suggested (and I fully agree) that rulemaking should include a proposal that petitioners be required to describe in their petition the effort they made to resolve their differences with the licensee before resorting to the Commission's formal processes. Metromedia notes that our "Public and Broadcasting" Manual specifically encourages citizens to bring their complaints to the attention of the local broadcaster before considering the filing of papers with the Commission. However, the majority dilutes this "encouragement" by stating that "although we encourage citizen groups to attempt to resolve differences before filing a petition to deny, if a group believes that only such a filing will prompt a licensee to consider legitimate suggestions seriously, we will not preclude it from doing so." Thus, the majority encourages the initial resolution of matters of local concern at the federal level rather than through local discussion and negotiation.

My dissent to the action of the majority goes not to the dismissal of the specifics of the NAB rulemaking petition, but rather to the continuing refusal to consider the desirability of more efficient and equitable regulations governing standing. Particularly in the light of repeated construction and mis-construction of the United Church of Christ case and the legislative history of Section 309(d)1 of the Act, (epitomized in this document), I think this Commission should institute an inquiry to clarify the confusion and determine the actual need for appropriate regulation. My position in no way denigrates the participation of bona fide public interest groups in any legitimate petition to deny process.