

February 25, 1981

Dissenting Statement of FCC Commissioner James H. Quello  
in which Commissioner Joseph R. Fogarty joins

In re: Applications of Waterman Broadcasting Corporation of Texas  
(WBBH-TV, Fort Myers, Florida) and Gainesville Television, Inc.  
(WCJB(TV), Gainesville, Florida) for changes in facilities.

WBBH-TV has applied for a construction permit to move its transmitter to a site where it would be 2.4 miles short-spaced to co-channel WCJB(TV). Subsequently, WCJB(TV) applied to move its transmitter to a location where it would be 14.3 miles short-spaced with WBBH-TV's proposed site. The applications are thus mutually exclusive. The applicants have submitted a joint request for simultaneous grant of both applications contending that there would be no significant mutual interference.

This is an unusual case. I believe that it is so unusual as to qualify for "purple cow" status; that is, it is doubtful that the Commission will be faced with a flood of such applications. In this instance, both applicants are seeking a mutually beneficial result which does no violence to the main purpose of the Table of Assignments which was, and is, to equitably distribute television service throughout the nation. Were the applicants seeking such an accommodation between themselves at the expense of the public that would be, of course, a cause of great concern. That, however, is not the case. Should these joint proposals be granted, an estimated 120,000 viewers would gain new service while only some 1,600 would lose a part of their existing service.

The majority has rejected these applications because of its concern that a precedent would be established which would erode the Table of Assignments. Again, I believe that this case is virtually unique. In the vast majority of situations, one party wants to move or upgrade while the other party prefers the status quo. In the instant case, however, both parties seek an opportunity to improve their service and the public only stands to gain.

I strongly suspect that the hearing which is being forced upon these applicants will result in a grant of both applications. The sheer weight of common sense, it seems to me, will ultimately prevail. In the meantime, the burden of the full panoply of a hearing will fall upon the parties and the government alike with all of the requisite delay and expense such a process entails. The hearing process, of course, is a valuable and necessary tool in many instances for reaching just and equitable decisions. In this case, I believe that it is being misused to serve the interests of administrative convenience at the expense of the public interest.

Therefore, I dissent.

245