

Statement of FCC Commissioner James H. Quello
Dissenting in Part

In re: Notice of Proposed Rulemaking, General Docket 80-739

The United States proposed that the 1979 World Administrative Radio Conference (WARC) add fixed and mobile radio allocations to the band now occupied domestically by the UHF television service. The rationale for the U.S. position was that flexibility was desirable in this band, insofar as the international tables are concerned, so that we would have an additional option to be considered at some future date should a need be demonstrated for additional fixed and land mobile radio spectrum. The WARC adopted the U.S. proposal, and we now have the flexibility that we sought.

In the Notice of Proposed Rulemaking adopted by the Commission today, the majority seeks to go a step further and actually provide for fixed and land mobile use of this band (1) without having established a need, (2) without due consideration of alternatives in the event a need is established, and (3) without having established that sharing the band by UHF television and fixed and land mobile radio is feasible. This action is being taken while thousands of Low Power Television (LPTV) applications are pending before this Commission, many of which are likely to remain in pending status for some time to come.

Much has been made of the proposal that fixed and land mobile radio would be given "secondary" status in the band. It must be noted, however, that LPTV is also a secondary service. Thus, under the majority proposal, both LPTV and fixed and mobile radio services would have co-equal status and would be assigned according to a first-come, first-served rationale.

It goes without saying that, once the spectrum in the UHF television band is made available, establishment of a "need" by fixed and land mobile radio interests will not be far behind. I submit, however, that this approach to "spectrum management" is hardly the reasoned process which the American people have a right to expect. It has all of the sophistication of an Oklahoma land rush where the fastest horses often determined the outcome. The plodding comparative hearing "horse" which the broadcast services are forced to ride is clearly no match for the high-speed assignment processes of the Private Radio Services. Even given the problematical implementation of the Commission's new-found lottery authority, the process is likely to still suffer from protracted delays.

Samuel Taylor Coleridge once wrote:

The juggle of sophistry consists, for the most part, in using a word in one sense in the premises, and in another sense in the conclusion.

I'm concerned that the word, in this instance, is "need."

Therefore, to that portion of the Notice of Proposed Rulemaking which refers to adding fixed and mobile radio assignments to the UHF television band, I most emphatically dissent.