

Statement of FCC Commissioner James H. Quello
Dissenting in Part

In Re: Report and Order in the Cellular Lottery Rulemaking, CC Docket No. 83-1096

I concurred in the Notice of Proposed Rulemaking in this docket because I felt that the Commission should explore the use of this newly-acquired tool in all areas where our resources were being overtaxed. I was persuaded by assertions that there was very little difference among the applications and that no meaningful differences were likely to emerge from comparative proceedings. It has become increasingly clear that this is not the case and that significant differences exist but are being ignored in the zeal to implement the lottery process.

The complexity and capital costs of major cellular systems require careful scrutiny by the Commission to provide the best possible service to the public in the shortest possible time. Clearly, the public has already waited far too long for this exciting new service. While the lottery will certainly expedite the selection process, in the first instance, it is far less certain that it will expedite service to the public given the petitioning process after the winner is chosen. And, of course, there is no consideration of which among the applicants is likely to provide the best service. Thus, the benefits of using the lottery may well prove illusory while its flaws are obvious and enduring.

I have previously expressed my concern that the majority's eagerness to embrace the lottery process is damaging the comparative process.^{1/} That concern is heightened by each order, such as this one, which continues to find uniformity where disparity exists, eliminating issue after issue as unworthy of comparative consideration.

In those markets where applications are already on file, I find it unreasonable and unnecessary to so drastically change the rules under which mutually exclusive applications are to be decided. There are vast differences in the amount of effort and expense required to prepare an application whose merits are to be compared point-by-point and in preparing a minimally acceptable application to qualify for the lottery process. Those who mistakenly relied upon the Commission's repeated assurances ^{2/} that lotteries would not be used in this service now find that they have spent significant sums of money to speculate in ping-pong balls.

I concurred with the majority in the use of the lottery in the smaller markets for two reasons. First, cellular systems for the smaller markets are likely to be far less complex than in the larger markets thus diminishing the expertise and financial depth required. Second, no applications for the smaller markets have yet been filed and no one will enter the process under false pretenses. It is a game of chance, pure and simple.

Finally, I wholeheartedly support the majority view that the wireline set-aside continues to be a valid concept for all markets.

^{1/} See MCI Cellular Telephone Co., CC Docket Nos. 82-796 and 82-721, _____ FCC 2d _____ (released March 6, 1984) (Quello, Commr., concurring).

^{2/} See Cellular Communications Systems, 86 FCC 2d 469, 499 (1981) modified, 89 FCC 2d 58 (1982), further modified, 90 FCC 2d 571 (1982) aff'd, sub nom. United States v. FCC, No. 82-1526 (D.C. Cir. March 3, 1983); Second Lottery Report and Order, 93 FCC 2d 952 (1983), recon. pending.