

Statement of
Commissioner James H. Quello
Dissenting in Part

In re: Application for Review of Order of the Review Board in
the Ventura, California Television Proceeding (Docket
Nos. 80-698 and 80-699)

The Commission has tentatively concluded that the reallocation of Channel 16 in Ventura is not desirable and the majority concedes that today's action does not alter that conclusion. Memorandum Opinion and Order, para. 5. Indeed, in our Further Notice of Proposed Rulemaking, FCC 85-236 at para. 14, released May 7, 1985 we supported our tentative conclusion as follows:

The Sheriff points out that since Channel 41 was recently allotted to Ventura it can be considered as a substitute channel for the parties to the Channel 16 hearing proceeding. However, this would result in a net loss of one of two TV channels currently allotted in Ventura. Furthermore, we note that Channel 41 cannot be used by the present applicants in the Channel 16 comparative hearing without substantial modifications to their applications, including selection of a new site meeting the Commission's technical requirements. (Citation omitted.) In light of the time and expense spent by the parties in prosecuting the Channel 16 applications to date, we have serious reservations about imposing this burden on the applicants, the community of Ventura, and the Commission at this late stage in the Channel 16 proceeding, particularly since we believe the Sheriff's requirements can be met from other spectrum. (Emphasis added.)

Thus, we tentatively concluded that Channel 16 is not a desirable alternative. Less than two months later and without benefit of a record supporting a contrary view, the majority has somehow come to the view that Channel 16 reallocation is a very real possibility.

Since we have stated our belief that the Sheriff's needs can be met from spectrum other than that allocated to Channel 16, I find it difficult to understand why the likelihood of reallocation has now risen to the level where conditioning a grant of the television channel is appropriate. At the least,

such conditioning will cause unnecessary delay in construction of Channel 16. While the majority declines to stay construction of the television channel, Memorandum Opinion and Order at note 12, that generosity is of no value to the grantee since the majority states that the grantee's channel may be summarily expropriated. Any funds spent on construction thus could be wasted. A stay of construction is effectively imposed by the legitimate concerns of a prudent licensee.

The citizens of Ventura, as well as these litigants, are entitled to a reasonable weighing of equities and probabilities now rather than a knee-jerk reaction in favor of preserving a remote possibility that a clearly undesirable result will be adopted by the Commission. Because I do not believe the public interest is served by unnecessary delays in this already protracted proceeding, I must dissent to conditioning the grant of Channel 16.