SEPARATE STATEMENT
OF
COMMISSIONER JAMES H. QUELLO
DISSENTING-IN-PART

Re: Notice of Proposed Rule Making to amend Part 90, Subparts M and S, and to modify policies concerning Specialized Mobile Radio (SMR) Service.

My dissent is rather straightforward. I dissent to that aspect of the Notice of Proposed Rule Making addressing technical proposals for Specialized Mobile Radio (SMR) services. Specifically, I object to the proposals that: 1) permit the use of non-standard channel widths and modulations without prior notification and Commission approval; 2) permit the aggregation of channel widths without Commission approval; and 3) permit licensees to choose between conventional or trunked systems for SMR services.

It is a bleak day in the realm of public policy formulation when just three weeks after the Commission released its Report and Order allocating spectrum in the 800-900 MHz bands, the majority proposes to do an about-face.[1] Action by the majority today proposes to allow SMR licensees more flexibility by aggregating channels to offer different services and different service quality requiring greater bandwidths than the 12.5 kHz channeling plan adopted in the reserve proceedings. Such proposed action could reduce the number of SMR channels available. The rationale for the 12.5 kHz channeling plan and the requirement for spectrum-efficient technology was to create more channels, not less, to meet the current needs and growing demands of the Private Land Mobile Radio community.

When adopting the channeling plan for the Private Land Mobile Radio services, the Commission stated:

> Foremost in our decision on a channeling plan for this allocation is the need to consider the evidence concerning private land mobile spectrum needs. As previously discussed, the substantial shortfalls in available communications capacity within the next decade that were projected by our own studies have been affirmed by the comments in this proceeding and supported by the actual growth rates...**in balancing the divergent goals of spectrum efficiency and high communications quality, we are compelled to give greater weight to the spectrum efficiency issue in the channel selection process.** In view of these considerations, we are adopting a 12.5 kHz channeling plan with technical flexibility for the 896-901 MHz and 935-940 MHz bands.[2] (Emphasis added)

After reviewing the comments addressing alternative channeling plans, the Commission in noting the shortfall of spectrum essential to meeting the needs of the Private Land Mobile Radio services, decided on the 12.5 kHz channeling plan. By today's action, however, the majority is proposing to abandon its rationale for selecting the 12.5 kHz channeling plan. It now appears that the majority would like to have it both ways. First, the majority relies upon the rationale of spectrum demand for requiring the 12.5 kHz channeling plan, trunked technology and the filing of waivers for other spectrum efficient technologies. Now, however, the majority proposes to rely on licensees' interest in developing "quality" SMR services that may be more socially or economically efficient, not necessarily spectrum efficient, and to do this without requiring licensees to seek waiver requests. In my opinion, the majority can't have it both ways. The proposals for less spectrum efficient technology and wider bandwidths for SMR services are based on factors other than spectrum efficiency and include such notions as "quality" of service and "options" available to users. Such notions were reviewed and rejected outright by the Commission in its earlier allocation decision requiring a 12.5 kHz channeling plan and trunked technology for SMR services.[3]

The bottom line of today's technical proposals is the abandonment of the Commission's decision to ensure spectrum-efficient technology in the SMR services. Spectrum efficiency will give way to whatever SMR licensees wish to provide and coupled with the proposals to eliminate the requirement to file waiver requests and loading requirements, we will never accurately know how SMR spectrum is being used. I find such a situation intolerable in light of the record indicating significant demand for SMR spectrum.

The more glaring example of contradiction in public policy, however, is the proposal to permit licensees of the 900 MHz SMR systems the flexibility to choose between conventional and trunked technology without the requirement of filing a waiver request. When allocating the reserve spectrum in July, the Commission stated "[t]o further enhance efficient utilization of this spectrum, we have decided to require the use of trunking on all channels in the SMR pool." The majority also stated that waivers of the trunking requirement "will be considered on a case-by-case basis for operational configurations that can clearly be demonstrated to be at least as efficient as trunking."[4] The proposal to allow licensees the option of choosing conventional or trunked systems is blatantly inconsistent with our action in the reserve proceeding released just three weeks ago. I find such a proposal an affront to the reasoning and logic so extensively relied upon by the majority in that proceeding. The Commission went to great lengths to justify the significant amount of spectrum given to the Private Land Mobile Radio services by arguing the existence of a tremendous unmet demand for spectrum. To remedy the plight of

the Private Land Mobile Radio Services, the Commission not only allocated 10 MHz of spectrum, but also required trunking on all channels in the SMR services. Now, just three weeks after releasing the Report and Order in that proceeding, the majority seeks to undermine its rationale for allocating spectrum by proposing to allow conventional SMR systems and furthermore, to do so without requiring licensees to seek a waiver.

Finally, a few words must be said about the waiver process in light of the technical flexibility now proposed by the majority. In the reserve proceedings, technical flexibility for the new 900 MHz channels referred to the flexibility to use more than a single emission within a channel, or upon justification, to combine contiguous channels.[5] Yet, by adopting this Notice of Proposed Rule Making, the majority is proposing rule changes under the guise of "technical flexibility" that are clearly contrary to the recently adopted rules allocating the 900 MHz channels for SMR services. Those recently adopted rules specifically required waivers to be submitted in the event that licensees seek to propose alternative spectrum-efficient technology. This waiver process allows the Commission to determine if the proposed technology is consistent with our goal of spectrum efficient technology. Apparently, under the proposed rule changes the majority no longer finds a compelling interest to ensure that valued spectrum is used in the most efficient manner available.

Although I am not dissenting to the proposals to eliminate some of the eligibility requirements for SMR licensees, and the loading requirements, I would like to draw public attention to some of my concerns with these proposals. By proposing to eliminate many of the eligibility requirements, is the Commission proposing to destroy the distinctions between private carriers and common carriers?

Regarding loading requirements, the Commission currently has reclaimed 1382 SMR channels due to the failure to meet loading requirements.[6] Furthermore, these channels were reclaimed in the 21 largest U.S. cities where waiting lists exist for SMR channels. This indicates that there is a real value to maintaining the current loading requirements. In the absence of loading requirements how will the Commission know that these channels remain fallow? I will be reviewing carefully the comments addressing this question and other aspects of the proposal to eliminate the loading requirement.

Finally, by proposing to allow the federal government to be an end user in SMR services, we are proposing to increase the demand for SMR services. The Notice of Proposed Rule Making provides no estimates of the increased demand for SMR channels due to federal government use. I believe that such information would be valuable prior to making our final determination on

this proposal. How one justifies increasing the number of eligibles for SMR services in light of our recent action allocating additional spectrum to SMR services to meet existing needs of current SMR eligibles remains unclear. Furthermore, the narrower 12.5 kHz channeling plan and the requirement of trunked technology were implemented to help ease the existing demand for SMR spectrum. Now, to propose to increase the demand for SMR channels, while also proposing to eliminate the requirements for spectrum-efficient technology and loading, coupled with decreasing the number of SMR channels due to the proposal to permit increased bandwidths, appears to be a contradiction in purpose and goal of our public policy. Such contradictions work against SMR interests in future spectrum related proceedings.

FOOTNOTES

[1] See, Report and Order in General Docket Nos. 84-1231, 84-1233, and 84-1234, 51 Fed. Reg.37398 (October 22, 1986).

[2] Ibid. See paragraph 69.

[3] Ibid.

[4] Ibid. See paragraph 75.

[5] Ibid. See paragraph 77.

[6] The Commission has reclaimed 2224 SMR channels. This figure represents 62% of all reclaimed SMR channels. The remaining 842 (38%) SMR channels have been reclaimed due to construnction failures.