

October 23, 1986

**STATEMENT
OF
COMMISSIONER JAMES H. QUELLO**

Re: Regarding Commission Decision to Seek Remand of Shurberg
Appeal

Because I was advised by my attorneys at the agency that the Commission's minority and female comparative licensing preference scheme, based on recent Supreme Court case law, was constitutionally suspect, I joined with my colleagues on September 15, 1986, in instructing our General Counsel to request that the United States Court of Appeals remand the Steele case. Since that time, I have made clear that I remain, to the extent the law permits, committed to continuing the Commission's long-standing policy of encouraging and assisting minority and female entry into broadcasting.

The Court of Appeals has now requested that the Commission present its views on what effect the position it took in the Steele case has on the constitutionality of its minority distress sale policy, an issue pending in the Shurberg appeal. Because recent Supreme Court case law may also call into question the legality of our distress sale policy, I am again compelled to join my colleagues in directing that our General Counsel ask the Court of Appeals to remand the Shurberg appeal.

I want to make crystal clear, however, that I am not, at this time, questioning the wisdom of continuing our minority policies. I must, of course, study the law to be sure that the Commission's policies are constitutional. However, as I have said before, I place the burden of proof on those that would challenge the constitutionality of our long-standing minority policies. And I am not expressing agreement with any characterization in our remand Order as to what justification is necessary under recent Supreme Court case law to support such policies. This is a matter to which I will give great care when the Commission undertakes a proceeding to study the issue.

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