

Dissenting Statement
of
Commissioner James H. Quello

In re Applications of Rebecca Radio of Marco, et al. (MM Docket No. 87-244)

As a general matter, I have always been in favor of settlements in the comparative process as a means of resolving disputes in an expeditious manner. In certain unique circumstances, allowing non parties to participate in the settlement will promote the public interest. See RKO General, Inc., 3 FCC Rcd _____ (1988) (settlement with sale to third party promotes public interest by resolving litigation that is over two decades old). However, in our drive to promote settlements and expedite the process, we must be careful not to lose sight of our underlying statutory obligations. The settlement in this case crosses that line, creating dangerous precedent that establishes a de facto private auction for broadcast spectrum.

Sections 301 and 304 of the Communications Act make it abundantly clear that broadcast applicants do not have a vested right in the spectrum. Accordingly, it is settled law that the holder of a construction permit cannot profit from the sale of an unbuilt station because the permittee has no property right in the spectrum. Central Television Inc., 60 R.R. 2d 1297 (1986); See 47 C.F.R. Sec. 73.3597. Given this time honored communications policy, I find it difficult to understand how the majority could allow an applicant for a new unbuilt broadcast station to sell its application to a third party for profit. Such a policy violates the fundamental principle that broadcast applicants do not have vested rights in the spectrum.

I agree with Administrative Law Judge Joseph Chachkin's observation that the parties in this case "seek to utilize a settlement arrangement to circumvent the Commission's established processes for qualifying applicants and awarding construction permits" Rebecca Radio of Marco, FCC 88M-1557 (May 24, 1988) at 4. The potential adverse ramifications of this de facto private auction on the ability of the Commission to promote local integrated ownership and minority participation through the comparative process may be significant.

The majority's decision in this case is a radical departure from Commission precedent. Because it raised such fundamental issues, I believe it would have been more appropriate to address the implications of this new policy in the context of a rule making proceeding. Therefore, for the above stated reasons, I must dissent from the decision.

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