

**Dissenting Statement of
Commissioner James H. Quello
in which
Commissioner Ervin S. Duggan Joins**

Re: Memorandum Opinion and Order, Review of Technical Parameters For FM Allocation Rules of Part 73, Subpart B, FM Broadcast Stations, MM Docket No. 86-144.

I dissented from the Commission's *Third Report and Order* in this proceeding because I thought the record was insufficient to demonstrate that the 36 mV/m standard would protect against additional interference and because I believed the majority's approach exalted a desire for consistency over a concern for the technical integrity of FM radio. Nothing in the Commission's discussion of the issues on reconsideration allays these concerns. Consequently, I respectfully dissent from today's decision.

The consequences of any new rule that would tend to increase the amount of IF interference could be enormous. As the Commission most recently acknowledged in another proceeding, "IF interference has more serious consequences than co-channel and adjacent-channel interference. For example, IF interference can prevent reception of *all* FM stations in the area rather than just the IF-related stations." *Edens Broadcasting, Inc.*, FCC 90-126 (released April 19, 1990) (emphasis added).¹ See also *Walter P. Faber, Jr.*, 4 FCC Rcd. 5492, 5494 n.7 (1989). Given the stakes involved, one would think that the Commission has compelling proof that its new technical standards will not result in increased IF interference, or that the public interest benefits more than outweigh any incremental increase in interference. Astonishingly, neither is the case.

The Commission presents no test data documenting the interference potential of its new separation rules. Instead, the majority goes to some length to distance itself from our in-house research, stating that "[n]owhere in the *Third Report* did we state that the new standard was based to any degree on the OET Study." Order ¶ 18. The majority devotes considerable energy criticizing the OET Study, which the Commission acknowledges does

¹ *Edens Broadcasting* involved a request for waiver of Section 73.207 of our rules to permit short-spacing of an antenna site for a Class C FM station and therefore posed a greater risk of increased interference than does the Commission's current decision. The point is, however, that any action which creates a greater risk of IF interference can cause significant adverse effects.

not support "the conclusive selection of the 'correct' protection level." *Id.* In fact, the Commission expressly eschews reliance on *any* research, choosing instead to justify our new technical rules "on non-technical grounds." *Id.* at ¶ 28 n.28. While this preference not to be confused with the facts may be necessary to permit the Commission to reach the conclusion it has chosen,² it provides little assurance that FM stations will not face the prospect of increased interference.

Lacking theoretical support, the majority looks to the past in order to justify our future technical rules. It concludes that the lack of interference complaints arising from the 36 mV/m standard that has been applied for twenty years to Class A and Class C stations is proof that no interference will result when the standard is applied to all classes. *Id.* ¶ 15. But this assumes that our past experience will continue when all FM stations are operating under a more relaxed standard. It further assumes that a lack of complaints in the past accurately reflects the experience of the listening public. As I pointed out in my dissent to the *Third Report*, most radio listeners that encounter interference are unlikely to report the problem. 4 FCC Rcd. at 3564. In any event, it is bad policy to delegate our statutory responsibility to prevent interference by establishing a "public grumbling" standard.

The majority's reliance on our previous experience with Class A and C stations also reveals the double standard it is imposing on petitioner. At the same time it relies on the historical absence of complaints, the Commission rejects petitioner's argument that site selection flexibility is unneeded "because it is based solely on data gathered in the past." Order ¶ 29. This "heads I win, tails you lose" tactic highlights the overall weakness of the Commission's argument for changing the IF interference rules. I continue to believe, however, that "[t]he burden in the instant proceeding should be placed squarely on those parties seeking to change our current IF separation

²The OET test results suggest that increased interference may well result from relaxing the separation requirements. The OET Study detected "a wide range of performance" in the thirty receivers studied, and found "[t]he receivers which had the poorest U/D (undesired to desired) ratios exhibited significant interference even at levels typical of the existing 20 mV/m separations." See ABES Petition for Reconsideration at 4.

The Study may well have understated the interference potential because it did not test line-cord and the increasingly popular "walkman" type receivers which may be more susceptible to interference. Rather than seeking to collect additional data, the majority merely thinks it is "reasonable to *assume* . . . that the performance of 'walkman' type receivers *may* not differ significantly from the receiver models tested in the OET Study." Order at ¶ 19 n.23 (emphasis added).

requirements." 4 FCC Rcd. at 3563. The Commission simply has failed to meet this burden of proof.

Additionally, the purported public interest benefits of the new policy are speculative, and, even if realized, appear to be minimal.³ While the majority "believe[s] that there *may* be a need for greater future site selection flexibility," Order ¶ 14 (emphasis added), it does not identify the magnitude of this presumed need. Although it notes that the problem caused by the current separation rules is one of "small scope," it concludes that there "*may* be a significant problem for individual stations." *Id.* (emphasis added). However, as petitioner notes, very few stations are operating at or near the existing permissible separation distances, and currently there are only 22 pairs of IF-related FM stations that are short-spaced under the current rule. "This is one-half of one percent of the approximately 4,200 commercial stations now authorized."⁴

Finally, I am concerned that the Memorandum Opinion and Order the Commission adopts today is inconsistent with our recent efforts to reduce interference in the AM band. At our April 12 open meeting we adopted new methods for measuring AM groundwaves and skywaves,⁵ approved new procedures to allow AM broadcasters to enter agreements to reduce interference⁶ and launched a rulemaking designed to result in the "transformation and revitalization of the AM broadcast service," chiefly by

³While I share the Commission's interest in making our rules consistent, this interest does not outweigh countervailing concerns -- particularly those related to interference. The majority acknowledges that inconsistencies may be necessary in certain circumstances, such as when a change in the rules would lead to increased interference. *Id.* Order at ¶ 12 n.15.

⁴ABES Petition at 5. *See also* Third Report and Order, 4 FCC Rcd. at 3560. The minute scope of the site flexibility problem presents us with a trade-off with respect to interference potential. To the extent the new rules encourage a large number of licensees to move their facilities, the less relevant our past experience becomes. But it was this past experience--with the old rules in place--that convinced the majority that there would be no significant increase in interference.

⁵Report and Order in MM Docket No. 88-510, Improved Methods of Calculating Groundwave Field Strength in the AM Service, FCC 90-139 (adopted April 12, 1990); Report and Order in MM Docket No. 88-508, Improved Methods of Calculating Skywave Field Strength in the AM Service, FCC 90-138 (adopted April 12, 1990).

⁶Report and Order in MM Docket No. 89-46, Amending Sections 73.1750, 73.3517 and 73.3571 of the Rules, and Revising Policies With Respect to Reduction in AM Interference, FCC 90-137 (adopted April 12, 1990).

reducing congestion and interference in the band.⁷ We also have adopted new rules pertaining to the authorized bandwidth permitted AM stations to combat interference between stations operating on nearby adjacent channels.⁸ While I do not attempt to equate the problems of AM and FM radio, the Communications Act requires that we adopt regulations "to prevent interference between stations" in order to promote "a rapid, efficient, Nation-wide, and world-wide wire and radio communication service,"⁹ regardless of band. By searching for uniformity among the trees of our IF interference separation rules, I fear the Commission has lost sight of the need for consistency in the forest of our statutory mandate.

I hope that I am being overly cautious and that our rule change will not lead to increases in IF interference. I hope the increase in site selection flexibility and the move toward uniformity of our separation requirements will prove to be true public benefits. But I am not convinced that the Commission has before it the evidence to answer any of these questions. Until it does, the rules should not be changed. Accordingly, I dissent.

⁷Notice of Proposed Rulemaking in MM Docket No. 87-267, Review of the Technical Assignment Criteria for the AM Broadcast Service, FCC 90-136 (adopted April 12, 1990).

⁸Memorandum Opinion and Order in MM Docket No. 88-376, Amendment of the Commission's Rules to Improve the Quality of the AM Broadcasting Service by Reducing Adjacent Channel Interference, FCC 90-68 (released April 20, 1990).

⁹47 U.S.C. §§ 151, 303(f).