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Concurring Statement of Commissioner James H. Quello

In the Matter of License Renewal Application of Dolcom Broadcasting, Inc. For Station WUMX(FM), Tallahassee, Florida.

I concur in the Commission's decision because of the licensee's generally poor recruitment record regarding minorities. However, one argument raised by the licensee as a reason to mitigate the penalty — and the Commission's response — is troubling.

The licensee, which hired a Hispanic for an upper-level position during the license term, asserted that the Commission discriminates between minorities by failing to give the station credit for this hire. In response, the Commission acknowledged that "we focus primarily on a licensee's efforts toward the dominant minority group in the labor force." *Notice of Forfeiture* at ¶ 8.

This comes dangerously close to suggesting that stations can run afoul of our EEO policies for hiring the "wrong" minority — a notion that I find to be disturbing and counterproductive. This agency has no business deciding what may be an "approved" versus a "disapproved" minority when applying our employment policies.

An excessive concern with "dominant" or "nondominant" minority status is inconsistent with our minority ownership and employment policies. Although the Commission cites *Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC*, 595 F.2d 621, 625 n.7 (D.C. Cir. 1978) as the source of this analysis, the court in that case noted that the use of such statistics "has not properly been raised by the parties to this appeal." In discussing the issue, however, the court made clear that "the most relevant figure is usually the overall percentage of minorities in the workforce." *Id.* The court also emphasized that "the FCC has [not] limited 'the coverage of its antidiscrimination rules to groups dominant in the licensee's service area' . . . or that a station is free to discriminate against one minority group *so long as it practices countervailing discrimination in favor of another. Id.* (citation omitted, emphasis added).

In *Metro Broadcasting, Inc. v. FCC*, 110 S. Ct. 2997 (1990), the Supreme Court explained that the rationale underlying the Commission's minority policies was to promote diversity in programming. That is, EEO and ownership policies seek to "ensure that . . . licensees' programming fairly reflects the tastes and viewpoints of minority groups." *Id.* at 3018, quoting *NAACP v. FPC*, 425 U.S. 662, 670 n.7 (1976). The Court said that it was "under no illusion that members of a particular minority group share some cohesive, collective viewpoint," but that it was a "legitimate inference" that with increased minority ownership and employment, "varying perspectives will be more fairly represented on the airwaves." 110 S. Ct. at 3018.

The Supreme Court emphasized that these policies exist not as a means to favor a particular group, but to serve the broader public interest. It noted that "[t]he benefits of such diversity are not limited to the members of the minority groups who gain access to the broadcasting industry by virtue of the ownership policies; rather, the benefits redound to all members of the viewing and listening audience." *Id.* at 3011.

Bottom line, our rules require all licensees to have an active EEO program, to assess its effectiveness and to make changes when necessary. But if "diversity" and "varying perspectives" are what we seek, we will find these goals to be elusive to the extent we attempt to determine which particular minority in a community is most acceptable in our employment policy decisions.

Fortunately, the *Notice of Forfeiture* notes that the licensee's EEO efforts "were inadequate in light of its poor record-keeping, recruitment and self-assessment, *and these inadequate efforts form the basis for the forfeiture.*" ¶ 8 (emphasis added). I agree that the licensee's efforts were inadequate here, and therefore support the outcome in this case. But any suggestion that hiring the "wrong" minority is evidence of an inadequate EEO program is unacceptable.