

**CONCURRING STATEMENT
OF
COMMISSIONER JAMES H. QUELLO**

RE: Automatic Vehicle Monitoring

I am concurring in the issuance of this Report and Order only because it appears to constitute the best of three not very good alternatives.

In practical terms, the Commission must do one of the following: acknowledge that AVM systems have been designed and built in reliance on operating in the 902-928 MHz band and do the best we can to accommodate them; acknowledge that AVM systems' operating in this band is liable to cause a variety of interference problems, and thus move at least some of them out of the band; or force the mutually-interfering AVM and Part 15 users into some type of negotiated rulemaking and conduct some systematized field testing during the pendency of the negotiation process. The Report and Order does the first.

I would not vote for this Report and Order if either of the other two alternatives appeared likely to produce a better result. But in my judgment neither one does. While moving the most interference-prone AVM systems to another frequency band would perhaps be the best result if the Commission were writing on a clean slate, unfortunately, we are not. During the pendency of these proceedings AVM systems have been engineered in reliance on interim rules predicated on continued operation in the 902-928 MHz band. I would feel less compelled by this element of detrimental reliance had it not lasted as long as it has, and had a number of AVM licenses not been conferred in the interim. But it has, and under these circumstances to completely disrupt existing and planned AVM operations by reassigning them to different frequency bands strikes me as inequitable at best.

Nor does further testing and a forced negotiated rulemaking look promising to me. Although I would not characterize the testing that has been done to date as anything more than fragmentary and inconclusive, I am not certain that a more rigorous system of testing would tell us more than we already know: that interference to and from Part 15 devices and AVM systems is likely to be sporadic, unpredictable and, beyond a certain point, intractable. And the Report and Order's attempt to prescribe that AVM systems "adequately protect" the six to eight million Part 15 devices already operating in this band is not very reassuring. The sheer number and diversity of the Part 15 devices that already operate in this band virtually guarantees that this standard, however laudable, will be well-nigh impossible to interpret and enforce. For example, is your new 900 MHz cordless phone "adequately protected" if it doesn't work only once in, say, five tries? or once in twenty-five? What would you consider "acceptable interference" to an infant monitor, or to a security system? And I defy anyone to tell me what would

constitute "adequate protection" to the Part 15 device that controls traffic during emergencies in Orlando, Florida. Nor do I think that forcing the parties to negotiate with one another is likely to be productive at this point. If the record in this long-pending proceeding demonstrates anything beyond a shadow of a doubt, it demonstrates that the various users in this band are unlikely to reach consensus on much of anything.

And so back to my original point: in this case the only real choice the Commission has is to make the best of a less-than-optimal situation, and so we have tried. This may gratify some of the AVM interests who have desperately pleaded that, after such a lapse of time, ANY decision is better than NO decision. But it in no way gratifies me. Regulatory philosophies have come and gone over the years this proceeding has been pending, but the Commission's principal regulatory responsibility, regardless of the prevailing regulatory philosophy, is to prevent interference. And that is precisely what we may not have done here. In this light, perhaps the most important lesson we can learn from this experience is that the Commission must pay close attention to the details of how the new spectrum being transferred from government to non-government use is allocated and assigned so that we are never put in this type of position again.

Rarely do I sound so negative in discussing an item that I am, after all, not dissenting from. But in my judgment this Report and Order will be but our first step into a potential bog of interference problems. I sincerely hope I am wrong, but I fear I am right.