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**Separate Statement
of
Commissioner James H. Quello**

April 1, 1997

Re: Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Services ("WCS"), GN Docket No. 96-228.

I agree with the determinations made in this *Memorandum Opinion and Order*. I am writing separately to emphasize that in making the decisions regarding technical performance criteria, I relied heavily, as is my usual practice, upon the analyses and recommendations of our in-house technical experts. The engineers in our Office of Engineering and Technology and in the International, Wireless, and Mass Media Bureaus reviewed the record thoroughly, including rapidly evolving technical submissions from those seeking reconsideration, and worked extensively with potential providers. The FCC's experts came to the joint conclusion that the technical parameters that we adopt herein provide the best opportunity for greatest number of potential providers of diverse communications services to participate in the auction of the frequencies designated by Congress for Wireless Communications Services. Moreover, the FCC's experts believe that these technical criteria will adequately protect services in adjacent frequency bands.

As is almost always the case, no party got everything it wanted in the final decision but I know that all received a fair hearing. Furthermore, the decision whether to participate in the upcoming auctions reposes where it properly belongs: in the business judgment of the potential bidders. Our technical decisions neither guarantee success nor preclude participation. That is as it should be. The public interest is served in a competitive bidding scenario where the Commission does not pre-select winners or losers but allows those entities that value a particular frequency most highly to bid to provide the allocated communications service(s).

Nevertheless, I would be remiss if I did not mention that I remain concerned about the repercussive negative effects of having spectrum management decisions driven by auction methodology. Since this Commission was given initially the authority to use competitive bidding while I served as Chairman, I have often reiterated my belief that auctions are a licensing method, they are not a spectrum management technique. To confuse one with the other does violence to the goals and purposes of both.

Management of the radio frequency spectrum in the public interest is one of the fundamental purposes for which this Federal Communications Commission was created.¹ Determining which

¹ 47 U.S.C. Title 1, Communications Act of 1934, as amended (General Provisions), *passim*.

innovative new communications services are worthy of an allocation of this valuable natural resource and where in the usable radio frequency band such service should be provided is the essence of responsible spectrum management in behalf of our fellow citizens, *i.e.*, determining "what" and "where" serves the public interest by, *inter alia*, minimizing harmful radio interference.

In this particular 'Wireless Communications Service,' however, these decisions were taken out of our hands. The allocation and assignment decisions were made legislatively. Congress directed this Commission to reallocate certain frequencies to "wireless services" (delimited only by consistency with "international agreements") and to assign licenses by auction on a specific and expedited timetable.² The focus was on receipt of auction revenues into the national treasury by a date certain. The budget process rather than engineering principles drove the overarching allocation and assignment decisions. Our decisions on the interstitial technical criteria were similarly bound by the revenue-based allocation and assignment parameters.

I am not certain that any decisions that we have made in this proceeding would be different if this Commission were allowed to pursue our time-tested and proven procedures for allocating and assigning spectrum. I am certain, however, that the decisions on technical criteria were made considerably more complex by having to be made after, rather than as an integral part of, the underlying allocation decision and in a hurried manner. This is especially troublesome where, as in these bands, equipment is yet to be developed. Manufacturers are at only the very early stages of research and development. Indeed, the record reveals that the manufacturers were looking for guidance from this Commission in order to target their R&D efforts.

This is not to denigrate in any way the efforts of our technical experts or the *bona fides* of the parties to this proceeding. I am continually impressed by technical acumen and prowess of this Commission's experts. They have become quite adept at pounding square service assignment "pegs" into round allocation "holes" but it is far preferable if they are allowed to shape the allocation and assignment decisions to limit interference in keeping with sound engineering practice in the first instance.

I am not an engineer, but my twenty-three year tenure at this Federal Communications Commission and the practical experience I gained as a broadcaster in my previous career have convinced me that engineering -- and, in particular, spectrum management -- is at least as much art as science. The technical experts evaluate all the variables and develop formula for predicting the likelihood and severity of harmful radio frequency emissions. To the extent that some variables in the calculation are fixed by allocation or other decisions that do not have a strong technical basis, the formula are less flexible and reliable.

That said, I reiterate that I support the minimal technical "corrections" that we make in this *MO&O*.

² Omnibus Consolidated Appropriations Act, 1997, P.L. 104-208, 110 Stat. 3009 (1996).