

SEPARATE STATEMENT OF COMMISSIONER
KEVIN J. MARTIN
APPROVING IN PART, CONCURRING IN PART

RE: Relocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59 (GN Docket No. 01-14, Report and Order).

I support and approve most aspects of this item. I am disappointed, however, in the approach taken by the majority regarding pending applications for construction permits to broadcast in analog on channels in the lower 700 MHz band. Granting these applications would have resulted in substantial consumer benefits with little-to-no harm to the digital transition or the ability to auction the spectrum at issue. Indeed, in an era of increasing consolidation of the broadcasting industry, the majority has missed an opportunity to promote local origination, and has effectively denied numerous communities the chance to receive local broadcast services for the first time.

This item offers applicants seeking to construct new NTSC stations in the 698-746 MHz band a “Hobson’s choice”: Amend the application either (1) to specify an NTSC channel in the core (where there is no room), or (2) to build in digital from the start (significantly limiting potential viewership and increasing costs). I fear that for most applicants, both “options” are tantamount to an outright dismissal. Although I concur with the decision to *allow* applicants to build in digital from the start, I would not have constrained all of these applicants by strictly limiting them in this manner. I believe we should have permitted at least some of these applicants to broadcast in analog initially. Remaining concerns regarding the impact on the digital transition could have been addressed through more reasonable options, such as requiring a switch to digital by a date certain.

As a practical matter and on policy grounds, it seems that the more sensible approach would have been to allow analog broadcast today. Spectrum that has been lying fallow would be put to productive use more quickly. Consumers would benefit by having more viewing options. Indeed, nine communities would have had their own local channel for the first time.¹

All of these benefits would have been at very little cost. I’ve been informed that only 16 of the pending applications are actually “grantable” from a technical perspective, and that all of them are in areas that are already encumbered. Indeed, the lower 700 band, with 100 analog and 165 digital stations in operation, is *four times* more encumbered than the upper 700 band. As a result, the impact of granting a few of these applications would have been minimal. It would have had little to no impact on the transition and no effect on the date when this band could be auctioned.

¹ These towns include Hammond, Louisiana; Blanco, Texas; New Iberia, Louisiana; Galesboro, Illinois; Waverly, New York; Warner Robins, Georgia; Franklin, North Carolina; Hampton, Virginia; and Fairmont, West Virginia.

Furthermore, as the majority acknowledges, parties have already made significant investments of time, money, and effort in these applications. They likely did so in part because we earlier encouraged broadcasters who had applied for an analog station in channels 60-69 to modify their requests to apply for an allotment in a lower channel – including channels 52-59.² Indeed, we acknowledged in the notice to this proceeding that:

this band was originally intended to remain principally a television band until the end of the transition and we recognize that it may be inequitable not to process these applications, or a subset of them. In addition, given the significant number of analog and DTV incumbents that already exist on this band, the impact on the provision of new services may be marginal.³

In sum, I believe that the approach taken by the majority with respect to these pending applications is unreasonable. It is simply not good policy to deny communities the opportunity to enjoy localized broadcast services when there is very little, if any, corresponding gain.

² See Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, MM Docket No. 87-268, *Sixth Further Notice of Proposed Rule Making*, 11 FCC Rcd 10968 (1996); Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations, *Public Notice*, 14 FCC Rcd 19559 (1999).

³ Reallocation and Service Rules for the 698-746 MHz Spectrum Band, *Notice of Proposed Rulemaking*, GN Docket No. 01-74, 16 FCC Rcd 7278, ¶24 (2001).