

**SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: Applications of Savannah College of Art and Design and Diocese of Savannah for Construction Permit and License in the Instructional Television Fixed Service on the G-Group Channels at Bloomingdale, Georgia and A Group Channels at Savannah, Georgia (File No. BPLIF-951020AN)

I fully support the action taken by the Commission in this *Memorandum Opinion and Order*. Indeed, it is the only decision that could be reached consistent with the Commission's Rules, long-standing precedent, and the public interest. The Diocese and SCAD filed applications for ITFS channels that they knew were not available for licensing at that time because the Commission had previously assigned those ITFS channels to the Pembroke Stations. In order for the Commission to grant those applications, we would have to ignore two fundamental rules – the rule against contingent applications, and the rule that requires applicants to show at the time they initially file their applications that they will not cause interference to existing licensees or previously proposed stations.

First, the Savannah Applications clearly state that their “acceptability” is contingent on the Commission's willingness to grant a petition to deny that was then-pending against applications filed by the Pembroke Permittees to reinstate their construction permits. The Commission's Rules, however, have long provided that “contingent” applications will not be accepted for filing. The reason for the rule against contingent applications is that it avoids burdening the Commission's resources with applications that cannot be processed until the applicable contingencies are resolved, which may never occur. In fact, that is precisely what occurred here.

Second, under the Commission's Rules, ITFS licensees and permittees (like virtually all radio station licensees, except those that operate on a secondary basis) are given authorizations that entitle them to specified levels of protection from harmful interference. The Commission's Rules therefore require new ITFS applicants such as the Diocese and SCAD to demonstrate, at the time of filing, that their proposed operations will not cause interference to existing licensees and permittees. In fact, in its filing, the Diocese acknowledged that their applications would have resulted in harmful interference to the operations of previously proposed ITFS stations (*i.e.*, the Pembroke Stations).

I fully support and welcome the expeditious introduction of additional ITFS services and regret the procedural errors that were made in this case. However, the facts of this case bar us from supporting the award of the subject licenses and ensuring the productive use of this spectrum. The Commission cannot legally reinstate an application that was flatly inconsistent with its rules. It simply is not in the public interest to sacrifice the principles of fair play on the hope and expectation that petitioners, who have not followed the rules, might begin service in the near term. Such an approach would only encourage parties in the future to submit defective applications under the most tenuous of circumstances, on the gamble that the existing impediments to a grant (here, a mutually exclusive – and previously granted – permit) will be removed on a *nunc pro tunc* basis sometime before Commission staff acts on the defective application.