

**DISSENTING STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*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 Bloomington, Georgia and the A-Groups Channels at Savannah, Georgia*

This proceeding is a dispute over whether the Diocese of Savannah, Georgia (“the Diocese”), and the Savannah College of Art and Design (“SCAD”) should be allowed to use currently unused spectrum to serve their students. The Commission decides today that they should not be allowed to use this spectrum and that it should continue to lie fallow. Because I disagree with this curious decision, I dissent.

At the heart of today’s decision is the Instructional Television Fixed Service (“ITFS”). ITFS was established to give schools access to spectrum resources so they could use technology as an educational tool. It is the only spectrum specifically reserved for educational purposes. While some school districts have not used this program to its potential, schools around the country have built important networks that provide a wide array of educational programs to their students. Today’s decision centers on the use of ITFS licenses in Savannah.

Commissioner Martin has laid out a strong legal justification for the position that the Dioceses and SCAD could and should have access to this spectrum. I will focus on putting the issue into perspective. A quick timeline is instructive.

- In 1992 the Commission granted Effingham County Middle School and Statesboro High School construction permits to build ITFS Stations. These schools never began construction of their ITFS facilities. Nonetheless, the FCC granted these permittees extensions four times, starting in 1995 and continuing through 1997. The spectrum remained unused for this entire period.
- In 1995, the Diocese and SCAD noticed that the spectrum was not being used. They therefore requested permission from the Commission to use it for educational purposes. They noted that the original permittees had not met their requirement to use the spectrum, and that the use of the spectrum by the Diocese and SCAD would be “contingent upon” the FCC recognizing this and allowing them to provide service where the original permittees had not.
- After delaying for three years, the FCC denied the Diocese and SCAD request in 1998. Why would the Commission refuse to give permission to educators who wanted to provide service to their students in the place of permittees who had left the spectrum unused for six years? The FCC said that they needed proof that the Dioceses and SCAD operations would not interfere with the non-existent operations of the original permittees – even though the original permittees had never built a system!
- In the meantime, the original permittees continued to leave the spectrum unused. Finally, in 2002, after the spectrum had lain fallow for ten years, the Commission rescinded the permits for Effingham and Statesboro for failure to build out a system. This is exactly what the Diocese and SCAD had requested they do four years earlier.
- And now that the Commission has revoked the permits of parties that did not use the spectrum will they grant permission to educators who have every intention of using public spectrum for their students? No. Even though no one else is using the spectrum, the FCC will not allow the

Diocese and SCAD, *or any other school*, to use it because it says the window for filing for applications has closed!

That means the Diocese and SCAD were denied use of the spectrum when the window was open because they might interfere with a system that had not been built and never would be built. And when this ghost system's permit was finally rescinded a decade later the Diocese and SCAD were denied use of the spectrum because the window was closed. This is a perplexing result.

So now the ITFS spectrum in Savannah has lain fallow for more than a decade. No school has been able to take advantage of this great program. And because of the Commission's decision, no school will be able to use the spectrum for the foreseeable future. Instead the spectrum will remain unused, and probably eventually will be transferred to a private company instead of a school based on the argument that ITFS licensees did not do enough with their spectrum. But as we see in this proceeding, even when a school was ready and willing to build out an ITFS system, our interpretation of FCC rules and procedures could get in the way.

As Commissioner Martin forcefully demonstrates, we have the legal ability to fix this problem. I fail to see how our refusal to do so serves the public interest.