

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

*Re: Reexamination of the Comparative Standard for Noncommercial Educational Applicants*

Today's decision has much to recommend it. I am pleased the Commission has reached a decision on the difficult issue of the eligibility of noncommercial educational applicants to use non-reserved spectrum. I agree with the decision to allow applicants for an NCE station to continue to apply for the use of non-reserved spectrum, subject to dismissal if there is a competing commercial application. Such an approach is preferable to holding all such applications ineligible even where there is not a mutually exclusive application for the spectrum's use. NCE stations – traditional public broadcasting, as well as other stations licensed to universities, churches, and municipalities – have been fulfilling their educational mission to their communities for decades.

It further seems reasonable to allow nonprofit educational organizations not wishing to provide NCE services to utilize non-reserved spectrum. Applicants who do not choose to make an NCE showing ought to have the opportunity to obtain licenses for the use of non-reserved spectrum. Indeed, as the Order points out, some non-profit entities today operate both commercial and non-commercial stations.

In addition, under current rules that are not at issue here, a commercial station is not precluded from changing its status to an NCE station. This also seems reasonable. After all, why preclude a commercial broadcaster from deciding it would be better to provide educational programming and receive the attendant benefits and obligations of being an NCE station?

I must note, however, that this is not a perfect resolution of all the issues. Probably there is no perfect solution. Nevertheless, I do see opportunities for abuse that could develop out of today's Order. For example, a non-profit educational organization that seeks an additional license outside the reserved bands could claim it is seeking a commercial station, participate in an auction, and then immediately upon receiving the license change its status to an NCE station. The Order assumes that the benefits of getting more educational programming on the air outweigh the risk of abuse. And indeed, allowing NCE applicants to avoid the auctions exemption in this manner is a way to get more NCE broadcast stations on the air. Yet, my concern remains.

More generally, I am concerned about further blurring the distinctions between commercial and non-commercial licensees. It was not so long ago that this Commission went down the road toward commercialization of public television by determining that the prohibition on advertising does not apply to advertisements carried on the non-broadcast portion of the bitstream - the spectrum used for subscription or data services.

I do not want to encourage further travel down this road. Some nonprofit educational broadcasters could feel pressure to seek additional revenue streams to purchase licenses. We may soon be dealing with revenue-raising schemes that will detract from and endanger the integrity of noncommercial broadcasting. Worse yet, at some point, public funds could be used to purchase licenses to use the public's airwaves. I fervently hope that public broadcasters will not resort to this, because in so doing, they could be playing fast and loose with not only the proud heritage of their service, but also with its very credibility and long-term survivability.

Congress did not establish noncommercial broadcasting to be the same as commercial broadcasting. In establishing the Corporation for Public Broadcasting, Congress reported that public broadcasters "will not be in economic competition with commercial broadcasters. [They] will be filling the gaps that commercial broadcasters do not fill." Because NCE stations are different, they should be able to use the money they collect for the development of new and innovative programming, rather than

for competing against commercial broadcasters in auctions for licenses of public spectrum. I hope our decision today will not be used to circumvent Congress' directive against auctions for NCE stations. If such a result comes to pass, the Commission may need to revisit its decision today. Indeed, I will urge it to do so.