

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART AND DISSENTING IN PART**

Re: Comparative Consideration of Seven Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations filed in the February 2010 Window, Memorandum Opinion and Order, FCC 15-54.

I am pleased to support this Order, which takes important steps toward resolution of several applications filed five years ago for new noncommercial educational FM station construction permits. While I would prefer an overall licensing approach not based on a convoluted and subjective point system, we are finally disposing of open petitions and providers can get on with providing service to their communities. Nonetheless, I cannot assent to the Commission's decision to consider the merits of the defective Petition for Reconsideration regarding NCE Reserved Allotment Group 39, which was correctly dismissed.

While the *33 Group Comparative Order* designating the tentative selectees in Group 39 stated that it was an interlocutory decision and thus arguments against the selection of the tentatively selected applicant should not be raised as petitions for reconsideration,¹ petitioner Gallatin Valley Community Radio ("GVCR") proceeded to do so anyway. But while the Commission properly dismisses the petition on this ground, it then proceeds to consider the underlying substantive issue on its own motion,² reversing its previous selection in favor of the petitioner.³ I believe this is a step too far. Short-circuiting the prescribed appeals procedure based on the argument that we would presumably get to a similar outcome in the future is a faulty and misguided approach.

For some of the other applicants addressed in this Order, such leniency on the part of the Commission will remain an unfulfilled wish. For example, Canary Coalition, Inc.'s initial local applicant point determination is overturned here because it provided a post office box address instead of the location of its physical headquarters on its application.⁴ And a diversity point determination for Dallas Seventh-Day Adventist Church is reversed because, in the absence of traditional governing documents, the policy adopted by the church board prohibiting the church, but not the individual board members, from holding an attributable interest in another radio station is insufficient to meet our requirement.⁵

If we are to apply the Commission's rules strictly with regard to these permits – a reasonable and logical assumption – we should do so across the board. Adjudications before the Commission are costly and, at five years into the process, certainly time-consuming for all of these parties. At the very least, they should have certainty that our approach will be consistent and fair. By second-guessing its dismissal of the GVCR petition, the Commission may very well have changed this station's fate and set us on a questionable path for the next applicant.

¹ See *33 Group Comparative Order*, 26 FCC Rcd at 9094.

² *Supra* para. 33.

³ *Supra* para. 36.

⁴ *Supra* para. 17.

⁵ *Supra* para. 44.