

March 25, 1999

Dissenting Statement of Commissioners Harold Furchtgott-Roth and Gloria Tristani

In the Matter of Request for Extension of the Commission's Initial Non-Delinquency Period for C and F Block Payments

In today's action, the Commission fails to reconsider adequately an earlier decision which has the effect of cutting off communications service to underserved areas of rural Kentucky. For the reasons set forth below, we respectfully dissent from this decision.

In a 3-2 decision October 29, 1998, the Commission denied the request of C-Block licensee SouthEast Telephone, Inc., ("SouthEast") to grant a limited waiver of the deadline for resumption of installment payments. We dissented from the October 29th decision because we believed that the SouthEast situation met the criteria for waiver and that, at the very least, SouthEast's request warranted "a hard look and due consideration of the specific facts presented

In its decision denying SouthEast's Petition for Reconsideration, the majority argues that denial of the waiver request was "clearly contemplated" by the original C-Block order. Although the Commission indicated that it would be reluctant to grant requests for extension, we cannot support the notion that a rule could fully anticipate and obviate all subsequent waiver requests. To do so would render the waiver process meaningless.

Moreover, the majority claims, but does not support the conclusion, that the Commission "looked carefully at the facts" of SouthEast's waiver request, as well as additional facts submitted by SouthEast before the October 29th decision. We expressly disagreed with this assertion in our statement on the October 29th decision, and we continue to dispute the majority's claim that the Commission has given SouthEast the "hard look" required for waiver requests. The lack of analysis -- and even recitation -- of the facts of the case in both decisions belies the majority's assertion.¹ By merely repeating but not supporting its claims in the present decision, the majority disregards the purpose of the reconsideration process.

Finally, the majority states that "SouthEast has not provided any new facts to convince us that our previous decision is wrong." New facts, however, need not be provided by a petitioner, nor found by the Commission, as a prerequisite for the FCC to modify or reverse an earlier decision. Petitions need only "state with particularity the respects in which petitioner believes the action taken by the Commission or the designated authority should be changed [and] where appropriate, cite the findings of fact and/or conclusions of law which petitioner believes to be erroneous" 47 C.F.R. Sect. 1.106(d). Thus, even if we were to agree with the majority's

¹ For a discussion of these facts, see our previous statement. Dissenting Statement of Commissioners Harold Furchtgott-Roth and Gloria Tristani, In the Matter of Requests for Extension of the Commission's Initial Non-Delinquency Period for C and F Block Installment Payments, WT Docket No. 97-82, *Order*, FCC98-290 (released October 29, 1998).

analysis of the new facts presented by SouthEast, we believe the majority has failed to reconsider adequately its October 29th decision.

It is unfortunate that the Commission's zeal to enforce a self-created deadline has hampered its ability to fairly address petitions for waiver and reconsideration and has frustrated its mandate from Congress to provide communications service to the public, including those in underserved rural areas. As for this particular situation, however, it is distressing that this same zeal will cut off communications service to underserved areas of rural Kentucky.

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