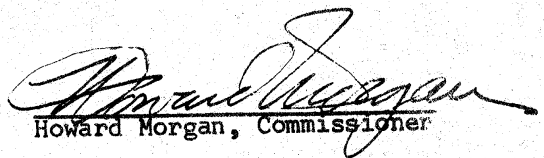


which Congress has seen fit to give us, and which we could and should have exercised in this case. Nor is there any reason in the public interest for our failing to call the attention of Congress to the inadequacies of the statute which the majority opinion outlined. No move has been made toward doing so in the eight months since the majority opinion was published. One finds it hard to escape the conclusion that the majority failed to take action in this case not because they lacked the power but because they preferred inaction then and have continued to prefer it since.

The same is true with respect to our lack of certificating power over such newly-important developments as long-distance extra-high-voltage regional inter-ties. I will not lengthen this dissent by a recital of the many ways in which the new transmission technology may now affect the public interest for good or ill in this vital field. The very case here discussed is a fairly illustrative, though by no means a complete, example. Suffice it to say that the technological and economic circumstances affecting the public interest are now radically different from those in which the Congress, in 1935, decided not to grant certificating authority to us. Bills which would close this gap for the protection of the public were introduced in the last session of the Congress. We have been asked to support those bills and I believe we should. But in the eight months since publication of their opinion the majority herein have made no move and have spoken no word in support of those bills despite the present inadequacies of the statute which they themselves have pointed out.

In this case we have been faced with a clear choice: like the Virginia commission in the case cited above we could have used the tools we already have, inadequate though they might prove to be in other cases, while asking that we be provided with the additional tools necessary for full protection of the public interest in all cases. Or we could, as the majority have done with superb illogic, point to the missing tools (and some which are not missing) as an excuse for refusal to use the ones we have, and then conspicuously refrain from asking that the missing tools be supplied.

The latter course was chosen by the majority in this case. I respectfully suggest that it is not good enough. The public interest, like the law available to us but not employed in this case, looms large to those who search for it. If the public is to be given the protection from monopoly which it deserves and expects, the law must eventually match the public interest. I believe the law adequately enabled us, in the public interest, to dispose of the issues posed by this case. In the future the law must be changed so that it matches the public interest in every case, and the law must be used.


Howard Morgan, Commissioner