

CONCURRING STATEMENT OF
FCC COMMISSIONER JAMES H. QUELLO

In Re: Children's Television Programming and Advertising Practices.
October 30, 1979

On October 30, the Commission instructed the staff to prepare a wide-ranging Notice of Proposed Rulemaking outlining several options for dealing with what some persons perceive as serious deficiencies in television programming for children. I would have preferred a Notice of Inquiry focusing upon the Staff Report since the conclusions and recommendations of the staff should be subjected to open comment before any specific rule is proposed. I concurred in this action because captioning it a "rulemaking" is, of itself, of consequence only if the Commission can build a record upon which to base a rule. In fact, the Notice, whatever it is called, is an inquiry into some very troublesome aspects of the philosophies which are to guide the Commission in the future, not only in children's television but also in all aspects of television programming.

The Notice of Proposed Rulemaking was represented as broad and encompassing all possible alternatives to the pre-determined failure of the television industry to comply with the 1974 programming guidelines. However, if the NPRM is written during the 45 day filing period for comments on the study, then the document obviously cannot consider or present rebuttal comments of filing parties. Thus, pre-conclusion appears to be that television broadcasters have in fact failed to comply with the programming guidelines and affirmative action is justified to correct the problem.

Since the Staff Report contains specific recommendations derived from the staff conclusion of its study, I remain convinced that affected parties should have the opportunity to comment on the study before the rulemaking. This is particularly true where the staff (and some of my fellow Commissioners) are proposing to tread in a very dangerous and precedent-setting area with respect to First Amendment considerations with censorship ramifications. We should have the benefit of a complete record before we embark upon such a drastic course. The Notice of Inquiry approach, permitting comments and requiring staff study and presentations to the Commission, in my opinion would thoroughly explore the problems and possible solutions, if required.

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I was surprised during the discussion of this matter to hear the staff take the position that a Notice of Inquiry such as I have proposed would be too time-consuming, requiring comments, replies, staff study, preparation of a summary, etc. For some reason, the "time element" has been interjected without explanation. For 45 years the FCC has wisely refused to demand--by government edict--that broadcasters program what the federal government wants, and when it wants it. Now, suddenly, we are loath to embark upon an additional three to four months in order to afford an opportunity for full comment by all interested parties on one of the most profound changes in the government's relationship with the broadcast media.

If the vote had been to approve a requirement of seven-and-a-half hours of age-specific children's programming during weekdays between 8 AM and 8 PM each week, I could not have voted in the affirmative based upon the present record. If the First Amendment means anything, it means that this Commission cannot substitute its judgment for that of a local broadcaster in deciding what specific kinds of programming best serve each community. Unfortunately, in this instance, the First Amendment issue is entwined in what many perceive as an attempt to significantly improve the lot of our children. I suspect the degree to which "improvement" can be achieved, even with the most heavy-handed government interference one can imagine, is being grossly overstated. But, the point is the First Amendment was not placed within the Constitution merely to be trotted out for use in cases which have no emotional appeal or in matters which incite no controversy. I will be interested in more substantive comments which must carefully consider the clear and present danger we must avoid by involving the federal government even further in television programming.

I am extremely concerned with government imposing quantitative programming standards, however well intended. It would mark the first time that the federal government has mandated--by law--that broadcasters program specific types of material for a required number of hours and minutes under threat of loss of license.

I will also be interested in reviewing what is being done and what has been done in the past two years to improve children's TV fare. I suspect that a complete record will show that not enough is being done. I further suspect that no matter what might be done in the future, it will not be considered enough. So many individual subjective judgments can and will be made on this subject that any definitive resolution of the matter is extremely unlikely. It might well be that the overall public in the marketplace should determine the success or failure of children's programming.