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The enclosed editorial in Broadcasting Cable magazine should be helpful in promulgating full First Amendment rights for broadcasters.

However, due to space limitation and normal editorial prerogatives, several items were deleted from my original script.

They are excerpted here for your information:

“The internet alone is now utilized by over 100 million people according to published reports. It is by far the fastest growing communications entity in advertising as well as in public usage. It provides an amazing variety of local news and information and personal interexchanges. In fact, the internet has practically preempted the media consolidation issue - - all media - - newspaper, TV, radio, magazine, periodicals etc. are immediately available to all the public on the net.”

“The current climate of unwarranted misguided broadcasting criticism has encouraged competitive malice like this outlandish quote from a formidable cable source “I am not sure why broadcasters are allowed in any way to restrict the right of any consumer to get their free over the air publicly owned broadcast spectrum by invoking things like retransmission consent. I believe advertising time as well should be free on the public’s spectrum”.!!”


James H. Quello

Enclosure

James H. Quello
In a photo from his
days as an FCC
Commissioner.



De-Regulate, Don't Re-Regulate

By James H. Quello

The recent FCC Notice of Proposed Rulemaking on localism, mandating more detailed programming and ascertainment than ever required before, represents grossly untimely and blatant government-mandated violations of the First Amendment.

The excessively burdensome FCC requirements are counter to the urgent need to update regulatory and ownership rules. It is time to recognize the current era of superabundant programming and multichannel transmissions of the omnipresent Internet, TV, cable, satellite and DSL, along with increases in digital channel availability.

In this surging competitive multichannel communications world, the government should lend some priority to ensuring the future viability of television and radio's expensive but vital emergency, news, local information and community services.

The FCC's notice for a proposed rulemaking, by over-emphasizing the need for government-mandated localism and advisory boards, is especially untimely and burdensome. The government mandating localism for broadcasters is like the government mandating breathing for human beings.

Localism is the very lifeblood of broadcasting. Everyone should realize that not only the success of broadcasters, but their very survival, relies on serving and attracting their local audiences.

Thus, the American public is actually in final control of broadcast programming through public audience measurements. Programs only survive with overall public acceptance.

It should also be noted that even well-meaning professional public interest activists do not represent the overall public interest. They represent their own private version of the public interest, which is their right. Sometimes they provide useful proposals and sometimes they urge excessive, unconstitutional government mandates or controls to further their own private interest agenda.

They have been very effective in promulgating the misconception that broadcasters received broadcast stations free and are using public spectrum for free. That has caused some strange statements from some usually responsible sources.

One such group said with the proposed new programming and reporting requirements, "citizens will have the tools necessary to see whether or not local broadcasters are living up to their end of the bargain to serve the public interest for free use of the people's property."

Let's get the facts straight. First, broadcasters today did not acquire stations free. They paid the full marketplace price. Second, the general public never paid for or invested in the initial radio and TV station operations. They were financed by risk capital investments. Radio in the initial broadcast stages, in 1919-1920, was financed by private capital utilizing vacant spectrum. Nothing happened on that spectrum until investors bought engineering equipment, hired talent and initiated radio broadcasting. Initial investors lost money developing the radio medium. (And later, television station owners did, too.) Government licensing was necessary to prevent interference, and licenses were issued to serve "the public interest, convenience and necessity."

The relative scarcity of broadcast frequencies was the rationale used to justify government regulation of the medium. But in today's 1,000-channel universe, the "scarcity" argument no longer exists.

There is no reason in this multichannel era of programming and Internet superabundance to return to outdated government-mandated ascertainment and content regulation once applied discriminatorily. Such ill-conceived mandates were eliminated over 30 years ago.

With the spectacular communication advances

in the past 10 years, a compelling case exists for a well-reasoned relaxation of government control. Today, the public has access to a superabundance of programming, views, information and political opinion exchange. The Internet alone has made available a proliferation of news and ideological opinion.

A special note on broadcast deregulation: The most vital usage of spectrum for information and news for consumers remains two of the very first wireless communications entities—radio and television. Broadcasters remain the prime originators and providers of emergency warnings, local news, information and community service integration. Why should they continue to be the most regulated, with only circumscribed First Amendment rights?

If broadcasting had existed in 1776, it certainly would have been a prime beneficiary of constitutional guarantees of free speech and freedom of the press. It is past time to extend those constitutional freedoms to TV and radio, the most vital and pervasive news and information media.

Quello was an FCC Commissioner for 23½ years, some of them as the Chairman. He is now an independent contractor for Washington communications-law firm Wiley Rein LLP.