

COMMENTS BY FCC COMMISSIONER JAMES H. QUELLO
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Nehru, the great Indian democrat, once said:

"Democracy does not mean shouting loudly and persistently, though that might occasionally have some value. Freedom and democracy require responsibility and certain standards of behavior and self-discipline."

I am opening my speech with this quotation from a great name in history because it seems particularly applicable to our social problems today.

The militant and sometimes disruptive agitation for civil and women's rights in the 60's and early 70's resulted in increased awareness of the influence and power of minority groups. It also resulted in needed civil rights legislation and affirmative action programs. In my opinion, there is a need for continued vigilance to safeguard equal rights for everyone. However, I sincerely believe the shouting phase of the 60's and early 70's is now being productively replaced with a more disciplined, sophisticated implementation phase -- loud shouting today is less and less effective or appreciated and can even be counter-productive in this current era of court suits and disagreement by many groups of different philosophy.

I'm suggesting that with the current level of civil rights and social consciousness much can be accomplished with a positive, constructive approach. Overall, the positive, affirmative attitude has worked well at the FCC and the vital communications industries it regulates.

Our present system of broadcasting in the United States provides a useful, informative and entertaining radio and television service to most of the nation. Licenses are granted to commercial broadcasters to provide service and the licensees sell broadcasting time to advertisers to finance this service. All in all, the system has worked pretty well. It has, however, worked better for the white majority in this country than it has for various minorities. For many years, minorities faced great difficulties in employment in broadcasting and even greater difficulties in entering the ownership ranks. Until very recently, there was no black ownership of a television station.

The Federal Communications Commission has conducted an escalating program of affirmative action over the years to change this situation for the better. And, we have seen signs that some of our programs have been succeeding.

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The Commission has applied a much higher standard of equal employment opportunity to broadcast licensees than was required of business-in-general. Licensees, first of all, are required to know the makeup of the communities they serve and to affirmatively attempt to recruit employees who fairly reflect the elements of their communities. In 1977, the Commission adopted processing guidelines for the staff to use in reviewing the EEO performance of licensees at renewal time. Stations with six to ten fulltime employees became subject to in-depth staff review if they failed to employ any minorities or females during the three-year license term or if they failed to employ minorities or females in the top four job categories. Stations employing eleven or more fulltime employees could avoid an in-depth review only if they employed minorities and women in numbers equaling 50% of their respective percentages in the labor force and 25% had been represented in the top four categories. Last month, the Commission tightened those guidelines. On February 13th, I joined with my colleagues to impose the 50/25% guidelines on stations with six to ten employees, to increase the standard for eleven or more employees to 50/50 and to require an in-depth review for all stations with 50 or more fulltime employees. Although there are only 518 stations in this latter group, they provide nearly half of the total industry employment. The in-depth review I spoke of includes an evaluation of the station's recruitment sources, the number of applicants referred, the number and composition of the new hires over the most recent 12-month period, the training opportunities made available, the station's own evaluation of its progress and the station's proposal for a "corrective action plan" to alleviate any problems. For those stations which still do not measure up after this review, the Commission imposes sanctions ranging from conditional license renewals requiring periodic EEO reporting procedures to short-term license renewals and imposition of hiring goals and timetables. The record of the broadcasting industry in minority employment has not been perfect but it has been significantly better than in practically all other industries.

While I am concerned with minority employment and have consistently supported Commission policies affecting equal employment opportunities, I discovered when I joined the Commission that there was something missing in our program--something very important. It seemed vital--if we were serious about providing opportunities for full participation in broadcasting--that minority ownership of broadcasting stations be encouraged. Back in 1977, I proposed that the Small Business Administration rescind its policy of refusing to support purchases of broadcasting properties. I was joined by then-Chairman Richard Wiley and then-Commissioner Ben Hooks and the SBA quickly changed its policy and the minority enterprise small business investment corporations soon got into the business of broadcast financing.

The National Association of Broadcasters came along with a suggestion aimed at further aid to minority entrepreneurs who wanted to enter broadcasting. The NAB suggested that the FCC issue tax certificates to incumbent licensees who chose to

sell their stations to minority owners. The tax certificate is a device which defers any tax liability from the profit from the sale and permits that profit to be ploughed back into a new enterprise. The issuance of tax certificates obviously provided an incentive to sell to minorities and it also made it possible for minorities to buy stations at lower prices than would otherwise be expected.

Another element of the Commission's minority ownership program is our "distress sale" policy. That policy makes it possible for a licensee who has been designated for hearing to resolve issues that could result in the loss of his license to sell his station to a minority for less than the going market price. Faced with the likelihood that he will be denied renewal of his license for serious breaches of Commission rules or policy, a licensee can choose to sell for considerably less than the market price but considerably more than the salvage value of his equipment.

The Commission considers the applications of minority applicants on an expedited basis, removing them from the regular processing line. In contested applications--where two or more parties are pitted against each other for a license--the Commission is required to give some preference to minority applicants. I have also urged broadcasters to give special consideration to minority individuals for membership on their corporate boards of directors.

Many of our minority ownership programs are still too young to have produced major changes in ownership patterns. But, it's clear that they are producing results. I was present at the inauguration of the very first black-owned TV station in the nation--a UHF television service in Detroit, Michigan, channel 62. The first black-owned VHF television station is now on the air in Wisconsin made possible by the first distress sale of a TV station under the new FCC policy. Black ownership and participation have been encouraged by FCC policies of tax certificates, distress sale, expedited applications and special preference for minority representation on comparative applications.

The National Association of Broadcasters has an ongoing program to assist minority entrepreneurs in funding. Storer Broadcasting is actively engaged in its own program to assist minority funding. Other group owners have their own programs. The knock of opportunity is getting louder all the time.

Now, what about the future? What is to become of the broadcasting industry and does it have a place in that future?

One technological development which appears to pose a near-term threat to the broadcasting industry as we now know it is the capability of direct satellite-to-home broadcasting. Estimates for the necessary receiving equipment--in addition to the television set itself--run as low as one hundred and fifty dollars. Produced by the millions, it's likely that the cost will go even lower than that. When the cost and

availability of satellite receiving equipment reach levels which are perceived reasonable by the American public, there is every reason to believe that satellite-to-home broadcasting will be here to stay.

With high-quality television programming going directly to the home, where does that leave the local broadcaster? That is a serious question and one being considered with increasing intensity by many in the industry and in government. No one has the answers yet, but I believe there is reason for optimism that local broadcasting will survive and prosper.

Our system of broadcasting in this country is founded upon the concept of "localism" -- the provision of local service. Local weather and traffic conditions, etc., to be reported in sufficient detail to make them useful to the residents of a community, do not lend themselves to nationwide satellite-to-home broadcasting. Community activities of all kinds are of interest to wide audiences as is evidenced by the efforts of local television stations to provide local news and public affairs programs. Certainly, there is no need to explain to this audience that local service is important to the communities around the country which you represent. I believe that local service concept will continue to require local broadcasting facilities.

While the local broadcasting facilities will continue to provide opportunities for entrepreneurs, don't overlook the new opportunities via satellite. I'm not suggesting that you go out and buy your own satellite. The capital requirement as well as the satellite is in orbit. But, as a program supplier or as a new breed of network owner you can lease a transponder and provide new services. Technology has made practical "instant networks" with all of the opportunities to provide new, innovative programming and to enter the marketplace.

I didn't discover the need for greater opportunity for minority participation in broadcasting after arriving here in Washington to take my seat as a member of the FCC. For many years, I was a broadcast executive in Detroit, Michigan, principally associated with Radio Station WJR, a 50-thousand watt, clear-channel station noted for its programming excellence.

WJR instituted minority hiring and programming in the late 40's and 50's -- as the Executive Director of the Detroit Urban League stated: "Before it was fashionable or deemed mandatory by the EEOC."

In 1949, working in conjunction with the Urban League, WJR hired the first black disc jockey on a major Detroit station. In the 50's and 60's, WJR also had an integrated chorus of 55 young singers on a program called "Make Way For Youth" which originated at the station and was broadcast for one hour each week on the CBS network. The chorus trained and developed outstanding high school talent. Among the notable black graduates of the chorus are songstress Freda Payne and Ursula Walker and several members of national

singing groups. WJR also hired the Dorothy Ashby Trio, a group of talented black musicians for a five-day-a-week program -- this, too, upon the suggestion of the Urban League. WJR also originated and broadcast 45 minutes of an all-black adult acappella chorus once a week in the 60's.

Over a period of twenty-five years, our relations with the Detroit Urban League were cordial. WJR was consistently on record as requesting black engineers as well as talent personalities. Many stations in the 50's and early 60's found that qualifiable blacks were not often available for announcing and production vacancies. This was before affirmative action programs and before blacks were encouraged to train for media jobs requiring specialized skill or talent. However, black education and opportunities increased during the 60's and also interest and consciousness in black employment. In the 60's WJR, generally, and I, personally, instituted an affirmative policy of additional black hiring and black oriented programming. This resulted in the hiring of two black announcers and two black students as production apprentices. We also hired three black newscasters in the late 60's and added another talented black newsmen later. We hired a black sports assistant, a good broadcast prospect, who decided he preferred the opportunities in the automobile business. We also hired, in the late 60's, a talented black songstress featured on the daily "Open House" show. In addition, we hired several black women in the production department and traffic department. WJR also participated in Columbia University's program for training minority newscasters in the late 60's.

In the 70's we hired a well known black personality as afternoon disc jockey. A black salesman and a black business manager were hired in 1971. Upon my personal recommendation, a black female student apprentice from the University of Detroit was hired and trained in 1971. It was also at my recommendation that WJR in 1970 started regular financial contributions to help defray publication costs of the Detroit "NAACP Reporter."

In the mid and late 60's we also instituted additional regularly scheduled and special programs that were minority oriented. The regularly scheduled programs included: "Action, Urban League," "Color of Achievement," "Urban Scene," "In Contact," "The Minority Report," "Religion in Action," "Ask the Professor," "Junior Town Meeting," "Sunday Supplement" and "Topic for Today." The more notable documentaries or special minority programs broadcast during the late 60's and 1970 included "Open Housing -- Fact or Fiction?"; "Tell It Like It Is," "Free At Last" (Story of Martin Luther King); "Some Lessons in Pride" (Story series of ten 45-minute programs on outstanding black contributors to culture and history of Negro "Firsts"); "Of Greatness In Slavery" (Story of Booker T. Washington); "Heroes Come in Many Colors," "Is there a Better Way?", "I Am Not Alone," "Psychology of a Rebellion," "Rebuilding Detroit" and broadcasts of principal speeches of the NAACP Conventions. At my suggestion, we also instituted a daily program of significance to women's interests called "Women are Great."

Established WJR daily programs like "Kaleidoscope," "Focus" and "Adventures in Good Music" in 1968, 1969 and the early 70's along with the regularly scheduled black-oriented programs and special documentaries combined to make a significant contribution to racial understanding and to black history and achievements. In this area WJR, with its large news and program staff, surpassed black or ethnic stations in Detroit.

It is significant, too, that my good friend, Federal Judge Damon Keith, former Detroit NAACP Vice President, then Michigan civil rights chairman, called me at 7 a.m. on Sunday morning requesting I call all TV and radio stations and urge them not to broadcast inflammatory reports. Judge Keith and Congressman John Conyers were frantically using all their resources to prevent a serious Saturday night disturbance from erupting into a full scale riot. I called the stations and most cooperated until the story broke on the noon network news carried by local stations. I called Judge Keith at emergency headquarters to inform him the story had broken. Tragically, by Sunday evening Detroit was embroiled in perhaps the largest riot in the nation's history. During the riots, I remained at the station all night directing operations--I remained in constant communication with the official emergency command post and with city and state officials.

It is interesting that after the tragic 1967 Detroit race riot, WJR news dominated the radio awards for responsible reporting and interpreting. WJR also became the communication center during the riot for BBC, CBC, Radio Copenhagen and CBS. Most of the national UPI audio reports the first two days of the riot originated with WJR reporters. Detroit staged a remarkable comeback in one year-- in 1968 when the Tigers won the world series hundreds of thousands joined together in an enthusiastic bi-racial celebration in downtown Detroit.

It must now be almost too apparent that I really appreciate this opportunity to tell about a good working relationship with the Black leaders in Detroit.

In my recent appearances I have urged various citizens' groups to take a constructive approach to dialogue and citizen participation in broadcasting. If implemented in the proper spirit, this dialogue serves both the citizens' group and licensee. It is, after all, public acceptance that determines the success or failure of a station or a program.

On some occasions, citizens' groups give the impression they are more interested in stirring a controversy and exploiting discontent than in correcting deficiencies or encouraging quality programming. I am concerned with some abuse of the license challenge process through unfounded petitions to deny. The time and money spent in litigation could be used in more constructive ways, that is, for innovative programming and added public affairs. I'm concerned that some citizens' groups representing only a small segment of the total public, seek to impose their individual program philosophies and preferences on local stations. I believe in broadcaster-citizen dialogue, but am suspicious of motives behind some forced written agreements. A negotiated agreement reached between a licensee and any citizens' group who represent only a small portion of the total community simply does not square with the requirement that a licensee determines

for himself the needs and interests of his total community. Also, the overall public is usually not aware of a special agreement that could significantly affect what he sees and hears on his TV and radio set.

If the licensee has ascertained those needs and interests, what possible contribution to the public interest can be made by a small segment of that public seeking special consideration for its own viewpoint by negotiating an agreement which is to be enforced by the Commission? As I have said before, activist groups, regardless how laudable the objectives, have not been elected or appointed as bargaining agents for the public at large. The FCC itself wouldn't dare even suggest the program demands made by some citizens' groups. We would be charged, and rightly so, with program dictatorship or infringing on First Amendment rights.

Many of our more constructive regulatory actions over the past decade have been aimed at greater public input and citizen participation. They have been aimed at qualitative, rather than quantitative, improvements in the broadcasting service. In addition to encouraging dialogue with citizens through the ascertainment process, we have required that broadcasters maintain a public file containing documents pertinent to the operation of their stations in the public interest. We also require that stations actively solicit public comment on the extent to which viewers or listeners believe stations have satisfied their public interest responsibilities. And, we have adopted a document entitled, "The Public and Broadcasting - A Procedure Manual" aimed at encouraging and assisting members of the public to take an active interest in promoting a quality broadcasting service. Each station is required to keep a copy of that manual in its public file where it is available for inspection during normal business hours.

The FCC is increasingly extending its efforts to open our processes to full public participation. We are now engaged in a series of community workshops at cities across the nation at which certain Commission staff members with the appropriate expertise provide guidance to interested members of the public as to how to become more involved in matters before the Commission. We have established a Consumer Assistance Office at our headquarters here in Washington to help citizens get the information they need to effectively and responsibly participate in the activities of the Commission. I recently supported a proposal to establish funding for the participation in our rulemaking proceedings by groups and individuals who can be expected to make serious contributions to our understanding of specific issues.

Those are some of the positive actions we have taken in an effort to improve broadcasting service and there will be more in the future. There is an effective limit, however, to what the FCC can do to improve the quality of what you watch on television and hear on the radio. Ultimately, of course, all the American people will demand and receive the kind of service from broadcasters they want. The positive efforts of interested citizens can and do reflect themselves in improvements.

I would be among the first to recognize that a few broadcasters, whether through ignorance, carelessness, or even defiance, do not fulfill their obligations on affirmative action or programming. I have expressed my personal attitude to broadcasters many times: "I'm with you when you are right and I'm dangerously knowledgeable when you are wrong." I realize that complaints filed with this Commission concerning such shortcomings are unduly delayed. In my opinion, this Commission should expend even more effort toward expediting the review and resolution of complaints without having to go through the expensive and time-consuming ritual of a formal petition to deny and its subsequent proceedings. I have always believed that we should act more directly and specifically with respect to minority employment problems, but must admit some doubt as to the extent to which we could rule on programming matters other than to determine whether the licensee has made good faith judgments in its programming decisions.

The dilemma faced by the Commission is how to encourage true dialogue while at the same time preserving the licensee's necessary freedom and responsibility, and how to avoid unnecessary government intrusion into the process. I do not believe that it is government "intrusion" to advise citizens' groups that they may not deprive licensees of flexibility in certain areas. Further, I think this Commission could properly propose that citizens' groups present their credentials or proof of constituency to the licensee before demanding negotiation, and this would not be government "intrusion."

I have been candid with you in presenting my personal opinions and attitudes with respect to citizen-broadcaster agreements, ascertainment and petitions to deny. Certainly, there will be differing viewpoints about "what's best?", and no individual or group will possess all of the truth. I do believe that the Commission has truth on its side in demanding that the licensee respect and retain his responsibility for program judgments. Without that clear allocation of responsibility we could find ourselves in the situation described in an article written some years ago for the Federal Communications Bar Journal: "The licensee may be transformed ... into a frequency broker, auctioning off access to the bidder with the most strident demands."

I must add, however, that we at the Commission must still do a better job of making our practice equal our preaching. We insist on licensee responsibility; at the same time, we encourage the filing of legitimate complaints -- at the local level or, if necessary, at the Commission level. Yet, we sometimes fail to devise complaint procedures that are specific and productive. In so doing, we may simply demonstrate to concerned citizens that the complaint process is unproductive, leaving the costly and time-consuming legal petition to deny as an alternative.

And speaking of legalities -- myriad complex legal filings, petitions, rulemaking hearings and arguments are today a regulatory fact of life. The FCC

alone has well over 300 lawyers. I'm not a lawyer so my approach to communications problems is more journalistic than legalistic. I ask myself where do reason and justice predominate? -- which viewpoint or action scores the most points morally, ethically and legally? And I find great solace and guidance in a quote from one of our greatest presidents, Franklin Delano Roosevelt. Back in 1940, President Roosevelt expressed his view of the role which should be played by administrative agencies in government --- he said "A common sense resort to usual and practical sources of information takes the place of archaic and technical application of rules of evidence, and an informed and expert tribunal renders its decisions with an eye that looks forward to results rather than backward to precedent and to the leading case. Substantial justice remains a higher aim for our civilization than technical legalism."

I believe that all of us share the goal of "substantial justice" and I sincerely hope we can all pursue that goal together in a progressive spirit of reason and mutual cooperation.