

REMARKS BY FCC COMMISSIONER JAMES H. QUELLO
AT THE
WESTERN CONFERENCE OF THE
AMERICAN ADVERTISING FEDERATION

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Thanks for the generous introduction.

Some of my most memorable introductions have been very brief. One I remember very well, the group chairman said: "For speakers who are well known, you don't need lengthy introductions. So I give you Jim Quello, the less said about him the better." Incidentally, he wasn't from a regulated industry. Another brief introduction indelibly recorded in my mind was "and now for the dope from Washington, Jim Quello." That chairman wasn't from a regulated industry either. Another former good friend described me as "an achiever who is comfortable with people and with himself -- in fact, it is said his closest admirer is only a mirror away." I had to protest in front of all that audience I came there to be toasted, not roasted.

So I especially appreciate this nice introduction from a group not regulated by the FCC -- but which is somewhat impacted by FCC regulatory jurisdiction over broadcasting, cable, LPTV, MDS and teletext.

When I was invited to speak, I asked a few advertising friends what subjects you might be most interested in. The obvious one: What is the impact of FCC regulation on advertising? Others said give them an inside look at the decision-making process and jurisdiction of the FCC and the power it may or may not exercise over broadcast advertising.

The regulatory power of the FCC has been overestimated, underestimated, challenged, debated and damned. The distinguished columnist and scholar, William F. Buckley, Jr., interviewing a former FCC Chairman a few years ago said "I think it fair to say that the FCC Chairman and his distinguished colleagues wield greater economic power than all the courts put together." That is undoubtedly overstating FCC power somewhat -- although the impact and ramifications of some of our decisions are agonizing and rather awesome. The function and jurisdiction of the FCC as an independent regulatory agency has been defined by the Communications Act of 1934 and guided by the Constitution. The FCC was established by the Congress as an expert agency to implement the Act. We remain subject to oversight by the Congress.

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The Senate and the House in the exercise of oversight authority make certain that regulatory agencies maintain a becoming humility. The numerous inquiries from oversight and other committees are a regulatory fact of life. The questioning is intense and detailed. Commissioners are constantly reminded they are an "arm of Congress," the duly elected representatives of the people. In fact, I wouldn't be surprised if someday a question would be included in a hearing -- "Is there anything known only to you and not this committee that could possibly be used to embarrass, discredit, or impeach you. Please state and remember you are under oath."

One of my favorite quotes is from my longtime friend, Chairman John Dingell of the House Committee on Energy and Commerce, who gave me fair advance warning years ago when I first sought an FCC appointment. When I was first nominated, he said "What do you want the damn job for? - you will be beaten up by Congress and overruled in the courts." We do get beaten up by Congress from time to time, but a great majority of our decisions are sustained in court. At last count, we had 276 government attorneys at the FCC -- bright, dedicated and well able to compete with their much higher paid brethren from the private sector.

As I mentioned, some of the decisions are awesome. Arguments pro and con are very persuasive. You listen, read, deliberate, soul-search and agonize. You consult your staff assistants. Sometimes you even wish you could flip a coin. The first and foremost consideration is which action best serves overall public interest? In this case, what is the public interest? Where do reason and justice predominate? What arguments are the most persuasive? Which viewpoint or action scores the most points legally, ethically and morally?

Finally, it's "H" hour and "D" day -- the Commission votes. Promptly after the Commission votes on a significant controversial issue, four things invariably happen. First, the losing parties immediately charge the Commission with not serving the public interest. (You haven't served their private interests or adopted their business proposals, hence you are not serving the public interest in their view.) Your motives, qualifications and integrity are impugned. Your jurisdiction is challenged.

Second, the losing parties generate as much public opposition as possible. They damn you in Congress, in the press and among friends and organizations sympathetic to their cause or viewpoints. (Frequently the objective is to cause a tough oversight hearing or a legislative reversal.)

Third, the losing parties who invariably consider their interests disadvantaged, petition us to reconsider our ill-considered action.

Fourth, the FCC decision is appealed in court — the third and fourth are perfectly legal and ethical recourses.

The FCC should keep in touch with the mood and will of the people and of their elected representatives in Congress. I once told an exceptionally bright and technically correct legal assistant that working directly for a commissioner will be a broadening experience in practical regulation. I smiled, "You will see how we apply social and political solutions to highly technical legal problems." Most FCC decisions are strictly legal matters, but the most significant ones require consideration of all policy perspectives with an emphasis on the policies expressed by Congress.

Now that you have a quick inside briefing on the trials, tribulations, jurisdiction and foibles of regulation, it is time to address the prime question on your advertising-oriented minds -- what impact does all this have on advertising?

Well, the greatest impact the FCC has had on advertising in the 10 years I have served on the Commission has been our efforts to authorize additional distribution channels for advertising messages. Such additional channels include the growth of UHF-TV, cable TV with their advertiser-supported cable channels, low power television, teletext, MDS, and direct broadcast satellite services, not to mention the growth of radio with additional allocation of over 1,000 stations. The increasing new distribution channels provide greater opportunities to target specific audiences at a hopefully competitive cost-per-thousand price.

Perhaps the second most significant action by the Commission in my list of "significant actions" is the elimination of commercial time guidelines. I am convinced that over time advertisers and broadcasters will experiment with new and innovative advertising formats. I believe there is no limit to creativity in the advertising industry. Perhaps by eliminating some of the regulations imposed on broadcasters, and indirectly on advertisers, greater efficiencies can be introduced in the development of advertising messages for a wider variety of distribution channels.

With the deregulation efforts at the FCC comes increased responsibilities for broadcasters, and I might add, advertisers. As the marketplace orientation to public policy progresses, broadcasters and other licensees will be affected more directly by consumer expectation and demands. If there is shelving or neglecting of the increased responsibilities brought on by deregulation, then there is the likelihood that the public will play a more active role in petitioning the FCC, and in the case of unfair and deceptive advertising, the Federal Trade Commission.

It is important to realize that my colleagues and I at the FCC have maintained that we have the right to establish guidelines governing advertising. However, we chose an alternative approach of marketplace-based policy.

So while the present commission is not inclined to regulate such things as "good taste," it seems clear that future commissions will have such options should they desire to exercise them. Conceivably the commission could make a public interest finding that advertising should be limited or prohibited from interrupting programming continuity -- or even that advertising should be permitted at only certain times of the day.

The FCC prefers not to regulate the content of broadcast programs or advertising. Actually, the 1st Amendment and Section 326 of the Communications Act expressly prohibit us from program content censorship -- this includes advertising content, at least to some extent.

In my opinion, the best means of assuring a marketplace approach to policy formulation is to assume the responsibilities and social consciousness such an approach affords the telecommunications industry and those industries, such as advertising, who play a key role in the financial support of licensees.

In no case do we pass advance judgment on any advertiser or advertisement. But neither do we allow the licensee to claim that "truth in advertising" is solely the advertiser's problem. To do that would be to violate a first principle of broadcast regulation: The licensee is ultimately responsible for what he allows to be broadcast.

The Federal Trade Commission has a mandate to protect the public against unfair and deceptive advertising, while the FCC must protect the public interest, convenience, and necessity in the granting of broadcast licenses. Over the years, regulation at both Commissions have been formulated to implement various interpretations of our mandates. I can't speak for the FTC. However, at the FCC I do know that in some instances rules formulated years ago to protect the public interest have become antiquated and in some cases have actually stymied the public's interest. A review of our rules has led us to eliminate many that imposed unnecessary burdens on licensees. We also enacted rules that authorized new services to meet the public's needs. The Commission's recent deregulation of TV illustrates the new FCC attitude. The FCC not only relied on a marketplace policy approach on eliminating commercial guidelines, but also voiced First Amendment concerns regarding commercial speech. The Supreme Court has increasingly recognized the First Amendment implications in regulating commercial speech. Current petitions

by parties before the Federal Trade Commission may raise significant First Amendment questions with regard to the manner in which commercial speech is regulated. I believe that the efforts by SMART (Stop Marketing Alcohol on Radio and Television) and others before the FTC may raise serious First Amendment concerns regarding commercial speech.

I am sympathetic to the ultimate objectives of public interest groups who want to reduce the incidences of drunk driving and teenage alcoholism. However, past experience has shown that the suppression of commercial speech does not remedy such situations. A case in point is the ban on cigarette advertising that was applied exclusively to the broadcast media. In my opinion, the resolution of the issues raised by interest groups is not effected by the suppression of commercial speech, but rather by the continued development of messages and programs which inform the public on issues of public concern such as crime, alcohol and drug abuse and drunk driving. In this respect, I applaud the efforts of both the broadcasting and advertising industries that have provided time and creative talents to inform the public on issues impacting public health and safety. I urge you, in light of the responsibilities inherent in the deregulation process, to continue these voluntary efforts to serve the public and your industry.

Remember, there are influential groups in Washington that simply believe advertising, and particularly TV-radio advertising, is socially and economically harmful. Opponents of advertising claim commercial broadcasting is not an informative, entertaining, free service to the public, but is rather an over-commercialized, profit dominated advertising business that costs the public in increased prices for products and services. They say that TV, the most powerful vehicle for information and enlightenment is dedicated in the United States to selling goods at the lowest possible advertising cost -- at the lowest cost per thousand. Mass audience is delivered, if necessary, by depictions of violence and sex, escape drama, by newscasters in an almost frenzied adversarial zeal to discredit the government of their own country, and by vapid comedy and quiz shows with too few enlightening programs calling for serious reflection. The argument continues (with some validity) that broadcasting is using up the highest paid creative skills of our nation, not to enlarge the human spirit, but to sell soap, cars, underarm deodorants and vaginal antiseptics at additional costs and high profits.

The "bottom-line" message of the critics is: TV and radio are the most powerful communications instruments in the history of civilization. They should be developed not for the narrow goals of sales and profits but to inform and enlighten the public and support and inspire the beleaguered spirit in our

society. They have a point that broadcasters and advertisers alike should heed. The best defense is a constructive sense of social consciousness and responsibility by broadcasters and advertisers.

Commercial radio in the United States is only about 64 years old; television has been of significance a little more than half that long. The framework of government regulation of both the radio and television industry go back, of course, to 1927 -- at a time when those very few broadcasters then in the business were begging the government to bring order out of chaos in the use of frequencies. These early broadcasters were primarily interested in technical matters -- equipment and frequency allocations. (They got more than they bargained for -- they got a general overall guide -- the "public interest" -- a term which has been and will continue to be reasonably subject to change -- and the source of a lot of uncertainty.) So actually the FCC was initially established as an engineering traffic cop -- as you know it has since taken on vice and morals responsibilities.

As Congress debated on what form the commercial broadcasting industry should take, there were some choices to be made. One of these choices was whether broadcasting in the United States would be a "common carrier" public utility type of industry with its time being available and being sold on a first come, first serve, basis at rates fixed by a government agency.

Congress emphatically rejected this choice and opted instead for a risk capital private enterprise system supported by advertising. Let me repeat. Congress approved an advertiser supported industry.

Thus, commercial broadcasting as we know it grew to where there are today over 8390 radio and 892 television stations providing broadcast services to the people of this country. Advertising is an important, indeed vital, part of that system. For without advertising, the American system of broadcasting as we know it today would most assuredly and completely collapse. Sometimes as I philosophize about the industry, the thought crosses my mind that advertising may well be this nation's principal guarantee against a government supported and controlled broadcast industry. Advertising underwrites the programming, the uncensored news and other services provided by the most varied and sophisticated broadcasting service in the world.

With my background, I believe advertising and marketing are vital forces in the American way of life. But what I believe, and you believe, and the critics believe about whether or not there should be broadcast advertising is not the issue here. Long ago, as I have already pointed out, when the framework of the American system of broadcasting was established, it was

decided that the principal broadcasting service should be advertiser supported and free to the general public who had receiving equipment. The American people through Congress, rejected the support of broadcasting through the concept of license fees and rejected the creation of a government controlled broadcasting monopoly (which is characteristic of broadcasting systems in other countries).

As you are well aware, we have an alternative broadcasting system, Public Broadcasting, which is partially supported by government funding and which performs a distinguished service to the American people. It, too, deserves and enjoys the support of many in the advertising industry.

And now a closing word about quality in broadcasting and advertising. "Quality" is a general term hard to specifically define in advertising or broadcasting -- but you know it when you see it.

I realize that in this age of computer buys and data processing systems, qualitative analysis of the media-buy is difficult, but I wonder if in the quest for gross rating points and demographics targeting we are not overlooking one of the most important factors in commercial effectiveness, the quality of the environment in which the commercial is presented. I guess it is a Utopian dream to expect that stations with the highest quality in programming, advertising standards, and production will guarantee the largest audience. Nevertheless, the public acceptance of advertisers associating with this type of station or program can provide a qualitative advertising impact not usually reflected in lowest common denominator ratings.

So advertising, broadcasting's life-line support system, is important -- vitally important -- not only to the health of broadcasting but to the well being of the American public. As a business-experienced commissioner, I am most interested in seeing that the broadcasting and advertising industries in this country remain in good health -- physically, morally and financially -- so that they can continue to maintain quality programming free to the American people to better serve the public interest.

Advertising, through creating and supporting a wide variety of quality programs and maintaining high professional standards, can and must play a vital role in assuring American people the best broadcasting service in the world.

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