

August 7, 1985

DISSENTING STATEMENT OF
COMMISSIONER JAMES H. QUELLO

In re: Petition for Declaratory Ruling filed by Cox Cable Communications, Inc., File No. CCB-DFD-83-1, seeking Commission preemption of state and local regulation of facilities located wholly within one state and used to originate or terminate interstate communications

I am not prepared to argue, at this point, that the majority has overstepped its authority in preempting entry regulation although that well might be the case. My concern rests with the policy established in this proceeding which seems to say to the states that we will preempt only a little now but stand ready to go further if the states exercise their prerogatives to regulate these new carriers.

It isn't clear to me what significant national policy is to be furthered by forcing the states to accept bypass technology while this Commission remains unable to implement significant strategies to make bypass unattractive. Until we can remove the subsidy that flows to local ratepayers, benefits will continue to accrue to those who can avoid paying the subsidy. By its action, the majority has introduced a technology with significant potential to do what the Commission's attenuated subscriber line charge was designed to prevent.

Not to worry, say the proponents of preemption, the cable industry merely wants to provide "broadband" data services, an insignificant contributor to exchange revenues. If this Commission doesn't understand by now that the money is in message telephone service, its institutional memory has been ravaged by some dread malady. And, like Willie Sutton, the new entrants in the local exchange market will simply and unerringly go where the money is.

The states have the incentives to take whatever steps are necessary to prevent serious damage to the local exchange, and I believe that they should retain the means. Therefore, I dissent.

390