

Luncheon Remarks
by
Commissioner James H. Quello
Federal Communications Commission

at
The Hofstra University Television Conference
"Issues for the Industry and the Audience"

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Thanks for the gracious introduction. I'm delighted to be here, but I have a confession to make.

When I first accepted the written invitation from Richard Block to speak at Hofstra University, I thought it was the Dick Block I have known for years as a respected broadcasting executive. He had recently resigned as executive vice president of Metromedia. I was impressed that at this mature stage in his career he had answered a higher calling and that he finally appreciated the value of academic service and prestige over crass commercial dollars. I was especially impressed and surprised with the Ph.D. following his name.

Well, when the real Hofstra Dick Block appeared in my office, authentic Ph.D. and all, I almost fell off my chair. Obviously, it wasn't my old friend providing me an opportunity to appear before this knowledgeable audience. Somehow, I had been specially invited to speak at a prestigious university observing its 50th anniversary. I'm pleased that I had the opportunity to get acquainted with the Dr. Dick Block of academia. I'm really happy to be here and I appreciate the gracious introduction.

You see, some of the introductions from old friends, particularly those from unregulated industries, seem designed to test your sense of humor. Some reflect the current roast vogue. (For example,)

Anyway, many crisis-provoking events have happened and are happening at the FCC. There is a broad range of contentious issues that are being addressed -- the media merger mania and hostile takeovers; the renewed drive headed by the RTNDA (Radio Television News Directors Association) to repeal the fairness doctrine and Section 315; the cable must-carry and compulsory license uproar; public broadcasting U for V swaps; proposals for advertising on public TV; multiple ownership rule changes and temporary waivers; the proposed beer-wine advertising ban and possible counter-commercials; telephone industry restructuring and rate controversies; AT&T and OCC competition; spectrum

allocation and sharing; numerous competitive applications and use of lotteries; and the usual complaints and petitions to deny.

Each subject could merit a full speech in itself. I'll be glad to answer any questions on these topics -- and especially any questions you may have on the recent mergers.

However, for a special reason I'll reveal later, the principal part of my speech today will be devoted to full First Amendment rights for broadcasters. I hope it will add a little further momentum to the renewed RTNDA and broadcasting industry drive. As a former newsman and broadcast executive, I have been a longtime advocate of full press freedoms for the electronic media. At three different national broadcast conferences, I have publicly urged broadcasters to get off their seats (I used the more explicit term) and sell something more important than broadcast time. I told them: "Sell with all your resources and energy the concept of freedom of the press and freedom of speech for your medium and for the American public. You don't have these significant freedoms because you haven't fought for them hard enough. It will take an all-out coordinated drive."

So today I will give vent to my First Amendment predilection and share with you a timely proposal for Congress. I propose clean, decisive, legislative surgery to remove the major pervasive defects and massive economic wastes of broadcast regulation. Unequivocally remove all First Amendment and regulatory constraints! Subject broadcasting to exactly the same regulations and First Amendment constraints as its major media competitor and closest cousin -- newspapers. This also means eliminating the nebulous, troublesome and outdated "public interest" standard.

In return, assess broadcasters a practical spectrum usage fee and provide for open marketplace addition of new stations that meet reasonable standards of engineering feasibility.

The time has never been more propitious.

This action would most effectively and forcefully implement the present visionary main thrust of deregulation -- that regulation should be necessary only "to the extent marketplace forces are deficient." In other words, wherever the market is open and competitive, regulations should be abolished. This certainly applies to broadcasting markets in this country where intense competition exists and is growing apace. Broadcasters not only compete aggressively against each other, but also with all other media including newspapers, magazines, outdoor advertising, transportation advertising, direct mail, etc. It's time to remove regulations and allow competitive market forces to operate. This would provide massive deregulation, reduced bureaucracy and a resulting reduction in government costs -- all

in keeping with the current trend and mood of the American public. Then, too, the public would benefit from a freer, more robust, more venturesome broadcast journalism emancipated from unnecessary restrictive government oversight.

These views and the supporting arguments to be presented are my own and do not necessarily represent an official FCC view. I fully realize that court interpretations and a continuing variety of adversary viewpoints are formidable considerations for legislative action or reform. I am also fully cognizant that present FCC decisions and deliberations must be based on the current Communications Act and existing case law and not on proposed legislative action or re-write. However, I am proposing substantial revision from the unique perspective of many years of FCC service and over twenty-five years in broadcasting. Also, I note that Henry Geller, a respected communications lawyer and former head of the National Telecommunications and Information Administration, is a staunch advocate of First Amendment rights. He was quoted by the New York Times: "The more we let radio and television be the way print is, the better off we are. Let the marketplace answer whether there should be more networks, not the FCC." I also agree with Mr. Geller's statement in the RTNDA publication where he was quoted: "I think the Fairness Doctrine does impose First Amendment restraints. I think, as I testified recently before the Congress, that if you scrap the public trustee scheme entirely in order to accomplish goals through other means -- means of spectrum usage tax or others -- that that's very worthy of exploration." I repeat the quote here as a reminder there are knowledgeable people of worthy purposes questioning the propriety of the public trustee concept as applied to current broadcast regulations.

I believe congressional or court-mandated restrictions on First Amendment rights and also the government-mandated public trustee concept are outdated and no longer justifiable in today's competitive technological, economic and journalistic climate in communications.

In fact, broadcasting was not initially formulated as a public trusteeship. It was actually conceived as an advertising supported, risk capital, commercial enterprise. No government funds were appropriated to finance pioneer broadcast service or to initiate commercial service. Much has been said of the people's airways or the public trustee concept -- perhaps too much, because by sheer continued repetition over the years it has become accepted as a fact. However, Eric Sevareid, who said so many things so well over the years, once commented:

I have never understood the basic legally governing concept of 'the people's airways.' So far as I know there is only the atmosphere and space. There can be no airways, in any practical sense, until somebody accumulates the capital, know-how, and enterprise to put a signal into the atmosphere and space.

As a former newsman, I have always hoped that some day broadcasting would be treated the same as other journalistic and advertising media. It seems this could best be achieved by bold, innovative legislative action. In my opinion, the time has finally come to grant full constitutional rights of freedom of the press and freedom of speech to broadcasters. This would end years of discriminatory treatment which is no longer justifiable with today's massive competition in all communications media.

There are many more TV and radio stations today than newspapers in every sizable market. The growth of cable, translators, UHF, FM and the development of satellites have provided more media availability than ever before. Future potential is practically unlimited. Then, too, broadcast journalism today is as mature, professional and objective as any media. Regulatory restraints are no longer justified in today's era of competitiveness, numerous outlets and professional journalism.

The scarcity argument justifying government intervention in broadcasting seems more specious today than when it first crept into court decisions years ago that limited First Amendment guarantees for broadcasters.

There are limitations upon the number of businesses of any kind in a given community. Limited spectrum "scarcity" arguments once embraced by the courts hardly apply in today's abundance of radio-TV media compared with newspapers. Economic reality is a far more pervasive form of scarcity in all forms of business whether in broadcasting, newspapers, auto agencies or selling pizza. It is a fact that not everyone who wants to own a broadcasting station in a given community can do so. It is also an economic fact that not everybody who wants to own a newspaper, an auto agency or a pizza parlor in a given community can do so.

I believe the public would be served by abolishing Section 315 including the fairness doctrine and Section 312(a)(7). The fairness doctrine is a codification of good journalistic practice. Its goals are laudatory. However, I no longer believe government is the proper source for mandating good journalistic or program practice. I believe the practice of journalism is better governed by professional journalists, editors and news directors. Programming is best done by professional program directors, producers and talent. Even with some programming deficiencies, a government cure with censorship overtones is worse than the industry disease.

There is little doubt that if TV and radio had existed in 1776, our founding fathers would have included them as prime recipients of the constitutional guarantees of freedom of the press and freedom of speech. After all, they were guaranteeing

citizens these freedoms so that a well-informed public and electorate could vote on issues and candidates -- free of any semblance of government interference or control. The Constitutional freedoms were instituted for the benefit of the citizenry -- the total public -- rather than the media. It is the public that stands to gain from an all-media freedom of the press.

Section 315 and Section 312(a)(7) guarantee access to broadcasting in order to seek political office. This is not required of newspapers and magazines because of the constitutional guarantees accorded only to print journalism. Clearly print journalism, with its guaranteed "freedom of the press" has risen to the task of informing the electorate and uncovering illegal or unethical practices without government interference or regulation -- I see no reason to assume broadcast journalists or executives are any less responsive or diligent. Broadcast journalists have earned and rightfully deserve all constitutional freedoms.

I believe that removing the government restraints of Section 315, including the fairness doctrine and Section 312(a)(7), would free broadcast journalism, foster more comprehensive and independent reporting and better serve the American people.

My proposals are not calculated to garner wide appreciation among existing licensees. Rather, they are meant to establish a climate whereby the American public can receive more, freer and better broadcasting service. I believe it is a proper goal of the Communications Act of 1934 and of the First Amendment to the Constitution. I also believe it is a proper goal for any new Communications Act.

Broadcast licensees should be assessed an appropriate annual spectrum fee and then assigned licenses without expiration dates. At present, broadcast licensees must prepare applications for license renewal. These applications are then reviewed by the Commission, which must find that renewal is or is not in the public interest. The applications are further subject to challenge from members of the licensee's audience under the very loose application of the principles of standing as a party in interest.

In the vast majority of instances, the Commission makes the public interest finding that permits renewal and the cycle begins anew. In a very few cases, the licensee is forced into a hearing to determine whether he is fit to remain a licensee. And, there are many instances where other parties file "on top" of the licensee in an effort to gain the license for themselves without paying the going market rate.

The process of license renewal appears to be an expensive, time-consuming method of ferreting out those few licensees who

have failed to meet a subjective "public interest" standard of performance. With adoption of a free marketplace concept similar to newspapers, license renewal would no longer be required. The enormous savings in time and money could be used for more constructive purposes in programming and news.

Some would contend that license renewal time offers the Commission the only real opportunity it has to review the overall performance of its licensees. However, I believe greater responsiveness to legitimate public needs comes about through public acceptance or rejection in the area served by the broadcaster.

What rules would then govern broadcasters? The same laws and rules as newspapers or other businesses or professions -- criminal codes, libel, slander laws, anti-trust laws, EEOC requirements, SEC requirements, etc. There is no need for discriminatory singling-out of broadcasting for special restrictive regulations -- broadcasters generally are as responsible, dedicated and every bit as socially-conscious as other Americans -- in media, industry, professional or government groups. Most feel a self-imposed public trusteeship. The few incompetents and miscreants fail and lose their businesses or jobs or run afoul of the law as in any other profession or business.

Also, I believe news objectivity and overall fairness and efficiency are better assured through professional broadcast and print journalists and through professional program executives. Many government-appointed officials, regardless of how well meaning, are handicapped by lack of experience and little understanding of media operations or the practicalities and economics of running a communications business.

Past considerations of the renewal issue have included the argument that a license "in perpetuity" would greatly weaken the competitive spur in the Communications Act. It must be remembered that broadcasting stations, although licensed, are also private business enterprises backed by private capital, subject to the risks and opportunities of entrepreneurship. Broadcasters have no incentive to offend or alienate potential audiences; on the contrary, it just makes good business sense to attempt to serve as much of the potential audience as possible and as well as possible. All media and particularly broadcasting require public acceptance to succeed and even to survive.

Regulation is supposed to be a rather imperfect substitute for competition where competition either doesn't exist or is restrained by certain market forces. In practically all of the broadcasting markets in this country, competition not only exists but is intense and growing. As stated before, broadcasters not only compete among themselves but with all

other media including newspapers, magazines, cable, outdoor advertising, direct mail, etc. Therefore, it would seem reasonable to remove as much regulation as possible in order to permit competitive market forces to operate.

One immediate beneficial effect of open market competition would be elimination of government involvement in news and programming -- where it never belonged in a free society.

There are many areas requiring continued government direction and surveillance but not a major news and information medium in a government conceived in and dedicated to the principles of free speech and a free press. I want to say that I advocate government involvement in appropriate areas -- government involvement and direct action were required to attain such desirable goals as social security, minimum wages, FDIC protection for savings, civil rights, medicare and public health, anti-trust rules and environmental protection. Government must continue a vital role in solving problems in energy, national security, public safety, urban decay, equal rights and economic well-being.

Also, there is a continuing need for consumer activist participation against products, organizations and services that mislead or bilk the consumer. Broadcasting should benefit from such interest but on the very same basis as any other news media. Broadcasting needs full, unfettered press freedom to report, clarify, editorialize and advocate on all events and controversies subject to the same marketplace constraints and criticism as newspapers or magazines. This includes expanding its already active role in exposing consumer frauds and unsavory corporate, public and governmental practices.

The argument that removing the public interest standard would permit broadcasters to eliminate news, public affairs or meaningful programs is indeed specious. It would be contrary to all industry trends and to broadcasting self-interest to eliminate or minimize news and information programming. Broadcast journalism and public affairs are increasing in importance. I believe the major impact of TV and radio on the American way of life today is in news and news analysis -- not in entertainment programs. I think most people agree that broadcasting today is most remembered and respected for its hours of exceptional journalism -- and that the greatest benefit most Americans derive and expect from broadcasting is accurate information. Recent research indicates more Americans are getting initial news from TV and radio than from newspapers. This potential for molding public opinion poses an enormous responsibility and opportunity. No practical broadcaster will ignore the audience mandate for comprehensive objective coverage of news and public affairs.

I firmly believe that full First Amendment rights will generate more top level management emphasis on news and public affairs. Owners, executives and broadcast managers of the future will more and more assume roles of publishers and editors-in-chief. With full press freedom, stations and networks will have added incentive for editorializing and for large news staffs capable of more investigative and detailed "on the spot" reporting.

Once more, I believe in full freedom of speech and freedom of the press for all media. This freedom best serves the overall public unfettered by government pressure or by citizen activist groups demanding special broadcast consideration for their own private social and political philosophies through government-mandated access. I further believe newsmen have the right to be wrong and that news executives have the responsibility of seeing that they are not wrong too often or wrong to the point they are an embarrassment to their profession or company. I believe newsmen have the right and obligation to seek the truth -- the facts. I also believe freedom of speech applies to government officials-- they should be able to criticize the press, including the broadcast press, without raising the ominous spectre of censorship because of possible regulatory oversight.

In conclusion, I repeat that with today's intensely competitive media, news and advertising marketplace, there is no logical reason for the special discriminatory regulation of broadcasting.

The laudable deregulatory thrust led by the RTNDA and joined by other responsible broadcast groups should be specifically implemented by granting broadcasting full First Amendment rights and removing all regulatory restraints. The overall public would be the important beneficiaries of deregulation, reduced litigation, reduced bureaucracy and a resulting reduced cost to taxpayers. With elimination of renewals, fairness doctrine complaints, petitions to deny, and unnecessary rulemakings, the FCC staff (which included about 276 attorneys at last count) could be systematically reduced. The principal remaining broadcast function would be orderly engineering spectrum allocation and enforcement. The agency reduction could be gradually accomplished through attrition, via transfer, resignation and retirement.

The reduction in bureau staff and government expenses would be in keeping with the mood and will of the American public today. I believe this total proposal would pass convincingly today in any objective public referendum.

Moreover, removing the government restraints of Sections 315 and 312 would free broadcast journalism, foster more comprehensive and independent reporting and better serve the American people.

This is the end of my First Amendment message. Now for the revelation I promised at the start of the speech. This message is practically an exact excerpt from my testimony presented to the House Subcommittee on Communications September 13, 1978 and submitted to the Senate Communications Committee for the Senate record one year later -- only a few outdated references (like H.R. 13015) were omitted. With the unprecedented communications explosion from 1978 through 1985 and the dramatic increase in electronic media and means of transmission, this message is more applicable today than ever before. *Except spectrum fee*

Also, the results of a recent FCC inquiry shows that the regulatory restrictions of the fairness doctrine have a definite chilling effect on broadcast journalism. The inquiry results also cast questions on the constitutionality of the rules. In the meantime, the FCC must enforce current rules until definitive congressional or court action.

Overall, it is a challenging, fascinating time to be at the Federal Communications Commission. There has been unprecedented deregulatory progress at the FCC the past four years. Most of the remaining deregulatory issues will require congressional or court action. Congress, the FCC, the communications legal profession, the academic community, industry and the public must work together to maintain our freedoms and communications leadership so that Americans remain the best informed and best served people in the world.

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