

Luncheon Address
by
FCC Commissioner James H. Quello
Before the
New York Chapter FCBA

The Harmonie Club, New York City
March 6, 1989

560

Greetings from the FCC -- your Friendly Communications Commission -- ushering in an era of gentler, kinder regulation and, hopefully, Congressional relations. According to your notice to members, I'm expected to provide "special insight into the expected policy direction under the Bush administration." The best I can offer is an educated guess.

The future policy of the Commission will be principally proposed by a new chairman and possibly three, but at least two, new commissioners! It is possible that I'll be the only holdover from the Reagan administration -- and a democratic holdover at that! Think of it, I'll be the only one with institutional memory and recall -- a quality not exactly essential to the operations of enthusiastic, hard driving, regulatory new blood. As you know, we have been operating with only three commissioners for over a year. In fact, I'll have to personally get used to operating without my awesome one vote veto power. Incidentally, I remember Chairman Mark Fowler's classic remark several years ago when asked "What is the difference now that the commission has been reduced from 7 to 5 members?" His terse reply "I have two fewer rears to kiss" -- he used the more explicit term for rear, but I withheld it out of respect for this prestigious audience.

This would assure complete objectivity with commissioners that have no experience or practical working knowledge of subjects they are to regulate. I can identify with overemphasizing this "fox guarding the chicken coop" syndrome. Some of the older members of the audience may recall my initial confirmation problems fifteen years ago (ad lib Senators Pastore, Griffin and Hart participation).

I expect the Bush administration commission to continue a marketplace deregulatory policy, but with a more moderate, less ideological approach. I hope and expect improved working relationship with Congress. I also believe we need to speed up commission processes and effect more prompt action on applications and issuance of notices.

I have served under both Democratic and Republican controlled commissions. As you know, only three of the five commissioners can come from the same party. I was relatively comfortable with the different social and legal approaches to regulation. Fortunately, most commissioners don't decide complex policy issues by partisan democratic or republican votes. The issues are decided on the legal record and the individual commissioner's determination of logic, reason and serving public interest.

UHF-land mobile sharing without a demonstrated need for more spectrum, limited spectrum allotment for HDTV, broadcast spectrum auctions, flexible use, the initial financial interest and syndication proposal, and others. I have also expressed concern and shifted burden of proof on the significant telco-cable NPRM and expressed reservations about replacing our current comparative process with random lotteries.

Despite expressions of misgivings in some quarters about marketplace competition replacing regulation, we still haven't deregulated either the FCC or the FCBA out of business. In fact, the communications marketplace is brimming with billable hours and lobbying controversy in broadcasting, cable, telephone and satellite fields. The more significant issues relate to the Fairness Doctrine; must carry; telephone price caps; MFJ implementation; syndex; broadcast cross-ownership waivers; telco-cable cross-ownership; trunking standards for public safety spectrum; network-cable cross-ownership; networks providing sales representation for their affiliates; reinstating the three year rule; comparative renewal reform; enforcement of obscenity and indecency rules; prohibiting U for V swaps; development of compatible terrestrial HDTV, DBS, MMDS, EEO regulation, lottery process for broadcast spectrum; auction, flexible use and negotiated interference rights for broadcast spectrum; transfer fees; possible ban on beer and wine advertising, etc. It's obvious there is enough contentious litigation to go around.

Before I discuss a major telecommunication issue which promises to generate billable hours into the next century, I want a long pause for a commercial message regarding the failed salary adjustment for Congress, judges and federal executives -- yes, it included the FCC.

This is the first captive influential audience I have addressed since that over-publicized controversy so please pardon my taking advantage of this opportunity to present a program length commercial.

First, let the record show that TV, radio and cable personalities and newsmen have a right to propose controversial actions -- they even have a first amendment right to be wrong!

However, I would like to exercise some candid first amendment rights of my own. I find it the ultimate in unconscionable self appreciation and insensibility for TV and cable personalities, news anchors and talk show hosts, many of whom make 10 to 25 times more than a senator or congressman to indulge in a messianic binge against a salary adjustment to keep pace with inflation for congressmen, key government officials and judges. The salary increase was not proposed by Congress It was recommended by an impartial, well-qualified non-political commission of civic leaders. The recommendation was supported by outgoing President Reagan and President Bush.

Isn't it kind of goofy that the president of the United States -- the most powerful man in the world when he's awake -- is paid less than a mediocre point guard in the National Basketball Association? Or a network anchorman? Or some local disc jockeys?"

As for myself, with a moderate lifestyle, I have no problem living well on my government salary. I like my job. But the salary level simply does not reflect the complexity or importance of commission responsibilities.

It also strikes me as ironic that the media resurrected Ralph Nader, who is notorious for his over-regulatory zeal.

Thinking it over, Mr. Nader, a self proclaimed advocate with his newly established expertise in appropriate compensation rates, could be the ideal chairman for a civic or public study committee to recommend reasonable compensation rates for TV-radio newsmen and personalities working for or utilizing the facilities of licensees with statutory obligations to serve the public interest. Mr. Nader could cause another public furor by recommending that overall public interest might be better served by restricting salaries to some reasonable level -- say only a mere 5 times the salary of congressmen and senators.

But let the record show this type or any type comic has a first amendment right to be an insufferable smart ass!

Seriously, congress and the media failed to emphasize enough that this was a catch-up increment recommended by an impartial, nongovernment commission to keep government pay abreast of inflation. It should have been repeated over and over again -- an inflation adjustment, not a pay raise per se. Of course, inflation adjustments should not have been neglected until they reached an inflammatory 50% -- small annual rates would have been acceptable. The federal compensation commission was formed for the express purpose of avoiding the embarrassment of a public body voting itself an increase. No one is required to vote his or her own pay raise. Even compensation for board chairmen or presidents of publicly held companies is voted by their boards of directors.

Representative Jim Cooper was on target with his quote in The Washington Post:

"I never met a constituent who ever turned down a pay raise for themselves or who ever liked a pay raise for someone else. I never met a constituent who liked his salary published in the newspaper, and I never met a human being who wanted the nation at large to vote on their pay. It's among the most sensitive matters."

Reviewing the initial round of comments and considering the long-term implications on the telecommunications marketplace lead me to believe that it may be appropriate to place a heavier burden of proof on telephone company entry in certain circumstances. I see little upside to replacing one unregulated monopoly (cable) with another larger monopoly. My initial thought is that telephone entry into cable should be limited to providing a competitive alternative, not merely replacing existing cable operations. However, there is a possibility that only one system will eventually survive in the practical marketplace.

If the marketplace ultimately reverts to a one wire environment, then the Commission should carefully examine the regulatory structure to ensure access by local broadcast stations. Thus, I must depart from the Commission's tentative decision to the extent that it does not adequately focus attention on the potential impact of telco entry on free over-the-air broadcasting.

A key question is whether telco entry will be a threat or boon to preserving free universal TV service. In my opinion the crucial public interest issue is the preservation of free local television service to all the public. Only broadcasting, not cable or phone fiber, has a government licensed obligation to provide TV service to the public. Broadcasting is the principal source of local news and government affairs, of vital local services like traffic, road, weather, school closing reports

These contentious questions provide an initial insight into the complex problems of telco entry.

Of course, my views are tentative and I plan to review all comments and reply comments before reaching a final conclusion. Depending on your viewpoint the Commission's proceeding may be visionary or premature. Some industry experts estimate that it will be 15 to 20 years before the nation is "wired" with fiber optic cable. I think the Commission must continue to review the implications of this complex issue as the possibility of telco entry comes closer to reality.

All of which brings us back to the state of telecommunications and, particularly, the broadcasting and cable industries. While not chaotic, there are major unresolved issues and undeployed technologies . . . and there probably always will be. And, with that I'd like to conclude with the words of a great American advertising man of the preceding generation, Bruce Barton: "Action and reaction, ebb and flow, trial and error, change -- this is the rhythm of living. Out of our over-confidence, fear; out of our fear, clearer vision, fresh hope. And, out of hope -- progress."

Progress -- that is a worthy goal for all of us. So a salute to FCBA and may your billable hours be used for worthy causes.