

AT LARGE



THE FCC'S JIM QUELLO

LIFE AS A WASHINGTON MONUMENT

After a long and successful first career in broadcasting, James Henry Quello joined the FCC 16 years ago and, in that span, has never forgotten his roots.

Time and again, the 76-year-old Michigan Democrat has stood up at the agency for what he calls, in this interview with BROADCASTING editors, the "all-important, free, universal, over-the-air broadcast service." Given his druthers, he'd keep on promoting the medium for the next five years to insure its place in the electronic communications mix of the 21st Century.

You surprised some people a few months back by letting it be known that you would like to be reappointed to another five-year term when your current term ends in June. Why do you want to come back?

A lot of reasons. I've served in the job; I'm comfortable with it; I feel I'm very useful; I think I'm useful in forming a consensus, and I bring institutional memory to a commission

with [four relative newcomers].

I'm also active physically and mentally and want to stay that way. My last physical exam was about a month ago and it was so good, I'm afraid to tell friends about it. Usually when your cardiogram is normal, your blood pressure is 120-over-80 and you have low cholesterol, it triggers some kind of perverse mechanism and...within a week you're gone with a stroke or

something. So as long as I can play tennis and I have that kind of a physical report, I think I'm fit physically and mentally for the job.

As I've said before, I believe I have 70% of my marbles—a good local norm in Washington—and I have delusions of adequacy. And a lot of people share that delusion apparently. I do have a lot of support going for this reappointment, which is very gratifying.

That's the next question. How is the campaign going?

I'm not going to say how my campaign is going. It's up to the people who think that I deserve another term to do their own campaigning for me, and I think it's in good hands. I've had a lot of people volunteer.

Has any competition emerged?

Not that I know of.

By making the early announcement, do you hope to preempt any competition?

Yes. What happened, quite frankly, is another magazine, *The National Journal*, actually forced my hand. I wasn't thinking of announcing until probably February, but they asked me the question and it came out. And as a result of the article I have had a lot of people saying: "You're a must, stay on," and a lot of people volunteering. And I'd rather not mention them right now.

In government?

Yes, there are some in government who were very glad to see that article, and a lot of them in the business.

Capitol Hill?

Capitol Hill and broadcasting and public broadcasting. The National Religious Broadcasters and the American Women in Radio and Television were kind of glad to see the article.

You mentioned that four of the five members are relative newcomers. How would you assess this FCC and what are the dynamics of the decision making?

Well, of course, [Chairman] Al Sikes is an old pro. He was head of [the National Telecommunications and Information Administration], he bought a couple of stations in Missouri, he understands the business, he has a good background in it. And on a lot of the contentious issues that come down, we're pretty close. You have three very bright new commissioners who are very aware of their individual prerogatives as commissioners, they don't want to be taken for granted. They all want to be brought into the process.

Because I've been here a long time and I usually don't have a confrontational approach, when I see the others I don't ask them for a vote. I never do. I say, "Vote anyway you want. That's up to you. I'm going to tell you what I am voting for."

Do Commissioners Andrew Barrett, Sherrie Marshall and Ervin Duggan operate as a block up here?

It makes a very dramatic and intriguing story for the press to say so, but I don't see them operating as a block. If the three of them happen to vote one way or think one way on an issue, it's because they arrive at that and not because they want to be rebels against two of the more established commissioners. [They worked together on last July's cable report], but eventually we came to a [five-member] consensus. There was a solid vote. It took a little doing. Every line in the cable report was reviewed and edited by every legal assistant and reported back to us. Overall, they realized that we all have to vote for whatever constitutes reason and justice and common sense, and there might be different ways of approaching them. But I don't see any "us against them" here at all.

Duggan has complained that the FCC is not collegial—not

democratic enough, that too much power is concentrated in the office of the chairman. What do you think?

Well, in the case of the Sunshine Law, I think the chairman is disadvantaged—all chairmen are—because of the restrictions of the rule. I think it's a silly rule that an administrative head of an agency can't call in the four commissioners and say, "Here's what we're doing, give us your best shot." He can't do it.

I think the whole thing could be corrected if he were able to call all four of us in at one time. Right now, I think Chairman Sikes is making an effort to go around talking to all the commissioners [one-on-one], and we have had meetings of legal assistants. If the commissioners can't get together, at least the legal assistants can. They can get together and it seems to work out pretty well.

But there's always been a little more power vested in the chairman than in other commissioners, and that's why he's appointed chairman.

You have a reputation as the broadcaster's commissioner, ready to go to bat for the industry on just about any issue. Is that fair?

Well, I'd like to talk to you about that because it's fair to a limited extent. I've been able to [criticize broadcasters] and still have a lot of broadcasters' support. But on things that really count, I'm with them in a lot of ways. We have to preserve localism.

I'm very good at raising hell with the broadcasters when they're wrong, and they'll listen to me. I've been on three different panels now where I say we're desensitizing society to violence and too much sex is available to people that are too young. Most broadcasters are concerned, too, and are wondering what to do about it because the American people tune in violence and sex. It makes it tough. [Broadcasters] want the cost per thousand and the demographics, but sometimes I think you have to have a goal that's a little higher than cost per thousand and demographics.

And I'm glad to see initiatives like Senator Paul Simon's [D-Ill.], encouraging broadcasters: "OK, we'll give you an [antitrust] exemption now, you find some code [of conduct] that makes sense, so we're not desensitizing society to everything." I mean pretty soon the way it's going, murder and rape will get to be misdemeanors. It bothers me, it worries me.

Doesn't your support for the broadcasters sort of undermine new services. For instance, you helped defeat proposals to turn FM translators into low-powered FM stations—a new service to the public.

Yes. I opposed that. The only people who supported it were those who were going to profit from it. There wasn't any demand for that added service. The fact is we were satiated with radio stations out there, and 35% of the AM's can't even make money and some are being turned in.

The idea of serving the public interest with more service can be carried too far. There is a little responsibility to make sure that the services are economically viable so they can keep on providing that service.

There was no need for 2,000 or 3,000 more radio stations out there.

But where is it written that every person with a broadcast license has a right to make money? You suggest the FCC has a responsibility to make sure all stations are economically viable.

Sure. They have to [be economically viable so] they can provide the local news, public affairs and public service announcements and other things.

You're not going to do well with companies that are barely marginal or that are going bankrupt.



So you're going back to the traditional deal: "We'll protect you to a certain extent, but you have to provide these special services."

I'm a great believer in the public interest concept. That's the price you pay; you provide the services and you conduct your business with a good deal of social consciousness.

Does this foreclose any kind of spectrum fee in your mind? Are you dead set against a spectrum fee, in spite of the mounting \$3 trillion debt and annual deficits?

A spectrum fee isn't going to solve the debt. I mean that's just going to be a small speck. It'll contribute a little bit. It all depends on what the exchange would be. I mean, if you're paying a fee for it, are you through with all the government regulations that no other media have? Are you through with having to come up with a license? Are you through with your obligations? Are you through with equal time?

If it were up to you then, you would swap a fee for no regulation?

Or reduced regulation. Yes, I think that would be fair.

You just had your big en banc hearing on fin-syn and conventional wisdom has it that you and Sikes are prepared to relax significantly the fin-syn rules if you can find a third vote. Is the conventional wisdom correct?

I'll tell you, this is only the start. There's a lot to it. If you're allowing the networks to bid for financial interest [in network programs], is it a two-step [negotiating] process? What kind of a two-step process—one week apart, or only after it's already been scheduled? That hasn't been decided yet. I was the only one who voted against repealing the rules in 1983. They had a tentative decision [that was never affirmed]. I had two reasons for voting against repeal. One, the independent stations felt threatened that if the networks were controlling off-network product, they would withhold it from the independent stations that were competitors. I thought the independent stations were providing a very necessary separate news and public affairs service that the people need. Two, the networks still had considerable power.

Since that time, by any reasonable standard, the network audience power has eroded. We now have 60% of the homes with cable. In those homes, cable decides what to put on and what not to put on. It decides what to carry and what not to carry. It's becoming more and more the dominant transmission

carrier.

You have VCR's, you have more independent stations, you have cable networks and you have some of the cable services owned by the studios. You have all these things.

Well, then, who needs to be protected from the networks? Is their power so eroded that nobody needs to be? Do independents still need to be protected?

I think independents need some protection. But this time, with oncoming direct broadcast satellite and fiber optics and cable, free television itself is on the line. You need income in order to be able to bid competitively against cable and everyone else for key sports and big entertainment programs. Cable with a dual [revenue stream from advertising and subscriptions] has the capability of outbidding broadcasting. The only reason they don't is there'd be a lot of complaints from the Congress or from me or the FCC. So free television is also at stake here down the line.

You seem to be suggesting that the burden is on Hollywood and independent stations. If they want to preserve some kind of regulation, they've got to show you why.

Things have changed so dramatically since the rules were first promulgated. It's been such a difference that I think it's time to allow networks to negotiate for financial interest and probably syndication. Maybe in syndication, the networks [might have] to syndicate it through a third party.

Allow a free marketplace to work that serves the public. If it didn't serve the public, then sometimes you might need some kind of regulation. But I think it's time to allow the networks a considerable degree of financial interest in the programs that they make popular.

What bearing do you think the foreign ownership of some of the major Hollywood studios, which benefit greatly from the rules, will have on the fin-syn debate?

I think it's a major development and certainly we have to look at it. As I mentioned at the hearing, it is somewhat perverse that foreign companies can purchase major American studios with full syndication rights, which are denied to American-owned networks by the rules. I don't see it because eventually, any way you want to cut it, the profits Columbia, MGM, MTM and even Fox make from syndication are going to foreign companies and foreign banks, and you're keeping the networks that are more and more under siege from a big variety of cable offerings and first-run syndication and VCR's from getting the business. So I think it's among the things that have to be considered. It has some influence on me. As a lawyer might say, I don't think it isn't dispositive, but, yes, it is a consideration.

What about the prime time access rule? That's sort of been injected into this whole thing. Columbia Pictures wants a waiver, Disney wants relaxation, First Media wants to get rid of it all together. Is that going to fall also?

No, I don't see it falling at this time. I've said that if anyone files a petition, we have to consider it. I'm not saying we ought to get rid of the rules. That's going to be a very hard and tough fight. I don't think the support is there to get rid of the rules because they seem to be serving the public. However, if you want to you can argue it the other way—that they're not serving the public the way they were intended. The idea first was that this would be a great vehicle for public affairs and for local programming. But it's turned into very popular game shows. So it hasn't quite actually fulfilled its initial purpose.

The other argument that was made was that in the 51st to 100th markets where PTAR is not, only 23% of the programs in access are off-network. That's pretty good. So there's an

argument for it, but I don't think the timing is right. I just say if you have good arguments, we'll consider them. As I said, it's going to be a long, hard fight.

In cable, the FCC proposed a tough new standard that would in essence return cable systems that do not hold rates below a certain national average to local regulation. How do you justify such a severe measure just a few years after you voted to set a standard that exempted most systems from local regulation? What's changed in the last five years to cause you to go from one extreme to the other?

[The vote for the original standard] was a very reluctant vote on my part. I didn't think it was going to be that important. It developed so that it practically deregulated cable. And at the time I voted for it, must-carry and channel positioning were definitely in place.

Now after I voted for it, all of a sudden because we weren't able to demonstrate a compelling government interest, there was no must carry. So what kind of a standard do you have that you have effective competition if you have three stations or six stations that cable doesn't even have to carry? It's ludicrous.

It just doesn't serve its purpose. Now that's one way of looking at it. The other is that there's been a history of a lot of municipality demands on cable that were unreasonable. If you want to get the franchise, you have to do a lot of other related things, and I think there are some of us here who have been through this and have seen the development of cable and want to give it a certain amount of freedom.

So I have great hopes for what we call the "good actor clause." If you are providing a service at a basic competitive price than it can be assumed that you have "effective competition" and [you can avoid local regulation].

The danger is if we allow the basic services to consist of maybe the stations you get off the air plus C-SPAN and a few government channels, and if we allow a free enterprise rate for all the other services, you have the possibility that you end up with a higher rate than you have now and that isn't the Congressional intent or the FCC intent.

So a lot of it depends now on what we can come up with in crafting this "good actor" clause. Can we say, if you want to be a good actor, you will have to provide X number of channels, say 14 or 18 or whatever you work out?

So we're in the process of trying to work that out now.

I understand you deserve credit for getting a question in "effective competitive" rulemaking about the nexus between the new standard and must carry.

Yes. We decided that that should be added, saying OK, if you want to make carriage of six stations effective competition, at least have it with a must-carry provision. Otherwise, it's ineffective.

Is this a way of trying to bring back some kind of must carry?

Absolutely.

Will must carry be a part of the good actor standard?

You don't need must carry in that aspect of it. The aspect where we'll assume that you have effective competition is the six-stations standard. If that's the one that is eventually adopted, you have to have must carry with that.

If you go ahead with your effective competition and your tougher standard—some people are calling that a price cap—do you think Congress will lose interest in reregulating cable?

I'm not sure. No one is sure. What happened with me, I was perfectly happy with cable. I like cable; it's a good service. I pay more and it's worth it. I was perfectly willing to let the

rates alone, and all of a sudden someone in Port Huron [Mich.] wrote that there was a Michigan man on the commission and in about three weeks I got over 50 letters, very well written, from responsible people saying: "Aren't you there to protect the public? Our cable systems have raised the rates 80% in two years. This is unreasonable. You should be doing something about it."

And then I realized that this was a small county next to Detroit's Wayne County. What if this had been Wayne County or Oakland County? I would have been flooded with letters, and if I'm a Senator and I'm getting this from 25-30 counties, I'm going to get concerned and I'm going to take corrective action.

So there is always a possibility that if cable isn't completely successful in reining in some of the excesses that they will be under continuous scrutiny. The big thing is the price has gone up too far and the service is poor.

It was self-inflicted and I think it's being self-corrected. In all, I've got to give credit to cable. But in the areas where it isn't self-corrected, they're going to be asking for problems for themselves from Congress and the FCC.

Do you think, as Duggan does, that adherence to some set of customer service standards should be a criterion for meeting the "good actor" test?

I don't know. It sounds like a good idea. It's getting very intrusive. I think cable ought to do that in its own self interest. I've got to think about it.

You flip-flopped on the question of whether telcos should be allowed to compete with cable systems? You voted tentatively to recommend telco entry to Congress at one point and then you came back later and refused essentially to confirm that decision. Where are you today?

Today I would favor telcos as common carriers, and not in the programming.

Just keep them out all together?

For the time being, yes. [But] this is an evolutionary process. It looks like someone will have to be able to provide fiber to the home or else we're actually keeping advanced technology from the American home. I don't know how much demand there will be for it. There isn't that much demand now, but fiber can provide more than phone service. You'll have a picture phone. You can have electronic newspapers. You'll have interactive TV. You can have data processing, homework by accessing every library. I mean you can have banking, shopping, the whole thing. Fiber has that capability, and how long can we vote against this kind of capability for the public? I don't think there is a big demand for it yet. How much will it cost when it does come? Right now I think giving the phone companies status as common carriers is fine. I also think that a lot of these services can be provided without the phone companies getting into cable.

Digital audio broadcasting is threatening to turn radio broadcasting on its head in the next decade. Do you favor authorizing a national satellite DAB service; do you think that's a good idea?

For the time being, I'm for terrestrial service. I don't see any big demand for satellite service. It isn't as big a threat as people think. How many people are equipped to receive digital radio right now? They don't have any receivers out there.

But the idea is to have some terrestrial service and some satellite service and radios able to receive both. When one service comes, so could the other.

I think we've got to work it out if we're going to preserve that

Continues on page 84.

Jim Quello 'At Large'

Continued from page 57.

all-important local service. Satellite isn't a local service; terrestrial has to be. That's where I am right now, subject to change with the evolving argument, the evolving technology.

Do you feel today's radio broadcasters should have first dibs on any new terrestrial DBS technology?

Absolutely. I think those who have invested substantially or pioneered in radio and TV broadcasting should have the first opportunity also to invest in DAB and in high-definition television, if that's the way it evolves. I'm very strong on that.

You have over the years helped preserve broadcast spectrum for broadcasters. Do you see mounting pressure to take away some of the spectrum, particularly UHF spectrum? Or do you think it's safe for now?

I see mounting pressure to take it away, but there have to be priorities. That's all. HDTV is going to be a very important priority, and if you need UHF spectrum for it, fine. I don't see putting people out of business that have already been allocated the spectrum. DAB can release a lot of spectrum for other uses. Right? Sixteen stations on one tower? Yes.

As I say, repeat, both the potential and the problems of all these new technologies—that's fiber optics, DBS, DAB and HDTV—are mind boggling. And I think what's going to be the best for the public is what kind of transition we make to get into advanced technology and still have a good service.

I think advanced technology has to serve the public, not advanced technology just for advanced technology's sake.

You mentioned HDTV on a number of occasions. Do you think the FCC can stick to its schedule and have a standard picked by late 1993?

I think so. We're going to have experiments now. [Richard Wiley, chairman of the FCC's industry advisory committee on HDTV] is very capable. We have a great group of engineers and industry leaders and administrative people.

Chairman Sikes wants to revisit all the structural broadcast regulations next year as part of his "attic-to-basement" review of the FCC mass media rules. Do you think that's a good idea? Do you think it's time to look at these things again?

I think it's a good idea. You've got to realize that Congress is going to be very much involved in it. But I think Sikes has made a good move. I don't know yet just where he's going to start on the thing, but I think it's a good idea.

Do you think Congress is going to let the FCC tamper with multiple ownership rules, the duopoly rules and the cable-broadcast crossownership rules? The House Telecommunications Subcommittee is already planning hearings on the public trustee concept, which some people see as some sort of preemptive move.

Of course, I am for the public trustee concept. As I've said, I think it serves the public and it also serves the broadcasters. I don't think you have much of a problem with the public trustee concept with this FCC. You've got the chairman who is a Republican who believes in it and you've got the senior Democrat who believes in it. Now as far as examining the whole mass media from top to bottom, I think it's a good idea and certainly Congress should play a part in it.

My attitude is that Congress are the elected representatives of the people and they are the ones who get most of the complaints. They see what's happening in their districts. I think they're in the best position really to be sensitive to what the public interest should include and what should be imple-

mented in the public interest.

So will Congress be a part of it? Absolutely. I expect them to. They're not going to abrogate their responsibility. But I think Congress will probably want our recommendations and say: "Where should we go?"

The Sikes FCC is building a reputation as one that is tough on enforcement in all areas. Given your stated willingness to criticize, I take it you encourage the tough enforcement against indecency or whatever?

All that stuff. As long as there's a congressional act, we have to enforce it. On the other hand, I know I've voted to take away over 90 licenses, and it bothers me. I don't think we should have the death penalty. Licensees ought to be fined. They ought to be jailed or they should have forced divestiture. There isn't a monopoly, there isn't a utility where if they're in violation, all they have is second-hand equipment to sell, and they take them right out of business. It's a little bit too drastic for a licensee that's been in business for 25-30 years and suddenly runs afoul of the FCC.

I think the RKO case is a good example of gross bureaucratic overkill. I said at the time, and I still do, and I think eventually that there ought to be forced divestiture, which would be enough of a threat. Most broadcasters want to do the right thing. But for the 1% or 2% that you have in any industry, or any group, you have to take corrective action.

Many people believe the FCC's surprise inspection of stations last July to check for compliance with the political broadcasting rules was motivated primarily to curry favor with Congress. Do you think that's fair?

I don't think it's fair, and I don't think it was politically motivated. It's a tough question. I'd like to think that maybe if it were entirely up to me I would have warned the broadcasters: "Now we're going to enforce this thing, you better get your act together because the era of lax enforcement is over with." Broadcasters have so many things they have to watch. They have to watch EEO, they have to watch indecency, they have to watch political broadcasting. The opportunity for just human error at a station is pretty big. And most managers and most owners are just appalled when there is an error made. The person that makes it, if it's serious enough, is threatened or fired, and they try to correct it.

What's on your agenda for 1991? Do you have a personal agenda?

I believe preservation and enhancement of the all-important free universal over-the-air broadcast service is the mainspring of American mass communications. The FCC's challenge will be the orderly compatible implementation of the advanced technology services of HDTV, DAB, fiber optics and DBS—four big things. The potential and problems are mind boggling. How do we do it in a good practical way that serves the public and still provides people who have been serving the public for a long time the opportunity to be a part of the advanced technology?

I've heard that broadcasters and the phone companies are getting together. I think the phone companies are trying to give broadcasters a deal they can't refuse, with the idea of trying to get into programing. I have a problem with that. The potential for disruption is not hard to imagine. You can see what would happen: free sponsored programs direct into the home, bypass the stations and bypass the networks, bypass everything. What the hell do we do with that? That's on my mind, how do we have an orderly transition on this thing?

While protecting this idea of local service?

That's important. I'd like local to stick around.