
Federal Communications Commission

**Separate Statement of Commissioner
James H. Quello, Dissenting in part.**
**In re: Exclusive Jurisdiction With Respect to
Potential Violations of the Lowest Unit
Charge Requirements of Section 315(b) of the
Communications Act of 1934, as amended.**

By this Declaratory Ruling ("Ruling"), the Commission is taking the important step of reaffirming our exclusive jurisdiction to enforce violations of Section 315 of the Communications Act. To the extent it does so, the Ruling is fully supported by law and represents sound policy. I can support this aspect of the Ruling without reservation.

I think it is important to emphasize that this action does not represent a new assertion of FCC authority. Section 315 never has been considered to have created a private right of action separate from our administrative processes. *See, e.g., Belluso v. Turner Communications Corp.*, 633 F.2d 393, 397 (5th Cir. 1980). Until recently, no one had ever sought a judicial remedy for purported lowest unit charge violations. In the two decades since Section 315(b) was enacted, the Commission has provided the sole remedy.

So in many ways this Ruling merely recognizes the obvious. It certainly is no departure from the Commission's historic view of its jurisdiction and statutory responsibilities. This necessarily means that the Commission is not "taking away" any existing remedy.

Conspicuously absent from the Ruling is any discussion of the Commission's existing complaint procedures or any suggestion that they have been in some way inadequate. Perhaps the reason for this omission is the fact that the Commission did not request comment on the question of procedures, nor did it engage in much internal analysis on this point.¹

It has been suggested that the FCC is not obligated to provide parties an opportunity to comment on procedural issues. Whether or not this claim is true in this context, the Commission has been rather erratic in this proceeding in deciding when to solicit and when to forego public input. For example, there is no requirement that the Commission receive comments in order to promulgate a declaratory ruling, yet we chose to do so here. Also, in our

Notice of Proposed Rulemaking, the Commission solicited advice on procedures for implementing sponsorship ID and other requirements. In all of our current proceedings, the question of complaint procedures is the only significant subject on which we did not request comment. If, as some have suggested, our current proceedings "may be the most important determinations made since the enactment of the lowest unit charge standard," this omission is exceedingly strange.

At this point, the new procedural guidelines raise more questions than they answer. For example, the Ruling encourages the use of Alternative Dispute Resolution at a time when the Commission's policy on such procedures is essentially conceptual. There is no discussion of how discovery will be limited to relevant documents or how the Commission will enforce such limits. Moreover, although the Ruling expresses concern with the potential administrative burden created by complaints, it establishes a new multi-stage procedure that includes a complaint, discovery, an amended complaint and several levels of Commission decisions including the possibility of hearings.

I dissent from the hastily made decision to adopt procedures because we do not yet know whether the new guidelines will help or make matters worse. Will the new procedures allow candidates to make a prima facie case and obtain quick relief or will they delay matters? Will they encourage the filing of speculative complaints, thus requiring the extension of our abuse of process rules? Will the number of complaints diminish now that the Commission is clarifying the political rules or will the volume of complaints under the new procedures create an administrative nightmare? We simply do not know. And, unfortunately, there was insufficient interest at the Commission in taking the time to find out.

I would have preferred to adopt the Declaratory Ruling on preemption and at the same time, issue a Further Notice to explore these issues. I believe that candidates, broadcasters and other interested parties would have welcomed the opportunity to comment on the issue of procedures.

Ironically, the internal pressure to adopt procedures intensified at the very time that the Commission is clearing up the confusion that prompted this Declaratory Ruling. Along with

this Ruling and the *Report and Order*, the Commission is releasing a number of enforcement actions arising from the 1990 political broadcasting audit. Contrary to the exaggerated claims that 80 percent of television and 50 percent of radio stations overcharged candidates, the Bureau is assessing fines for overcharging in only two cases — about 7 percent of the stations audited. All together, the Bureau is issuing Notices of Apparent Liability to five of the thirty stations we examined, two for lowest unit charge violations and three for political file violations. In short, the level of rule violations by broadcasters is far below what some suggested in the wake of the audit. For this reason I wonder whether the rush to adopt new procedures may be premature.

We are doing the right thing by making clear that the Commission has exclusive jurisdiction to determine both liability and damages in complaints that implicate Section 315(b). Although I would not have taken the additional step of adopting procedures just yet, I am hopeful that they can be administered efficiently, and in a way that is fair to all concerned.

¹To put the issue into some perspective, the Commission adopted the Notice of Proposed Rulemaking on our political broadcasting policies last June. The Commission began examining the issue of jurisdiction in July and released the Notice of Intent to Issue a Declaratory Ruling in October. By sharp contrast, a draft order proposing new procedures was circulated less than a week ago at a time when other pressing matters were under consideration.

Sovl

"Pulse of Radio" publication

PULSE OF RADIO INTERVIEW

Interviewed
conducted by phony
1 PM Dec 20. JH

LMA Related:

- What about the stations NOT asked to participate in an LMA. Let's say you're in a three-station market. Two go LMA together making them both more powerful. It could force that station out of business. Or, suppose there are two country stations in a market. One of the country stations pairs up with a CHR for combined demographic strength. This combo forces more business on the country/CHR combo, thus forcing the other country station out of business.

RESPONSE: Your questions imply that LMA's can disadvantage certain stations in certain markets and that can happen. However, there are a number of possible marketing scenarios involving cross-promotions with non-broadcast businesses as well as joint marketing arrangements between broadcasting stations that create certain advantages for those participating that result in disadvantages for those who are not. The fact that a station decides to select one format over another or hire talent that is denied to another station in the market creates advantages and disadvantages, but that's a part of the



competitive marketplace.

- The FCC has been conducting on-scene inspections of LMAs. Does this mean the commission will crack down on LMAs? Does Chairman Sikes' recent remark in answer to Congressman Dingell mean the FCC will maintain its present hands-off policies on LMAs?

RESPONSE: If the Commission concludes that some aspects of LMAs involve anti-competitive practices, I assume that we will take some action. I assume the inspections are for fact-finding purposes and I don't think you can draw any conclusions from them until we have had an opportunity to analyze the facts. As for Chairman Sikes' comments to Chairman Dingell, I think the FCC Chairman should interpret his own remarks.

- What long-term effect will the LMA have on the Radio business overall?

RESPONSE: To the extent LMAs attract more advertising dollars to radio from other media, they should have a beneficial effect. Of course, if LMAs create unfair advantage for some stations against others in the market, the effect would be negative. I don't think we know all of the answers yet.

AM'S FUTURE

- How is this expanded band going to work to clean up the AM interference mess and maybe give some AMs a new lease on life?

RESPONSE: I hope that the expanded band can promote cooperative efforts among broadcasters to significantly reduce interference. I believe that cleaning up the technical quality of the signal through negotiation and by moving interfering stations to the expanded band will greatly improve the AM service. That's not the total answer to AMs' problems, of course. There need to be better receivers out there as well.

- Won't the tightened up AM interference standards prohibit AMs from upgrading?

RESPONSE: Some AM upgrades will be limited by the new standards. If the interference situation is to be improved, some limitations are necessary.

ALIEN OWNERSHIP/INVESTMENT:

- With the EC occurring this year, how do you feel about alien ownership of U.S. properties? (i.e.: 49% control, 99% ownership of non-voting stock, etc.)

RESPONSE: I think its time we took a new look at the question of

foreign ownership. I don't know that the same concerns that were present when the restrictions were enacted are still present. My interest in removing foreign ownership restrictions will be influenced greatly by what other nations are willing to do with respect to ownership of their properties by U.S. concerns.

- Where does the Commission stand on purely financial investments made by aliens, as opposed to ownership?

RESPONSE: I believe that passive foreign capital investments in U.S. telecommunications companies can be beneficial and can improve the financial health of these companies. However, it should be permitted only to the extent that foreign nations permit similar investment by U.S. companies and individuals.

- Are there dangers of allowing foreign ownership?

RESPONSE: There can be dangers and I don't believe that unlimited foreign ownership should be permitted. Any changes in present restrictions would have to be carefully thought out.

BACKLOG PROBLEMS

- When will the FCC get cleaned up on the spate of contested renewals - dating back to 1988 for some Florida stations? Are you aware of how many stations are in limbo because their radio

renewals have not be acted on?

RESPONSE: Many of these delays resulted from the Commission's reworking of the EEO guidelines in 1987. Many stations faced some confusion as a result of our actions and this confusion is being sorted out now in the administrative process. EEO complaints--along with all other complaints--must be sorted out before renewals can be granted and this process is underway. It's expected that this will be a one-time problem and that once we have all adjusted to the guidelines, licensees will know what is required of them.

EEO

- Is there any sign that the radio industry can get some relief from the constant pressure to get numbers when Congress just passed an act declaring that quotas are NOT the law of the land?

RESPONSE: Several years ago, the Commission rejected the notion that numbers, in and of themselves, were not the most important criteria in determining EEO compliance. We began to focus, instead, on the efforts made by each broadcaster to reach out and attract minority employees. I believe we have made some mistakes in implementing this policy that have led to fines and other actions which were not justified.

- What's being done about these groups which create mass filings at renewal time, just (so it appears) to extort monies to go away?

RESPONSE: The Commission's rule now prohibit settlements in these contested cases to go beyond reasonable and prudent expenses and that was designed to reduce nuisance complaints. However, we must continue to provide opportunities for legitimate complaints and there will be some abuse.

BANKS/SECURITY HOLDERS

- Will the FCC let the banks and other debt holders gain a security interest in the FCC license itself? A recent Wall Street Journal (12/13/91) says a Baltimore court would allow this, while others have precluded it.

RESPONSE: We have before us a petition for declaratory ruling on that subject and have not responded as yet. However, it seems likely that we will provide some opportunity for public comment before we resolve this question, either in a Notice of Inquiry or a Notice of Proposed Rulemaking.

LOOKING BACK

- Are there any actions taken by the Commission which you look back and say, "I wish we hadn't done that?"

RESPONSE: Over the 18 years I have been here, there have been several Commission actions that, upon reflection, might have been unwarranted. One of the actions affecting radio which comes to mind is the so-called 80-90 decision which has not had a good result for the most part. Certainly, in the present economic climate, it's hard to make a case for increasing the number of radio stations. *also FCC should have set a standard for AM stereo.*

Financial Interest syndication vote continued obstructive, outdated regulation of TV networks. Chairman Sikes and I dissented. I expect court to remand decision to FCC.

PULSE FAX

RECEIVED

Date: December 16, 1991 Time: DEC 16 3 52 PM '91

To: James Quello, Commissioner JAMES H. QUELLO

Company: Federal Communications Commission

Fax Number: (202) 632-5173

From: Elaine Schmidt, Managing Editor

Message: Here are the questions we've prepared for the interview scheduled for our January 20, 1992 issue of "The Pulse of Radio" magazine. I'd like to ~~conduct~~ ^{schedule} the interview before the Christmas break. Please call me as soon as possible. If I don't hear from you by Wednesday, December 18th, I'll call you.

Thank you.

The interview will take about 20 minutes over the phone. Eric Rhoads the publisher and owner of "The Pulse" will conduct the interview.

We will need black and white photos for the inside and a color "mug" shot for the cover. Call with any questions. - Elaine Schmidt

Number of pages to follow this sheet 1

Thank You!!!

The Pulse of Radio
1501 Corporate Drive, Suite 220
Boynton Beach, FL, 33426
(407) 736-4416 FAX: (407) 736-6134

Questions For James Quello, Commissioner, FCC

+ LMA Related:

- What about the stations NOT asked to participate in an LMA. Let's say you're in a three-station market. Two go LMA together making them both more powerful. It could force that station out of business. Or suppose there are two country stations in a market. One of the country stations pairs up with a CHR for combined demographic strength. This combo forces more business on the country/chr combo, thus forcing the other country station out of business.
- The FCC has been conducting on-scene inspections of LMAs. Does this mean the commission will crack down on LMAs? Does Chairman Sikes' recent remark in answer to Congressman Dingell mean the FCC will maintain its present hands-off policies on LMAs?
- What long-term effect will the LMA have on the Radio business overall?

+ AM's FUTURE:

- How is this expanded band going to work to clean up the AM interference mess and maybe give some AMs a new lease on life?
- Won't the tightened up AM interference standards prohibit AMs from upgrading?

+ Alien Ownership/Investment:

- With the EC occurring this year, how do you feel about alien ownership of US properties? (ie: 49% control, 99% ownership of non-voting stock, etc.)
- Where does the commission stand on purely financial investments made by aliens, as opposed to ownership?
- Are there dangers of allowing foreign ownership?

+ Backlog problems:

- When will the FCC get cleaned up on the spate of contested renewals - dating back to 1988 for some Florida stations? Are you aware of how many stations are in limbo because their radio renewals have not been acted on? *Reworked guidelines in 1987 -*

+ FCC Resulted in some confusion

- Is there any sign that the radio industry can get some relief from the constant pressure to get numbers when Congress just passed an act declaring that quotas are NOT the law of the land?
- What's being done about these groups which create mass filings at renewal time - just (so it appears) to extort monies to go away? *Reasonable & prudent - explain -*

+ Banks/Security Holders:

- Will the FCC let the banks and other debt holders gain a security interest in the FCC license itself? A recent *Wall Street Journal* (12/13/91) says a Baltimore company would allow this, while others have procluded it? *WPRM a MOI - But a Dec Ruling file*

+ Looking Back...

- Are there any actions taken by the commission which you look back and say "I wish we hadn't done that?"

PULSE FAX

Date: MONDAY, JAN. 6 '92 Time: 11:10 a.m.

To: JAMES QUELLO, COMMISSIONER

Company: FCC

Fax Number: (202) 632-5173

From: Elaine Schmidt, Managing Editor

Message: Please review and make corrections. DO NOT RETYPE. We can discuss ^{changes} over the phone.

I will need it faxed back to me by Wednesday ^(Jan. 8) morning. Thanks for being so helpful.

Elaine Schmidt

P.S. It's a great interview.

Number of pages to follow this sheet 8

Thank You!!!

The Pulse of Radio

1501 Corporate Drive, Suite 220

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(407) 736-4416

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James H. Quello, a veteran Detroit broadcast executive, and the current "Dean" of the FCC, was initially sworn in as a member of the Federal Communications Commission in April 1974. He has been reappointed four times.

Quello was born in Laurium, Michigan, in 1914 and holds a B. A. Degree from Michigan State University from which he graduated in 1935.

Quello served during World War II, achieving the rank of Lieutenant Colonel. He was decorated with seven campaign stars, the Bronze Star with cluster and the Croix de Guerre.

Quello joined the staff of WJR, Detroit, in 1947 as promotion manager and subsequently served as program and public affairs manager and operations manager. In 1960 he was appointed vice president and general manager.

In late 1964, when the station was acquired by Capital Cities Broadcasting Corporation, Quello became station manager of the corporation's WJR Division. From 1969 until he became an active consultant in late 1974, he was also a Capital Cities vice president.

Quello has long been active in civic affairs and has received many awards over the years.

The Quellos reside in Alexandria, Virginia.

PULSE: You come from a broadcast background. How important is it to have a broadcaster on the Commission?

QUELLO: It's very important to have someone with some kind of broadcast experience who understands what the bottom line effect will be of regulations. We tend to have academic or legalistic interpretations all the time because some of them just don't fit well with the bottom line. I've felt very useful here. I've been reappointed now for the fourth time. I've never forgotten where I came from. I can see what effect this is going to have on the industry way before the others, and I can pass that along. This is self-serving, but actually, it might be someone who was in my position where he could say, 'I'm not going back to broadcasting. I understand the strengths. I understand the weaknesses. I come from a background of a very public service-oriented station. I think I have something to offer the Commission.'

PULSE: What can broadcasters do to keep the FCC informed of their problems and make sure they have an excellent forum in order to be heard?

QUELLO: One thing more of you should do is if we have a Notice of Inquiry or if we have a Notice of Proposed Rulings, be sure to

← Clarify

file your comments because we always learn something new from some people on how the rule is going to effect them. It has quite a bearing on the outcome. The other thing is if there is something that is really (????) like Bill Burton I said write a

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letter. When you write a letter, that means that you're separating rhetoric from fact - you're going to be very factual. It gives me a basis on whether we can do something about it or not. Comment on FCC inquiries, comment on FCC Notice of Proposed Rulemaking. You could send letters to Commissioners you may know, or send a letter to the Chairman with copies to other

→ clarify

Commissioners.

PULSE: Do they get read?

QUELLO: Oh, yes.

PULSE: What do you think are the primary issues that are going to affect Radio in the next five years?

QUELLO: The most dramatic possibility is digital audio broadcasting - DAB. That's going to transform AM Radio completely. It's going to make it comparable to FM. The FCC has to do everything within its power to promote the prompt introduction of digital audio broadcasting. It's relatively interference-free. It's a superior sound. It's the sound of the future. DAB is by far the most dramatic possibility that's been around the FCC recently.

PULSE: In your opinion, what effect are the LMAs going to have on the industry, and how far do you think we're going to be able to carry that?

QUELLO: Whoever owns an LMA is still a licensee, so he has to be completely responsible for that station. He has to be responsible for the programming and responsible for all the FCC rules. He cannot abrogate licensee responsibility. We have a market of - let's face it - thirty-six to one hundred four television channels and all the competition. We have a different outlook than we had before. LMAs may be the salvation of some stations that have the possibility of going broke.

PULSE: In a situation where LMAs are definitely a positive in terms of the survival of the industry, there also may be a negative. Let's say there are some stations in a marketplace that are not asked to participate in an LMA. Suppose you're in a five-station market, and two of the major stations go LMA together making them more powerful - it could possibly force one of the stations out of business. Or, you could pair a Country format with a CHR format making the two of them more powerful with a

combo sell, maybe forcing a third Country station out of business. How do you feel about that?

QUELLO: You're always going to have a problem with anything you do. However, there are other advantages that some stations have. Some stations will have agreements with a local newspaper to exchange ads, or they will have marketing promotions with grocery stores. There's always one getting ahead of the other. This is kind of a marketplace problem, and it should be settled by the marketplace. But, if this is generally the case, then I think we ought to go very slowly on what LMAs we approve. It ought to be done on a case-by-case basis, not just a general rule allowing everybody in. We should look at every case and decide for ourselves: is this good and to what extent does it harm others. Remember that even a dominant station will say, 'If they join up together, we're going to get hurt.' Well, you may have to take that chance. Everyone wants the regulatory advantage. They all fight for regulatory advantages. If someone is going bankrupt, and they have a chance through LMA to survive, that should be fairly important here.

PULSE: If they're going bankrupt and are on the verge of going under, and they go to another local station and say, 'Let's do an LMA together,' that time between survival and non-survival may be a very short period of time. Is there time to get an FCC approval in a case like that?

QUELLO: What they should do is mention this and ask for expedited review. It's hard to do because we have way too much work for the staff we have. Sometimes, it's hard to even get an original application in on a reasonable time. They have to say what the situation is and they need to have prompt action or this thing won't take place. And then they'll have to take their chances. That's kind of our (marketplace) problem too, if you wait so long to do this that you're going to go broke, then you either wait or go broke. We'll handle it as fast as we can, but there are a lot of priorities here at the Commission.

PULSE: The FCC has recently been conducting on-site, unseen inspection of LMAs. Does this mean that the Commission will be cracking down on LMAs?

QUELLO: The idea is it's not so much "cracking down on" but fact-finding. How does it actually work? These questions you've asked me will be answered by some people saying, 'This LMA is all right, but the other stations are being adversely affected to the point where one of them might have to go bankrupt.' Of course, you know that the Chairman of the Communications Committee [John, D-Mich] Dingell, the Subcommittee Chairman [Edward, D Mass] Markey, will

→ clarify

say they expect the FCC to do it on a case-by-case basis and have a hands-on policy on LMAs. They don't want it to just run rampant. We've done that. We've said you have to maintain control of your programming, you have to maintain control of your station. The idea of going out isn't so much a raid but let's see how it actually works in the marketplace.

PULSE: What long-term effect do you think it's going to have on the industry?

QUELLO: If the LMAs attract more advertising dollars to Radio from other media, it should have a beneficial effect. If the LMAs create unfair advantage for some stations against the others in the market, the effect might be negative. I don't think we know all the answers yet, but if you can by (???) your station get more advertising from other media, it would be very good. → ???

PULSE: You mentioned earlier that you guys had a lot of work on your plate. Tell me about the backlog problems. Help the broadcasters understand what you have to go through.

QUELLO: It's almost a separate chapter on all the details. But suddenly, each year we have to do more and more. Congress wants you to submit tighter budgets. So, you're going to have a backlog in some applications, and more in cases that don't involve broadcasting. We have a lot of spectrum allocations, frequency allocations here. A lot of those are dragged out. Occasionally, you'll have a broadcast that will last way to long - for what I'm accustomed to in business. → clarify

In business, you make your decisions, you move fast. Sometimes you have more than you can do, and you allot priorities. You're going to have some backlogs.

PULSE: When is the FCC going to get cleaned up on the contested renewals dating back to '88 for some of the Florida stations? It seems like there are a number of them that just haven't been solved that just seem to be sitting.

QUELLO: Do they have challenges of renewal?

PULSE: Yes. Some of them do.

QUELLO: The problem is that once it gets adjudicatory, we have to keep arms' length and we can't discuss it, although I'll be glad to check and see where it is and how long it's been.

PULSE: In regards to that, with a lot of the contested licenses it seems as though there are a number of groups creating mass filings against Radio stations at renewal time. It appears - although it may not be in many cases - that some of them are just for the intention of extorting money.

Is there anything being done about this? Are these groups that are contesting all these licenses being investigated?

QUELLO: They should have been investigated. We're aware of this. Last Spring, the FCC took some very important steps to eliminate this. My comment was that this should have happened years ago. If a group challenges a station, there can be no settlement except bare legal expenses. There's no outside settlement. In applying for the station - if it's a new allotment - they have to show a financial capability or qualification, and they have to agree to run the station for a year. This is going to eliminate some of the people who only want to get a license and then pedal around. At one time, there were huge settlements. Now, the settlements are limited to legal expense only. Nobody can get paid off two or three hundred thousand or fifty thousand for going after somebody. I think it's going to help a lot. I hope so.

→ clarify

PULSE: Is there any sign that the Radio industry can get some relief from the constant pressure to get the numbers when Congress just passed an act declaring that quotas are not the law of the land. In some cases it makes a lot of sense, but in some cases it's very difficult to achieve.

QUELLO: It is difficult to achieve. Sometimes we've been almost heavy-handed. One time you had to be close to parity. Now, with the new FCC regulation, we also want to know what you've done in the last three years to recruit minorities. In some ways, the FCC is going way above the EEO requirements of other companies and probably beyond the ??? policy. That's never been decided. The only advice I have for broadcasters until there is a change: be careful to comply with the EEO rules and have a three-year program of recruiting where you've advertised and all that. Some places, sometimes you simply can't get qualified people. This is one area that no one wants to tackle. It's a Civil Rights' type of thing. NAB hasn't come out very strongly. They haven't come and issued a complaint. And, maybe if we're carrying it too far, they should have some kind of request here that we review our policies because I see some stations getting huge fines. A lot of Radio stations can't stand ten thousand dollar fines. I'd like to see some more reason applied to it.

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PULSE: Speaking of fines, there was a recent decision which came down which mildly slapped the hands of KROQ in Los Angeles for an on-air hoax. There seems to be a lot more of that type of activity going on lately. Are you noticing an increase, and what are your feelings about these hoaxes?

QUELLO: If they have disclaimers before and after, and it's obviously a hoax, it's one thing. If they get a police department involved where there's a negative effect on the public, we have this broad mandate of complying with public interest, we could fine the station or issue a cease and desist order. We're going to handle each one on those on individual cases. But the idea that we did that [fined KROQ] is because after we investigated it, apparently they had a lot of disclaimers, they had a lot of reason for people to think it was a hoax rather than a reality. We will continue to review this area very carefully.

PULSE: There's a lot of confusion on the part of broadcasters in terms of what's acceptable and what's unacceptable in terms of on-air shock jocks and so on. Is there a standard? Can you give us a direction on that?

QUELLO: There are definitions of indecency and obscenity. The stations should comply with that. We look at complaints from people. If people want to complain on a station, they have to send us a tape and a letter. We listen to the tape and decide whether this violates our indecency or obscenity laws. We have had fines. In one case I was kind of surprised - I think we fined Howard Stern six thousand dollars. He turned around and - now that he's a controversial character with more publicity - raised his rates twenty-five percent. If it's a repeated pattern, remember it isn't the disc jockey or the personality who's going to be charged, it's the licensee. That licensee cannot abrogate licensee responsibility. If there's a pattern of obscenity or indecency, he could even be hauled up for a hearing revocation.

PULSE: Would the FCC ever get to the point where they would demand somebody like Howard Stern be pulled off the air?


QUELLO: That's a violation of First Amendment rights. We would fine him, and if there's a violation, the stations that are carrying Stern along with being fined could be designated for a hearing. We can't individually say you've got to get off the air. We have enforcement authority here, but not a direct policing. It's always a delicate area. How far do you go? How much do First Amendment rights get you? I say First Amendment rights were not granted for repulsive, obscene or indecent purposes. But, there's a delicate area there. We're watching it. I think we've had about a half a dozen fines here recently. If there was a pattern of it, we might have to take the next step. We haven't done it yet.

PULSE: The broadcasting industry, especially Radio, has gotten itself into a lot of deep financial problems as a

result of overextending themselves, paying too much money for properties. Now the banks are wanting to come back on them. Will the FCC let the banks and other debt holders gain a security interest in the FCC license itself? There was a recent *Wall Street Journal* report that said a Baltimore court had allowed this, yet others had precluded it. Can you give us a feel for what direction the Commission's going to go?

QUELLO: I think that Baltimore decision was a surprise to everyone. It allows it. It's a matter of legal interpretation. The license is only leased according to Congress. You do not have the title to that license. The title is granted to you on the basis that you serve the public interest, and the license belongs to the public. It does not belong to the station. It does not belong to the station owners. It's a public property, and Congress will so state. I think this court opinion will be reviewed. I can see where a district court might say, 'Why not? They're in trouble. That license is worth something.' But all that a licensee can sell is the physical property and the good will he's built, but the license belongs to the American people and to the government. We'll see how many courts jump on this thing and whether the court decision is sustained, and if the court decision is sustained, will Congress take action?

PULSE: Talk to me about AM's future. How is the expanded band going to work to clean up the AM interference mess and maybe give some AMs a new lease on life.

QUELLO: The biggest thing to give AMs a new lease on life will be DAB. The expanded band is an effort. We say we mean well. We will give people a frequency on an expanded band if by putting him in the band he eliminates a lot of interference. There's way too much interference in the AM band. In the interest of government demands for diversity and competition, we just allotted too many stations. We granted way to many. It's been of particular ??? because initially, many years ago, I said we don't need 80-90 out  there. We don't need more Radio stations. What we need are more stations that are economically viable enough to form a good service. So, I've never been for this overpopulation of Radio. Sometimes, I've been a low voice here. But, expanded band is quite a ways a way. When you think of it - the Radio today - you've got millions of Radios without the expanded band. I imagine the first big inroad would be if you could get General Motors and Ford and all the Japanese cars to put in a 1605 to 1705 band in the car. That would be a start. Then after that start, it would take time - it takes another five, six, seven years for those cars to circulate on the second-hand market, on the

used car market. How many people are going to turn in their Radio so they can get 1605 to 1705 when there are so many other signals available somewhere else? So, that's a very slow process. Meanwhile, we're going to try hard.

PULSE: Especially if DAB comes into play. That's going to change the picture dramatically.

QUELLO: I'm by myself in this thinking. I think DAB is going to render 1605-1705 relatively not so important.

PULSE: Looking back, are there any actions taken by the Commission which you look back and say, 'I wish we hadn't done that?'

QUELLO: Frankly, I'm only one vote here. But, if anything, mine is the 80-90 decision, which didn't have such a good result overall. I mean we just flooded the market with more stations. It's hard to take a huge increase in the number of stations in any kind of economic climate, but particularly this one. Also, the FCC should have set a standard for AM stereo. And, we didn't. We said, 'Let the marketplace decide.' So, the Radio broadcasters said, 'What should we do?' I said, 'I tell you what I would do if I were a broadcaster. I'd wait and see which stereo set is installed in General Motors in cars, and if it's one set I would go with that. And that's what practically did happen. I guess the Motorola ??? system was installed in General Motors and other cars and that's become the standard. But, it's a poor way of doing it. We should have stayed with the initial standard that we had. Granting too many stations in the many of diversity and competition and not setting an AM standard were two big Radio mistakes.

PULSE: Are there any things you'd like to say to Radio broadcasters?

QUELLO: There will always be a need for Radio because Radio's mobility is going to be its salvation. Wherever you go, there's Radio. That's a slogan we started in Detroit in 1950, when television started to come on. It's still true. There are so many uses of Radio. It's going to be a good business for the future, too, because of its mobility and its immediacy. You don't have to wait for a picture. You can report any kind of weather condition, road condition immediately. I do think some stations are going to fall by the wayside. We might be overpopulated with Radio. All you can do is provide a good local service with a lot of local civic interest and become the station that people identify with in your community. That's the way I used to operate, and it worked real well for me.