Luncheon Keynote Remarks

by

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Regarding The Cable Television Consumer Protection and Competition Act of 1992: What Does It Mean?

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I am delighted to be with you today to give my first official speech since being appointed interim Chairman two weeks ago. And, although I am new to this particular job, I know mine is not a new face to most of you, and I have no delusions that it's a young face. But it is an appreciative face and I hope the AARP will remember that President Clinton appointed a citizen in his golden years - make that his platinum years - to a prestigious post. With the strong support of the communications leadership in Congress I will do my best to assure that our actions will represent the best interests of the public.

Naturally, our immediate goal is to maintain a steady, stable course deciding the regular FCC stream of issues and problems until a permanent chairman is selected and confirmed.

In this regard, unconfirmed rumors abounded in Washington last month that Phil Verveer, an expert panelist in today's forum was a leading candidate for FCC Chairman. The rumors have since subsided. Phil once served as an exceptionally knowledgeable Chief of the FCC Common Carrier Bureau -- So, I know Phil Verveer, I worked with Phil Verveer and, needless to say, I'm no Phil Verveer. But if he had accepted an FCC position, it would have been the very first time I would have questioned his judgment or I might have decided that here is a martyr lawyer who decided he has only one economic life to give to his country.

The public service urge would have to be overwhelming and his family most tolerant for a leading communications attorney to take a massive pay cut and take on a contentious complex job-- and then comply with the new ethics guidelines that he couldn't apply his legal communications expertise before the FCC for five years! I applaud the new ethics guidelines as well intended, but I hope it doesn't discourage relatively young legal communications experts from seeking FCC appointments. The FCC is still predominantly a legal ball game -- our actions are subject to court appeal or review. I believe two and probably three commissioners should be communications attorneys.

I am looking forward to future appointments so we will have a full complement of commissioners to help determine the challenging, complex multi-channel, multi-faceted future of telecommunications in America.

In the meantime we are destined to be an active, not a caretaker, Commission because we must comply with the Congressional deadlines of the 1992 Cable Act. The staff has the formidable task of developing the upcoming Reports and Orders for Commission review and approval. The understaffed Mass Media Bureau has the primary responsibility for this, but it is too big a job for any one Bureau. Other Bureaus and Offices, from the Common Carrier Bureau and the Office of Engineering and Technology, to the Office of Plans and Policy and the Office of Legislative Affairs, also are contributing.

In adopting the various rules, the FCC must ensure the landmark Act is workable and fair to all concerned. The way we implement the Cable Act at our upcoming agenda meetings will have profound implications for the American consumer and for the cable broadcasting, telephone, and satellite industries.

Our proposed schedule for the upcoming FCC meetings will include Reports and Orders on vital cable and TV issues that will affect the benefits Americans are able to derive from multi-channel TV and cable services. Currently, we are planning to consider the rulemaking proceedings as follows.

At the March Agenda Meeting, we propose to adopt rules governing:

Must Carry/Retransmission Consent Report and Order

Buy-through Report and Order

Customer Service Report and Order

April Agenda Meeting

Rate regulation Report and Order

Programming Access Report and Order

PEG Channel Indecency Report and Order

May Agenda Meeting

Ownership Report and Order on Anti-Trafficking and MMDS/SMATV

Cross-Ownership Restrictions/Further NPRM on Vertical and Horizontal Cable Restrictions

June Agenda Meeting

Sports Migration Interim Study

Home Shopping Stations Report and Order

Cable EEO Report and Order

Crafting workable reports and orders in all of these proceedings in time to meet Congressionally-imposed deadlines is an incredible challenge. In approaching this daunting task, I have found that complex commission issues can be eased by applying a basic formula of questions. I like to call it enlightened over-simplification.

If the issue requires implementation of a Congressional act the important first questions must be "What is the intent of Congress?"

The next all important question is "How is the public benefited?"

The next question should be "Are our proposed actions fair to the regulated industries? Does it provide opportunity for reasonable return on investment and, hopefully, for expansion and additional gainful employment?

Who supports it? Who opposes it? Why?

Cutting through hundreds of pages of comments, "What is the likely 'bottom line' effect?"

And, in the case of total implementation of the Cable Act, what will it take to effect a practicable, equitable solution?

Let's apply a combination of the question formula to the 1992 Cable Act.

No doubt, the prime intent of the legislation is to assure reasonable cable prices and improved service to the public. Add to this, retransmission consent, must-carry, program access, vertical and horizontal cable restrictions, anti buy-through restrictions, etc., and we have many questions with no perfect answers. For example, how do we calculate rate benchmarks? Are rates the same for large and small cable operators? The same for affluent areas as economically disadvantaged areas?

Apart from the rate issue, we must answer other difficult questions. To answer some of these difficult questions, we are just now receiving data from our survey of cable systems.

One of the more encouraging aspects of our entire cable regulatory process is the cooperation we've received in response to our cable rate survey. We sent out 752 surveys and received 708 responses -- that's a 94 percent return rate which is just fantastic. The cable industry is to be congratulated. After eliminating duplicated surveys, we are analyzing 695 responses which will give us information on about 1100 cable franchise areas. As soon as the database and documentation is ready--which should be in several days -- we are going to make the data available to anyone who wants to do their own analysis. This, I hope will improve the quality of the debate and, therefore, our decisionmaking.

A very quick count of the data indicate that, in addition to our random sample of all systems, we have identified 49 systems that face head-to-head competition as defined by the Cable Act. In addition, there are an additional 98 systems that meet one of the other two statutory definitions for competitive systems. Taken together, these responses should help us identify more clearly the impact of competition on cable rates and service and help us in meeting our statutory obligations.

I hope the responses we receive will help solve some troubling questions. How do we reconcile the potential conflict in regulations based on ADI measurements and others on mileage zones? For example, rights to must-carry or retransmission consent apply to stations based on the ADI to which they are assigned and not, as formerly, based on a 35 and 55 mileage zone surrounding each station. However, network nonduplication, syndicated exclusivity and territorial exclusivity rules still are based on the old mileage zone system. What rules must we craft to assure the new rules and existing exclusivity rules work rationally together? What system or service should have precedence?

How are we going to effect and enforce retransmission consent? Incidentally, many have asked me how I became a strong proponent of retransmission consent. (Explain. Ad lib: Cable with subscriber, advertising and pay per view sources of income is an eventual threat to universal free TV because it could outbid broadcasting for program and sports rights.)

Now back to a few more significant questions. Who is entitled to program access? How will it be enforced? The FCC is understaffed and must find the staff to issue the report and order, as well as enforce the requirements.

This is also a good time for Congress and the FCC to recall the wisdom of Thomas Jefferson's maxim that the "execution of laws is more important than their making." Once we implement the Act, we will need more personnel to effectively execute it. Lacking that, we will do the best we can with what we have.

Another question: How do we give broadcasters what they deserve for rights to their programs and still keep cable profitable and able to expand? Many cable loans are based on a formula of 6-1/2 times cash flow. If the Commission drives rates and cash flow down, could this put some cable companies in default and, thus, place more banks at risk?

I realize I'm asking more questions than I am answering, but at this stage of our deliberations it would be premature and presumptuous of me to provide answers. These are tough questions and we are still working on the answers. We depend on your help to arrive at practicable results.

In all my Commission cable-telco deliberations, I believe the overriding crucial public interest factor is the preservation and enhancement of free local television service to all the public. TV, the most influential and pervasive of all media, is essential to a well informed citizenry and electorate in a democracy. Stations licensed by the government must have guaranteed access to the public they are licensed to serve.

My commitment to universal free TV started back in 1974 when I was first confirmed as a commissioner. I promised Senator John Pastore, the Communications Subcommittee Chairman, that I would ensure that news, public affairs, political debate, major sporting events and entertainment would remain free to the American people. In my years on the Commission since then, I have endeavored to keep that promise. Chairman Dingell and Chairman Markey make sure that we don't forget. With the multi-channel advanced technology of today that commitment is more important than ever. Adherence to the all encompassing principle of universal free TV will have a profound effect on future legislation and regulation of cable, broadcast, telephone and satellite industries.

I have been asked my opinion of Southwestern Bell's trail-blazing $650 million purchase of two major Washington, DC area cable companies of Hauser Communications, which represented an attractive price of 10-1/2 times cash flow. Cable stocks, which may have been unduly depressed because of the upcoming FCC rate regulation, scored immediate gains. It will start a precedent-setting interesting competitive battle between two regional Bells. Southwestern Bell owns a cellular telephone franchise in the Washington area and probably will link it to a cable system.

This would be a competitive challenge to Bell Atlantic which provides normal wired telephone service. The future possibilities of cable-telco ownership are dazzling in an advanced digital world where telephone, TV sets and computers merge to become a mega-industry.

The transaction further emphasizes the rapidly converging worlds of the telephone and cable television business. It could trigger a rush of investments in cable companies by phone companies through outright purchases or joint ventures. It is a recognition that cable TV represents strong growth potential with technological advancements of video compression, intelligent converter boxes and fiber optics. Also, most phone lines cannot deliver full motion video or interactive services to the home.

The Southwestern Bell transaction could well be the catalyst for revisiting the content ownership restrictions of the 1984 Cable Act. For example, Southwestern Bell's cable network can own programming while Bell Atlantic serving the same locality would be prohibited from owning programming for its competing video dialtone services.

Perhaps, it is time for Congress, the Court and the FCC to free phone companies to fully compete with cable in their own areas with a stipulation that phone companies must compete with cable and cannot buy cable systems in their own area. This could start a competitive cable-telco marketplace giving consumers a choice which almost always results in lower rates. As I mentioned in a speech last fall, I can visualize a future with cable and phone companies as major multi-channel and phone competitors with Congress mandating free or favored access for stations licensed to serve the public interest. If this evolves, the FCC must also take steps to prevent phone companies from using telephone ratepayers to subsidize cable service. I disagree with those who claim TV station broadcasting has no future, particularly with the multi-channel future. It is important to remember that people watch TV programs, not delivery systems. And broadcasters have the most experience in developing and buying attractive TV programming to serve local tastes and needs.

Now back to the Cable Act. In summary, we must implement the Act to provide lower rates and better service for consumers, equity for broadcasters, program access for cable competitors and reasonable cash flow profits for cable systems. At the same time, institute anti-trafficking rules so that cable systems can't be traded as commodities, install practical anti-syphoning rules, etc. Can the FCC accomplish this? This is our formidable challenge for our upcoming agenda meetings implementation for all. It sounds like an almost impossible task -- but I believe this is the time to adopt the old slogan "The impossible we do immediately, but miracles take a little longer." It is too much to ask for the Second Coming to lead us out of the wilderness. But we can ask the good Lord for guidance, however, keep in mind the FCC must answer to a higher authority -- the oversight committee of the House and Senate.

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