Remarks by Chairman James H. Quello
Before the Washington Metropolitan Cable Club
Washington, DC - May 26, 1993

You have made me feel so welcome that I almost sent my food taster back to the office. But after all the cable rules we have adopted lately, I thought better of it. Thanks for hanging in there, Bob.... And best wishes for a speedy recovery.

Incidentally, I'm personally in the throes of a persistent flu bug with stomach ache, nausea -- the whole gamut. I didn't mention it to longtime friend, John Evans, because I was afraid he might recommend a doctor from our hometown who guarantees total relief from all pain and discomfort -- Dr. Kervorkian.

On February 5th, President Clinton asked if I wouldn't mind filling in as Chairman for a while and finish up a few things. I said, "Sure." Did I have a "Kick me" sign on my back, or what? Actually, the complex task of implementing the Cable Act has practically destroyed my "delusion of adequacy" on which I campaigned for past reappointment.

I appreciate your patience in sitting through a few jokes at a time when the cable industry does not feel like laughing. This is a time of great challenge for your business. The 1992 Cable Act is an intensely regulatory statute, and it directs you to modify virtually every aspect of your operations, from customer service, to signal carriage as well as to adjust to rate regulation.

As I am sure you are aware, life at the FCC under the Cable Act is no piece of cake, either. We face the greatest regulatory challenge in my two decades' experience -- and perhaps the greatest challenge in the Commission's history. This task was thrust upon us at a time of slashed budgets and staff reductions. Today, the Commission has approximately 1,745 full time employees -- 45 fewer than in 1992, and 216 fewer than we had when the deregulatory 1984 Cable Act was passed.

We are currently seeking a supplemental appropriation of $12 million for 1993 to fund 240 staff positions to help enforce the Act. We still do not know the fate of this request. I am hopeful that Congress will come through, but given the task before us, I am increasingly concerned that it may be too little and maybe never enough to handle the massive regulatory job.

In the meantime, we are setting up phantom cable branches in the Mass Media Bureau, and looking forward to the time when we can hire staff. I am beginning to think of this approach as "neutron bomb budgeting" -- the structures are all in place, there are just no people to put in them.

The 1992 Cable Act directed the Commission to conduct 20-odd rulemaking proceedings and inquiries in an extremely abbreviated period of time. Now, I am not trying to make excuses or pass the buck. We all know that Washington is a city in which people constantly seem to be seeking power while at the same time trying to avoid responsibility. In this case, the Commission did not seek this much authority -- although I admit lobbying for must carry and retransmission consent -- but we do have the responsibility for making the Act work. We are trying to implement the intent of Congress -- a job made more complicated by the varied Congressional intents we had to interpret.

While many in this audience will no doubt disagree, I think we have done a hell of a job. I have never been more proud of the FCC or of the work of its staff. You probably don't want to hear me say this, because many in the industry are angry about the Commission's rules. Of our rate regulations, Jim Mooney has been quoted as saying that the FCC took a national political problem and converted it to 10,000 local political problems.

I would only note that the rules followed the structure of the Act, which placed basic rate regulation in the hands of local franchising authorities -- just as the 1984 Act did. Similarly, the director of one of the state cable associations recently said of retransmission consent, "The day we start paying our competitors, our industry will be at an end." To this, I would simply point out that broadcasters have long felt the same way about paying for carriage or supplying their programming to a competitor -- for virtually free -- due to the compulsory license.

But I am not here to debate the relative merits of the Cable Act or retransmission consent. Believe me, I understand your anger and frustration over the Cable Act. But there is more than enough anger to go around. Some are angry at rules they consider to be too burdensome or complex. Some are angry that the industry did not accept earlier legislative proposals that would have been far less burdensome. Some are angry that the industry did not accept the earlier introduction of competition, or otherwise get its house in order and thus prevent the need for legislation.

On the other hand, there is anger that some in the industry appear to have attempted to "game" the process by engaging in preemptive rate increases, or by dropping local broadcast signals. And there is anger at what I take to be misquotes from industry leaders, suggesting that there could be a concerted effort to clog the Commission with pleadings and letters.

In fact, I was called by a reporter who claimed that cable, in the words of a prominent executive, was adopting a "scorched earth" policy against FCC enforcement. This was promptly disavowed by NCTA.

It elicited an initial response from me stating "If cable is seen as flaunting the intent of Congress while we are shorthanded here, that might not be the smartest move politically." I also said if we are hit by a planned avalanche of industry filings we may have to extend the rate freeze from 120 days to an indefinite period to give us time to sort through the petitions and letters. There is no planned extension of the rate freeze at this time.

However, I did warn that all industries -- cable, broadcasting, telephone, etc. should not consider themselves more important or more powerful than the government acting in the public interest.

That being said, I recognize a general sense of frustration caused perhaps by a sense of unreality that seems to have surrounded the Cable Act. Because cable legislation had been debated for several years, there was a high degree of doubt that a bill would be passed. Even when it did, many believed that President Bush's veto would be the end of the matter. But then Congress overwhelmingly overrode the veto. Still, there seemed to be a general belief that the Act would not go into effect -- the courts would strike down must carry, if not the entire Act, and the FCC would not be up to the task of writing the rules. Some even appeared to believe that -- like Rick and Captain Renault at the end of Casablanca -- the FCC and the industry would walk away from the Cable Act mandates; the beginning of a beautiful friendship.

As we know now, reality reasserted itself the first week in April, with the District Court upholding must carry rules and the Commission adopting rate and program access regulations. The rules are the reality, and we must find a way to confront their challenge without being confrontational.

Believe it or not, we are in this thing together. The 1992 Cable Act imposes obligations on both the Commission and the cable industry. Our job is to adopt rules that the industry can live with, and yours is to find a way to live with them. Neither of us really has an option. But the only way we can meet our respective obligations is to work together cooperatively. I was accurately quoted in trade publications that the FCC was not in the business of putting investors out of business.

What does it mean for us to work together?

Well, for starters, the Commission must try to be as clear as we can in our orders and to answer questions as they arise. There is no doubt that the rules are complex -- particularly those governing rates. Recognizing that, we are trying to do as much as we can to bring clarity -- if not simplicity -- to the new regulations.

In response to this need, the Commission issued executive summaries describing the rules, both on the April 1 date of adoption, and with the text of the Report and Order on May 3.

We also issued Public Notices answering questions about the rules on May 7 and May 13. The May 7 Public Notice addressed the basic procedures for rate regulation, while the May 13 Notice answered the most commonly asked questions, which the staff solicited from the industry and the communications bar. In addition, staff members have appeared at industry forums to help explain the rules, and have been available by telephone to deal with questions or concerns as they arise.

Dealing with the numerous questions places a strain on our limited resources, and diverts attention from other business of the Commission. But I believe we have an obligation to provide as much explanation as possible. Accordingly, I have decided that we should continue the process of issuing periodic Public Notices to answer written questions submitted to the Commission. Using this form will allow the Commission staff to give full consideration to your questions, and to provide more comprehensive answers. To do so, however, we need to work with the industry to focus on your most pressing questions.

A second way we can help is to more formally clarify the rules and make minor adjustments when necessary. In this regard, we need your help to determine when we need to fine-tune the rules to try to avoid needless disruption and unintended consequences. We already have made adjustments in response to legitimate concerns, and we are prepared to do so as needed to help smooth the transition to regulation.

For example, after the April 1 Rate Freeze Order was released, Daniels Cablevision and Time Warner sought a stay of the freeze and pointed out a number of practical problems. We found, in particular, that "Time Warner's claim that the freeze will lead to anomalous results warrant[ed] clarification of the Freeze Order." Consequently, the Commission clarified what it meant for rates to be "in effect" during the freeze to conform to industry practices and billing cycles; we found that the freeze would not preclude rate adjustments resulting from on-going system upgrades; and we clarified that increases in subscriber bills resulting from customers' choices to buy more expensive services were not covered by the Order.

More recently, NCTA sought a limited stay of the effective date of rate regulation, arguing that it was inconsistent with the terms of the rate freeze. The Commission responded in an Order preempting local notice requirements that could hinder operators' ability to readjust to the new rules, and clarifying that rates considered to be "in effect" would be allowed as of the effective date. Further questions on this point have been raised, by Continental Cablevision, for example, and I expect the Commission to make further clarifications very soon.

Of course the Commission cannot grant every industry request for relief from the Cable Act's requirements. Nor can we formally act on matters that are definitively explained in our Orders. But we have a public interest duty to take your legitimate questions and concerns seriously and to act on them expeditiously. The industry, on the other hand, must let us know where there are problems we can fix, and to do so without overreacting. It is a delicate balance, that requires good faith on both sides.

For more fundamental changes, there is the avenue of reconsideration. I have heard informally about a number of reconsideration requests that we expect to receive, and I hesitate to encourage wholesale filings. I can tell you now not to expect the Commission completely, or even substantially to rewrite the rules. But there is room for some revision within the constraints of the Cable Act and the benchmark approach of the rules, and I encourage the industry to make reasonable suggestions on how we could do so. In this regard I define a "reasonable suggestion" not by the vehemence of your criticism of what we have done, but by the logic of your recommendations for what we should do.

In particular, I doubt that any of us are completely satisfied that we have done all that we can do to relieve small cable systems of unnecessary regulatory burdens. We welcome your analysis of what more we could do in this regard. Let me again stress that the suggestions must be realistic and must be compatible with the overall requirements of the Act. But otherwise we are open to your advice. This process will work only if we all participate fully.

In addition to Commission processes, I encourage you to seek legitimate legal remedies in court. I say this not because I believe the Act or our rules will be overturned. Quite to the contrary, I am confident that we will be sustained, as demonstrated by the recent experience in District Court with the must carry rules. I make this point to underscore that we are governed by the rule of law, and it is important for all parties to have their day in court.

From my perspective, the concept of must carry finally had a fair hearing. I do not believe that the rules had ever been fully defended before. Certainly the Supreme Court will have the final word, but I am satisfied that the rules are finally having their day in court. I want you to know, however, that I have no problem with the industry seeking legitimate court review of must carry, or any other rules. I do not see it as an affront to the Commission-- it is merely a function of how our process works.

I cannot say the same, however, if it appears that multiple appeals are taken -- either to the FCC or to the courts -- as simply a tactical ploy to inundate the process. Such a strategy would force a Commission response, if not a Congressional one.

I hope it does not come to that, for it would mean that the industry and the Commission both would lose. Much more can be accomplished through cooperation, and I look forward to working with the cable industry to make the best of our respective situations.

Despite the pessimism gripping many in the industry, I am convinced that talented cable executives will be able to devise creative solutions that could benefit everyone. There are signs that this is happening already.

Cable operators and broadcasters currently are embroiled in negotiations over retransmission consent. Typical of any negotiation, there has been tough talk on both sides. Some broadcasters have stated publicly the size of payments they expect, while major MSOs have announced their firm intention to make no cash payments. Many lines have been drawn in the sand by parties who have much to gain from working together -- and much to lose if they do not. Personally, I have urged broadcasters, both publicly and privately, to be reasonable in their demands, particularly in light of the many regulatory changes taking place.

During this period of posturing, there are some signs that the stalemate can be broken and that both sides can benefit. The announcement in the past two weeks that TCI and Fox plan to establish a new cable network is very encouraging. If the deal goes forward as planned, it would create a new outlet for Fox programming and a new revenue stream -- revenues that would be shared with the broadcast affiliates. TCI, for its part, can say that it kept its pledge not to pay for retransmission consent. In the end, all may benefit -- the cable operator, the broadcasters, and, most importantly, the viewers. And news reports suggest that other similar arrangements may be on the horizon.

Another example of a creative response to the Cable Act came in yesterday's announcement that Encore plans to multiplex its premium movie channel. As a new kid on the block, and deprived by the Act from negative option billing, Encore told the Commission that it was having trouble establishing a market presence unless it was placed on a tier that included other services. But to be offered in that way subjected Encore to benchmark regulation, a difficult proposition for movie channels that are not advertiser supported.

The solution? By multiplexing, Encore can create its own "tier" and yet still be considered a "per channel" service under the Act that should be exempt from rate regulation. This promises to solve Encore's marketing problem, and, at the same time, subscribers should benefit by receiving several movie channels for the price of one.

I cite these examples not to endorse them. I am not certain that I have all the facts yet. But at first blush they appear to me to be creative solutions to problems often raised in discussions of the Cable Act. They also highlight the benefits of cooperative, rather than confrontational, solutions.

I am also encouraged by the possibilities for the convergence of media and the development of new technologies. If there is a bright spot in the current situation, it is that the burdens of the Cable Act -- both real and perceived -- may provide a spur to the development to the electronic superhighway.

The recent announcement of an alliance between Time Warner Entertainment and U S West, the acquisition of Washington-area cable systems by Southwestern Bell and the talk of additional arrangements between multiple system operators and other industries, such as computer firms and telephone companies, may bring us closer to the day when regulation in the form of the Cable Act may no longer be necessary. Ideally, the consumer would have the ability to select from a range of competing services, any one of which could provide entertainment, telephony, or a wide range of other information services.

Eventually, I envision multiple electronic superhighways effectively competing with each other along with added competition from DBS and MMDS. I can foresee cable competing with telephone and vice versa in a multi-faceted, multi-channel broadband telecommunications service encompassing video, telephones, computers, data processing, interactive services, home shopping, home banking, video on demand, and other advanced services coming onstream.

We can assume there are many quiet negotiations underway that could result in similar alliances like U S West-Time Warner or purchases like Southwest Bell-Hauser Communications.

I hope I'm still around to see the happy day when effective competition among multi-channel super electronic highways replace the need for government regulation.

That is my hope, in any event. And if the Cable Act helps move us toward the point at which all of us -- including the cable industry and the FCC -- understand that it is better to compete than to regulate, then the current turmoil will have been worthwhile.

The result should be a wide choice of mind boggling advanced services with reasonable rates to consumers, attractive cash flow profits for expansion and development for cable-telco operators and reasonable rates of return for investors.

Now, let's all stand and sing "God Bless America" together!

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