Remarks by Chairman James H. Quello

Before the 42nd Annual Convention and Exposition

Of The National Cable Television Association

San Francisco, CA - June 8, 1993

One of the pleasant experiences of being appointed Chairman, even interim Chairman, is that you are often accorded more generous introductions. Also, you are headlined as a luncheon speaker rather than a panelist. However, I paid my dues -- I have served as a panelist at the NCTA convention for over 10 years. I'm honored to be a speaker, but leave it to NCTA to invite me to speak in the one jurisdiction in America where there is no must carry.

As Chairman you also get more press and more mail -- you also get more of it than ever before questioning the legitimacy of your family lineage. Some of the cable press has been most helpful in assuring that I maintain a becoming sense of humility. One editorial stated (and you don't have to stand and applaud just yet) -- I paraphrase: "A first order of business for the White House must be to appoint a permanent FCC Chairman before Interim Chairman Jim Quello destroys the entire cable industry." Also, my son who has close cable friends, called from Florida. He told me a local cable publication characterized me as "Hurricane Quello" stating I did more damage to the cable industry in one meeting in April than Hurricane Andrew did to all of Florida. Of course this criticism was balanced by consumer publications which characterized a maximum of 10% reduction in rates as a token slap on the wrist from a business oriented Chairman protecting cable. Consumer groups insisted on at least 30%! These types of accolades go with the regulatory territory.

However, as you have been reminded, ad nauseam, the FCC was implementing the intent of Congress -- a job made more complicated by the varied Congressional intents we had to interpret. Some questioned what happened to the FCC as an independent agency? When we are interpreting and implementing a complex new Congressional Act, it makes sense to keep in mind we are bound by legislative intent. Also, we are officially characterized as an arm of Congress.

Before I proceed, I would like to refute two unconfirmed rumors. One -- I did not bring my personal food taster to this convention. Two -- It's not true that when I felt like I had terminal flu two weeks ago that my longtime friend, John Evans, recommended a doctor from our Michigan hometown who guarantees total relief from all pain and discomfort, Dr. Kevorkian!

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 courtesy chuckles and your patience in accommodating some introductory humor at a time 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. Let's face it -- basically the intent of the Act was to lower rates and improve service to consumers, provide program access to competitors, assure equity for broadcasters and to provide reasonable cash flow profits for cable operators. I guess the key active word for profits is "reasonable."

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.

For the remainder of 1993, we have been 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. In fact, we are even wondering if we have to defer implementation of the Act until we have adequate resources to effectively handle the 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.

But as we enter the implementation dates for the new rules we still have no assurance of a supplemental appropriation for 1993, or of a necessary increase in 1994. As I am sure you have read by now, the Commission informed the relevant Congressional committees that this shortfall will have significant ramifications regarding enforcement of the Act. In a letter signed by all three Commissioners, we informed Congress that the Commission lacks the funds to mail complaint forms out to the subscribers, let alone hire the staff to process the complaints once they are filed.

The situation is made even worse by the fact that the FCC would fact a budget shortfall for 1993 even if the Cable Act had not been passed. Current projections are that most FCC employees will probably have five furlough days between now and the end of the fiscal year. For those of you who do not live inside the Beltway, I will translate: it means that we literally will have to close down the agency for five days -- the equivalent of a full business week -- during which time no work will get done and no employees will be paid. This also translates into a substantial pay cut.

Without a supplemental appropriation, every penny we spend on Cable Act implementation makes this problem worse, and will increase the number of furlough days. In other words, it would force the FCC staff to contribute, through lost wages, the funds that Congress has been unwilling or unable to authorize. It is patently unfair to expect such a sacrifice, and I will not impose this penalty on the employees of the FCC.

With these concerns in mind, the Commission informed Congress that we have two choices: First, we could defer implementation of all rules that require FCC action until October 1st, the beginning of fiscal 1994. Or, second, we could keep the current effective dates, but notify the public and local franchising authorities that FCC action on certifications, complaints and other matters will be substantially delayed until additional funds are received and new personnel trained. Personally, I am inclined to favor the first option, because it recognizes the reality that in the absence of funding there is no implementation.

These are the hard facts, although I suspect that many of you are not all that upset about a possible delay. But I would caution you not to be too enthusiastic. The Cable Act is still the law of the land, both for you and for the Commission. If implementation is deferred, however, I would suggest that we use the time constructively to fine-tune the rules and to ease the transition into the regulatory environment. I will be a little more precise about this in a few minutes.

As you know, the 1992 Cable Act directed the Commission to conduct about 30 rulemaking proceedings and inquiries in an extremely abbreviated period of time. The Commission did not seek this much authority -- but we do have the responsibility for making the Act work.

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 disagree with the Commission's rules. One quote about our rate regulation claimed 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 the programming they pay for to a competitor -- 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, particularly the rate provisions. 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. As I mentioned at the Washington Metropolitan Cable Club last month, there is no planned extension of the rate freeze at this time. A further rate freeze would be considered only if implementation of the Cable Act were to be deferred until fall.

However, and I don't enjoy repeating this, but 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 very first week in April, with the District Court upholding must carry rules and the Commission implementing the Congressional Act and 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 is 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.

To help clarification, 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.

I believe we have an obligation to provide as much explanation as possible. To the extent resources permit, I have decided that we should continue the process of issuing periodic Public Notices to answer written questions submitted to the Commission. This process 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. In response, 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.

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 fundamental changes, there is the avenue of reconsideration. We have already begun to receive 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 rulings in the D.C. and Los Angeles District Courts regarding 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 with varied results. 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 this past month that TCI and Fox plan to establish a new cable network is very encouraging. It will 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 from the announcement that Encore plans to multiplex its premium movie channel. 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 solution promises to solve Encore's marketing problem, and, at the same time, subscribers should benefit by receiving seven movie channels for the price of one. I cite these creative because they highlight the benefits of cooperative, rather than confrontational, solutions.

I am also encouraged by the ultimate 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 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.

With the oncoming competitive environment, there 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 -- with minimum or no government regulation.

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

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