REMARKS BY COMMISSIONER JAMES H. QUELLO
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The proliferation of programming channels available to the public and the advent of the multi-channel, multi-faceted communications superhighway has created a dynamic new telecommunications market environment. That new market environment, in turn, demands a comprehensive review of the existing regulatory environment by both Congress and the FCC.

My most important public policy objective as a Commissioner has been, and continues to be, the preservation of universal free, over-the-air broadcasting. Clearly the development of multichannel video program providers like cable, home satellite dishes, DBS and MMDS is producing profound changes to the dynamics of the markets in which broadcasters operate. Also, the coming of new digital telecommunications transmission systems capable of providing even more multiple channels of voice and data as well as video will make it imperative that broadcasters adapt to survive.

Considering the future multi-channel economic potential of telco-cable programming, it is imperative that government adapt broadcast regulation to assure incentives to provide universal free service. Telephone entry and cable's use of fiber optics will result in approximately 98% public penetration compared to cable's current 62%. Broadcasters, and particularly networks with newfound production capabilities, might be tempted to lease channels and sell popular programs for a subscription fee.

To encourage broadcasting to remain a vital free component of the new information infrastructure, the Commission must look forward to fundamentally changing its regulatory focus. The Commission must stop looking at broadcasting as the centerpiece of the communications infrastructure, and instead realize that it is now becoming one component of a much larger and more complex media marketplace. As a Commission we have, for the past year, "talked the talk" of the changes being made by the new information superhighway. As regulators it's now time for us also to "walk the walk," with advance planning and revising our broadcast rules and policies in recognition of these changes.

What revisions to our existing approach to broadcast regulation do the convergence of technologies and the emergence of multichannel, multimedia competition call for? Here are some basic building blocks of what I modestly would refer to as a possible FCC Manifesto for broadcasting:

- Revise the national and local television ownership rules. In a multichannel world there is little justification for artificially restricting the number of television stations one entity may own or have an interest in. On the national level, we should substantially increase the number of stations that can be commonly owned, as well as the audience percentage cap. But we must not ignore the pressing need to also rationalize our ownership rules in the all-important local television market. Shrinking the prohibited contour overlap from Grade B to Grade A, allowing the ownership of more than one UHF station in a local market, and liberally allowing ownership of four-station radio and TV combinations in the largest markets with reasonable local percentage caps are changes that, in my view, this Commission must eventually adopt.

- Remove the remaining "cross-interest" rules that restrict broadcasters in the same local market from engaging in joint ventures, holding nonattributable equity interests, or employing key individuals, in common with each other. In the current market environment these rules do nothing but keep local broadcasters from making investments in other stations that might otherwise enhance the overall amount and diversity of broadcast programming available.

- Facilitate minority ownership in more productive economic ways than by limiting the number of stations that can be commonly owned. The relative dearth of minority-owned stations demands that this Commission be more creative in the methods it uses to enhance minority ownership of broadcast properties. We can do this by providing incentives for financing minorities in communications and by encouraging existing broadcasters to invest in minority-owned stations. Eliminating the remaining cross-interest rules would help. But we should also broaden our tax certificate policy to enable those making upfront investments in minority-owned properties to defer the tax on any reinvestment of back-end profits.

- Eliminate content regulation. Broadcasting is no longer the sine qua non of mass entertainment and information. Cable, DBS, MMDS, interactive computers, VCRs, and other media are available to provide programming choices for individuals not satisfied with broadcast fare. Those who wish to express their likes and dislikes in a more direct, activist fashion than by turning the dial can engage in product boycotts, demonstrations and similar activities consistent with the First Amendment. In today's multichannel, multimedia world, broadcast stations monopolize programming options about as much as one lane in the Holland Tunnel monopolizes travel options in and out of Manhattan.

In short, it's now time for the Commission to "get right with reality" when it comes to regulating broadcasting. The Commission needs to seize the opportunity, at this critical time, to dispassionately reexamine these and other provisions of its broadcasting rules. And when we look at our existing structural and behavioral rules, reality demands that we change our view of the product and geographic markets in which broadcasting now operates. The Commission need not, and indeed should not, create a place for broadcasting to occupy in the developing information superhighway. But we can, and indeed we must, get rid of rules that wrongly keep broadcasters from adjusting to the new competitive multi-channel reality.

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1. Relaxation of T.V. ownership rules; creation of a level playing field with new media.

The time is right, politically and in the marketplace, for significant changes in the TV ownership rules. I support increasing the national ownership limits, including both the number of stations that can be commonly owned and the audience percentage cap; expanding ownership limits in local markets to allow for ownership of 2 UHF stations, and shrinking the prohibited contour overlap from Grade B to Grade A; allowing ownership of four-station radio and television combinations in large markets; removing the cross-ownership rules to allow stations to engage in more efficient operations; and facilitating minority investment by encouraging existing broadcasters to invest in minority-owned stations. I believe that, with the dramatic changes in the video marketplace in recent years, these changes are necessary to ensure the future vitality of television broadcasting.

2. Cable rate regulation.

It is inevitable that, as cable operators add new, vital programming to their offerings, rates for cable service should rise. My main concern is to ensure that these increases are reasonable, as Congress provided. Therefore, the Commission must strike a careful balance between regulating to ensure that rates are reasonable, while at the same time ensuring that operators have the incentives to add programming and upgrade their systems, which will directly benefit subscribers. Along these lines, packages of a la carte channels that constitute a realistic service offering should not be regulated by the Commission; the mark-up for adding channels must be enough to incent operators to do so; and tiers of new channels should be subject to market regulation in the first instance. Cost of service showings that justify above benchmark rates because of the particulars of the operator should be viewed reasonably by this agency. In the long run, we cannot lose sight of the ultimate goal: increased services and programming for subscribers at reasonable rates. Both must be encouraged.

3. Effect of the Cable Act and implementing rules to date.

I think the truth as to whether the Cable Act did a little or a lot in slowing down cable industry growth lies somewhere in-between. I believe the Cable Act did, as Congress intended, negatively affect the growth of cable, and therefore of the NII. However, I think the larger cable

Jorge cable rates

companies will survive this setback. I think the smaller cable companies will truly suffer from rate regulation, unless this Agency ultimately does the right thing for small operators.

4. Vertical integration and concentration in the communications industry, including cable, broadcast networks, studios, and telcos.

Mergers between the telcos and cable MSOs may still happen. However, the attention now focused on broadcast networks reflects, in my opinion, the recognition by those controlling the wires into the home that programming is and will be the most valuable commodity in the video marketplace. And broadcast network programming still attracts more eyeballs than any other programming. While the Commission will need to approach mergers of large companies carefully, we need to recognize that, if two wires are ever to reach most homes in this country, it will only be through large, healthy, diversified communications companies.

Given the pace with which the government moves, much to my chagrin, I think it is difficult for the FCC to keep pace with the rapidly changing marketplace. However, as government agencies go, I think the FCC is one of the most vibrant and efficient in Washington. However, to maintain this vibrancy, we must continue to bring an open mind to issues, be willing to admit when we are wrong, and be willing to move quickly and with courage.

5. Future of Fin-syn and PTAR.

I would continue to support, and would continue to urge my colleagues to support, eliminating the fin-syn rules in November 1995 as planned. Any attempt to do otherwise would likely be viewed by the courts as ill-advised. Supporters of the rule would have to convince me that the marketplace looks like it did when the rules were adopted in order to even get my attention; this scenario is unlikely.

I would be willing to consider any waiver prior to November 1995 should a studio and network propose a merger.

I think the prospects are good for a fifth network; and hopefully a sixth. However, I am not sure the financial realities of the marketplace will allow for a sixth network. The appearance of a fifth or sixth network should result in this Commission reexamining across-the-board its existing television regulations to ensure that they are still justified. Artificial barriers designed for a three network marketplace may no longer be necessary with five or six networks, cable television, wireless cable, video dialtone, etc.

From my perspective, the major factual and policy issues in considering the status of PTAR include: the future viability of independent TV stations and of the fifth and sixth networks; whether the rule promoted, as originally intended, a diversity of programming; whether the rule is necessary, and operates to, provide access to independent producers.

6. Enforcement in the wake of D.C. Circuit's invalidation of the FCC's forfeiture standards.

I believe the court decision directly implicates the policy statement the Commission used in determining forfeiture amounts for EEO cases. While on an interim basis the Commission will have to return to a case-by-case method for determining forfeitures, it is my position that we should embark on a rulemaking to adopt standards to ensure consistency in our decisionmaking. One issue that will be of concern to me, which I have expressed on many occasions, is whether the Commission is creating a "reign of terror" by imposing excessively large and punitive fines for minor or record-keeping type violations. While fines should be steep for safety-related infractions, other violations should be approached by the Commission in a more constructive fashion, particularly with respect to small, struggling broadcast stations.

7. HDTV

Once the Advisory Committee makes its system recommendation to the FCC, I will do whatever I can to ensure this Agency moves as promptly as possible in adopting a new broadcast and cable transmission standard.

While I will consider the arguments before me at that time, my initial impression is that a phased implementation, allowing smaller market stations more time to implement HDTV, makes sense.

I believe broadcasters should be given reasonable flexibility to utilize the additional spectrum for HDTV, as long as the primary purpose is broadcast television. Once that spectrum is proposed for use for primarily non-broadcast purposes, broadcasters should be required to bid for the spectrum in a competitive bidding procedure along with other bidders.

8. Video Dilatone.

The FCC's video dialtone rules will be vital to ensuring that safeguards are in place so that the ultimate monopoly pipeline -- telephony -- does not control access to the video marketplace for subscribers.

These rules are currently before the Commission on reconsideration, and should be voted on at the October agenda meeting.

I support telco entry into cable and vice-versa, with some conditions to ensure that monopoly power is not abused.

The FCC can do little to clear the way for cable entry into telephony, because the Communications Act gives jurisdiction over purely intrastate lines to local authorities. While we can encourage the states to remove entry barriers, the ball is really in Congress' court to address this issue on a nationwide basis to ensure a uniform policy.

9. Program content: TV violence, indecency, kidvid.

My sincere hope has always been that the industry will exercise self-control by declining to show gratuitous violence during times when children are likely to be in the audience. I think there has been some improvement; however, this self-control must be ongoing, otherwise, this agency may be forced to undertake some form of regulation, a task that I do not relish. In any event, I think the courts would pay close attention to any content-based regulation of violence.

Indecency fines, while affected only procedurally by the recent court decision invalidating the forfeiture standards, will continue. I will not hesitate to support large fines, where justified by a pattern of repeated violations.

The En Banc Hearing on Children's Television in June of this year crystallized for me the concerns in this area. Broadcasters should, consistent with the Children's Television Act, be encouraged to provide educational and informational programming that is entertaining as well so that it reaches a child audience. However, regulations imposing quantitative requirement, or defining in overly-precise terms what this Agency means by educational and informational, would be overreaching, in my view, and a violation of the First Amendment.

10. The "new social compact" for broadcasters; possible implications for cable operators.

While I do not wish to speak for the Chairman, I do not think that any "social compact" for the future would be any different than the "social compact" for the past. Broadcasters have public interest requirements that do not apply to other video providers; in return they receive free spectrum and a certain minimum level of regulation. Independent of this social compact, the Commission must make regulatory decisions that make sense: imposing rules only where absolutely necessary, with a close eye on the First

Amendment implications of our decisions and the marketplace realities of an ever-changing world (including the increasing strength of cable and other multichannel video program providers).

I do not think that the FCC should impose similar public interest obligations on cable. Broadcasters are unique in their ability to provide free, over the air service to all Americans with a television set. This is not the case for cable.