

The right stuff

Amid all the wrong-guided talk out of Washington about government-imposed quotas and government-engineered compacts on educational TV, there is a right-guided example of how to tap the communications industry's resources to help educators and their students.

Cable, broadcast, telephone, computer and consumer electronics industry executives met with President Clinton and government officials at the White House two weeks ago (BROADCASTING & CABLE, Oct. 16) to discuss the President's proposal to insure that all the nation's schools have access to the information superhighway.

Time Warner, whose chairman Gerald Levin was among those meeting with the President, pledged to wire every classroom in its service area, provide modems to the schools and training for the teachers, and a host of executives who will be involved in developing a comprehensive connection plan.

The plan would give the President industry firepower he needs to effect the massive interconnect. It would insure students and teachers universal Internet access. Not incidentally, it would push the telco bill closer to passage.

The President dialed the right numbers and touched the right nerves. It's no surprise that he got the right answers.

New times always, old time we cannot keep

We're not quite sure what to make of Tony Malara's leaving CBS. It's not quite the end of an era, but it feels that way. This page first knew him as general manager of WNY-TV Watertown, N.Y., in something like the 171st

market, before he burst like a rocket on the network scene in New York in the late 1970s. Neither the network nor the business of broadcasting was ever the same again. Last December, we had occasion to interview him for a cover story principally concerned with the sturm und drang of putting CBS back together after all the inroads from New World and Fox. It was a fascinating account by a pro about his profession, and his calling.

We're not sure just when the exodus began at CBS, although the tide started to go out with Frank Stanton in 1973. The years since then have been hard ones for the once Tiffany network. Tony Malara, who leaves on the eve of Westinghouse's taking over, joins a long line of broadcasters who thought working for CBS their highest honor.

Happily for the Fifth Estate, many of them are still around to populate the new ventures that have picked up where CBS left off. There is life beyond Black Rock.

Nonpartisan praise

FCC Commissioner James H. Quello, a Democrat, was accorded a singular honor by Representative Jack Fields, a Republican and chairman of the House Telecommunications Subcommittee, who entered into the *Congressional Record* a statement that said in part:

"It's accurate to say that no one has played a greater role for a longer period of time in our country's and the world's communications revolution.... I have been particularly impressed with Jim's efforts to reduce regulation and foster competition.... Perhaps the reason that Jim is so universally respected is the fairness and common sense he brings to every issue that comes before him."

The chairman's commendation filled two single-spaced pages. Not a word too many.

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carnival to raise money to purchase the land for the hospital.

The Antelope Valley Hospital, since its inception, has provided state-of-the-art health care service to the people of the Antelope Valley. Their modern facilities include the valley's first mental health and coronary care units, the area's only neonatal intensive care nursery, along with many outreach programs designed to meet the needs of this fast growing area. If it wasn't for services such as these, many individuals in the Antelope Valley would not have received the high quality health care they so deserve.

Mr. Speaker, I ask that you join me, along with my colleagues in the House of Representatives, in recognizing Antelope Valley Hospital's 40th anniversary, and commend the hospital in providing four decades of quality health care service to the residents of the Antelope Valley.

SALUTING JIM QUELLO, "DEAN OF THE FCC"

HON. JACK FIELDS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 12, 1995

Mr. FIELDS of Texas. Mr. Speaker, I would like to take a moment today to salute a dedicated public servant who has given generously of his time and talents to the Federal Communications Commission for the past 21 years: FCC Commissioner James H. Quello.

Before and since I became chairman of the House Telecommunications and Finance Subcommittee, I have enjoyed working with Commissioner Quello, and I have benefited greatly from his unparalleled knowledge of communications issues. It's accurate to say that no one has played a greater role for a longer period of time in our country's and the world's communications revolution than has Jim Quello.

While Jim has impressed me in many ways, I have been particularly impressed with Jim's efforts to reduce regulation, and foster competition, in the telecommunications industry whenever possible. Likewise, I have come to appreciate his principled and consistent defense of the First Amendment at the FCC. Press freedom has no more vigorous ally in the federal government than Jim Quello, and all Americans can take comfort in that fact.

Perhaps the reason that Jim understands broadcasting issues so well is that prior to joining the FCC, he served as vice president and general manager of WJR in Detroit. As a broadcaster, he was recognized for his leading roles in a number of civic and community service projects.

And perhaps the reason that Jim is so universally respected is the fairness and common sense he brings to every issue that comes before him. Jim is a Democrat. But he has been

appointed to the FCC four times by Republican presidents and, has been confirmed by the United States Senate on four separate occasions, winning the support of overwhelming and bipartisan majorities.

While serving as station manager at WJR, he served as a member of the Detroit Housing and Urban Renewal Commission for 21 years, having been appointed and reappointed by four different mayors. Similarly, he served for 22 years as a trustee of the Michigan Veterans Trust Fund, having been appointed and reappointed by both Democratic and Republican governors.

Jim has always believed in service to others, and to his country. As a young man, he served in the Army during World War II, spending 33 months overseas in Africa, Italy, France and Germany. During his Army service, he survived six amphibious landings and rose in rank from lieutenant to lieutenant colonel.

A list of awards and honors that have been bestowed upon him would fill many, many pages of the CONGRESSIONAL RECORD, Mr. Speaker. I do want to point out, however, that this list of awards includes the National Association of Broadcasters' highest award, the "Distinguished Service Award;" the Radio and Television News Directors Foundation's "First Amendment Award;" the National Religious Broadcasters Association's "Chairman's Award;" the National Association of Broadcasters' "Award of Honor;" the Community Broadcasters Association's "Lifetime Achievement Award;" and the National Cable Television Association's first "Distinguished Public Service Award."

Those of us who know Jim Quello and who have the privilege of working with him deeply appreciate his hard work at the FCC. His long and distinguished record of service at the FCC—not to mention his awesome tennis prowess—inspire all of us who are interested in the telecommunications industry. For my part, I simply wanted him to know how grateful I am for his public service, for his assistance, his advice and his friendship. I wish him, and his wife of 58 years, Mary, the very best in the years ahead.

Thank you, Mr. Speaker.

HONORING ROBERT WASKIEWICZ

HON. STEVE GUNDERSON

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 12, 1995

Mr. GUNDERSON. Mr. Speaker, on this day we honor those firefighters who in 1994 gave the ultimate sacrifice to their communities. Robert Waskiewicz, a husband and father of two, served the Augusta-Bridge Creek Fire Department and was killed while fighting an out of control brush fire. His dedication to his job, his family, and his department should not

be forgotten. His wife, Sondra, and his sons, Patrick and Charley, can be proud of Robert's bravery and service. His death should be a reminder of the importance of our firefighters and that on a daily basis they put their lives in danger for all of us.

One hundred firefighters died in 1994. Roughly 1 million outdoor fires were started in 1994, like the one in which Robert died. Even one death is one too many, and we must do everything possible to reduce the number of fires and the resulting civilian and firefighter deaths.

My condolences to Robert's family and all of the other firefighters who died in 1994.

PURDUE RECEIVES HEISMAN TROPHY OF COLLEGE BAND AWARDS

HON. JOHN T. MYERS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 12, 1995

Mr. MYERS of Indiana. Mr. Speaker, I rise today and congratulate the Purdue "All-American" Marching Band on receiving the "Heisman Trophy" of college band awards—the 1995 Sudler Trophy.

For over 109 years this collegiate band has won coveted honors and generated excitement at home football games. Look to the Purdue Marching Band for a number of firsts—first band to break ranks and form a letter on the football field (the Block "P") to the first band to place a bandsman, Neil Armstrong, on the moon. Known for its trademark Big Bass Drum and internationally famous Golden Girl, the band has carried its proud heritage throughout the world, through a multitude of televised and worldwide appearances, and 77 consecutive showings as the host band of the Indianapolis 500 Mile Race.

Under the leadership of Band Director David A. Leppla, now in his 8th year at the helm, the band continues a tradition of excellence characterized by creative musical arrangements with no two halftime shows alike. Leppla's innovative talent has persuaded the percussionists, roused the reeds, and hammered the horns to a dazzling display of show tunes, marches, rock and jazz selections.

For many people, the Purdue Marching Band has come to symbolize a part of the American spirit. A spirit that embraces life solely out of sheer enjoyment. Generations of band members have come to Purdue to become part of that spirit—the world's largest permanently organized marching ensemble.

This Saturday as band members march on the Purdue Homecoming field at halftime, let us salute that spirit and watch the Boilermaker band go out on their "highest note" ever enriching the life of the college and instilling a sense of pride in all alums. "Hail, Hail to old Purdue!"

Remarks by Commissioner James H. Quello
Before the
Midwest Chapter of the FCBA
Palmer House, Chicago, IL
October 19, 1995

Thank you Red Quinlan for that sterling introduction -- that is supposed to be kinda funny. You see that Sterling "Red" Quinlan is a distinguished author of numerous books including the notorious "\$100,000,000 Lunch," an intriguing recount of a super-expensive lunch preceding an FCC TV license revocation some years ago.

Anyway, Red, after that kind of introduction I should quit right now while I am still ahead.

However, your generous memorable introduction will not be the most momentous of my Chicago Palmer House experiences -- In September 1937, an upper peninsula small town hillbilly, me, spent his first and only honeymoon in the then-luxurious Palmer House. It is still a fine hotel, but not with the exalted luxury status it enjoyed in the 1930s. Yes, that was over 58 years ago and I am still married to that same woman.

Some of my friends, or should I say acquaintances, can't understand how one person could stand me for 58 years. It proves what a great and tolerant sense of humor can do for a good woman. (Etc.)

As I have stated in other forums, I believe in marriage. If it weren't for marriage, some men might go through life thinking they had no faults at all.

We all have faults -- even Commissioners and Chairmen. But, I feel comfortable quoting Goethe, the great historical German philosopher, "One only has to grow older to become more tolerant and even permissive. I see no faults committed by others that I have not committed myself."

However, I don't intend to include in my faults (1) violating the Constitutional First Amendment and Section 326 of the Communications Act, which prohibits FCC censorship, by in any way endorsing program quotas (quantitative standards or guidelines) for any classification of programming, whether for children, senior citizens or others; or, (2) authorizing a government agency, controlled by political appointees, to make specific judgments as to what children's programming is or is not acceptable on the most influential news and entertainment medium in America. Government officials endorsing specific programs and disapproving others are already accomplices in government-compelled speech forbidden by the First Amendment.

For example, the Commission has already given the green light to "Fat Albert and the Cosby Kids;" "CBS Schoolbreak Specials;" "Winnie the Pooh and Friends;" "ABC Afterschool Specials;" "Saved by the Bell;" "Life Goes On;" "The Smurfs;" "Great Intergalactic Scientific Game Show;" "Action News for Kids;" "Carmen Sandiego." One Commissioner even specifically voiced approval for "Bill Nye, The Science Guy," and another has bemoaned the cancellation of "Cro" and the substitution of "Dumb and Dumber." From a regulatory official, these endorsements represent government intrusion into program content.

The Media Institute in its comments filed with the FCC states that the Commission is probably echoing Congress in listing specific programs. I agree and I quote:

The legislative history provides a wealth of examples of children's programming that is educational and informational. These include "Fat Albert and the Cosby Kids" (dealing with issues important to kids, with interruptions by host reinforcing purpose of show), "CBS Schoolbreak Specials" (original contemporary drama educating children about the conflicts and dilemmas they confront), "Winnie the Pooh and Friends" (show based on books designed to encourage reading), "ABC Afterschool Specials" (everyday problems of youth), "Saved by the Bell" (topical problems and conflicts faced by teens), "Life Goes On" (problems of a retarded child, emphasizing pro-social values), "The Smurfs" (pro-social behavior), "Great Intergalactic Scientific Game Show" (basic scientific concepts), and "Action News for Kids" (weekly news program for and by kids). Where determinations of whether a program qualifies as "educational and informational" are in doubt, we will expect licensees to substantiate their determinations.

Then, in what many lawyers considered a First Amendment affront, the Commission volunteered that the specifically named programs have received the government stamp of approval for broadcast. Listen to what the Commission said:

We will rely on the guidance given in the legislative history, including the specific examples cited above, in ruling on the sufficiency of such demonstrations [of whether a program qualifies as educational and informational].

Thus, an illustrative list has, in the wink of a bureaucrat's eye, been transformed into a laundry list of officially blessed shows -- something that was never intended by Congress.

You don't have to look far to see how slippery a First Amendment slope this type of approach puts the government on. For example, a leading proponent of "market failure" and the need for more children's programming has characterized "It's Academic" as a game show rather than a children's educational program.

"It's Academic," celebrating its 35th anniversary on the air on station WRC(TV), Washington, DC, has won numerous local and national awards, including an endorsement by the National Association of School Boards. Based on the well-established theory that competition motivates learning, this game show questions high school students from 162 schools in current events, history, geography, and other areas covered in their school curriculum. Because of its educational value, public school systems in the Washington area have created "It's Academic" clubs to extend the benefits of "It's Academic" to more students. These clubs, along with the show, are flourishing.

Here's the bottom line -- FCC Commissioners casting judgments on what they think constitutes "good" children's television programming unavoidably constitutes a First Amendment intrusion.

The subject is complex and politically charged because everyone heartily endorses quality children's programming -- activists, the general public, Congressmen and all five Commissioners. I resent the implication that FCC Commissioners are "against children" unless they support imposition of a 3 to 5 hour quantitative standard, particularly when there has been a significant increase in children's programming over the past four years. Also, I believe we should be concerned that children grow up in a society where First Amendment freedoms are fully appreciated. This goal, as applied to society as a whole, is more important than arguing over the number of hours of educational children's programming on broadcast stations.

It is counter-intuitive and counter-factual to believe that broadcasters, ever sensitive to government requirements, would not willingly comply with the Children's Television Act. In my view, the fight for additional children's programming is over. Broadcasters have responsibly responded to the concerns of Congress, the FCC and public activists by significantly increasing children's programming without the government risking First Amendment encroachment through government-mandated program quotas or social contracts.

An objective review of the latest NAB survey reveals that broadcasters have responded to the Children's Television Act of 1990. Some of the results from the currently released survey are:

- The average commercial television station aired more than 3-3/4 hours (225.85 minutes) in Fall 1993 and over four hours (244.74 minutes) in

Fall 1994 of regularly scheduled full length (30 minutes or more) educational and informational children's programs.

- The Fall 1994 amount was over 100% higher than the Fall 1990 amount (122.02 minutes).
- Similar significant increases were also found in the airing of children's educational and informational specials (i.e., program length 30 minutes or more but not regularly scheduled).
- Stations in all market sizes showed strong increases from Fall 1990 through Fall 1994.
- All affiliate types (ABC, CBS, Fox, and NBC) and independents aired substantially more children's educational and informational programming in Fall 1994 than in Fall 1990.
- For Fall 1994 over four fifths (81.4%) of the children's educational and informational programming started after 7:00 AM, with nearly another sixth (15.8%) starting between 6:00 AM and 7:00 AM.

For its research purpose, the NAB defined educational TV programming as "programming originally produced and broadcast for an audience of children 16 years old and younger which serves their cognitive/intellectual or social/emotional needs."

With these latest figures, Congress, the FCC and the public, particularly children, have won.

In addition, several networks, already in compliance, have comprehensive, ongoing plans for future informational and educational programs for children that will not be undertaken under threat of government-imposed quantitative social contracts.

However, more and better children's programming has such a seductive political-social appeal that the programs available in the unprecedented multichannel universe of today will never satisfy insatiable regulatory appetites reverting to the good 'ol regulatory "TV scarcity" days of the 1960s and 1970s.

A former FCC Commissioner I respect as a foremost communications legal expert, Professor Glen Robinson, succinctly summarized this problem years ago in his separate statement accompanying children's programming:

There is especially seductive appeal to the idea of "protecting" children against television For this reason, regulation of children's programming raises the most subtle and the most sensitive of problems.

Everyone recognizes the free speech dangers of governmental control of political broadcasting. Not enough people appreciate the far more subtle problem of governmental control when it is extended to an area like this one, where there is widespread popular sentiment supporting some measure of governmental control. But if the First Amendment is to mean anything at all, it obviously does not mean that we can make judgments on the basis of majoritarian sentiment alone.

Professor Robinson's statement highlights the difficulty of maintaining First Amendment rights when confronted with a socially and politically sensitive issue.

Moreover, his statement was issued in the regulatory era of so-called broadcast scarcity. In the multichannel world of today, there is even less justification for government control. Today, there is a superabundance of program choices -- over 1500 full power television stations, including 4 networks, 2 additional emerging networks, 363 noncommercial educational stations, and more than 1600 community low power stations -- claiming that 90% of the community stations surveyed carried children's programming and 74% carried extensive children's programming.

Broadcast television is no longer the sole dominant player in the video marketplace. Today, cable television reaches 97 percent of all television homes and 65 percent of households subscribe. Cable's 135 program networks, with 60 more in the planning stages, have brought an undreamed-of diversity of programming that responds to virtually every conceivable want and wish. DBS, MMDS, and, soon, video dialtone systems will augment and extend this array of programming. Also vying for the hearts and minds and eyes of the viewer are the Internet and VCRs, which are now in 82 percent of all homes.

It is increasingly more difficult, both logically and legally, to justify legislation or additional regulation imposing program restrictions or quantitative children's educational requirements on broadcasters when a great and ever-increasing variety of program choices are available to the public for just a twist of the dial or the insertion of a VCR tape.

Incidentally, I don't believe I have to disenfranchise myself as a Commission Democrat, particularly a middle of the road or conservative Democrat, by opposing politically liberal, outdated regulations in the competitive multichannel communications market of today.

Many solid Democrats have stated that regulation is necessary only when there is lack of competition. In fact, it was a Democratic Congress in 1990 that rejected quantitative program requirements for children's programming, thus avoiding problems with the First Amendment and Section 326 challenges.

The Senate committee report accompanying the children's television legislation declared that:

The Committee does not intend that the FCC interpret this section as requiring a quantification standard governing the amount of children's educational and informational programming that a broadcast licensee must broadcast to have its license renewed pursuant to this section or any section of this legislation.

The House committee report with only minor difference, was to the same effect. Thus:

The Committee does not intend that the FCC interpret this section as requiring or mandating a quantification standard governing the amount of children's educational and informational programming that a broadcast licensee must broadcast to pass a license renewal review pursuant to this section or any section of this legislation.

These Congressional committee observations were, in the Commission's view in April and again in August of 1991, an order that bound the agency to stay away from numbers of programs or numbers of hours. Given this strong legislative direction, the Commission reacted to what it regarded as marching orders from the Congress.

The Commission adopted its current rules to implement the Children's Television Act in April 1991. Those rules were reconsidered in a Memorandum Opinion and Order, that reaffirmed most of the decisions of the earlier Order. In both documents, the Commission bluntly stated that it was not adopting any minimum amount of programming standard. It was staying away, the Commission confessed, because the Congress had directed it not to go that far. Thus, in the April 1991 Report and Order, the Commission explained that:

The Act imposes no quantitative standards and the legislative history suggests that Congress meant that no minimum amount criterion be imposed. Given this strong legislative direction . . . We thus decline to establish any minimum programming requirement

On reconsideration in August 1991, the Commission affirmed its view of its limited authority, as follows:

We declined to adopt minimum quantitative criteria, finding that the Act imposes no such quantitative standards, and the legislative history indicates that none should be imposed.

Notwithstanding all this history, the Commission adopted a further notice of proposed rulemaking in 1994 that asked whether the Commission should adopt quantitative children's programming requirements, among other proposals. And that brings us full circle to where we are today.

The few Democratic Congressmen now taking the lead in aggressively espousing children's quantitative programming 3 to 5 hours weekly should have simply included them in the Act. Everyone at the FCC is duty bound to implement a Congressional Act -- but the point here is, the Children's Television Act doesn't mandate quantitative standards because Congress explicitly -- and in my view, correctly -- rejected them. For us to adopt them now would be to fly in the face of the statute, not comply with it.

Many think it is unseemly for a few Congressmen, through aggressive denunciations, to now insist that the FCC implement a Constitutionally-suspect quantitative requirement rejected by Congress and previously repeatedly rejected by the Commission itself.

In my 20+ years tenure at the Commission, I have adhered to the principle that I don't decide important controversial issues on the basis of whether I am a Democratic or Republican appointee. I do my best to make common sense decisions on how to best serve the public and industries that employ the public within the framework of existing law. I believe Commissioners are appointed to serve the overall public and are on the public payroll. When private interests conflict with the public interest, the public interest must prevail. However, in complex issues, there may be differences among Commissioners in what action would best serve the public interest. That is why five Commissioners are appointed with different backgrounds and perceptions to achieve a balance of viewpoints. The conflicting viewpoints sometimes result in contentious untidy proceedings. It lends authenticity to the old adage that there are two things you never should see being made -- sausage and FCC regulations.

However, there are many regulations with positive public interest implications. Among the current regulatory issues I believe serve the public interest are: (1) reasonable local caps on radio and TV multiple and cross ownership to obviate market domination or antitrust problems; (2) time constraints providing a safe harbor for children against indecent programming which I have vigorously enforced; (3) the requirement that broadcasters maintain quarterly issues/program lists open to public and FCC inspection; and (4) the installation of the V-chip to empower parents to protect children against objectionable programming as long as the government does not dictate composition of the ratings board -- although parents always had the ultimate control by merely tuning out undesirable programming. I also continue to favor tax certificates and distress sales -- which we no longer have the authority to

grant -- to encourage minority ownership. None of these regulations involve the government in prescribing what specific programs can, and cannot, be broadcast.

At this writing, it seems doubtful that an FCC majority will impose any quantitative or processing guidelines. Then, too, the Commission would be complying with Congressional intent if it declined to adopt any form of quantitative standards.

Any legislative or FCC regulatory attempt to influence program content will be closely scrutinized, and likely rejected by federal courts concerned about government censorship and intrusions on First Amendment rights.

The Supreme Court in the summer of 1994 issued a most significant broad First Amendment ruling that quantitative program advocates avoid like vampires shunning the cross. In ruling on the 1992 Cable Act, the Supreme Court stated, and I quote:

The FCC's oversight responsibilities do not grant it the power to ordain any particular type of programming that must be offered by broadcast stations. The Commission may not impose upon them its private notions of what the public ought to hear.

An implausible counterargument to this Supreme Court statement seems to be that the courts have supported time constraints to provide children a safe harbor from indecent programming. However, it is a quantum First Amendment leap from time constraints to provide a safe harbor for children to specific, government-mandated quantitative program requirements.

The Supreme Court statement must be considered by both the FCC and Congress when contemplating content-related issues such as violence or children's television quantitative standards accompanied by specific program pre-approval. As a longtime strong advocate of programming violence restraint and indecency enforcement, the court statements have influenced my legal, if not personal, position. However, I believe there is a continuing need for broadcasters, cablecasters and program producers to exercise more responsibility in reducing violent and indecent programming.

In the face of public concern and Constitutional constraints, aggressive citizen action can play a key role in sensitizing programmers and advertisers to the need for more responsibility and more positive family values in TV, radio and cable.

Citizen groups like Americans for Responsible TV, Action for Children's Television, Morality in Media and American Family Association have sensitized programmers and advertisers to the critical need for responsible, positive programming. Under pressure from public groups, some advertisers have dropped sponsorship and stations have become more aware of constant public opposition against program excesses in glamorized sex and brutal violence or the need for programming to meet the educational and informational needs of children. Direct citizen action can be very effective and doesn't implicate governmental First Amendment intrusions.

In conclusion, there is a principle involved that transcends mandating an additional three hours per week of broadcast children's programming in the existing multichannel TV universe in which broadcasters already exceed the three hour per week proposal.

The all-important principle is whether a government agency, controlled by political appointees, or advocacy groups petitioning that government agency, should have the power to impose their quantitative and qualitative programming will on the most influential and pervasive news and entertainment medium in the nation.

Congressional Acts and Court precedents, conscious of First Amendment rights and Section 326 provisions, have said no. I hope the majority of Commissioners agree.

Broadcasters don't need another layer of government regulation in the competitive multichannel program era of today. And the Commission doesn't need another opportunity to lose in Court -- no matter how good our lawyers are.

Ignoring the facts of a substantial increase in children's programming, lacking Congressional approval or Court precedent, the regulatory activists are playing the emotional C (children's) card for all it's worth. From a First Amendment perspective, they are dealing from the bottom of the deck.

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