

Remarks by Commissioner James H. Quello  
Federal Communications Commission  
In re: Children's Programming  
November 28, 1995

The push for more government is on, and this time it's about government in your living room.

We are all concerned here at the FCC about what your kids are watching on television, and we are all committed to doing everything that we are legally permitted to do to ensure that television continues to be an asset in your home. Where some of us at the FCC differ, however, is to what extent the government may intrude into the editorial decisions of broadcasters by specifically mandating how much and what kind of educational programming they must air. Allow me to put this debate into some historical perspective.

In 1990, Congress passed the Children's Television Act, which recognized the important role that television can play in our children's lives both as a source of entertainment and education. Congress, in that Act, directed the FCC to do two things. First, it told the FCC to implement time limits for advertising on children's television programs. Congress specifically set out those limits, which are no more than 10.5 minutes per hour on weekends, and 12 minutes per hour on weekdays. It then directed the FCC to "consider the extent to which the licensee has served the educational and informational needs of children . . . ."

As a result of the Children's Television Act, we at the FCC look at renewal applications of licensees to see how well they are serving the educational needs of children. Broadcasters have responded favorably. In fact, a recent survey of 559 out of more than 1100 commercial TV broadcast stations conducted by the National Association of Broadcasters indicates that the amount of children's educational television has doubled since 1990, the year the Act became law. According to the survey, in the Fall of 1994 broadcasters aired more than four hours of children's educational television per week. Furthermore, there are 73 children's educational television programs that are currently being aired whose educational merit is beyond dispute; these programs truly serve the needs of children. (For a list of these programs see my speech to the Media Institute on November 14, 1995.) Along with these 73 programs, there are many local programs and short vignettes with positive educational or pro-social messages.

Then too, there is a superabundance of program choices from a variety of media -- over 1500 full power TV stations including 4 networks and 2 additional emerging networks, 363 noncommercial educational stations and more than 1600 low power community stations. The 1600 community stations claim that 90% broadcast children's programs and 74% carried extensive children's programs. In addition,

cable TV reaches 97% of all television homes and 63 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. Also DBS, MMDS and soon video dialtone systems will extend this array of programming. Also vying for the hearts and minds of the public are the Internet and VCRs which are now in 82% of all homes. Remember that the numerous educational/informational children's programs now available on VCR tapes can be played over and over again.

The notion of a general marketplace failure in children's programming is further refuted by the existence of cable services like the Learning Channel, Discovery, Nickelodeon, Arts and Entertainment, the Disney Channel and others. In addition, Children's Television Workshop has announced plans to form a new cable channel. Also, most broadcast networks have announced future plans for increasing both children's and family programming. In fact, the Fox network has implemented the Children's Television Act in an impressive fashion. Fox Children's Network, the top-rated children's programming service in the U.S., currently provides three hours of weekday and Saturday morning educational programming.

So for all practical purposes, the dispute should be over. Congress and the public have won. There is a superabundance of available children's programming and of broadcast and cable channels carrying them. Why this fight just to establish an authoritarian right of a government agency to impose an anti-Constitutional program mandate? Broadcasters have increased the amount of educational children's television pursuant to the Children's Television Act, without objectionable First Amendment encroachments.

Thus, additional regulation is neither logically nor legally justified when a great and ever-increasing variety of program choices are available to the public for just a twist of the dial or insertion of a VCR tape.

So what's the problem? Certain public activists are just not happy with some of the programs that broadcasters schedule. This is a very subjective judgment. They cite isolated examples of programs with questionable educational value to justify their regulatory scheme to have the government dictate to television broadcasters exactly how much and what children's educational television they must air. Even worse, some of the activists would have government place a federal stamp of approval on certain programming in order for it to qualify as educational television.

This is not only a bad idea, it does not represent what Congress had in mind in passing the Children's Television Act. And more importantly, it violates the First Amendment.

Significantly, in passing the Children's Television Act, Congress set out exact numerical standards for advertising time and yet spoke in more general terms regarding educational television. There is a good reason for this: it's called the First Amendment. You see, advertising is considered commercial speech and has been afforded less Constitutional protection than noncommercial speech (regular television programming) by our courts. Thus, Congress could mandate quantitative guidelines for commercial advertising time, whereas it could not legally do so for regular programming. Congress certainly understood that quantitative guidelines for educational television would not pass Constitutional muster.

The Communications Act could not be clearer in stating that "no regulation or condition shall be promulgated or fixed by the FCC which shall interfere with the right of free speech by means of radio communication." 47 U.S.C. 326. Also, in a 1994 Supreme Court decision, the Court stated that while "the Commission may inquire of licensees what they have done to determine the needs of the community they propose to serve, the Commission may not impose upon them its private notions of what the public ought to hear." A government scheme that establishes quantitative guidelines or specifically approves certain programs and disapproves others would be struck down by the courts in a heartbeat.

Aside from the fact that this proposal is unconstitutional, as a practical matter, do you feel comfortable having the government decide what qualifies as educational television? I can just see a future Public Notice announcing that "The Commission will be meeting next Tuesday to discuss the educational merits of "Yogi Bear" or "Bill Nye, The Science Guy." Also on the agenda, "Whether the television version of Catcher in the Rye is appropriate for kids." You see my point -- these are decisions you should be making -- not the United States government.

Also, as a parent and grandparent with many relatives and friends, I have found them much more concerned with graphic violence and glamorized sex available to kids than any generalized lack of educational or informational programming for children. The problem of violence may be partly mitigated if pending "V-chip" legislation passes which would require TV manufacturers to install technology that will allow parents to block out violent programs.

**The question for me has always been: how can we at the FCC help you make the right decisions about what your children should be watching? One Constitutional way to do this is to require TV broadcasters to have a separate "children's file" available for public inspection in which they would specify the children's educational programs being aired on their station along with the educational objectives of these programs.**

**Broadcasters are already required to maintain, for public inspection, issues/programs lists delineating the programming they have aired that serves the community's needs. These lists must also contain the programming the licensee has broadcast to meet the needs and interests of the child audience. Another helpful guide for parents could be a separate identifying mark in TV listings indicating which programs are educational/informational. This is but one of several options that would give meaning to the Children's Television Act without trouncing on the First Amendment.**

We welcome your views.

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