RESPONSE TO QUESTIONS SUBMITTED BY SENATOR GOLDWATER
HEARING ON NOMINATION OF JAMES H. QUELLO
TO THE FEDERAL COMMUNICATIONS COMMISSION
June 7, 1984

Several years ago, Congress passed a law giving the FCC authority to determine utility pole attachment rates, that is, the rates that electric and telephone utilities may charge cable television operators for the right to use and occupy the utility's poles. The FCC implemented that authority by establishing a rate formula for determining such rates. The utilities believe very strongly that the rate formula established by the FCC no longer reflects current conditions, fails to allocate costs fairly, and ought to be revised. They have asked the Commission to institute a rulemaking proceeding to examine this issue.

- Would you be willing to look into this matter and give it your careful consideration?

ANSWER: I will be very happy to give full consideration to this matter. I am informed by our Common Carrier Bureau staff that it should be ripe for consideration by the Commission next month. I am aware of the issues which have been raised and I will carefully evaluate the arguments presented before taking any action.

- Would you work with my staff and follow up on the matter?

ANSWER: I will be happy to work with your staff on this matter. If there are any questions about status or timing, I will try to assist in any way I can.

ANSWERS TO QUESTIONS FROM SENATOR HOLLINGS
HEARING ON NOMINATION OF JAMES H. QUELLO
TO THE FEDERAL COMMUNICATIONS COMMISSION
June 7, 1984

1. What is your regulatory philosophy, and how will it serve the public interest?

ANSWER: My regulatory philosophy is one that is generally supportive of competitive market forces over regulation. I believe regulation is best conducted in the spirit of mutual cooperation with the regulated industries. I also believe that progress can best be achieved with a constructive government attitude that provides incentives for innovation, growth and improvement in services and in products. With this philosophy, the FCC must also provide reasonable opportunities for new entry. In return, we should expect that telecommunication companies maintain a strong sense of social consciousness. Additionally, one of our highest government priorities must be to preserve America's market strength and our preeminent position in world communications to ensure healthy, progressive industries with gainfully employed Americans. I believe my philosophy will serve the public interest by creating the best service to the most people at the most reasonable cost.

2. How important is the entry of new services to accomplishing this philosophy?

ANSWER: The entry of new services in a timely and appropriate manner is necessary to accomplish my regulatory philosophy. As new services enter into the marketplace, competition among new and existing services will develop. I am a believer that through competition service providers will be more responsive to the needs of the public. I also believe that new services must be introduced in a timely and orderly fashion so as not to create interference with existing services.

3. How would you encourage the entry of new services and new service providers?

ANSWER: Generally, we should remove barriers to entry and expedite processing of applications and grants. For example, I supported rule changes that created the use of FM subcarriers, TV stereo, teletext, LPTV multipoint distribution services, direct broadcast satellite and AM stereo. Overall, I believe the Commission's goal of spectrum efficiency provides the opportunites for new services to come into existence where previously they could not. I also encourage the entry of new services and new service providers with minimal regulatory responsibility at the onset. However, as new services mature we must track their progress to determine how these services and our overall policies best serve the public need.

Overall, my philosophy has been to encourage entrepreneurs' ability to create and expand their services free of regulatory restraints. Such a philosophy, I believe, goes a long way to encourage the entry of new services and new service providers. Currently, at the Commission, efforts are being made to reduce the backlog of applications for license to offer new services. Facilitating the application process will continue to be an important issue on my agenda.

4. Do you support ownership and cross-ownership requirements?

ANSWER: Generally, I do support ownership and cross-ownership requirements currently in place at the FCC. I do believe, however, that perhaps one of the most important rulemakings now pending before the Commission is the proposal to modify the so called "7-7-7" rule. These limits on multiple ownership of broadcast stations are over 30 years old, and thus, date from a time when the communications marketplace was vastly different. I think it is very reasonable for the Commission to take another look at this rule to explore whether these are appropriate limits in todays marketplace. The important issue in our ownership rules is to insure diversity of voices. The duopoly and one-to-a market rules are particularly important to ensuring diversity and competition in the marketplace of ideas.

5. In establishing ownership requirements in the broadcasting industry, do you believe the three major networks are sufficiently different from other station owners such that they may require different regulatory treatment?

ANSWER: The issue of the three major television networks being sufficiently different from other station licensees is not a new issue at the Federal Communications Commission. To begin with, we do not regulate the networks. However, as licensees of television stations the networks are treated like any other licensee. Unlike other licensees, the networks are in a unique financial position. Their financial strength and the strength of their affiliates have caused some concern with regards to any action that we take in the area of multiple ownership rules. The Notice of Proposed Rulemaking on the 7-7-7 Rule issued by the Commission in late 1983 expressly seeks comments with regards to network versus other broadcast licensees in regard to economic strength, and audience reach. I will review the record carefully with this specific issue in mind.

6. What do you see as the relationship between ownership requirements in the broadcasting industry, such as the 7-7-7 Rule, and ownership of stations by minorities?

ANSWER: One of the issues resulting from our Notice of Proposed Rulemaking with regards to the 7-7-7 Rule is the possible impact this rule or any modification of this rule may have on the ownership of stations by minorities. It is important to realize that many of the licensees who hold the maximum number of broadcast licenses are in fact publicly traded corporations and as such minorities, as any other segment of our society, can participate in their ownership. The issue of how modifications in the 7-7-7 Rule may impact on ownership of stations by minorities will certainly receive my full attention in staff recommendations with regards to this rulemaking. I also believe that modifications to the rule of 7's must be examined with regards to diversity of voices in addition to opportunities for ownership.

7. Do you support the FCC's policies developed over the past decade which have encouraged minority ownership? In particular, do you support the distress sale policy? the tax certificate policy? the additional credit or preference for minority applicants in comparative hearings for new licenses?

ANSWER: I have supported in the past and I continue to support the FCC's policies developed over the past decade that have encouraged minority ownership. I have especially supported the distress sales policy, the tax certificate policy and the additional tax credit or preference for minority applicants in comparative hearings for new licenses. I also believe it is important to understand that minority ownership should not necessarily be associated with a constituent minority audience or a community of license. It is important that minority ownership be made available across the board and across communities.

8. What steps would you take to improve and expand the existing minority ownership policies, including to other services within the FCC's jurisdiction?

ANSWER: I believe there are a couple of important ways in which to improve and expand the existing minority ownership policies. First, I believe there should be continued and improved efforts on behalf of the telecommunications industries to improve minority ownership. A case in point is the efforts by the National Association of Broadcasters to provide financial assistance to minorities for the purpose of acquiring stations. I feel such industry efforts are important and perhaps most directly responsive to the needs of minorities. At the Commission we can continue to enforce our minority ownership policies. Additionally, we may want to examine how these policies should be imposed on new telecommunication services. We also must review the requirements for entry to ensure that minorities have access to telecommunications services. Finally, with the development of new technologies we can provide opportunities for minority ownership.

9. Do you support the continuation of FCC regulation of industry EEO practices? What steps would you take to improve industry EEO regulations? Do you support increasing the threshold for requiring the filing of FCC Form 395?

ANSWER: I do support the continuation of the FCC's regulation of industry EEO practices. My record at the Commission demonstrates my strong belief and compliance with the Equal Employment Opportunity laws of this country and I continue to support present FCC regulations with regards to EEO practices. As a former broadcaster I can also lend my full support to affirmative action programs developed by the industry to recruit qualified minority applicants. I believe the first step necessary to improve industry EEO regulations is to enforce the regulations that are on the books. With respect to increasing the threshold for filing Form 395 above five employees, I believe this warrants special consideration before any changes are made. The Office of Management and Budget in response to the Paperwork Reduction Act has asked the Commission to remove the requirement that Form 395 be submitted to the FCC. OMB believes this form should be maintained at the station and if there are questionable minority practices, then this form can be submitted as part of the record. The Commission has asked for and received permission by OMB to continue to require licensees to submit their EEO Form 395, and I believe this is an appropriate requirement necessary to evaluate industry EEO performance.

10. What steps would you take to improve internal EEO within the Commission?

ANSWER: I believe it is not only important to recruit qualified minority applicants to the FCC but also it is important to promote from within. The most current FCC employment data indicate that approximately 48% of the Commission's staff is female, and approximately 33% of its staff is minority. I supported Commission efforts in the past with regards to its internal EEO program and I pledge I will continue to play a strong role in this area.

11. Have you ever voted in favor of a Commission order that stated that the Fairness Doctrine is a statutory requirement?

ANSWER: Yes. I have supported many orders which either stated, or strongly implied, that the Fairness Doctrine has a statutory basis.

12. Have you ever stated in a speech, article, testimony before Congress, or elsewhere that the Fairness Doctrine is a statutory requirement or that legislation is required for its repeal?

ANSWER: I have often publicly stated my view that the Fairness Doctrine was codified by the 1959 amendment to the Communications Act. On April 11th of this year, I issued a statement accompanying a Notice of Inquiry on the Fairness Doctrine in which I said: "The Commission has long acquiesced in the view that the 1959 amendments to the Communications Act did effect a codification of the doctrine, and I believe that the burden of proof rests on those who seek to change this _status quo_." (Copy of statement attached.)

13. Have you ever voted in favor of a Commission order that stated that the spectrum is scarce or limited?

ANSWER: I have voted in favor of many Commission orders that stated or strongly implied that spectrum is a limited resource. From Docket 18262, which reallocated spectrum from UHF television to land mobile services, to authorization of Direct Broadcast Satellite service requiring certain terrestrial microwave licensees to move to other spectrum, all of our allocation and re-allocation orders at least imply that the spectrum is limited.

14. In 1981, Chairman Fowler and three other Commissioners, including yourself, asked Congress to repeal the Fairness Doctrine. In submitting this recommendation to Congress, the Chairman stated, "I recognize that it is Congress which must ultimately resolve the complex issues presented here." Do you agree with the Chairman's statement that repeal of any part of the Fairness Doctrine must be left to Congress.

ANSWER: Section 73.1910 of the Federal Communications Commission Rules and Regulations states: "The Fairness Doctrine is contained in section 315(a) of the Communications Act of 1934, as amended, which provides that broadcasters have certain obligations to afford reasonable opportunity for the discussion of conflicting views on issues of public importance." I support that interpretation and agree that repeal of the Fairness Doctrine can only be effected by Congress.

15. Do you continue to favor an access charge scheme that shifts costs to the end user regardless of use?

ANSWER: I will certainly consider any reasonable pricing plan which appears to support competitive entry in long distance services and which does not contain incentives to bypass the local exchange. However, at this time, I am not aware of any plan, other than customer line charges, which meets both tests. The Commission will take a very comprehensive review of telephone pricing mechanisms late this year after all parties, including the public, are given a full opportunity to comment.

16. Do you think bypass of the public switched network poses a serious threat?

ANSWER: I am very concerned that bypass can become a very serious threat to universal service. The subsidy which flows from users of long distance services to local exchange customers adds significantly to the rates for long distance services. Prudent business people will continue to seek ways to avoid this added cost and will consider bypass. We have anecdotal evidence that there is considerable bypass now and that many large users have plans for bypass in the future. We hope to have a comprehensive view of this issue by late this year before we take any further action.

17. What should be done to protect universal telephone service for residential users? rural users? small business users?

ANSWER: The Commission has established a Universal Service Fund to subsidize those users whose costs are above average. The subsidy will be paid by interexchange carriers but it will be much smaller than the current subsidy since it will be targeted to only those who need it. Small business users will also be aided by reductions in long distance service prices in the years just ahead.

18. Should the newly formed seven Bell Regional Holding Companies be allowed to offer long distance telephone service?

ANSWER: I'm willing to consider that issue at the appropriate time and I really have no position on it as a long-term proposition. It seems to me that the Commission has enough on its plate for the immediate future without getting into that issue. As things take shape in the weeks and months ahead, it might be that the holding companies can enter the long distance business in some form without raising undue cross subsidy concerns. If that can be demonstrated, I would certainly be willing to consider their entry.

19. Do you believe the long distance telephone market is effectively competitive?

ANSWER: Yes. There are no barriers to entry that I can discern. AT&T cannot price its services without regard for existing or potential competition. There are areas of the country where AT&T remains a monopoly provider of long distance services but only because other carriers do not choose to serve those areas. If the definition of "effectively competitive" is that competitors can enter the market at will and that the major carrier is unable to set prices without regard for competitive forces, then I believe the market is effectively competitive.

20. What can be done to promote competition in international telecommunications services and facilities?

ANSWER: There are a number of applications before the Commission seeking to provide competitive entry into international communications services. The Commission has encouraged competitive entry into international record and voice services by breaking down the barriers which once confined certain carriers to record-only services and AT&T to voice services. We have required a balancing of satellite and cable services to provide choices for consumers. We are continuing to examine opportunities for competition in international services as are the legislative and executive branches of the government. Because competitive entry is not always welcomed by some foreign governments, we are proceeding carefully.

April 11, 1984

SEPARATE STATEMENT OF COMMISSIONER JAMES H. QUELLO

Re: Section 73.1910 of the Commission's rules and regulations concerning the general fairness doctrine obligations of broadcast licensees, General Docket No. 84-282.

It is no secret that I have long advocated full First Amendment rights for the electronic media. I strongly endorse the thrust of this document which has many well-reasoned arguments and which should provoke thoughtful comments. This Commission has an obligation to continually reexplore -- for both its own benefit and for the benefit of Congress -- any doctrine that precludes full exercise of journalistic rights by the electronic media. I think this is an extremely important initiative that the Commission has undertaken.

I would like to add that I shall be very interested in reviewing the comments concerning the Commission's statutory authority to revise the fairness doctrine. The Commission has long acquiesced in the view that the 1959 amendments to the Communications Act did effect a codification of the doctrine, and I believe that the burden of proof rests on those who seek to change this status quo. I trust that this issue will be addressed at length in the comments, and I look forward to examining the views of legal scholars on this issue.