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June 28, 1985

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JAMES H. QUELLO

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 90554

Dear Commissioner Quello:

I just read an excerpt of your speech entitled "Press Under Fire: Jefferson Revisited" in the June issue of CHANNELS MAGAZINE.

I would be most interested in seeing an entire copy of your speech if your office can make one available. Just on the basis of what I read, it would seem to me that if our Founding Fathers, who drafted the 1st Amendment, were to see how it protects all kinds of nonsense they might very well have made a few reservations.

At any rate, I found the excerpt of your speech remarkably challenging and intellectually far above the speeches made by some of your colleagues. You might be interested in a letter I sent to Chairman Fowler, a copy of which I have enclosed.

Cordially,

David Levy

DL/psr



391

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October 18, 1984

Mr. Mark S. Fowler, Chairman
Federal Communications Commission
1919 M Street, N.W. Room 814
Washington, D.C. 20554

Dear Mr. Chairman:

In your speech of October 10, before the Hollywood Radio Television Society, you said that your door is always open to new arguments, and that you will "bring an open mind and a willingness to listen" to the issues facing the television industry.

I wish to accept that invitation.

This organization has called upon you to resign your office because we do not believe that you perform your duties in an unbiased, dispassionate manner. We believe you are disposed to make decisions in which the freedom you espouse for broadcasters conflicts with and diminishes the freedom of other major participants within the television industry, decisions which are designed--whether you so intend or not--to consolidate and strengthen the already immense power of three private broadcasting corporations.

In your speech you spoke a good deal about freedom--but never once did you mention the corollary to freedom, and that is responsibility. You seem to have forgotten that freedom without responsibility can lead to license.

You referred to your "extensive experience in broadcasting" as an attorney. Granted, but decisions which you recommend for broadcasters have a tremendous impact on other elements of the television industry, whole areas of which you tend to ignore, either because of your lack of real knowledge of those areas, or worse, your indifference to their survival. The public interest is, thereby, often adversely affected.

You profess to believe that we should "move towards a marketplace approach to broadcast regulation" and further, that "under a marketplace approach the Commission looks to competition not rules."

Wrong.

Competition is excellent--as freedom is excellent. But just as freedom has its corollary in responsibility, competition has its in rules.

Every sport has competition--and it has rules. It has referees or umpires to interpret those rules. Some sports have commissions as well. Every business has competition--and it has rules. Some of those rules are necessary in order to make the competition fair--those



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rules take the forms of agency regulations or laws passed by state and federal bodies. We have agencies and courts to interpret those rules just as we have umpires and commissions in sports.

Broadcasting is no exception.

Broadcasters once operated under a code of conduct dealing with matters of program content as well as with commercials. That a court construed elements of this voluntary effort by broadcasters--to set modest rules for themselves--to be illegal, is almost academic since there appears to be a silent industry agreement that the rules were in the self interest of broadcasters and in the public interest as well. They are being adhered to despite the court decision.

What is the "marketplace" to which you constantly make reference? Without rules, your concept of a marketplace would encourage the three networks, as well as other financially powerful station groups, to gobble up the ownership of stations. In that process the three networks would surely emerge as the dominant owners.

Without the Financial Interest and Syndication Rules--which you tried to drop--your concept of a marketplace would invite the three networks to become unwanted financial partners of every production company turning out television programs. Without those rules the three networks would, overnight, become major syndication companies capable of driving small companies out of the business, and capable of using their tremendous real marketplace power to demand and obtain participation in all of the subsidiary rights of all television producers.

Without rules (including the consent decrees) the three networks could become the major contractual parties to exclusive contracts with talent (producers, writers, directors, actors, etc.) and become major production centers, eliminating, or at the very least, diminishing the use of outside studio facilities and the skills of major and independent production companies.

Rules are vital for broadcasters and for the television industry.

The Commission has no direct dealings with the creative community, but its decisions, affecting broadcasters, have a direct impact upon every production company, every distribution company, and every working man and woman in the television industry--whether he is a star or a stagehand or a composer or a bookkeeper.

You said that "as an attorney with extensive experience in broadcasting, I committed my energies to regulatory reform of the broadcasting laws." Mr. Fowler, those laws do not exist in limbo--they have a profound impact on the entire television industry, of which broadcasting is only a part--I am assuming that broadcasting, to you, relates to television stations, and to a lesser extent to the networks, since they are not subject to FCC licensing as are their owned and operated stations.

The marketplace of television is distorted by the fact that there are only three networks, each a powerful buyer, each dedicated to the pursuit of profits, profits derived by stations and the networks. Those profits are earned not by serving the interests of the entire American public, but by catering, in the main, to a very specific segment of that public, in particular, 18 to 49 year old women, preferably urban women, because

they are the major buyers of consumer goods and services. This specific audience is, consequently, the major target of broadcasters and networks. Older and younger women are not; men are not except in the case of some sports programs. Children are not, except on Saturday mornings.

Since broadcasters and networks are preoccupied in their pursuit of these urbanized 18 to 49 year old women, the Fowler marketplace is an illusion. Networks and station owners expend huge amounts of monies researching program appeals, and if a program does not appeal to that number one target audience it will seldom be on a station or network schedule.

In short, Mr. Fowler, broadcasters serve the interest first of advertisers' targets--not America's viewers, but rather specific prospects for the sale of their goods and services. It's on that edifice that the entire American commercial television system rests, not on serving the public interest.

Congress specifically set up the Commission, however, in order to protect that public interest--the founding fathers of the communications act had enough wisdom to know, or to suspect, that some kind of oversight body would be necessary. In an era when a 30-second spot costs $190,000 on "60 Minutes," and when even the cheapest network spot in primetime costs $59,000 (on "Punky Brewster"), and when, out of a total of 70 prime-time shows--on 40 of those shows--a 30-second spot costs over $100,000 (these facts from ADVERTISING AGE of October 11, 1984) when the stakes are so tremendous, some rules are necessary.

Why?

Once you accept the fact that our television system, including the existence of every commercial station and the three networks, depends, primarily, on the advertisers' needs--a specific targeted audience--it is clear that the system cannot serve the public interest without some modest guidance--and that guidance can take the form of FCC regulations and guidelines as well as an FCC commissioner's raised eyebrow.

Why the eyebrow?

Because the First Amendment protects freedom of speech and of the press--and we are all grateful that it does. But again, with that freedom goes responsibility, and sometimes that can best be served--not in unwise laws or regulations---but rather as the result of a raised eyebrow, jawboning, or call it what you will.

I call it leadership.

I call it a recognition of responsibility.

I call it purpose. If it has behind it--not some capricious opinion, but rather common sense--as was true of a predecessor's remark about the "vast wasteland," it has impact, not only on the public, but upon the men and women who control programming, network television executives. (I was one of those executives at the time of Mr. Minow's critique, and its impact brought about the immediate primetime scheduling of public affairs programming on all three networks, and an intensive examination of

the twin evils of gratuitous violence and exploitative sex on all programming.)

Broadcasters sensed that it was wiser--and better for them and their viewers--not to ignore the Chairman's criticism. He never advertised that he was a paper tiger either, as I'm afraid you do, but relied not only on his implied power, but upon the pressure of public opinion.

You have abdicated from such responsibility, citing the First Amendment to defend your position. That is not leadership. That is an admission of total indifference to the chief product of the television industry--its programming, yes, its content.

You have publicly stated that you see the role of the FCC to be likened to that of a traffic cop--making sure the air signals don't collide, but being totally indifferent to what the signals carry. A traffic cop is just that--trucks carrying dynamite or drugs or terrorists obey the same red and green lights that all other traffic obeys. Just so, programs of witless content, questionable taste, dubious values, are as secure with you as programs of meritorious substance and wholesomeness.

Minow saw his office as one that could voice aspirations for a very competitive industry. You see yours as one preoccupied with technical details and nothing else, except, possibly, the release of broadcasters from paper work that at the very least reminded the holders of station licenses that, in exchange for their licenses, they did have to provide some service to the public, and, in fact, paper work that advertisers and their agencies are insisting that stations continue to adhere to, despite your orders.

The marketplace, which you applaud, makes it clear that the networks completely dominate the programming field. Although they cater to the advertisers' needs, since 1960--as a direct result of the twin elements of the infamous quiz scandals and the escalation of program costs, which gradually eliminated the advertising agency as an initial contractor for programs which it placed on one of the three networks--networks have the major voice in determining what programs are produced and for the most part, for that matter, which producers and which production companies will provide those programs.

They control the development, production, and scheduling of programs to such an extent that they dictate to the major production companies--not only the terms under which they license those programs--but the approval or disapproval of personnel who serve before the camera as well as those behind the camera. They do this with respect to writers, directors and actors, and very often without any regard to key provisions of existing contracts between the creative guilds--SAG, WGA, amd the DGA--and the production community. In actual fact, they compel all production companies, large and small, to breach their contracts with these guilds by asserting rights of approval in areas which the creative guilds deny production companies from delegating, rights won in long negotiations with the production companies, won, sometimes, after painful strikes. That, Mr. Fowler is the harsh real marketplace which you espouse.

Catering solely to the 18-49 year old woman is an evil practice--just as evil when it reaches out, as it sometimes does, to the 25-54 year old woman. That target distorts the kind of programmming offered to the American public. You say "Broadcasters, not the government, should decide what the people should hear and watch, based on their reading of what it is they believe the people want." They do that,

Mr. Fowler, by reading Neilsen and Arbitron ratings--and the refined demographics those organizations offer. They decide what people should hear and watch, to paraphrase your words by acccomodating their taste and judgment to what advertisers want. If broadcasters were encouraged by FCC leadership to offer some programming--some modest portions of their programming-without regard to ratings and one major demographic group, it would alter the kind of programming scheduled.

Is that the way a national treasure, as vital as the television program structure of the nation, should be run?

Is the advertisers' need superior to that of the public's?

Free of some of the basic restraints induced by advertisers--encouraged by real leadership from the one body Congress set up to protect the public interest--the Commission you head--today's network executives would be able to explore far more diversity of program content for the public's entertainment.

The need to satisfy the advertiser--and I recognize that there is a need to take his interest into consideration, along with that of the many different publics that make up the mass audience--would require less reliance on ratings. That is a Caucus objective. Another characteristic of today's television structure that arises from the need to satisfy the advertisers' desires, and that has built-in, albeit necessary evils, is the magazine concept which substitutes a kind of advertiser anonymity in the form of 12 thirty second commercials (plus station breaks, promos, local spots) every hour, with no real responsibility placed upon the advertiser. This, of course, was not the case when advertisers sponsored entire programs, or at least, alternate week showings. This identity of sponsor and program once made advertisers more scrutinizing about the program content of shows they sponsored--not, admittedly, without creating some problems in the way of interference with the production team, although I would venture to say, interference on a far lesser scale than presently exists with that imposed by network personnel on the creative teams now employed to produce network programs (that creative control being another issue the Caucus struggles with in its dealings with the three networks)--than the present system.

The practice of scheduling programs in order to take advantage of the flow of audience is another aspect that is not necessarily in the public interest--but rather in the networks' interest, since they schedule similar types of programming so compatible with each other that the flow of one leads into the flow of the next, accounting therefore, as in the current network schedules, for a sameness in program appeals--for example, in the scheduling of three action adventure programs for an entire evening on one network, and a block of four comedies one right after another on a second network. This block programming is done in order to achieve maximum audiences--again of a specific character, preferably the 18-49 year old woman--for prospective advertisers.

Networks, in short, are preoccupied in producing specific audiences made up of wanted prospects--the larger, naturally, the better. This practice effectively eliminates what was once known as a balanced schedule.

Tied to the flow of audience, as measured by Neilsen research, is the primary goal of the networks--not to serve the public interest, which you believe is synonymous with

ratings--but rather to win the largest audiences possible (of the preferred specific audience makeup) every half hour, every night--and every half hour, every day, as well. This, too, results in monotonous programming of a few types.

There are some--Judge David Bazelon has been one--who equate television as one of the two or three significant facotrs of the 20th century--right alongside nuclear power.

And why not? Television programming is a vital factor in shaping the American mind--in consuming much of our leisure time, in forming public opinion. Its influence and power--pictures plus movement plus color--far exceeds that of print. Advertisers know its power. They extract much from their twelve 30-second spots each hour. Some have great impact. And, Mr. Fowler, so do the other 54 minutes of program content. Someone--some body--has to have some interest, even concern. That is why citizens look to the FCC.

You may understand broadcast law, but I don't think that helps you to understand, fully, how the television system functions. You occupy a key role in government. You should help elevate the medium--not, of course, by initiating a flock of burdensome rules, and repealing the fair ones, but by supporting or introducing constructive rules that help all of the players--the broadcasters, the networks, the advertisers, the production companies, the creative community--deal with each other on a fair and equitable basis.

You should be the voice and the dream of the public interest. Those aspirations, hopefully, could serve as suggestions that merit consideration by all elements of the television industry.

The public has its rights and its expectations. You have yours--and included in those rights is your freedom to express yourself. The First Amendment is in our Constitution to serve you as well as the broadcaster. And yes--guidelines, raised eyebrows, lofty goals are useful tools; they offer legitimate constraints on those who would ignore or deny the rights and freedoms of others.

You should be the television industry's visible champion leading all of the varied elements of that industry to work together in the interest of America's children--America's families--America's mind.

Sincerely,

David Levy
Executive Director

DL/psr