

American Association of Advertising Agencies, Inc.

February 18, 1987, Luncheon Speech

Russell Senate Office Building - Room #385

Honorable James Quello, FCC Commissioner

JIM QUELLO: Thank you. I am a Commissioner at the FCC, God willing, until 1991. At my last confirmation hearing, when the hearing was over, Senator Goldwater said, "Jim, are you willing to serve your full term?" And I am sorry I have to admit this, but at that time ('84), I was seventy years old. I said, "if God is willing, I am willing."

I got a nice wire from Chuck Adams that said "Congratulations, hang in there until they name the building after you." A lawyer I know well, said "Congratulations, you are living proof that the meek do not inherit the earth." I called him and said "If they did inherit it, what the hell would they do with it?"

I think the Commission in the last five or six years, has been a deregulatory commission. There is no doubt about that. I think it has been very friendly to the marketplace and to business. You have to give Mark Fowler a lot of credit. I tell Mark personally, "Mark, you are like a cow that gives real rich milk and then occasionally you will

kick over the bucket." But I am still glad that cow is in the barn.

We do disagree on a few things. One of the major disagreements now has been must carry. I disagree with him about financial interest syndication. I disagree with him about the merger mania that the FCC made too easy. These are the three major things I opposed him on. I support him 96% of the time. A lot of good things have come down the pike. I don't think business and advertising should feel threatened by the FCC as presently constituted.

I think you are interested in must carry and First Amendment rights so I will quickly bottomline those issues. As you know, cable at one time was required to carry the local signals of local stations. About a year ago, the court claimed that the must carry rules were unconstitutional and invited the Commission to redraft them.

Well at the time, this was one of my major disagreements with the Chairman, Chairman Fowler didn't believe in must carry of any kind. He thought the market place should take care of it. I thought you have a gross imbalance in the market place without must carry.

I firmly believe the Commission should have appealed the Court's decision. However, there were no votes for appealing

the decision. So everyone said "there it is, the FCC is actually endorsing the court decision." I started making all kinds of noises saying "the court has the legal authority to overrule us, but they don't know the practical market place. This is a terrible decision. There is imbalance without must carry."

A couple of friends of mine on the Hill including John Dingell, Chairman, Committee on Energy and Commerce, said, "I am on your side." So I said, "Let them know." Well it is the first time in my almost thirteen years at the Commission that I saw a letter signed by every member of the House Telecommunications Subcommittee. Every Republican, every Democrat, liberal, moderate, conservative signed it. "You will do something about must carry." In the meantime, you also had Senator John C. Danforth, the Republican Chairman of the Senate Commerce Committee, saying you must have must carry. Senator Ted Stevens wanted must carry. Senator Ernest Hollings wanted must carry. Congress wanted the Commission to come up with a new rule, adopt it and then throw it to the courts.

✓ The Commission first came up with the idea of the AB switch which at first blush sounds pretty good. It is a switch that you can install ~~only our~~ set. The you can punch the buttons for cable. If you want to get your local station and cable is not carrying it, you can turn to the switch.

It didn't strike me as a very practical idea. I think, if the cable isn't going to carry a station, how many people will go to the AB switch? And the other thing that worried me a little bit -- in our business when you have so much regulation you get a little paranoid -- I thought maybe the AB switch was one way to make sure must carry got killed again.

Cable estimated the AB switch would cost them approximately \$1 billion, \$1.4 million to install. We were going to force cable to provide the AB switch at cost for all the sets out there and to install it in all the new subscribers, all the new systems. What if the cost was exaggerated? What if it was only \$800 or \$900 million? If I were a judge and saying "Now look, these cable companies went into this thing 30 years ago, 10 years ago, 20 years ago and this strikes me as a little ex-post facto. Now we are bringing something in that is going to cost them this much?" I might say I don't like it. That is what worried me, along with the fact that I thought it was impractical.

Ultimately, the Commission drafted the rule with the AB switch and with limited must carry. According to the rule, the must carry requirements will vary depending on the size of the cable system. Generally, cable systems will be required to carry seven stations or 25% of the system, which

even is greater. We will issue this rule in two or three weeks maybe. We have been sitting on it long enough. Congress again is saying "expedite it." We have had letters from Senators Hollings and Congressman Dingell. I am saying let's expedite it and let's get on with it. Then we will see how it stands up.

But without must carry you have all kinds of imbalances. You have cable ^{now} ~~not~~ starting to sell spots. The President of Manhattan Cable sent a letter around to the top, twenty-five markets saying in effect that you don't have a media plan without cable. You should have television, you should have cable. Then you should have, I guess, all the little extraneous stuff like newspapers, magazines, radio. The important point was that he was making bigger claims about cable; that cable today can deliver more cost per thousand efficiency than anyone else.

There is no doubt that there is a big media drive on. You can see this scenario coming up without must carry. Cable is selling spots aggressively, but without carriage on cable independent stations cannot sell spots as aggressively. Thus, cable can decide not to carry that independent station, thereby hurting the station's advertising base.

Independent stations should have syndicated rights too. I am not saying the new syndicated rights to "The Bill Cosby

Show", just a nice attraction like "MASH", "All in the Family", "Three ^{COMPANY} is a Crowd". If cable doesn't carry that local independent station, it doesn't have to lose the syndicated shows for the market. Cable brings in WGN, Turner, any distant independent station that they want to, and you get that syndicated feature from a distant signal. The local independent station has paid for territorial rights, usually 35 miles or their coverage area. Without must carry, this gross inequity is possible. If cable wants, they could knock off all three local network affiliated stations. Cable can get them from New York and you get your local news from one or two of the local independents.

We were getting all kinds of horror stories. First of all, a horror story came from the National Association of Public Stations. They said, "Do you realize that even with this thing still in contention, 150 public stations have been dropped?" Now public stations don't have the audience that others have, but they do have government support. They are initiated by the government. There is a government interest in having a separate, distinctive type of program service. But, 150 dropped.

I am aware of another horror story told to me by a broadcaster. He said, "You know, the cable system in our area has promised me that I could keep my channel." I think he has Channel 5 or something on cable and he wanted to make

it long-term. He said, "It is very simple for me. All they asked me to do is pay them \$150,000 a month." I said, "A month! Wow!" Another broadcaster said "Well, I'm a lot smarter than he is. I can get it for \$75,000 a month." Then I heard another two or three broadcasters talking, "Well, the cable people said they would keep us on the same tier and the same channel, but they expect us to buy cable spots."

You are giving way too much power to what I think is a monopoly. I don't think that any monopoly transmission pipeline should have the power to either prevent or obstruct a license from serving the area he is licensed to serve.

Now being the devil's advocate, say I have a 12 channel or a 20 channel cable system. I could go before a judge and say, "Judge, I can't exercise any editorial judgment at all on my 20 channels. All 20 are actually preempted by this ridiculous rule that I must carry all these local signals. Well, if you were a judge, you might say "Well, that sounds like there is something wrong there." The courts did say something about it. They said the best thing they could; that we were interfering with cable First Amendment rights.

Now I am the oldest advocate of full First Amendment rights for broadcasting at the Commission. I have appeared before the House, before the Senate in 1986-77, saying let's get rid of the Fairness Doctrine (which really should be called the

Government Intrusion Doctrine). What bothers me is that the courts were given cable full First Amendment rights, but not broadcasters. Cable originates practically no local news and very little local public affairs. They have a network that is carried down the line. But all the local news, local public affairs, or local requirements to serve the public interest are met by broadcasting.

With the new cable act of 1984, cable is really accountable to no one. They get their franchise for fifteen years. The city can't interfere with what they are going to charge. You've got a very powerful medium that gets its basic programming, i.e. local stations, for free. If it is a distant station, they get it for very little under the compulsory copyright. So cable has a sweetheart deal. If must carry and syndicated exclusivity do not come back down and if I were a banker, I think I would sell broadcasting short and buy cable stocks. I don't think this kind of inequity can't last that long. I feel very strongly about it.

Of course, the first thing you know, people start saying this [rulemaking process] is getting to be politically tainted. Congress reacted so strongly. However, I think Congressmen and Senators have an obligation, let alone the right, to let the Commission know exactly how they feel about anything that affects the public or the public interest to this extent.

So that is it. I don't know whether you want to hear about the First Amendment and the Fairness Doctrine. Briefly, if broadcasting has existed in 1776, it would have been a prime beneficiary of our constitutional guarantees: the freedom of the press and freedom of speech. You didn't have broadcasting at the time. You had newspapers and the town crier. But look what broadcasting could have done. We had so much illiteracy then. I mean, you at least could have been aware of what was going on through radio and through television.

At first, they used scarcity as the primary reason why broadcasting has to have special rules and special government restrictions. The scarcity isn't there any more. There is no scarcity argument. The only argument I can make is that constitutional guarantees weren't placed there for the benefit of the public, so they could have news free of government control or government influence. Now in America you have broadcasting news free of government control. However, as long as you have 315, 312A and the Fairness Doctrine, you don't have broadcasting free of government influence. I think it is time to give broadcasting to the maximum extent possible the same freedom that newspapers enjoy. They are every bit as responsible and in some cases maybe more so.

That bottom lines it. I would be so glad to answer any questions. There are eight or nine other controversial issues before the FCC but I think these are the two things most important to you: must carry and First Amendment rights particularly. If broadcasters get full First Amendment rights for news, you are going to have a better chance of having full First Amendment rights for your advertising. I am a believer in full First Amendment rights for advertising.

(Applause) Thank you.

QUESTION: Who is going to be the next Commissioner of the Federal Communications Commission?

QUELLO: There are about seven or eight in the running. There is a good chance that someone within the Commission could get it. That is a good way of uplifting someone who does an exceptional job and let him get to be a policymaker. We are trying to save Brian [Fontes]* for the copyright royalty tribunal. If you ever have an opening there, I hope all of you will get behind and support Mr. Brian Fontes, tremendously well qualified, a very valued member of my staff and one hell of a guy.

And incidentally, I have someone else in my office who is rather unusual, Dave Donovan.* I was delighted I was able to get him to come to my staff because he had a very good job. He was the legal assistant to the head of the Mass Media Bureau, which is the biggest bureau at the Commission. I was able to get him to come and be my legal assistant. God knows I need legal help because sometimes I bottom line things too fast. I can always tell when I am doing wrong at the Commission. The legal assistant is out there looking at me like he is more than just hoping I don't say the wrong thing. "Do you realize this is an adjudicative proceeding and you just told them exactly where you stood." I said, "Well, normally the press likes to know where I stand and they take care of me."

One time I got in a little bit of trouble and I had to raise hell with the press. There were about 20 of them there and they looked at me and I said, "I thought I was really badly treated by the press. They used a lethal device of quoting exactly what they heard. I can't stand that kind of treatment."

QUESTION: What is the history of syndicated exclusivity?

*Guests at the 4A's luncheon.

QUELLO: Briefly, at one time, cable systems were required to give syndicated exclusivity to local stations that had bought the program. Cable couldn't bring the same program in on top of that program. They were required to blank it out. Well, in 1980 the Commission did away with the syndicated exclusivity rules over a very strong dissent from me. However, we are presently revisiting that decision.