

**Press Statement of
Commissioner James H. Quello**

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**Re: Amendment of Parts 73 and 76 of the Commission's Rules
Relating to Program Exclusivity in the Cable and Broadcast
Industry**

I generally agree with the item to the extent it reaffirms our legal authority to establish syndicated exclusivity and that the syndicated exclusivity rule is consistent with the public interest. While I support the item, there are several aspects of the decision that I find troublesome.

As I observed in my separate statement to the Report and Order in this proceeding, the Commission's treatment of pre-existing contracts, i.e., contracts entered prior to August 1988, is unfair and inconsistent with the underlying premise of the decision. Regardless of the intent of the parties, the Commission requires these contracts to contain language stating, in effect, that the parties contemplated reimposition of our syndicated exclusivity rules. I doubt broadcasters and syndicators were blessed with the clairvoyance to place into their contracts, language that would not be required for several years.

I also find no real reason to extend the effective date of our Report and Order. Cable operators have had over a year to prepare for this rule. There is ample evidence in the record to demonstrate that switching equipment is available. Indeed, a study submitted by the supporter of the cable industry states that 30% of all cable systems now have equipment for blanking out time segments or for inserting programming into blacked out time segment. There is also evidence demonstrating that the costs of such equipment are not overly burdensome. Most importantly, there is no hard evidence in the record to demonstrate that cable operators would be unable to handle requests for syndicated exclusivity. In fact, it appears that syndicators have not been generous in reaffirming syndex rights for pre-existing contracts. If problems arose in August, the Commission would always be in a position to take corrective action. Extending the rules at this time is based on nothing more than conjecture as to future events.

At the very least, we should honor the exclusivity for programming contracts entered into after the date of our Report and Order. In these cases, parties had legitimate expectations that they would be able to enforce syndex as of August 1989 and gain the benefit of their bargain. It is patently unfair not to honor these contracts.

On balance, I believe the equities in this case justify the Commission retaining the August deadline established in our Report and Order. Because broadcasters are required to notify cable operators by June 19, 1989, the industry and the Commission would be in a position to evaluate the need for additional time, if any.

A more detailed statement will accompany the Commission's decision when released.