

E Mail to Chairman Hurst
from Commissioner Jim Quello

Sept 17, 1997

Your creative approach to your newfound unilateral power of an FCC Chairman is intriguing, but I don't believe it is supported by the Act, precedent, or reasonable management practices.

As a former Chairman, there were many times I, too, wished for the unilateral power of an industry CEO, but there was no legal or precedential justification. Further, I respected the power vested in the will of the majority of commissioners, who may oppose my viewpoint, but who had equal voting rights.

In particular, I must respectfully take issue with your statement that "the Commission is not a single commissioner or even a group of commissioners," that "it is personified not by commissioners but by the CEO (you) and by other employees," and that you, alone, control the activities of the staff of this agency.

Section 4(a) of the Act states clearly that the Commission "shall be composed of five Commissioners" with one designated as Chairman. Section 4(h) states that three Commissioners shall constitute a quorum, and our own handbook states that a quorum may legally conduct business. Further, Section 4(i) states that the Commission may perform any and all acts . . . as may be necessary in the execution of its functions. I cannot see how these provisions would lead you to the conclusion that the Commissioners are irrelevant to the "execution" of the Commission's "functions." I also disagree with your assertion that the statutory provision that explicitly exempts our personal staff from the civil service laws can be read as a limitation on the authority of the Commission, defined as four commissioners and a chairman, to hire employees under 4(f)(1) or to direct the staff to act in a manner necessary to the execution of its functions.

In addition, I believe that your reading of the language in Section 5(a) is much too broad. While the Chairman may have the authority to organize the work of the Commission, that authority is limited to the promotion of prompt and efficient disposition of issues pending before the Commission. In addition, I do not read that authority as sufficient to overcome the will of a majority of Commissioners. For example, that section specifically requires the Chairman to represent the Commission, which, as noted above, is comprised of the Commissioners. The Commission is not some amorphous entity that needs to be "personified," but a group of people, appointed by the president and confirmed by the Senate, who carry out their mandates from Congress through consensus and majority. Now these Commissioners, acting as the Commission, may, under Section 4(f)(1) hire employees, under Section 5(b), organize them into Bureaus, and under Section 5(c), delegate some of its functions to them. But it is the Commission that, in the first and last instance, is granted the authority to execute the Commission's functions, and to make decisions.

Even if there were a possible argument that the Chairman can overrule the will of the majority of the Commissioners, never, in my 23 years, nor am I aware of any time, that such a naked grab for power has been attempted. There has been a long tradition of respect for the process of majority rule at the Commission. Like a democracy, it draws its strength from that respect, and from the willingness of people to abide by the decisions of the majority. I would hope that we can find

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a way to resolve our differences over the real issues before us, prior to the end of our term, in a manner befitting the respect this agency deserves.