COMMISSIONER JAMES H. QUELLO

CONFLUENCE ON COMMUNICATIONS POLICIES

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As a Commissioner I used to say one of the joys of public speaking is hearing yourself introduced.

I should just say thank you and sit down – quit while I'm way ahead and not spoil the impressive introduction with my speechmaking.

Anyway, I'm glad my longtime friend and distinguished FCC alumnus, Matt Leibowitz invited me to speak. As you may know, Matt is the very effective, and I must add, influential, legal counsel for the Florida Association of Broadcasters and other prestigious communication entities. Many of you may know that Matt was a principal in establishing Cellular One throughout the State of Florida and now represents local jurisdictions throughout Florida on telecommunications matters.

So I'm glad to be here and really appreciate the pre-posthumous eulogy.

Of course, as a fugitive from the actuarial law of averages, I'm glad to be anywhere.

I have lived ten years beyond the average life expectancy – a source of annoyance to some. Also, I'm very lucky my physiology hasn't lived up to my chronology.

I'm often asked what do you consider your most important official achievement. I simply answer it is being appointed by a president five different times and confirmed by the senate. Naturally, without appointment and confirmation you are not in a voting position to accomplish anything.

My very first confirmation hearing lasted eight days and was the longest on record for all regulatory agencies. My last confirmation hearing of 12-1/2 minutes was heralded as the shortest in history.

One bit of homely advice I give new commissioners: : "Add your oversight senators and congressmen to the Fourth Commandment. It is a good idea to honor them."

The pros, cons and subtleties of confirmation and oversight hearings and FCC regulatory tribulations are subjects of a book I'm writing -- if I ever get it completed.

One of my more memorable laugh lines came in preparing for my second hearing about 14 years ago. It has become a raunchy speech standard.

Sex is always a contentious but intriguing subject in government circles, even back then.

At that time several nominees for cabinet posts, including a prominent senator, were being grilled at confirmation hearings about possible inappropriate sexual proclivities. In advising me on the upcoming senatorial hearing, my legal assistants asked, jokingly maybe, "Commissioner, could you be accused of being a womanizer?"

I replied "Hell no! At my age I'm not a womanizer, I'm now a fantasizer. I even play X-rated films backwards because now I like to see people get dressed and go home." Naturally it wasn't used for the official confirmation hearing, but it was handy as a speech laugh line for 14 years.

As a speaker at the FCBA (Federal Communications Bar Association) luncheon last year, I regaled the audience with my latest sexual disclaimer -- I said "With the involuntary celibacy of the golden years, I now read Playboy for the same reason I read National Geographic -- to see fascinating places I don't get to visit."

Wife Mary threatened to turn me in for two 40s if I ever used that raunchy story again. Her threat was well timed. It came after I made a statement that "I feel great but anyone who says he can do at 80 what he did at 40 wasn't living too exciting a life at 40."

But enough for the heavy stuff. You aren't in the audience today to hear about all my personal experiences and tribulations as fascinating as they are to me.

Matt told me you seek an inside view of some of the key communication issues before the FCC and Congress with some time specifically devoted to the 1996 Telecom Act.

The FCC has been an active battleground for contentious First Amendment debates the past three years.

The issues tripping First Amendment challenges and arguments are frequently emotionally charged, mediogenic and lend themselves to demagoguery.

I'll list a few of the more publicized issues, like:

1. liquor advertising
2. counter-advertising
3. government requirements in children's programming
4. government mandated V chips and audience ratings
5. additional public interest obligations for HDTV and digital broadcasting
6. cross ownership and multiple ownership restriction
7. enforcement of broadcast indecency
8. proposed regulation of TV violence
9. public broadcasting funding
10. government regulation of telephone interconnection rules, cable rates and many others too numerous to treat in one speech or even in a single book.

It is generally known that I vigorously opposed what I characterized as the FCC regulatory fixation the past three years. I opposed what I considered a constant promulgation of a culture of regulation and governmental micro-management contrary to First Amendment rights and values.

I wish we had the time to share my strong feelings on all the more visible communications issues. However, with the limited time today I'll present my position on the upcoming contentious newspaper-TV cross ownership regulation and on the problems of implementing the 1996 Telecom Act. If time permits I'll present brief bottom line opinions of other issues. If possible, I'll leave time for your questions and accusations.

The newspaper-broadcasting cross ownership and multiple ownership of communications entities is starting to surface in Congress and the FCC.

Ten years ago I would have been a hard-liner opposing relaxation of cross ownership rules because of the dominant power of TV and to a lesser extent, newspapers.

But, today we have an exploding multi-channel, multimedia environment not envisioned or even imagined back in 1975 when the FCC adopted the newspaper and broadcast cross ownership restrictions. To fair minded, media conscious individuals, the restrictions are outdated.

Broadcast and media scarcity are outdated theories. Three networks that once commanded 95% of prime time viewing are down to 46% with six networks. Audiences are being eroded more each year. Newspapers are no longer the prime or most utilized sources of news and commentary.

Broadcasters and newspapers face intense and growing competition from a wide variety of multi-channel, multi-media entities and more are coming on stream.

The competitive increases are dramatic, not only since 1975 when the rules were first adopted but even since the past ten years!

A fast review of the multi-channel, multimedia competition of today is convincing:

1. The large increase in TV and radio stations. For example, from 3 TV networks to 6 networks plus increases in public stations and establishment of 1500 low power stations.
2. DBS and DARS dramatically increasing available TV and radio channels.
3. Growth in cable channels and MDS with huge audiences of ESPN, CNN, TBS A and E, Discovery Channel and numerous other channels with many more specially programmed channels planned.
4. USA Today with large national circulation
5. Internet and on-line computer services
6. Competitive suburban dailies and regional magazine distribution
7. Growth in direct mail advertising
8. Growth in sophisticated electronic billboard advertising.
9. Future telco entry
10. Future channel increases from digital broadcasting.

With so many competitors, broadcasters and newspaper publishers need freedom to pursue the growth strategies and technologies of their communications competitors.

With the phenomenal multichannel, multimedia communication world of today, the "scarcity" rationale justifying broadcast restrictions no longer apply.

The cross and multiple ownership rules should be revised or rescinded and restricted only by anti-trust laws or some practical safeguards against local market revenue dominance.

The other major subject I'll discuss today is telephone regulations under the 1996 Telecom Act.

It's been almost two years since the passage of the Telecommunications Act of 1996. This was the first time Congress rewrote the Communications Act in more than sixty years and it was intended to usher in a dramatic revolution in telecommunications by lowering regulatory barriers and by opening the flood gates to new technology and competitive services. The result was supposed to increase competition and lower telecommunications costs to the American consumer.

However, twenty-twenty hindsight has demonstrated the failure of this legislation and the FCC's rules and regulations implementing it to create competition in telecommunications services and to lower rates.

The initial intention of the legislation were laudatory, but not specifically enough stated or implemented to be effective.

Thus, it is reported that some members of Congress are eager to review what they did in 1996 and consider necessary changes to implement Congress's initial intent. In addition, state legislatures, such as Florida legislature, have begun to focus on what needs to be accomplished in order to achieve this laudatory goal of increased competition and decrease of rates within our respective states.

Thus, I think it is appropriate for sessions, such as today, to go back to basics and see what has happened, what has worked and what has not worked so that future efforts may come closer to achieving the promises of this telecommunications revolution.

First, as an FCC Commissioner for over 23 years and as a general manager of a major radio station and successful TV applicant before joining the FCC, I have seen time and again, the

beneficial promises of technology become unfulfilled dreams. On some occasions, the fault is properly directed at the FCC for failure to take the lead in encouraging the implementation of such technologies. An example is AM stereo radio and more recently, high definition television. On other occasions, the promises of technological revolution were lost somewhere between the lofty plans and dreams of engineers and the commercial reality of the market place, i.e., who pays the bill and how much does it cost? Thus, I think we all need to step back and recognize what technology is really available today at a cost effective basis and not what may be available only in the laboratory and in the halls of the government. More importantly, we must create an environment which will be flexible enough to allow for future technologies to be developed and implemented on a more rapid basis.

Second, as an FCC Commissioner, I was often lobbied by industries who made lofty promises offered in exchange for some regulatory relief. Sometimes these promises were kept and sometimes they weren't. At the FCC, we use to refer to this dilemma as Promise vs. Performance. In the case of telecommunications, we were promised that telephone companies were ready and anxious to offer video services to compete with cable companies, and that the cable companies were ready to jump into the telephone business. However, two years later, this hasn't happened.

Now, don't get me wrong, I believe that the genius of our telecommunications engineers have made our country's telecommunications industries the best in the world and that our telecommunications companies provide the highest levels of services to the American public. However, what I am suggesting is that prior to wholesale and rapid changes in the telecommunications regulatory structure, we must realistically understand what technology has

in store for us and recognize there are costs to be paid by someone in the implementation of these technologies.

A second issue that government officials must confront is how is the government going to facilitate the implementation of this new technology and not act as the obstacle in this telecommunications revolution. Notice I use the word government since, as the Communications Act of 1934 as well as the Telecommunications Act of 1996 recognize, government includes the federal government, the state government and, of course, the local government. Sitting in Washington, I can report to you that depending on who you talk to, the FCC and federal regulators are bad guys. Also, many believe Congress has failed legislation in its goals. The FCC, after issuing thousands of pages of documents on rate regulation failed in their long run, to hold down cable rates. The state public service commissions have stymied the FCC's abilities to encourage competition in the local telephone market. Local jurisdictions are greedy in trying to hold up the introduction of telecommunications services by making outrageous demands. On the other side of the coin, I also hear that the industries are being arrogant and selfish in their demands with little or no concern for valid historical, regulatory and economic needs of government at all levels. Of course, even industry comes to Congress and the FCC seeking only a "fair advantage".

Thus, we need to step back and evaluate the jurisdictional turf war that has erupted between the FCC and the Public Service Commissions around the country, and the FCC and local jurisdictions. The Telecommunications Act of 1996 respects local jurisdictions' rights to manage the rights of way and collect reasonable fees for access to the rights of way, with respect to towers, the Act specifically recognized local jurisdictions' reasonable zoning authority. As far

as the state PUC and FCC jurisdiction for interconnection and rates are concerned, it will be decided by the Supreme Court reviewing the 8th Circuit decision sometime this fall.

Now, the State Legislatures have been asked to redraw jurisdictional boundaries, to facilitate construction and operation of the telecommunications system.

It is not my point here this morning to provide you with a simplistic answer to this continuous issue. However, I would suggest that the regulators we should proceed very carefully. Let's not rush and throw out a structure that has worked well for so many years and brought us the best telecommunications system in the world for glowing "promises" of the technology revolution. We must recognize, as does our Federal Constitution, that one size does not fit all. Telecommunications' needs vary depending on state and local conditions. Moreover, the impact of the new infrastructure will also vary according to the very same local conditions. Thus, Congress, in its wisdom, acknowledged, and federal government officials must recognize the need for governments at all levels to work together. Then too, if we are to receive the benefits of new competition and services, industry must be able to proceed without unnecessary or unreasonable demands from government.

In this regard, perhaps one mechanism that we should use to search for the appropriate answer is effective joint boards with representations of federal, state, and local officials, as well as industry representatives to work on the problems. It is critical that the composition of these boards not be merely composed of politicians, government officials or lobbyists, but industry awareness individuals who understand the technologies and the costs to assist in this delicate process. The recommendations of the joint boards have played a substantial role in the past, but could benefit from an infusion of experts understanding business practicalities.

It would be worthwhile to bring together a new expanded joint board to balance the different interests in searching for a practical common sense solution.

Finally, at least in some of these issues, government officials must consider the very technology that offers these wonderful opportunities to solve some of our problems. For instance, telecommunications engineers have recognized long ago the problems of the introduction of antennas and towers into our local community. Thus, they were able to develop stealth antennas and towers. While it is true that the cost for these antennas and towers are higher, this higher cost has to be balanced out against the local residents interests and the local authority's fiduciary responsibility to protect those local interests.

In conclusion, I congratulate you on coming together today to discuss many of these critical issues which face government at all levels and which will ultimately effect all of our citizens and their quality of life.

Federal vs. State vs. Local jurisdiction and industry practicalities pose controversial problems requiring the best common sense efforts of all involved.

Federal and state legislators and regulators and all interested parties have my best wishes in their efforts to resolve these contentious issues.

Now under the protective cover of my FCC retirement I say "better thee than me."

So may the Lord be with you, but not too soon.