

FEDERAL COMMUNICATIONS COMMISSION

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OFFICE OF COMMISSIONER  
JAMES H. QUELLO

Honorable Lionel Van Deerlin  
Chairman, Subcommittee on Communications  
Rayburn House Office Bldg., Room 2408  
Washington, D. C. 20515

Dear Congressman Van Deerlin:

First, congratulations to you and the Communications Subcommittee for your catalytic efforts for an all inclusive update of the Communications Act of 1934. It's a monumental historic undertaking whose time has come. It's a fascinating challenge to incorporate the complex revisions and interpretations of the past with the proposals and possibilities for the future into one comprehensive, viable and more understandable instrument.


I realize there are volumes of materials and proposals on file for your consideration. Also, there probably will be ample opportunity for further comments after the bill is introduced.

However, despite the volumes already filed, I'd like to register a few unofficial viewpoints of a single FCC Commissioner with a broad background in broadcast operations. (Incidentally, one who ended his broadcast career five years ago and will not be a "revolving door" candidate.) Viewpoints expressed here are strictly my own and do not represent those of other Commissioners. However, the views do come from the unique perspective of almost four years service on the FCC and over twenty-five years in broadcasting. Therefore, I'm limiting my suggestions to broadcasting, the area with which I am most familiar.

I fully realize that court interpretations and continuing controversy indicate that some proposals may seem more like ideals to be strived for than realities that can be achieved.

Attached are ten broadcast priorities for legislative re-write consideration followed by brief supporting arguments for several of the more controversial proposals.

Sincerely,

  
James H. Quello

Attachment

ONE COMMISSIONER'S VIEWPOINT:  
A FEW BROADCAST PRIORITIES FOR  
CONGRESSIONAL RE-WRITE

1. ELIMINATE LICENSE RENEWAL REQUIREMENT FOR BROADCAST STATIONS: HOWEVER, LICENSE SUBJECT TO CHALLENGE AT ANY TIME FOR EGREGIOUS VIOLATIONS OF COMMISSION'S RULES AND/OR POLICY.
2. SPECIFY DEFINITIVE STANDARDS FOR STANDING AS A PARTY IN INTEREST IN RENEWAL AND TRANSFER APPLICATIONS.
3. AUTHORIZE MAXIMUM MONETARY PENALTY FOR LARGER COMPANIES OF AT LEAST \$200,000. TO PROVIDE AN EFFECTIVE MID-RANGE SANCTION BETWEEN THE CURRENT LIMITED FORFEITURE OR REVOCATION. (ALSO PROVIDE DIRECT FORFEITURE AUTHORITY OVER NETWORKS.)
4. ENACT A SPECIFIC STATUTORY FEE SCHEDULE FOR ALL COMMUNICATIONS AUTHORIZATIONS.
5. ELIMINATE FAIRNESS DOCTRINE AND THE POLITICAL BROADCAST REQUIREMENT OF SECTION 315 OF THE COMMUNICATIONS ACT. ALSO REPEAL SECTION 312(a)(7).
6. REASSERT EX PARTE PROHIBITIONS IN ALL ADJUDICATORY PROCEEDINGS AND IN THOSE RULE MAKING PROCEEDINGS REQUIRED BY STATUTE TO BE DECIDED ON THE RECORD AFTER THE OPPORTUNITY FOR HEARING; SPECIFICALLY EXEMPT EX PARTE RESTRICTIONS IN RULE MAKING PROCEEDINGS WHICH DO NOT INVOLVE IDENTIFIABLE COMPETING CLAIMS TO A VALUABLE PRIVILEGE.

7. AUTHORIZE COMMISSION TO IMPOSE FORFEITURES FOR ANY VIOLATION OF ITS RULES: DELETE PRESENT REQUIREMENTS OF "WILLFUL OR REPEATED".
8. ELIMINATE TIME-CONSUMING AND EXPENSIVE COMPARATIVE HEARINGS FOR NEW OR AVAILABLE FACILITIES. . PROVIDE FOR LOTTERY OR OTHER DIRECT METHOD OF SELECTION FROM AMONG ALL BASICALLY QUALIFIED APPLICANTS.
9. SPECIFICALLY DEFINE THE PARAMETERS OF COMMISSION'S REGULATORY JURISDICTION OVER CABLE TELEVISION.
10. FOSTER THE GOAL OF UHF PARITY WITH VHF TELEVISION THROUGH CONGRESSIONAL DIRECTIVE.

If it weren't an almost impossible task, an additional priority for legislative consideration could be "Define and clarify the terms 'public interest'". Licensees are now required to operate in the "public interest". It probably serves some purpose to keep the phrase deliberately ambiguous so that Congress and the FCC can apply broad interpretations and implementations to the many facets of broadcast regulation as it develops. However, without a clear definition, it is a source of continual uncertainty to the regulated industries. I have asked experienced executives at the FCC for definitions. They varied according to individual interpretations and philosophy. In some of my speeches I use a quote from the late Walter Lippman who defined public interest in good practical terms.



He said: Public interest is what people would do if they thought clearly, decided rationally, and acted disinterestedly."

I personally defined it over four years ago in oversimplistic terms as it applied to common carrier regulations: "The best service to the most people at the most reasonable cost."

The supreme court in the NBC Chain Broadcasting case characterized the statutory criterion of public interest, convenience and necessity as being: "The standard of 'public convenience, interest or necessity' governing the exercise of powers delegated to the Commission by Congress is not so vague and indefinite as to be an unconstitutional delegation of legislative authority. The standard is as concrete as the complicated factors for judgment in such a field of delegated authority permit and is limited by such standards to guide determinations as the purposes of the Communications Act of 1934 the nature of radio transmission and reception, and the scope, character and quality of services. NBC and United States, 319 U.S. 190(1943)."

The terms "public interest" or "public interest, convenience and necessity" are easier to visualize than define. The re-write committee might better concentrate on other important problems more amenable to definitive solution.

There are valid reasons and logical arguments for listing the ten priority broadcast proposals. Several of the more controversial subjects have been selected for detailed explanation.

ELIMINATE LICENSE RENEWAL REQUIREMENT  
LICENSE SUBJECT TO CHALLENGE

First, broadcast licenses should be issued with no fixed expiration date, but should be subject to challenge any time for serious violations.

Every three years, broadcast licensee must prepare lengthy applications for license renewal. These applications are then reviewed by the Commission which must find that renewal is or is not in the public interest. The applications are further subject to challenge from members of the licensee's audience under the very loose application of the principles of standing as a party in interest.

For most licensees, the triennial shipment of paper to Washington D. C. is ritualistic, time consuming, expensive and non-productive. In the vast majority of instances, the Commission makes the public interest finding that permits renewal and the three-year cycle begins anew. In a few cases, renewal is delayed by objections from members of the public. In very few cases, the licensee is forced into a hearing to determine whether he is fit to remain a licensee. And, there are instances where other parties file "on top" of the licensee in an effort to gain the license for themselves.

This process of license renewal appears to be a very expensive, time consuming method of ferreting out those few licensees who have failed to meet public interest standards of performance. I strongly recommend that the statute be changed so as to no longer require license renewal.

Some would contend that license renewal time offers the Commission the only real opportunity it has to review the overall performance of its licensees. However, I believe greater responsiveness to legitimate public needs comes about through the requirements of the ascertainment process-- that the licensee make a diligent, positive and continuing effort to discover and meet the problems, needs, and interests of the service area. I envision that the Commission would continue to have authority to require certain reporting from licensees but only where it can be shown that the information sought is worth the burden to both the licensee and the government. One of the worthwhile reporting requirements might be annual listing of twelve most important community needs and the programming and public service proposals to meet the needs. Proposals could be compared with performance upon substantiated complaint.

The performance of licensees could be subject to challenge at any time provided that the basis for challenge meets some reasonable standing threshold. Qualifications for achieving standing as a party in interest should be more equitable and definitive than at the present time. The present practice of accepting bald assertions and self-serving conclusory statements in support of license challenge is wasteful and unproductive. The right of the people to petition for redress of grievances is incontestable, but the right of individuals to cause expenditure of government funds and resources in pursuit of self-serving goals should be subject to reasonable constraints. I realize that any challenge must be considered to determine its legitimacy

but I believe ways can be found to quickly eliminate those without merit by establishing certain standards which must be met. Such a system, were the Commission not faced with requirement of reviewing every license every three years, would enable us to take a more comprehensive in-depth look at a smaller number of stations based upon information received and perhaps coupled with some random and/or systematic sampling.

Past considerations of the renewal issue have included the argument that a licensee "in perpetuity" would greatly weaken the competitive spur in the Communications Act. It must be remembered that broadcasting stations although licensed, are also private business enterprises backed by private capital, subject to the risks and opportunities of entrepreneurship. Broadcasters have no incentive to offend or alienate potential audiences; on the contrary, it just makes good business sense to attempt to serve as much of the potential audience as possible and as well as possible. All media and particularly broadcasting require public acceptance to succeed and even survive. Regulation is supposed to be a rather imperfect substitute for competition where competition either doesn't exist or is restrained by certain market forces. In the vast majority of the broadcasting markets in this country, competition not only exists but is intense and growing apace. Broadcasters not only compete among themselves but with all other media including newspapers, magazines, outdoor, direct mail, etc. Therefore, it would seem reasonable to remove as much regulation as possible in order to permit competitive forces to operate.

Eric Sevareid, who said so many things so well over the years, once commented:

"I have never understood the basic legally governing concept of 'the people's airways.' So far as I know there is only the atmosphere and space. There can be no airway, in any practical sense, until somebody accumulates the capital, know-how, and enterprise to put a signal into the atmosphere and space."

Various minority spokesmen have favored a three year renewal in the mistaken belief that process would provide opportunity for minority ownership. They ask for an opportunity to participate to a much greater extent in such ownership. I agree there is too little minority participation in ownership and I continue to support efforts to provide more opportunity. During a conference on minority ownership at the FCC at the FCC, I suggested that the Commission should prevail upon the Small Business Administration to review its policy against granting loans for acquisition of broadcast properties. I will encourage any legitimate non-discriminatory means of improving opportunities for minorities to participate in broadcast ownership. At the present time, the major deterrent to minority ownership seems to be inadequate finances. The greatest potential for progress is devising means to make funding available to those who are interested in ownership participation. The NAB proposal of tax certificates for broadcast owners or corporations who sell to minorities seems to offer an attractive inducement.

Opportunities to inject new ownership into broadcasting have rarely come about through the renewal process. The real opportunities here appear to be in the transfer process. Just to satisfy my curiosity about the availability of broadcasting properties once funding is available, I queried



our Broadcast Bureau Transfer Branch about the number of transfer applications we have received over the past three years. It turns out that in 1975 there were 967 applications, 1,210 in 1976, and 1,385 in 1977. In each of those years, slightly more than half of the applications involved pro forma transfers; that is, there was a change in control but not a change in overall ownership. And, of the totals, perhaps a half dozen transfers each year involved non-commercial stations. Discounting both pro forma and non-commercial transfers in 1977, broadcasting stations--AM, FM and TV--changed hands at an average rate of nearly two per day, including Sundays and holidays.

Reporting in September 1977, the staff noted: "Average receipts during the past five calendar years have ranged from a low of 81 applications per month (1975) to a high of 101 per month last year. Staff has averaged 103 disposals per month thus far in calendar year 1977, the highest disposal rate for this service in the history of the Commission." Thus it seems that opportunities for broadcast ownership do exist once the financial hurdle has been overcome.

Back to my initial basic point--I believe that a broadcasting license once granted, should continue in effect until transferred or revoked. No other utility, news medium, industry, monopoly or non-monopoly must apply for a governmental renewal of license every three years to stay in business.

DEFINE STANDARDS FOR STANDING

Definitive and equitable standards should be established by statute to determine qualification for standing as a party in interest. Too often, broadcasters, immediately prior to filing of an application for renewal or assignment of license, are confronted for the first time by persons claiming to represent a group or coalition of local organizations concerned with the manner in which the licensee is fulfilling its responsibility to meet their needs and interests. While the membership, purpose and local representation of church groups, educational associations, civic organizations or professional societies with whom broadcasters regularly meet are known locally and are rarely in dispute, the same cannot be said for many "citizen groups" or "coalitions" which appear at renewal time demanding that the licensee accept its proposals or face a petition to deny. Under the present system, a great deal of time and effort is expended by the FCC and by contending parties in cases devoid of any legal or factual merit. Many cases are frivolous from conception through disposition. Some overzealous parties, under the guise of representing some significant sector of the public, freely indulge in petitioning against license renewal of broadcast licensees with knowledge that, even without merit, such petitions (1) require a costly defense to be mounted by the licensee and, (2) result in delay of renewal, in some cases well beyond the normal renewal period. Forearmed with this awareness, some citizen groups can promote their own private version of public interest by extracting self-serving concessions from licensees who presumably choose the least expensive option available to them.

There are some instances where petitioners feel aggrieved but fail to perceive the difference between an offense subject to legal resolution and a social or philosophic disagreement.

Unfortunately, the consideration of even unfounded allegations take time, manpower and money --- all of which could be spent in more productive ways. In 1966 the United States Court of Appeals for the District of Columbia Circuit held that responsible representatives of the listening public may have standing as parties in interest to contest renewal applications. Office of Communications of United Church of Christ v. FCC, 359 F. 2d, 994. However, while the Court was of the opinion ".....some mechanism must be developed so that the legitimate interests of listeners can be made a part of the record," it also recognized that any expansion of standing to include citizen groups might encourage "spurious petitions from private interests not concerned with the quality of broadcast programming" who "may sometimes cloak themselves with a semblance of public interest advocates."

In that much quoted 1966 landmark case, Judge Burger, writing for the majority, also stated "such community organizations as civic associations, professional societies, unions, churches, and educational institutions or associations may well be useful to the Commission. These groups are found in every community; they usually concern themselves with a wide range of community problems and tend to be representative of broad as distinguished from narrow interests, public as distinguished from private or commercial interests".

The logic of Judge Burger's statement is irrefutable, but it can't possibly be interpreted to mean that standing is to be automatically conferred upon any viewer or listener in the area. Judge Burger made another significant statement in that decision --- a statement rarely quoted which encouraged the FCC to establish standards. He said:

"The Commission should be accorded broad discretion in establishing and applying rules for such public participation, including rules for determining which community representatives are to be allowed to participate and how many are reasonably required to give the Commission the assistance it needs in vindicating public interest".

Congress should encourage the Commission to institute processes to correct abuses. If appropriate, Congress should even amend Section 309(d)(1) of the Communications Act to include the following language at the end of that Section:

"Parties who seek standing to file petitions to deny, alleging they also represent local organizations, must substantiate by affidavit their relationship with each cited group and provide information concerning the group's address, the names of its officers, date of formation, its purpose, the size and location of its membership, and whether (if so, how) the group authorized the filing of a petition to deny. "

Limitation of the right to file a formal petition to deny does not deprive any individual or organization of the right to file complaints relative to the performance of a broadcast licensee.

I again emphasize that the Commission's present permissive approach to standing encourages the filing of frivolous, unsupported or vindictive petitions to deny and results in standing being routinely granted to groups of doubtful representativeness and purpose so long as they

provide a local resident as a "front man." The ease of achieving standing also provides the leverage used by groups which threaten the filing of a petition to deny to coerce acceptance of their demands. The above paragraph implemented by Commission action, or lacking that, Congressional direction, should minimize possible abuses.

INCREASE FORFEITURE TO \$200,000.00

I am pleased that the Congress has recently enacted the Commission's forfeiture proposal which, among other things, increases the maximum forfeiture authority to twenty thousand (\$20,000). This amount is adequate for many situations where the offense is relatively minor or the broadcasting station is rather small. Where a large broadcaster is involved and the offense is very serious, the Commission could still be faced with a decision to either impose a forfeiture which is too small to be meaningful or invoke the ultimate sanction, denial of license renewal or revocation. In the case of a major television facility with revenues of several million dollars annually, that choice becomes either a slap on the wrist or removal of the license--which is the equivalent of, perhaps, a fifty or sixty million dollar penalty.

That kind of disparity can lead to some gross inequities and irrational decisions. That is not to say that there are never situations warranting license removal. However, I believe this severest of penalties should be reserved for only the most serious violations or derogation of license responsibility.



To remedy this situation, I would propose an addition to the Communications Act as follows:

"Where the Commission has determined after a full hearing that an application for renewal of a broadcast license should be granted pursuant to Section 307(d), or that an order for revocation of a broadcast license should not be issued pursuant to Section 312(a), but that the licensee has engaged in conduct of the kind specified in Section 312(a), it may, taking into account the gravity of the conduct and the financial condition of the licensee, impose a monetary penalty in an amount not to exceed \$200,000.00."

Note that this penalty would be levied only after a full and complete hearing subject to judicial review and after the Commission has made specific findings with respect to the substantiality of the misconduct and its reasons for imposing a large monetary penalty. If a more explicit statutory limit were desired, however, Congress could further restrict the maximum monetary penalty to a percentage of the broadcast station's gross revenues. Under this proposal, such a monetary penalty could be imposed only for conduct defined in Section 312(a) of the Communications Act.

The recent legislation provides for a statute of limitations of one year or the beginning of the license term, whichever is longer. Since I am recommending that the three year license term be eliminated, I believe that a three year period in which to impose a forfeiture would be appropriate

and more practical. Numerous times under present rules, the one year statute of limitations period has expired preventing the Commission from levying justifiable forfeitures. This in turn causes a penalty problem of "too little or too much." A three year statute of limitations would be more flexible and in the long run would better serve the cause of justice.

Also, the FCC should be granted jurisdiction providing for direct forfeiture authority over networks.

#### ENACT STATUTORY FEE SCHEDULE

As you are aware, the Commission's fee schedule program is in a shambles following the order of the U. S. Court of Appeals for the District of Columbia Circuit that the Commission recalculate its 1970 and 1975 fee schedules and refund money which it collected that exceeded the permissible statutory standard.<sup>1/</sup> Shortly after this decision the Commission's General Counsel and Executive Director in a joint memorandum to the Commissioners noted that it would be extremely difficult for FCC to comply with the Court order. The Commission interpreted the Court decisions to require that fees not only be based on costs but also on the "value conferred" upon individuals or organizations paying such fees. However, resultant exhaustive studies and analyses concluded that we were unable to determine the value that the Commission's actions conferred

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<sup>1/</sup> National Ass'n of Broadcasters v. FCC, 554 F.2d 1118 (D.C.Cir.1976);  
Electronics Industries Ass'n v. FCC, 554 F.2d 1109 (D.C.Cir.1976);  
National Cable Television Ass'n v. FCC, 554 F. 2d 1094 (D.C.Cir.1976);  
Capital Cities Communications, Inc. v. FCC, 554 F.2d 1135 (D.C.Cir.1976).

upon payor applicants. Accordingly, the Commission on December 22, 1976 notified both House and Senate Legislative and Appropriations Committees that it was issuing an order suspending all fee collections, effective Jan. 1, 1977.

Pursuant to joint request of both Houses of Congress, the Comptroller General (GAO) was requested to review the FCC schedule and related matters with a view toward specific changes necessary in the Commission's accounting system and alternatives to the fee schedule which would meet the criteria established by statute and by the Court. In a Report of the Comptroller General of the United States, dated May 6, 1977, GAO concluded that sufficient guidance is contained in the recent Court decisions from which a proper fee schedule can be established for services provided by government agencies. GAO further concluded that the FCC can make a good faith effort to recalculate its fee schedules and to refund only the excess portions of the \$164 million collected in fees from 1970-1976.

The new Chairman of the Commission directed a thorough review of the fee program and on Jan. 11, 1978 the Commission determined to move ahead in attempting to design a new fee schedule and to deal with the refund program. We propose to construct a methodology for determining and applying in the fee-setting process a "value to the recipient" factor. Such methodology will be a key not only in determining what the proper fee should have been with respect to the 1970 and 1975 schedules, but also will be the cornerstone of our efforts to construct a new fee schedule. Whether the final product will withstand further challenge and judicial scrutiny is of course a matter of conjecture.

In my opinion the government suffers in the long run to the extent that protracted litigation of the fee schedule problem will result in continued delay in assessments and collection of fees for a substantial period of time. Rather than continuing in an aura of uncertainty, the Congress may wish to provide additional legislative guidance. Congressional action could take the form of amending the Independent Offices Appropriations Act of 1955 or enacting new legislation in lieu thereof. In either case, it seems to me most desirable that if general statutory standards are specified, the standard "value to the recipient" as expressed in the 1955 Act should be eliminated, defined, or reworded so as to avoid the obvious ambiguity that has resulted in the present posture of implementation.

In my opinion, the fees previously imposed by the Commission, but rejected by the Court, caused no undue hardship on the profitable broadcast and cable industries or on any other licensees. It's primarily a matter of making fees legal.

#### REPEAL SECTION 315 INCLUDING FAIRNESS DOCTRINE

As a former newsman, I have always hoped that some day broadcasting would be treated the same as other journalistic and advertising media. With the continuing debate and various court interpretations, it seems more like an ideal to be strived for than a reality to be achieved. However, in my opinion, the time has finally come to grant full Constitutional rights of freedom of the press and freedom of speech to broadcasters. This would end years of discriminatory treatment which is no longer justifiable in today's technological, economic and journalistic climate.

There are many more TV and radio stations today than newspapers in every sizable market. The growth of cable, translators, UHF, FM, and the development of satellites has provided more media availability than ever before. Future potential is practically unlimited. Then, too, broadcast journalism today is mature, professional and as objective as any media. Regulatory restraints are no longer justified in today's era of competitiveness, numerous outlets and professional journalism.

The scarcity argument justifying governmental intervention in broadcasting seems more specious today than when it first crept into court decisions years ago that limited First Amendment guarantees for broadcasters.

There are limitations upon the numbers of businesses of any kind in a given community. Limited spectrum "scarcity" arguments once embraced by the courts should hardly apply in today's abundance of radio-TV media compared with newspapers. Economic reality is a far more pervasive form of scarcity in all forms of business whether in broadcasting, newspapers, auto agencies or selling pizza. It is a fact that not everyone who wants to own a broadcasting station in a given community can do so. It is also an economic fact that not everybody who wants to own a newspaper, an auto agency or a pizza parlor in a given community can do so.

I believe the public would be served by abolishing Section 315 including the Fairness Doctrine and Section 315(a)(7). The Fairness Doctrine is a codification of good journalistic practice. Its goals are laudatory. However, I no longer believe government is the proper source for mandating good journalistic or program practice. I believe the practice of journalism is better governed by professional journalists, editors and news directors. Programming is best done



by professional program directors, producers and talent. Even with programming deficiencies, a government cure with the censorship overtones would be worse than the industry disease.

There is little doubt that if TV and radio had existed in 1776, our founding fathers would have included them as prime recipients of the Constitutional guarantees of freedom of the press and freedom of speech. After all, they were guaranteeing citizens these freedoms so that a well-informed public and electorate could vote on issues and candidates ---free of any semblance of government interference or control. After all, the constitutional freedoms were instituted for the benefit of the citizenry--the total public--rather than the media. It is the public that stands to gain from an all media freedom of the press.

Section 315 and Section 312 (a)(7) guarantees access to broadcasting for political office. This is not required of newspapers and magazines because of the constitutional guarantees accorded only to print journalism. Somehow print journalism, with its guaranteed "freedom of the press" has risen to the task of informing the electorate and uncovering illegal or unethical practices without government interference or regulation. Again I see no reason to assume broadcast journalists or executives are any less responsible or diligent. Broadcast journalists have earned and rightfully deserve all constitutional freedoms.

I believe that removing the government restraints of Section 315 including the Fairness Doctrine and Section 312(a)(7), would free broadcast journalism, foster more comprehensive and independent reporting and better serve the American people.

REMOVE EX PARTE RESTRICTIONS IN INFORMAL  
RULEMAKING PROCEEDINGS

I believe it would aid Commission processes and effectiveness if Section 303 of the Communications Act could be amended to provide Commission authority to seek out all pertinent information in all informal rulemaking proceedings.

I have been concerned by severe restrictions on fact-gathering and decision-making process of the Commission for all rulemaking procedures as a result of court opinions in Home Box Office and Action Television cases. The Commission is now revising its own procedures to solve the problem without seeking legislative help. However, if further court interpretations result in continued restrictions, the Commission may seek legislative guidance or even possible legislative action.

AUTHORIZE COMMISSION TO IMPOSE FORFEITURE  
WITHOUT "WILLFUL OR REPEATED" REQUIREMENT

Title V of the Communications Act of 1934--entitled Penal Provisions-- Forfeitures--requires that the Commission determine that a violation has been committed "willfully or repeatedly" (Section 503(b)) before a forfeiture can be imposed. It is difficult if not virtually impossible to prove willfulness in almost any area of human endeavor since it is necessary to enter the mind of the violator and accurately assess motive. Thus, the Commission is left with the "repeatedly" requirement.

The question of whether a violation which occurs more than once is "repeated" for the purposes of this section has concerned me from my first

week as a Commissioner. The fact that an offense was committed more than once because the licensee was unaware that it constituted a violation should not, in my opinion, constitute a repeated violation for purposes of levying a forfeiture. It seems to me that a requirement to find "repetition" leads to the use of subterfuge by the FCC and to legal game-playing which often diminishes respect for the law.

It's apparent that the salient point in assessing forfeitures against licensees is that such forfeitures either encourage obedience to the rules or they do not. Applied even-handedly, I believe that forfeitures do encourage compliance.

We are frequently faced with interpretations and litigation as to whether the same act committed or omitted -- and constituting a violation of Commission rules----- on more than one day ----- is a single offense or a "repeated" violation. Questions arise as to whether "repeated" means simply more than once or whether the offense must be repeated after the licensee has first been warned that the conduct or omission constitutes a violation. Difficulties in interpretation arise, for example, where a licensee fails to notify the victim of a personal attack within 7 days as required by our rules. It may be impossible to show willfulness, e. g., the licensee may not have interpreted it to be a personal attack. Can it be "repeated"? Well, certainly if it happens a number of times. But some agree that each day the licensee fails to send the required notice could be a separate offense--and, therefore, it is "repeated" for forfeiture purposes. The other side of the argument is that there is only one duty to notify and that the offense is

committed only once --when the 7th day passes without such notification. And, of course, on the 8th and succeeding days, giving notice would not comply with the 7 day rule so how could failure to give notice on those days be considered as "repeated" violations?

It seems to me these time-consuming legal exercises are unnecessary. Respect for our rules could be increased by a single and straightforward requirement that any violation of our rules is subject to a forfeiture. This simply recognizes the constructive knowledge licensees are assumed to have where rules are published in the Federal Register. Moreover, licensees are required by rule to obtain copies of rules pertaining to the service in which they operate. Additionally, the Commission and trade publications give wide dissemination to significant rule changes.

I do not anticipate that such a change in the law would really affect the way in which we apply forfeitures. It would merely simplify the requirements and make the process less subject to debate--before the Commission and the courts. The Commission presumably would continue to tailor the forfeiture to the nature of the offense and the offender as it has done in the past.

Moreover, in view of the fact that Section 312(a) of the Act permits revocation of license "for willful or repeated violation of, or willful or repeated failure to observe any provision of this Act or any rule or regulation of the Commission..." imposition of the far less serious sanction of a forfeiture--tailored to the offense and the circumstances--should be available simply for failure to abide by the Commission's rules. Sensible revisions to "willful and repeated" would afford a certainty and precision in our enforcement efforts which would benefit all concerned.

As a non-lawyer whose approach to government regulation is more journalistic than legalistic, I find solace and truth in a quote from that great President, Franklin D. Roosevelt, who said:

"A common sense resort to usual and practical sources of information takes the place of archaic and technical application of rules of evidence, and an informed and expert tribunal renders its decisions with an eye that looks forward to results rather than backwards to precedent and to the leading case. Substantial justice remains a higher aim for our civilization than technical legalism."

In my opinion, regulation can be most effective when conducted in that spirit.