

COMMENTS FOR CABLE PANEL
BY FCC COMMISSIONER JAMES H. QUELLO
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I'm very happy to be here with you--in fact, I've been lucky in all my cable convention timing because the past three years have all been happy upbeat occasions with more and more positive development for cable. Truly 1977 and again 1978 are the real golden era of cable.

Last year in Chicago and even more this year, you can sense the spirited upward momentum of success and expansion.

There has been growth in prestige, service and profits. Despite some grouching, you have been beneficiaries of massive de-regulation. You got de-regulation where you wanted it and even some regulation where you wanted it. Since May 1974, the Commission itself has taken over 50 de-regulatory actions favorable to cable--and what we missed, the courts more than made up for.

I'll again resist the urge to detail all the de-regulations the past three years--but I will tell you "what we have done for you lately"--just last week we (1) increased the size of small systems classification from 500 to 1000 subscribers--such systems are exempt from distant signal carriage limits, technical standards, performance tests, franchise compliance; (2) adopted a notice of rule making to implement Section 224 of the Communications Act enacted February 21, 1978 to regulate rate, terms and conditions for cable TV pole attachments; (3) approved additional staff for the new Pole Attachment Branch of the Common Carrier Bureau (13 for last quarter 1978--22 people for 1979); (4) denied a petition from MPAA restricting broadcast of TV signals to cable systems via satellite. This was based on MPAA assertions that WTCC, channel 17, has requests or authorizations for carriage of its signal via satellite from 672 cable systems serving 1.2 million subscribers--making it a national "super" station--and remember, WGN, Chicago, and San Francisco are yet to come (we also recently eliminated network non-duplication requirements for all significantly viewed signals but I understand there is pending a petition for reconsideration).

The courts have been favorable to cable, too--perhaps more favorable than needed in one instance. There have been three very significant court decisions--two of them in 1978. First, the landmark HBO decision is now practically history--two significant other court rulings include the Second Circuit Court of Appeals upholding the FCC's preemption of rate regulation for specialized or pay cable programs. As you probably know, the New York State Commission

on Cable TV attempted to regulate rates charged for pay cable. The court held that the FCC has the authority to preempt state and local price regulation of pay cable; that it had exercised such authority and that FCC regulations via policy statements and interpretations rather than by formal regulations were proper. The other recent significant court decision was the Midwest Video decision of the Eighth Circuit Court of Appeals that rejected the Commission's public access rules. That decision also restricted FCC authority to regulate cable beyond its relationship to broadcasting--the term used was that FCC could only regulate in areas "ancillary to broadcasting"--that's considerably more freedom than the cable industry bargained for considering all possible ramifications in franchise fee and other areas. The FCC has requested the Supreme Court to review the decision. But generally the court decisions have favored cable and, overall, the cable industry has fared very well in FCC de-regulation.

There has been set in motion a continuing pattern of de-regulation or re-regulation for your relatively new cable industry--it portends continued growth and expansion for all cable. Established middle and large sized cable systems can look forward to continued further growth through the new pay TV programming, new services, development of new franchises, acquisition of other systems and line extension in existing systems.

One of the most significant steps the Commission took last summer to guide it in its continuing de-regulatory efforts and its reassessment of its policies and rules was the initiation of the Cable Economic Inquiry. When we instituted the Inquiry we stressed that the goal of our regulatory program was still the maintenance of a system of over-the-air broadcast service, while at the same time fostering cable growth in order to provide diversity of programming and broadband communications services. These goals are compatible if we keep in mind that the prime consideration must be the extent to which carriage of television signals by cable systems has an adverse impact on television stations and their ability to serve the public. In short, the bottom line is localism and public service.

I think the Economic Inquiry is a positive step, since it shows that we are willing to develop economic data and the facts to guide us in our decision-making. During the past twelve years this controversy over the extent of cable's impact on broadcasting has often produced, as we have said, more "heat than light."

In the Inquiry we propose to examine the many facets of the claimed interdependence between cable and broadcasting, including cable demand and penetration, audience diversion, the audience-revenue relationship, and service to the public. I would emphasize that the Cable Economic Inquiry is not being undertaken to reach any specific set of recommendations, such as to strengthen or delete signal carriage rules, but rather, it is designed to generate the kind of economic data we need in order to draw knowledgeable conclusions.

Another aspect of the Commission's regulatory program is its refusal to enact rules where none are needed. An example of this was the Commission's recent decision not to enact rules restricting the transmission of radio programs by cable systems. We found no facts indicating that cable systems discriminate against local signals in favor of distant ones. Basically, we found no evidence that local broadcasters were harmed by radio signal carriage over cable systems and, accordingly, refused to enact radio carriage rules.

Many cable operators have expressed concern with forfeiture authority over violators of cable rules. I have heard the arguments on both sides as to the propriety of forfeiture provisions at the present time, and I continue to believe that Commission authority to assess forfeitures will aid cable-industry quality and development. From the Commission's standpoint, forfeiture authority is an enforcement tool for egregious situations.

Certainly the Commission needs some direct means of assuring that the very few "bad apple" operators comply with the rules, as do the great majority of the industry. Let me assure you that we do not intend to use the forfeiture sanction willy-nilly or to harass.

I have not been particularly impressed by the sporadic attempts to raise translators as a real threat to cable television. I have read the many arguments set forth and I find many of them to be fallacious. I recognize that translators can be competitive to a cable operation in a given community, although limited in extent. I don't see translators threatening your capability for diversity and multiple channels. I do recognize that there can be instances of translator interference to cable headend reception. These situations should be brought to the attention of the Commission for individual resolution. In this connection, I firmly believe that notice of translator applications should be provided to local cable systems in order that they might comment with respect to channel interference potential. I don't agree, generally, with the claim that translators and cable should be regulated on a parity basis. There are substantial differences in the two services in motivation for initiating service, in number of channels carried, fees charged and in profitability. I think our rules have taken into consideration the differences in characteristics.

The greater involvement of minorities in cable participation and ownership raises new issues requiring serious consideration. For example, the federal government is currently funding numerous research and demonstration projects in the areas of health care, education and other local services to determine how cable and other telecommunications technology can improve the quality of life in both urban and rural areas. Are the results of these projects applicable to minorities? What are the effects of the interface between cable and newer technologies such as satellite, fiber optics, etc., for the delivery

of educational, health and other social services to minority communities? What role should minorities play in the design and delivery to minority communities of electronic convenience services? What are the social and economic effects of absentee ownership in areas in which local minority ownership of cable systems cannot be achieved--what happens when revenue derived from subscriptions to cable systems is taken out of minority communities each month?

Granted these are long range issues but of sufficient importance and impact that they should not be set aside or tabled purely for "future consideration." Hopefully, our Commission Office of Plans and Policy will soon begin to examine issues such as these I have listed with respect to minority interests in cable television.

Finally, I would like to again state that your Washington representation of the cable industry is excellent--knowledgeable, aggressive--but with a real touch of class. However, I would remind you that all industries come to the Commission to present views favorable to their own private, economic interests--true of cable, broadcasting, telephone, land mobile, movie producers, CB manufacturers, satellite companies, etc. That is only natural. Most successful industries these days are socially conscious--they know their proposals must first serve overall public interest to best serve their own economic interests. It is difficult at times to determine just where the public interest really lies. As for cable and broadcasters, we are still hoping for peaceful co-existence. However, as I said once before, when the controversy gets too heated or the arguments too self-serving, I remind myself of the affluence of these two industries and mentally say "A blessing on both your houses."

Seriously, it is our job to apply an objective, overall public interest factor--that must be the dominating consideration in all Commission deliberations.

All I can promise you is to exercise my best good faith judgment on what proposals or options make the most sense legally, ethically and morally, and vote accordingly. I plan to continue an open-minded policy and, as much as the courts will allow, an open-door policy. I wish you continued success in the challenging, promising years ahead.

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