

Dissenting Statement of FCC Commissioner James H. Quello
In Re: CBS Tennis Matches

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Short term renewal of a station for the dereliction of a parent network is unprecedented, and in this case, unwarranted and unreasonable.

Such potentially far-reaching and unusual regulatory punishment should be reserved for egregious situations and direct culpability.

None of the CBS owned-and-operated television stations, according to our record, had knowledge of or participated in the financial and promotional arrangements for the tennis broadcasts. None of the stations were aware of the deceptive aspects of the "Winner Take All" advertising slogan.

Also, there is organizationally no direct working correlation between the President of the CBS television network who negotiated for programming and promotion of the tennis matches and the O and O stations. Stations report to the President of the CBS television stations division.

I do not condone the unfortunate conduct and poor judgment of CBS officials who knew of the additional remuneration afforded contestants and permitted the misleading "Winner Take All" slogan. However, neither do I place such exaggerated promotion on the egregious level of a deliberately rigged performance intended to deceive the public. The contest itself was not rigged. There was no fraud perpetrated on the viewing public as to the outcome of any of the matches. The public saw hotly contested tennis matches for the highest cash prizes in the history of tennis rather than "Winner Take All" as advertised. I believe the injury was more to competing networks than to the public. It is difficult to assess any serious degree of public injury to a public witnessing the world's leading and best-paid tennis players in earnest competitive matches.

Also, the CBS network instituted massive corrective action long before this Commission's unprecedented decision.

The two key CBS executives most involved in arrangements for tennis broadcasts were replaced. (The President of the CBS network and Senior Vice President, Sports.) Comprehensive remedial procedures were instituted to prevent recurrence. The sports department and portions of the program department were completely restructured to avoid future errors and misunderstanding. Detailed instructions were printed and signatures required of program and sports executives acknowledging understanding. The new President of CBS appeared on the CBS TV network on two separate occasions and publicly apologized for what he termed the inexcusable misleading "Winner Take All" promotion.

Then too, CBS executives involved in the tennis matches were thoroughly interrogated in three days of public hearings last November before the House Subcommittee on Communications. The Chairman of the Subcommittee noted that public exposure of network mistakes had already produced changes to prevent further deception. He did not seek further sanctions and wisely resisted the intrusion of government "over media which operates best in an atmosphere of freedom."

I believe FCC deliberation in this matter would have been better resolved by the more tolerant, statesmanlike approach of the House Communications Subcommittee rather than a kind of punitive bureaucratic overkill that is fomenting a public outcry, generally, against meddling bureaucracy and intrusive big government.

I am somewhat assuaged by the Commission majority expressions that short term license renewal in this case is for surveillance only and is not intended to reflect on the qualifications of stations to remain licensees. It's far from certain, however, that these current expressions of Commission intent will prevail in contested proceedings in the future.

Considering CBS's overall longterm record of meritorious news and public affairs service and its major contributions to American broadcasting, a forfeiture or strong letter would have sufficed. The letter could have stressed the corrective rather than the punitive intentions of the FCC. It could have emphasized (1) that deceptive program and promotional practices in sports events would not be tolerated whether they arise from deliberate misconduct or from failure of institutional organization; (2) that network licensees have a special obligation to know the relevant facts concerning sports events which they broadcast through their owned stations and supply to others; (3) and that the failure by a network to discharge its obligations in these regards could result in an FCC network inquiry recommendation for some kind of direct jurisdiction over the networks.

This unfortunate short term renewal against an innocent individual station results from the FCC's lack of authority to impose sanctions against the networks themselves. Rather than illogically and vindictively punish whomever we can legally reach, I believe this Commission should acknowledge its inability to apply sanctions against the appropriate entity, CBS, Inc., under present jurisdictional constraints. I believe it improper to exact a regulatory pound of flesh from a completely innocent station whose obligation is to the area it is licensed to serve. Each of these stations seeks public acceptance and is an important informational and public service force in its own community. Inflicting an undeserved short term renewal on this station is unfairly damaging to its reputation and reflects unfavorably on the logic and evenhandedness of the responsible regulatory agency.