

Address by FCC Commissioner James H. Quello
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This is no time for the customary pleasant opening phrases for speeches.

I'm not sure that "I am particularly pleased to be here with you" because these are such worrisome times for broadcasters.

The negative implications of the recent D.C. Court of Appeals Decision (Cowles case) for incumbent broadcasters are worrisome. (In fact, if existing judicial decisions prevail many of the multiple owners and managers in the audience today may not be here for future meetings.)

The confusion and uncertainty of the new Communications Act and the lack of a coordinated positive position by broadcasters are also worrisome.

There is no doubt that the "Cowles" decision lends a new urgency for broadcasters to seek legislative relief and direction. It's practically an incitement to a new call to arms both legislatively and judicially.

My ad-lib message to radio broadcasters in San Francisco (delivered before the Cowles decision), is now more applicable than ever--get off your seats and sell something much more important than broadcast time. Sell, with all your resources and energy, the concept of complete freedom of the press and freedom of speech.

The important, much deliberated, new Communications Act provides the legislative vehicle for providing stability and reasonable renewal expectancy. The Act also possesses the potential for emancipating broadcasters from all First Amendment and regulatory constraints.

I have been on record as applauding and supporting the laudable de-regulatory thrust of the new Act. I think the general de-regulatory thrust can be converted into specific overdue freedom for broadcasters.

The re-write has great potential for massive de-regulation of broadcasting--radio, particularly, has a great opportunity to be the prime beneficiary.

But this can be accomplished only through an all-out constructive, positive approach plus persistence and insistence over a period of time. I always believe more can be accomplished by being for something than against.

I want to share with you some of what I consider "positive approach" testimony before the Van Deerlin Committee--it contains valid arguments for full First Amendment rights. From a standpoint of logic and justice, I believe the position enunciated in my testimony is unassailable.

From the standpoint of a position itself, however, it is unsaleable--unsaleable for different, and sometimes self-serving reasons, to professional public interest groups, lawyers, broadcasters, the FCC and many legislators.

Before I proceed with the proposals I presented before the Congressional Committee, I want to emphasize that current regulatory procedures have to be conducted under existing laws and judgments rendered on the legal record developed under existing rules and regulations.

What I proposed then and propose now is clean, decisive, legislative surgery to remove the major, pervasive defects and massive economic wastes of broadcast regulation. Unequivocally remove all First Amendment and regulatory constraints! Subject all broadcasting to exactly the same regulations and First Amendment constraints as its major competitor and closest cousin--newspapers. This also means eliminating the nebulous, troublesome and outdated "public interest" standard. It would also automatically eliminate government oversight or intervention in formats, news and all programming.

In return, assess broadcasters a practical spectrum usage fee, then provide for open market place addition of stations that meet established standards of engineering feasibility without reducing quality or existing power of established stations. The fee would be pre-tax--- so practically about 1 1/2% for TV and 1% for radio--3% gross for TV, 2% for radio.

De-regulatory action would most effectively and forcefully implement the visionary main thrust of H. R. 13015--that regulation should be necessary only "to the extent market place forces are deficient." In other words, wherever the market is open and competitive, regulations should be abolished. This certainly applies to broadcasting markets in this country where intense competition exists and is growing apace. Some government officials don't seem to realize and must be reminded that broadcasters not only compete aggressively against each other, but also with all other media including newspapers, magazines, outdoor advertising, transportation advertising, direct mail, etc. It's time to remove regulations and allow competitive market forces to operate. This would provide massive de-regulation, reduced bureaucracy and resulting reduction in government costs--all in keeping with the current trend and mood of the American public. Then, too, the public would benefit from a freer, more robust, more venturesome broadcast journalism emancipated from unnecessary restrictive government oversight.

I believe government or court-mandated First Amendment restrictions and also the government-mandated public trustee concept are outdated and no longer justifiable in today's competitive technical, economic and journalistic climate in communications.

In fact, broadcasting was not initially formulated as a public trusteeship. It was actually conceived as an advertising-supported, risk capital, commercial enterprise. No government funds were appropriated to

finance pioneer broadcast service or to initiate commercial service. Much has been said of the people's airwaves or the public trustee concept--perhaps too much because by sheer continued repetition over the years it has become accepted as a fact. However, 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."

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 this can only be achieved by bold, innovative legislative action. 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 with today's massive competition in all communications media.

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 even 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 number 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 also be served by abolishing Section 315 including the Fairness Doctrine and Section 312(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. Government has a difficult enough job of mandating even good government 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 some programming deficiencies, a government cure with censorship overtones is worse than the industry disease. No matter how it's weighed, the supposed benefits of the Fairness Doctrine, the personal attack and editorializing rules, etc. do not outweigh the detriments inherent in governmental interference in the journalistic affairs of broadcasting. No matter how well intended, no matter how evenhanded, the FCC's role in this area, when all the gloss is removed, is simply censorship. As a practical matter, the most positive step might be to stop using the term "Fairness Doctrine" and restyle the Section 315 rules "Government Censorship Doctrine".

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. 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) guarantee access to broadcasting in order to seek political office. This is not required of newspapers and magazines because of the Constitutional guarantees accorded only to print journalism. Clearly 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--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.

To remove all arguments of "spectrum" public trusteeship--broadcast licensees could pay an appropriate reasonable annual spectrum fee and then be assigned licenses without expiration dates. As you know only too well, broadcast licensees must prepare lengthy applications for license renewal every three years. 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. This re-write could get rid of the predatory, unfair license renewal challenge process.

What rules would then govern broadcasters? The very same law and rules as newspapers or other businesses or professions--criminal codes, libel, slander laws, anti-trust laws, EEOC requirements, IRS, SEC requirements, etc. There is no need for discriminatory singling out of broadcasting for special restrictive regulations--broadcasters generally are as responsible dedicated and every bit as socially conscious as other Americans--in media, industry, professional or government groups. Most feel a self-imposed public trusteeship. The few incompetents and miscreants fail and lose their business or jobs or run afoul of the law as in any other profession or business.

Also, I believe news objectivity and overall fairness and efficiency are better assured through professional broadcast and print journalists and through professional program executives. Many government-appointed officials, regardless of how well meaning, are handicapped by lack of experience and little understanding of media operations or the practicalities and economics of running a communications business.

Past considerations of the renewal issue have included the argument that a license "in perpetuity" would greatly weaken the competitive spur in the Communications act. Government officials must be reminded 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 practically all of the broadcasting markets in this country, competition not only exists but is intense and growing. As stated before, broadcasters not only compete among themselves but with all other media including newspapers, magazines, outdoor advertising, direct mail, etc. Therefore, it would seem reasonable to remove as much regulation as possible in order to permit competitive market forces to operate.

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. Neither should the broadcaster!

The principal difference between broadcasting and competing media is that broadcasting requires a government allocation of broadcast spectrum or license. The spectrum is a potentially valuable privilege. Spectrum value varies with the license type, power, location and entrepreneurial service and dedication of the licensee. With today's prolific competition, a broadcast license can no longer be accurately characterized as a monopoly or a potentially unregulated monopoly, as sometimes done by professional public interest groups. Most broadcast allocations have been diligently developed over the years into valuable economic enterprises. I believe a reasonable spectrum usage fee or resource allocation charge is appropriate. I suggest for openers, and subject to study and refinement, a 3% fee on gross revenues for television and 2% for radio. I readily admit the difficulty of proposing any fee formula that will gain universal acceptance, but I believe a fee would be a good trade-off for a guarantee of full freedom of speech and the press.

There are many areas requiring continued government direction and surveillance but not a major news and information media in a government conceived in and dedicated to the principles of free speech and a free press.

I believe there is a continuing need for consumer activist participation against products, organizations and services that mislead or bilk the consumer. Broadcasting should benefit from such interest but on the very same basis as any other news media. Broadcasting needs full, unfettered, press freedom to report, clarify, editorialize and advocate on all events and controversies subject to the same market place constraints and criticism as newspapers or magazines -- this includes expanding its already active role in exposing consumer frauds and unsavory corporate, public and governmental practices.

The argument that removing the public interest standard would permit broadcasters to eliminate news, public affairs or meaningful programs is indeed specious. It would be contrary to all industry trends and to broadcasting self-interest to eliminate or minimize news and information programming. Broadcast journalism and public affairs are increasing in importance. I believe the major impact of TV and radio on the American way of life today is in news and news analysis -- not in entertainment programs. I think most people agree that broadcasting today is most remembered and respected for its hours of exceptional journalism -- and that the greatest benefit most Americans derive and expect from broadcasting is information.

Recent research indicates more Americans are getting initial news from TV and radio than from newspapers. This potential for molding public opinion poses an enormous responsibility and opportunity. No practical broadcaster will ignore the audience mandate for comprehensive objective coverage of news and public affairs. I firmly believe that full First Amendment rights will generate more top level management emphasis on news and public affairs.

Once more, sell, demand if you will, full freedom of speech and freedom of the press for all media. This freedom best serves the overall public unfettered by government pressure or by citizen activists groups demanding special broadcast consideration for their own private social and political philosophies through government-mandated access.

I believe with an all-out effort the laudable de-regulatory thrust of H.R. 13015 could be specifically implemented by granting broadcasting full first amendment rights and removing all regulatory restraints. The overall public would be the important beneficiaries through massive de-regulation, reduced litigation, reduced bureaucracy and a resulting reduced cost to taxpayers. With elimination of renewals, fairness complaints, petitions and unnecessary rulemakings, the FCC staff (which included 342 attorneys at last count) could be systematically reduced by probably as much as 40%. The principal remaining broadcast function would be engineering spectrum allocation and enforcement. The bureau reduction could be humanely and gradually accomplished through attrition via transfer, resignations and retirement.

The reduction in bureau staff and government expenses would be in keeping with the mood and will of the American public today. I really believe this total proposal would pass convincingly today in any objective public referendum.

Moreover, removing the government restraints of Sections 315 and 312 would free broadcast journalism, foster more comprehensive and independent reporting and better serve the American people.

Our many lawyer friends may, understandably enough, express considerable concern with the problem of replacing or scrapping 45 years of case law and legal precedents. As a non-lawyer whose approach to government regulation is more journalistic than legalistic, I find truth and solace 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."

I hope with your all-out, positive efforts that Congress' concept of "substantial justice over technical legalism" will soon result in emancipating all broadcasting, starting immediately with radio, from unnecessary, restrictive, economically wasteful and outdated regulations and first amendment constraints.