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Comments by FCC Commissioner James H. Quello
Before the National Religious Broadcasters Association
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Thank you---I'm pleased to be here and I especially appreciate the ecumenical spirit of this esteemed group---for you have as your speaker this noon an Italian Roman Catholic, a moderate democrat and an ardent advocate of long overdue total First Amendment rights for broadcasting. I'm especially delighted to have the opportunity to share my de-regulatory and First Amendment views with this perceptive and compassionate forum of religious leaders.

But first, a very recent example of your success--I mentioned I was Catholic, but, I'm the only Catholic left in the family. We are really ecumenical. My nieces and nephews are all Southern Baptists or Unitarians. Two grandchildren are Lutheran, one granddaughter is Jewish---one of my sons was practically an agnostic until his deliverance last year. He was miraculously transformed by a powerful positive religious force that made him see the light and brought him back to God. Yes, Dr. Schuller, I want you to know you have a younger Quello, a family man, that's a believer and loyal viewer to the "Hour of Power" every Sunday morning in Deerfield Beach, Florida---and you have a senior Quello here who is both grateful for this salvation and impressed with your positive inspirational power of persuasion.

And speaking of persuasive powers of religion---we at the FCC are again truly overblessed with the continual flood of letters protesting an issue that doesn't exist.

The letters received by the FCC pleading generally for religious freedom on the air totalled nine million at the end of 1978---the religious mail received by the FCC averaged 8523 per day last month! This unprecedented volume of mail is continuing to pour in unabated!

There is no denying this is an overwhelming display of the power and influence of the pulpit, electronic or otherwise. This is especially true considering the mail was initially generated by a petition (not to keep God off the air) but requesting a freeze on applications by religious institutions for television or FM channels reserved for educuational stations. The petition filed by two broadcast consultants, Jeremy D. Lansman and Lorenzo W. Milam of California, was denied, August 1, 1975! You won the war over three years ago. But the letters keep pouring in because the petition has somehow become misconstrued as an atheistic plot to keep God and religion off the air.

Believe me, we God-fearing Commissioners have seen the light! We are delighted that Jesus Christ is truly broadcasting's No. 1 super-star with an all-time high mail count. Margita White, a perceptive female Commissioner, told me and I quote: "Everyone should know that God made man, She did it as a joke."

But, seriously, we have to again issue our annual counter-plea---there is no issue---please don't keep "those cards and letters rolling in." We are not administratively equipped to handle them. More importantly, remember that those wonderful but misinformed letter writers have spent over $1,350,000.00 in postage alone---this doesn't count the envelopes, paper, time and effort in mailing. This sizable expenditure of money and energy should be used for productive work and live issues.

You can count on the FCC to be the prime protectors for the Constitutional guarantee of freedom of religion, not oppressors. However, religious broadcasters, too, have the responsibility of maintaining the highest professional standards to merit continued respect and support. Unfortunately, you too, must guard and self-regulate against the greedy, the unethical, the cultists and the power hungry.

However, overall there is a significant lesson to be learned from the overwhelming showing of strength in protecting freedom of religion in broadcasting.

If other broadcasters showed the same purpose and dedication fighting for freedom of speech and freedom of the press as the religious broadcasters do in fighting for freedom of religion, broadcasters would have won their full Constitutional rights years ago!

I believe all previous reasons for conferring second class Constitutional rights upon broadcasting (scarcity, use of valuable spectrum privilege) are outdated, specious, economically wasteful and a disservice to the overall public. The only real continuing regulatory need is for engineering standards, spectrum management and orderly development of technological advancement.

If I were a broadcaster I'd invite religious broadcasters to join in a cause which is real---full First Amendment freedom for all broadcasters. Because freedom of the press and speech and freedom of religion are so closely linked in the First Amendment, one could well reason that a threat to one is a threat against the other.

Can you imagine the cumulative impact of 8000 plus broadcasters---owners, managers, program directors, public service managers and news directors all fighting for freedom of the press and freedom of speech for their own medium?--particularly if they enlisted the aid and took a few lessons from their broadcast brethen in the pulpit?

Fortunately, the legislative vehicle for accomplishing this goal is at hand. The House Subcommittee on Communications chaired by Congressman Lionel Van Deerlin has done a monumental job in proposing and advancing the re-write of the Communications Act of 1934 to its present stage.

I was among the first to laud the de-regulatory thrust of the proposed Act as timely and courageous. It initially provided massive de-regulation, particularly for radio, which would result in reduced brueaucracy and a resulting reduced cost to taxpayers in keeping with the mood and will of the American people today. I hope it didn't get sidetracked by the self-serving filings and critical testimony of some affected groups.

I recently told a broadcast group---and I'm going to keep repeating it---get off your seats (I confess I used the more explicit term) 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 for your media and yourselves.

I believe the general de-regulatory thrust of the New Act can be converted into specific overdue freedom---it has the potential of emancipating broadcasters from all First Amendment restraints. But it requires an all-out constructive approach and more attention to Constitutional principles and less to cash flow.

Some of my FCC colleagues are on the public record favoring some de-regulation but they seem to have run afoul of the well-known "but not" syndrone. One might support de-regulation of radio "but not" television. Another might favor de-regulation insofar as logging or ascertainment requirements are concerned "but not" the special EEO requirements or public trustee concept. Another might favor elimination of the public file "but not" the Fairness Doctrine. In order to accommodate all of the "but nots" in aggregate, of course, it would be necessary to retain, with slight revision, virtually all of the present regulation and, perhaps re-interpret or add some more.

Before I proceed with my comprehensive de-regulatory arguments, I want to emphasize that current regulatory procedures must be conducted under existing laws, and judgments rendered on the legal record developed under existing rules and regulations---not on legislative proposals.

I also want you to know that my views and proposals come from a unique perspective of over 4 1/2 years on the FCC and 30 years in broadcasting.

What I proposed before Congressman Van Deerlin's Subcommittee 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 marketplace addition of stations that meet established standards of engineering feasibility without reducing quality or existing service of established stations. The fee I proposed as an initial suggestion was 3% gross for TV; 2% Radio -- this is a pre-tax fee.

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 marketplace 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 legislative 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 virtually every 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.

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 also believe the public would 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. There

have been no government innovations or contributions to the advancement of the state of the art. Even with some programming deficiencies, a government cure with censorship overtones is worse than the industry disease. No matter how they are weighed, the supposed benefits of the Fairness Doctrine, the personal attack and editorializing rules, etc. do not outweigh the detriments 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 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.

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.

One might ask 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 and SEC requirements, etc. There is no need for discriminatory singling out of broadcasting for special restrictive regulations--broadcasters are as responsible, law-abiding, tax-paying, dedicated and every bit as socially counscious 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.

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 ricks and opportunities of entrepreneurship. Broadcasters have no incentive to offend or alienate potential audiences; on the contrary, it just makes good sense to attempt to serve as much of the potential audience as possible 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 cable, 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.

I want to emphasize a 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 entrepreneural service and dedication of 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 charged 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 should eliminate the public trustee concept based on grant of a valuable spectrum resource.

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 want the record to indicate that I advocate government involvement in appropriate areas--government involvement and direct action was required to attain such desirable goals as social security, FDIC protection for savings, civil rights, no fault insurance, medicare and public health, anti-trust rules and environmental protection. Government must continue a vital role in solving problems in energy, national security, urban decay, equal rights and lagging economy.

Also 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, editoralize and advocate on all events and controversies subject to the same marketplace 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. (Special music format stations in radio are formed only after an abundance of news is already available.)

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. Broadcasters will not ignore the audience mandate for comprehensive objective coverage or news and public affairs, I firmly believe that full first amendment rights will generate more top-level management emphasis on news and public affairs. Full freedom best serves the overall public unfettered by government pressure or 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 , elimination of administration of renewals, fairness and program complaints, petitions to deny and unnecessary rulemakings. The FCC staff (which included 342 attorneys at last count) could be systematically reduced by probably as much as 30%. 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.

I'm convinced that the general public would be very interested in the re-write if it understood all of its implications. I don't believe that the press -- both print and electronic -- has done a very good job of telling the story and explaining the implications. Religious broadcasters -- who regularly speak to millions of Americans -- have a great potential for filling this information gap.

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 progressive 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 suggest that other broadcasters enlist your support and emulate your dedication in an all-out positive effort so that Congress will adopt the concept of "Substantial Justice over Technical Legalism". This could result in emancipating all broadcasting, starting immediately with radio, from unnecessary, restrictive, economically wasteful and outdated regulations and First Amendment restraints ---for freedom of religion functions best, thrives and grows where there is <u>full</u> freedom of speech and freedom of the press.

Thank you.