Statement of FCC Commissioner James H. Quello
Before the
House Subcommittee on Communications
April 11, 1979

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to present my views on significant policy decisions made by the Federal Communications Commission during the past year and to discuss future policy issues.

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Because Chairman Ferris presumably will give the factual details of most of our important decisions of the past year, I will simply note a few of the more significant ones in my remarks and will spend most of my allotted time discussing a few areas where we have not yet reached decisions and which I feel urgently need our attention.

In the cable television area, I invite specific attention to the elimination of the certification process, the adoption of policies and rules to clarify the EEO obligations of cable systems, and the de-regulatory step of exempting all small cable systems with fewer than 1000 subscribers from many of our rules. Approximately 1750 CATV systems have been so exempted.

This is the type of de-regulation I support--to eliminate requirements and restrictions for which there is no demonstrable need. For the

future, I believe this should continue. I would note, however, that despite considerable speculation that the Commission will totally de-regulate cable--or that Congress will do so--many basic decisions remain to be made. I believe there are certain areas where some regulation of cable will continue to be desirable and will spell out the details of my views in your hearings on H. R. 3333.

I would note, however, that it is important to retain our cable expertise until these decisions concerning legislative or administrative de-regulation have been made. I would, therefore, oppose placing the cable functions within the Common Carrier Bureau or the Broadcast Bureau at this time.

Let me turn now to a common carrier matter of particular concern to me and which I believe should be addressed by the Congress. Proposals for amending or replacing the Communications Act of 1934 have recognized the problem and I sincerely hope and trust that the final legislation will resolve it.

I am referring to the present unsatisfactory approach to the establishment of intercontinental communications facilities. And, I prefer to use the term "intercontinental" instead of the more commonly used "international." Insofar as Canada and Mexico are concerned, our needs and interests in telecommunications tend to be very similar--at least near the border areas--and our current methods of resolving problems which arise appear to work reasonably well.

It is clear, however, that our current structure and procedures for dealing with intercontinental facilities applications are not adequate to the task. Because the FCC must deal with facility plans only after they have been negotiated between U.S. carriers and foreign carriers, the Commission finds itself in a position of maintaining veto power over those international negotiations. The Commission is not permitted to participate in the negotiations, of course, and, thus, must review the results somewhat apart from the give and take of which they are part and parcel. As a result we use a more precise yardstick in assessing intercontinental facilities plans than we do for domestic facilities where we are dealing only with a single U.S. carrier. For example, a domestic carrier can install millions of dollars worth of switching equipment without seeking Commission approval. It cannot lay a mile of undersea cable, however, without prior authorization.

Aside from this lack of evenhandedness, the problem becomes much more complex when we consider that the foreign carriers with whom U.S. carriers must negotiate are, themselves, most often the same entities which carry out communications policy for their respective governments. Therefore, the foreign carriers can and do negotiate in the definitive sense while the U.S. carriers can only hope the results of the negotiations will find favor with the FCC.

In our ongoing consideration of the various TAT-7 proposals for the North Atlantic, for example, we are being forced to deal with the concerns I have just expressed. While we appear to be well on the

way toward a resolution of TAT-7, I don't believe we have come very far in providing a vehicle for the resolution of similar facilities questions in the future. Therefore, I am pleased that the Congress is addressing this question with a view toward effecting some changes. This foreign facilities planning process is far too important and complex to continue to deal with it as we have in the past.

In the broadcast area, we have broken significant ground with a policy statement supporting increased minority ownership of broadcast stations and have implemented it through the use of tax certificates and permitting "distress sales" to minority applicants.

I would like to commend this Subcommittee for the momentum it has provided in developing the current de-regulatory climate. Much of a positive nature remains to be done and I recognize, as you do Mr. Chairman, that the Commission can go only so far--that there are a number of provisions which can be remedied only by Act of Congress.

The Commission is, however, actively looking at the matter of radio de-regulation and our task force on this subject will report to us at a meeting on May 8 on its re-evaluation of such matters as rules relating to commercial limits, ascertainment, non-entertainment programs, local public service programs, and program log requirements. I look forward to that meeting and to future discussions with the Subcommittee on this important issue.

While there are a number of broadcast issues that still need attention, I would like to mention three of particular concern to me: the question of who has standing to participate in Commission adjudicatory proceedings, the issue of private agreements with broadcasters and tax exempt reimbursement of expenses, and the subject of UHF/VHF comparability.

One of my primary concerns has been that broadcasters, immediately prior to filing an application for renewal or assignment of license, are confronted for the first time by persons claiming to represent a group or a coalition of local organizations concerned with the manner in which the licensee has fulfilled its responsibility. In many cases the petitioner's standing is challenged by a licensee because of a failure to show that it is a legitimate spokesman for the "coalition" or because the group exists only on paper.

The Commission has required only a bare minimum showing to establish so-called standing--as a party in interest--merely that the petitioner or an individual member of the petitioning group be a viewer or listener of a broadcast facility. In fact, we have carried our lack of concern so far that a petitioner need only list his address as within the broadcast market area--without any averment of viewing or listening. Even assuming that an individual granted standing has been determined to be a local resident and a listener or viewer of a given station, his personal views and objections are not necessarily representative of the general public, but rather constitute an expression of private concern.

The blame for this lackadaisical approach lies not so much with the courts as with the Commission. The landmark United Church of Christ case made the observation that:

> "In order to safeguard the public interest in broadcasting, therefore, we hold that some 'audience participation' must be allowed in license renewal proceedings. We recognize this will create problems for the Commission but it does not necessarily follow that 'hosts' of protestors must be granted standing to challenge a renewal application or that the Commission need allow the administrative processes to be obstructed or overwhelmed by captious or purely obstructive protests. The Commission can avoid such results by developing appropriate regulations by statutory rulemaking." (United Church of Christ v. FCC, 359 F.2d 994, 1005 (DC Cir., 1966)).

That court further noted that, while there may be efforts to exploit the enlargement of interventions, the problem "...can be dealt with by the Commission under its inherent powers and by rulemaking."

Thus, the Commission has not been forestalled by the court from establishing reasonable standards for standing. On the contrary, the court seemed to be inviting the Commission to set such standards. Instead, we have taken refuge in cryptic footnotes and self-generated precedents to formulate the ad hoc "anything goes" policy we have today.

I cannot accept the view that standing is automatically conferred upon every individual who views or listens to television or radio broadcasts. Individuals may advance private interests or personal philosophies but are not representative of broad interests unless they make positive showings to that effect. The individual objector or one group may voice private concerns in the form of complaints directed to the Commission, and the Commission, if warranted, may institute further investigation or inquiry.

When the interests of a substantial number of individuals coalesce, a matter of concern arises which then affects a representative segment of the general public, and at this point standing to intervene should be conferred.

I have stated many times, informally and formally, that this Commission should institute a rulemaking proceeding to codify specific and equitable regulations governing standing. The National Association of Broadcasters has recognized the problem and in March 1977, filed a petition for rulemaking to establish standards for determining the standing of a party to petition to deny an application. Some fourteen months later the petition was finally acknowledged with a rulemaking number by notice of May 1, 1978. Now, some eleven months later, the matter still has not been brought before the Commission.

I hope the Commission will grant a long overdue higher priority to the matter of standards for standing as a party in interest and take positive steps toward codification of reasonable standards. Our work load will be considerably reduced and substantial monies will be saved by all concerned through avoiding needless Commission deliberation and litigation. The government, the general public and the broadcast service will all save money, time and energy that can be better utilized for constructive purposes.

I am particularly concerned about Commission sanction of private agreements and reimbursements because the overall real public is usually unaware of the agreement provisions which significantly affect what it sees and hears on television and radio. I remain concerned that a single, highly vocal group, with an indeterminate constituency can exert disproportionate

influence over programming for the entire community.

The preferences of one group might well be antithetical to a far greater majority of others. If many minority, civic or citizens groups all prevailed upon a station for special agreements (with the added inducement of tax exempt reimbursement for litigation), the resulting chaos could threaten the quality and stability of broadcast service.

Last December I reluctantly concurred in approval of tax exempt reimbursement for six different licensee-citizens groups. My concerns were: (1) I believe the entire subject of legal reimbursement raises serious questions that should be resolved by comprehensive rulemaking not by an ad hoc special exception; (2) the intrusion of the FCC into these particular agreements violated the spirit and intent of the 1975 policy statement stating the FCC would maintain neutrality and neither prescribe nor prohibit any particular agreement terms; and (3) I questioned the propriety and legality of tax exempt reimbursing of legal expenses for long-time adversary activist groups who do not represent the overall public but use legal processes to promulgate their own private, self-serving version of public interest.

Public interest law firms enjoy tax exempt status under Section 501(c)(3) of the Internal Revenue Code. The IRS has ruled that "...public interest law firms are charities only so long as they provide representation in cases of important public interest that are not economically feasible

for private firms." I concurred in Commission action because Revenue Rule 75-76 notes that: "...the likelihood or certainty of an award of fees is a factor affecting the appropriateness of the particular litigation for a public interest law firm...As legal precedent is developed indicating the strong possibility of the recovery of fees, certain issues may become economically feasible for private litigants and thus inappropriate for public interest law firm participation."

I have given particular attention in the past year to UHF television. My special interest stems in part from my assignment as Educational Commissioner and the fact that 169 out of 281 educational television stations are UHF. I am also impressed by the fact that about two-thirds of the independent commercial broadcasters are assigned to UHF channels. And, my concern for the further development of UHF television is also rooted in the belief that the greatest opportunity for growth and diversity of service in broadcast television--for minorities and non-minorities alike--lies within the UHF band.

The Congress has long been aware of and concerned with the disparity between UHF and VHF television services. It expressed its commitment to "comparability" between the two services in the 1962 all-channel receiver legislation. Unfortunately, except for a requirement for detent tuning of UHF channels, very little has been done in terms of public policy decisions to improve UHF service from 1962 until last year.

Last year the Commission finally promulgated its commitment to comparability in acting upon a petition filed by a group of UHF stations. After long deliberations, panel presentations and debate, the Commission voted to set a timetable to reduce the permissible receiver noise level from the present 18 dB down to 14 dB and then to 12 dB. I believe the figure should go even lower and that it probably will within the next few years.

Other problems are being addressed. Late in December 1978, the Commission initiated a series of inquiries seeking to place the whole comparability question into sharper focus. Among other things, the Commission is looking into the question of whether we should incorporate additional receiver performance standards into the rules. We are concerned that receiver manufacturers might be tempted to make some unacceptable trade-offs as they adjust their designs for better noise figure performance.

We are seeking more information on a wide variety of means which might be employed both in transmitters and receivers to improve UHF performance. We want to consider further new approaches in design such as those present in the so-called TI receiver. We want to consider antenna design--both transmitting and receiving. We want more information and comment on receiver lead-in problems and some suggested solutions. And, we want to look into various ways of providing the viewer

with information he needs to make an intelligent and informed selection of the receiver he buys so that it adequately meets his needs.

A part of my concern with the lack of comparability between UHF and VHF television centers on transmitter technology now available and the economics of providing the power levels necessary to overcome path losses inherent in the higher frequencies. Very few UHF stations operate with maximum power and antenna height. A quick glance at the economics of UHF television broadcasting provides a ready explanation of the problem. UHF broadcasters are choosing to limit their coverage areas because of the very high cost of installing and operating maximum power transmitters. I'm told that a low-band VHF operator can install a maximum power transmitting system for about a third of the cost of a UHF system offering the same coverage. And, when you consider operating costs of the transmitting systems, the UHF operator's disadvantage ranges from about ten-to-one to fifteen-to-one when compared with high-band and low-band VHF respectively. Fortunately, there are some technical improvements on the horizon. For example, it now appears likely that the klystron power amplication systems now universally used by UHF transmitters will be replaced by a far more efficient vacuum tube power amplification system similar to those being used in VHF transmitters.

Summing up, significant progress is being made in the two areas of UHF television most capable of providing near-term comparability between UHF and VHF television. First, the noise figure performance

of television receivers will be significantly improved. And, second, the economics of high-power transmission are likely to significantly improve. Those factors, coupled with almost universal availability of UHF receivers, are leading to a robust UHF television industry with even greater future promise.

We must be careful to move forward in research and actual development aimed at making the needed improvements rather than getting bogged down in studies. I will be watching with considerable interest over the next few months, as I know you will, for definite signs of progress in these areas.

These have been just a few areas of special concern. There are many other important broadcast matters to be dealt with in the coming year--clear channels, the 9 kHz matter, AM stereo, subscription television, and public service announcements. I guess, Mr. Chairman, we both have our work cut out for us and I look forward to working with the Subcommittee on many issues of mutual interest.

Thank you.

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