Statement of FCC Commissioner James H. Quello
submitted to the
House Subcommittee on Communications
(for the record on H. R. 3333)

May 16, 1979

I appreciate this opportunity to submit my views on several significant broadcasting aspects of H. R. 3333. The views are my own but come from a unique perspective of over five years on the Commission and 28 years experience in broadcasting.

First, I congratulate Chairman Van Deerlin and Congressmen Collins and Broyhill for persisting in deregulation and for the constructive revisions in H. R. 3333. The deregulatory thrust of the new bill is laudable, courageous and timely and its origins, I might add, predated Proposition 13. The general principle of the Act will provide massive radio deregulation, reduced bureaucracy, and a resulting reduced cost of government in keeping with the mood and will of the overall American public today. I am pleased that the new Act did not get side-tracked by the opposition and understandably self-serving filings of affected groups and trust that its deregulatory thrust will remain intact throughout the bill's legislative journey.

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In my view, H. R. 3333 represents a significant constructive start toward desirable, feasible, total broadcast deregulation. But it is only a first step. I again propose total implementation of the competitive marketplace principle by removing all the major pervasive defects and economic wastes of broadcast regulation. This can only be accomplished by removing all regulatory constraints from broadcasting and giving it complete First

Amendment protection. There is no longer any justifiable reason why the broadcasting industry, and particularly the American public, should be deprived of full media constitutional freedoms in today's intensely competitive marketplace. Giving broadcasters the same rights and freedoms as their major competitors--newspapers--would eliminate the nebulous, troublesome and outdated public trusteeship concept. It would also automatically eliminate government oversight and intervention in program format, news, and in all programming. My detailed arguments in support of complete deregulation presented to this Subcommittee on September 13, 1978 are still valid today.

Turning to the important question of fees, whether or not there should be a spectrum use fee and its amount are major national policy decisions for the Congress. Those most concerned are making their case directly to the Congress. I would like simply to make two points. First, if you adopt a fee, whatever formula is selected should be one which can be easily administered by the Commission. Second, it should be fair and designed to avoid involving the Commission and others in protracted litigation.

Because the bill does not totally deregulate television, I have revised my thinking on the 3% gross revenues for TV and 2% for radio I had suggested last year. It is apparent that television is paying the major portion of the total fees for comprehensive deregulation of radio--a related but competing medium. Also, in view of recent legal studies, it may be advisable to avoid a gross receipts fee (or tax). A formula based upon costs involved in processing applications and rendering other services to licensees seems fair, equitable, and more likely to withstand legal challenge. While it would not raise as much money

as some of the other suggestions, it is certainly a realistic measure of the special services received by the spectrum user. Moreover, I am concerned that assessment of a fee based upon revenues could result in the disclosure of confidential financial information about individual stations, something the Commission has carefully avoided in the past and a practice prohibited by Section 452 of H. R. 3333 which permits disclosure of such information only in the aggregate.

Let me briefly call to your attention a few other potential problems I noted in reading portions of H. R. 3333.

I repeat my strong opposition to placing all spectrum allocation authority with NTA. The non-government portion of the spectrum is more efficiently and appropriately administered by the rulemaking and enforcement agency--the FCC or the new CRC. Moreover, the bill's approach places too much authority in this regard in the executive branch.

The advent of satellite distribution of TV signals has added a cataclysmic new dimension to copyright and to cable carriage of TV signals. There is a threat of gross basic inequities in program property rights and also to an orderly system of TV allocations if satellite carriers continue to transmit broadcast signals to thousands of cable systems without retransmission consent. This is one of the most complex, controversial communications problems today.

The focus of retransmission consent has been primarily on cable systems and their relationships with broadcasters and program producers. It can be logically argued that a new element has entered common carrier and satellite distribution to cable--an element not adequately addressed by Congress in its consideration of copyright. In some manner, the problem

of copyright and retransmission by satellite must be thoroughly reviewed. In light of these new developments, perhaps some thought should be given to requiring the "carrier-distributor" to obtain retransmission consent from the TV stations before transmitting signals to the satellite for distribution and sale to certain cable systems. This mechanism would permit the marketplace to operate freely and fairly without further government intervention. The broadcaster would either grant or withhold retransmission consent based upon where he intended to compete. If he decided to grant retransmission consent in the expectation that he could attract larger revenues on the strength of his cable audience, he would be free to do so. The program producer, aware that consent had been granted, could then negotiate with the broadcaster and price his product with the knowledge that it would be distributed in more than the local market. We are already seeing instances where producers are by-passing markets where super stations are located in order to retain control over their products. I would expect to see much more of this kind of behavior. To the extent this does occur, the public is being denied certain programming. Thus, I believe the problem must be addressed. It does not seem feasible to require each cable system to require consent from each broadcaster or each producer. By requiring consent from the broadcaster to the satellite carrier, however, the marketplace balance is restored with relative ease.

Incidentally, the Commission, in a recent Notice of Proposed Rulemaking, is asking for comments on retransmission consent, particularly as it applies to satellite distribution to cable systems.

On another subject, Section 413(a)(2) requires a commercial VHF station for each state and the District of Columbia. The only states lacking such stations are New Jersey and Delaware. The Subcommittee should clearly understand that the Commission would be forced by this legislation to take away VHF channels from existing licensees in other states--probably New York and Pennsylvania. Drop-ins are not considered technically feasible. It is difficult to correct an unfortunate TV allocations discrepancy made 30 years ago without causing disruption and a probable public outcry from longtime viewers. A positive development is that UHF generally has finally become profitable and viable. Also, the increased number of cable systems and the increased services and stations carried by cable provide further potential for service. The Commission last month by a 3 to 3 tie vote failed to take action to require a studio capability as well as an office presence in New Jersey on the part of New York VHF stations. However, in my opinion, this matter will be reconsidered in the near future.

Subsection 413(b) lists five factors the Commission "shall take into account" in carrying out the distribution of AM radio licenses. Paragraph (1) requires the Commission to take into account "the amplitude modulation channel spacing systems in effect in foreigh nations in order to ensure that the systems in effect in the United States are compatible with systems in general use in foreign nations." This could imply a statutory direction to go to 9 KHz--a very desirable objective but one where international and technical matters need to be carefully explored.

The provision seems to go beyond just taking the factor "into account" when it states "in order to ensure" compatibility with foreign systems. Would we be free to retain 10 KHz compatibility with our hemispheric neighbors in Region 2 or would we need to adopt the 9 KHz spacing which Regions 1 and 3 went to in 1975?

In any event, there are established international procedures for deciding matters of this nature; it is not a matter for unilateral action by the United States. If a decision is made by FCC, NTIA and the Department of State to examine the feasibility of going to 9 KHz separation, the initial step would be to obtain approval of COM-CITEL which will meet in July in Brasilia, Brazil. If COM-CITEL approves such a move, some of the work done over the past four years by COM-CITEL broadcasting work group would have to be re-examined. Much would then need to be done prior to the scheduled April 1980 first session of the regional conference.

Canada is preparing to request bids from consulting firms to provide the necessary economic and technical information. The Commission is assessing what its next step should be. Thorough studies should be conducted before reaching a decision. The FCC is vitally interested in exploring all possibilities, but keeping in mind international treaties and comity. Under the circumstances, it may be well to re-word or to remove §413(b)(1) from the bill.

These are just a few matters of special concern. I know your hearing record will contain testimony on a number of others.

The rewrite of the Communications Act of 1934 is the most comprehensive and important communications project of the past 40 years. Overall it contains

a significant and timely deregulatory thrust. It incorporates revisions of the past and the proposals for the future into one comprehensive, viable and understandable legislative instrument.

I applaud the Subcommittee's efforts and I am pleased and proud to have the opportunity to submit my views on this historic proposal.