Comments for the Record by
FCC COMMISSIONER JAMES H. QUELLO
to the Senate Subcommittee on Communications
Relative to Broadcasting and Cable Sections of S. 611 and S. 622

June 26, 1979

Mr. Chairman, I am pleased to have this opportunity to submit for the record my individual views concerning the commercial broadcasting and cable provisions of S. 611 and S. 622.

As you undoubtedly are aware, there are diversified viewpoints among my fellow Commissioners with respect to the method and the extent of updating the Communications Act of 1934. In my opinion the record should reflect such diversity of views among the members of the Federal Communications Commission.

I would emphasize that my own viewpoints stem from a unique perspective of over five years on the Commission and 28 years experience in broadcasting. Consequently, the views expressed herein are not based solely on limited experience in the administration of federal regulations and policy in communications. My previous background tends to give me a special sensitivity to the practical impact of broadcast regulation.

Turning to the area of spectrum fees, S. 611 proposes a spectrum fee based on the value of the spectrum, as contrasted to the provision of S. 622 which bases the fee on the Commission's regulatory costs. In my opinion, a spectrum fee based on an approximated value of the spectrum amounts to a tax levied on the broadcaster for the

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privilege of doing business. I believe that a spectrum fee is much more justifiably assessed on the costs of regulation. I must confess that I had earlier taken a position that a specific percentage fee on gross revenues for television and radio stations would be an equitable basis for a spectrum fee assessment. However, further reflection has convinced me that any fee which exceeds the cost of regulation amounts to a tax, and accordingly is not justifiable. 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. Further, 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. In short, the spectrum fee should be one which can be easily administered by the Commission and it should be designed to avoid involving the Commission and others in protracted litigation.

There seems to be a consensus in both Houses of Congress to make radio license terms indefinite. I am in full agreement with this viewpoint. S. 611 provides for a Commission "audit" of five percent of all radio licenses annually. In my opinion periodic Commission review is unnecessary because of the self generating pressure of marketplace acceptance and widespread industry competition.

Both Senate bills would lengthen TV license terms to some degree. As between the provisions of S. 611 and S. 622, I prefer the specific provision of S. 611 to lengthen TV licenses to five years in all cases, rather than the more complicated approach of licensing on the basis of television market sizes. However, I believe removing all

regulatory constraints in licensing would remove the previous inequities and defects of license renewal and eliminate massive economic waste. The time has come to grant broadcasters the same freedom and rights as newspapers.

Of the two bills I favor the provision in S. 622 with respect to TV de-regulation, to the extent that it requires the Commission to continually seek ways to cut back on television regulations and to make annual progress reports to Congress. The requirement of annual progress reports to Congress would guarantee continuing efforts in this direction.

I note that both S. 611 and S. 622 would maintain the current regulatory standard of "public interest, convenience and necessity." It is at this point that I depart from the philosophy of both bills. In my opinion, Congress should unequivocally remove all First Amendment and regulatory constraints. Broadcasting should be subjected to exactly the same regulations and First Amendment constraints as its major competitor and closest cousin -- newspapers. This would mean eliminating the nebulous "public interest" standard. It would automatically eliminate government oversight or intervention in program formats, news and in all programming matters. In my view regulation should be necessary only to the extent that 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 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 is time to remove regulations and allow competitive

market forces to operate. Certainly 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 technological, 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 airways" or the "public trustee concept" -- perhaps too much, because by sheer continued repetition over the years it has become accepted as 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 someday 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.

As to renewal procedures proposed in S. 611 and S. 622, I prefer the provisions of S. 622 which would do away with the comparative proceeding for new facilities, substituting a lottery system. While the lottery system may not be the ideal solution, it does avoid the tremendously expensive,

drawn-out hearing proceedings involved in our present comparative renewal procedures. I believe the comparative renewal process should be eliminated. However, if this process is continued I prefer the provision of S. 622 which provides for discretionary renewal of the incumbent applicant upon a finding of its substantially meeting the problems, needs and interests of its service area listeners. Assuming such to be the case and absent serious deficiencies in operation, the Commission may terminate a comparative proceeding at such point and grant renewal in its discretion. With only this modification, a tremendous procedural impediment would be removed from the present process.

I believe the public would be served by abolishing Section 315 including the fairness doctrine and Section 312(a)(7). These Sections 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 corporate or government 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 would better serve the American people.

There's 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.

There are many areas requiring continued government direction and surveillance, but not a major news and information medium in a government conceived in and dedicated to the principles of free speech and a free press. I advocate government involvement in appropriate areas -- government involvement obviously has been required to attain such desirable goals as social security, minimum wages, FDIC protection for savings, civil rights, 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. But government oversight should not be required to initiate, maintain or perpetuate a free broadcast press. Pressure generated from industry competition and public marketplace acceptance will accomplish this end -- the same as in other media or industry.

However, 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 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. 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. For example, all-music radio formats develop and thrive only in markets already fully served by news and public affairs. I firmly believe that full First Amendment rights will generate more top level management emphasis on news and public affairs. Owners, executives and broadcast managers of the future will more and more assume roles of publishers and editors-in-chief. With full press freedom, stations and networks will

have added incentive for editorializing and for larger news staffs capable of more investigative and detailed "on the spot" reporting.

Once more, I believe in freedom of speech and freedom of the press for all media. This freedom best serves the overall public unfettered by government pressure or by activist groups demanding special broadcast consideration for their own private social and political philosophies through government-mandated access. I further believe newsmen have the right to be wrong and that news executives have the responsibility of seeing that they are not wrong too often. I believe newsmen have the right and obligation to seek the truth -- the facts. I also believe freedom of speech applies to government officials -- they should be able to criticize the press, especially the broadcast press, without raising the ominous spectre of censorship because of possible regulatory oversight.

I repeat that with today's intensely competitive broadcast news and advertising media, there is no logical reason for the special discriminatory regulation of broadcasting.

CABLE TELEVISION:

Turning now to the cable television aspects of S. 611 and S. 622 I would state for the record that I am in general concurrence with the thrust of both bills. Overall, I prefer the provisions of S. 622.

The advent of satellite distribution of TV signals has added an unforeseen dimension to cable carriage of television signals. There is a threat of gross basic inequities in program property rights and also to an orderly system of TV allocation if satellite carriers continue to transmit broadcast signals to thousands of cable systems without retransmission consent. This most complex, controversial communications problem has been the subject of lively debate before this Subcommittee in recent weeks and I realize that there is substantial opposition to the retransmission consent concept within this Subcommittee. I would like to advance my own view on the matter since it differs substantially from the general tenor of the debate.

I suggest first that there should be a statutory requirement for retransmission consent, but applicable only with respect to television signals which are distributed by satellite to cable systems for distribution. Retransmission consent would not apply to carriage of distant signals via terrestrial microwave since distance-sensitive costs involved would provide a self-limiting factor.

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 the arena; satellite distribution to cable -- an element not adequately addressed by Congress in its previous consideration of copyright. My proposal does not involve

the copyright concept. Instead I propose that the "carrier-distributor" should be required to obtain retransmission consent from each TV station before transmitting its signals to a satellite for distribution and sale to 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 intented 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. On the other hand, should the broadcaster feel that producers would by-pass his station in order to retain control over their products, he would be free to refuse retransmission consent in order to have access to the programming he desired. We have already seen instances where producers are by-passing markets where super-stations are located in order to retain control over their product. To the extent this does occur, the public is penalized by being denied distribution of that programming in the primary television market. It is unreasonable to require each cable system to request retransmission consent from a super-station or from each program producer -- such a burden would be intolerable. Under my proposal the would-be super-station would need to give its consent only once, to the "carrier-distributor", which would then retransmit its television signal to a satellite and thence to a receiving station for further distribution, upon purchase, by cable systems. In such event, the program producer would charge the super-station more for the coverage

the station would assess more from the carrier-distributor for its retransmission consent, and the carrier-distributor in turn would "up his ante" proportionately to his cable customers. Thus, the marketplace balance is restored with a feasible working plan.

Both S. 611 and S. 622 would permit continued federal regulation of cable. Chairman Ferris, in his statement before this Subcommittee on June 5th, noted the acceptability of the provision of S. 611 prohibiting the Commission from regulating distant signal carriage except upon an evidentiary finding that local broadcast program orignation would be harmed. While I can agree with his statement in this respect, I must disagree with his further statement that he would "... even strike the balance more strongly on the side of diversity of overall program service, since local programming may be as likely to emerge from cable in the future as from broadcasting today." Over the past 20 years cable has done comparatively little in the area of local programming, even under the earlier mandatory access rules of the Commission. It has proven extremely expensive to attempt local programming over an extended period of time. There is a shortage of programming material and a shortage of audiences, as well as a shortage of monetary return. However, aside from this aspect, local programming by cable amounts to no more than programming only for cable subscribers in a franchized area -- this is minuscule compared to the universal market area served by a television station with programs available to all who own television sets.

I personally believe that this Commission must continue regulation of cable television to some extent. Depending on the final legislative outcome, the Commission may well be involved with cable regulation in the areas of distant signal carriage, impact on local service, waiver requests, cross-ownership restrictions, possible

anti-siphoning rules protecting broadcast sports events, EEO matters, access channels, political and equal time access, possible broadcast ownership and operation of cable systems, and possibly the provision of cable facilities by telephone companies. Any number of the aforementioned areas will continue to demand a substantial portion of the Commission's administrative time.

With respect to cable cross-ownership, S. 611 makes no provision for this aspect of cable. S. 622 would permit broadcasters to own and operate cable systems, including those co-located, and I agree with this provision.

I am in full agreement with Chairman Ferris that we should not yet mandate permanent separation between cable transmission and cable programming by either cable or telephone companies. As he stated, the Commission should be given flexibility to design and alter the regulatory structure governing the competitive relationship between cable and telephone companies that will best serve present and future needs.

In conclusion, I wish to again express my appreciation to this Subcommittee for the privilege of submitting my views on the cable and broadcasting aspects of S. 611 and S. 622. My philosophies and viewpoints differ somewhat from those expressed by Chairman Ferris; there may be other differing viewpoints expressed by other fellow Commissioners who comment for the record in this proceeding. Whatever the legislative outcome, it will hopefully incorporate revisions of the past and the proposals for the future into one comprehensive, viable and understandable legislative instrument.