

ADDRESS BY FCC COMMISSIONER JAMES H. QUELLO
BEFORE THE TEXAS ASSOCIATION OF BUSINESS
SAN ANTONIO AND AUSTIN

JULY 29, 1980

I searched for a dramatic opening statement today but decided it would be appropriate to stay with the customary "I'm delighted to appear before this distinguished Texas group to address a significant subject of mutual interest." (TV, cable, radio, telephone, satellite transmission).

And, in my case, I really am delighted - you see, my term expired June 30th and my reappointment has been placed on "hold". So I'm glad to be somewhere, but particularly here in historic, picturesque and, thanks to you, friendly San Antonio.

My son bluntly characterized my situation in typical overfamiliar family manner saying, "Dad, it now looks like you are a long shot instead of a big shot." At least being on "hold" has some advantages --- No one has yet crowded me away from the drinking fountain. Also, no one in Washington has approached me pointing and saying: "Oh, I remember you. You used to be -- ah --- oh, yes, you used to be Jim Quello!"

I must admit that along with your invitation I am pleased with the large number of other invitations I received for August, September and October from communications and educational groups. I don't know whether it is an act of faith, hope or charity on their part.

Anyway, I feel comfortable appearing before the Texas Association of Business because in a sense, I, too, was a businessman -- in broadcasting.

I found the transition from business to a regulatory agency quite a challenge. It is a unique, gratifying and sometimes frustrating experience to cap your career regulating an industry you devoted 30 years to.

There is a notable difference. In my view, business or industry is more direct, autocratic and, thank goodness, more efficient than government. Industry also pays much better in the upper grades and, perhaps, less in the lower and middle grades.

I found government more thorough, more academic and theoretical in approach and much slower and more litigious than industry. Rulemakings and decisions are subject to long, detailed, legal analysis and writing and re-writing. The objective is to make decisions appeal-proof in court and this is an arduous, time-consuming task.

At the FCC alone we have 372 lawyers, most of them from the top 10% of their class! This is out of a total of approximately 2100 employees.

Lawyers, economists and government bureaucrats are resourceful and creative. They develop cyclical regulatory fads. Like most professionals, they tend to develop a jargon which has a special meaning among themselves. Their attitudes and ironic humor are represented by special "buzzwords."

227

"Restructuring" is one of the more popular buzzwords in Washington these days. Restructuring is generally understood to be the antithesis of the old adage: "If it ain't broke, don't fix it." For regulators, restructuring is a very useful tool. For a regulator who is required to regulate an industry he knows very little about, it's often useful to "restructure" that industry. The idea is to dismantle the industry and then put it back together to conform to some theoretical or idealistic model that you've studied in school. Now, if the "restructured" industry doesn't work --and chances are it won't -- there is an obvious mandate to continue the tinkering while denouncing industry managers for failing to respond to your enlightened government policies.

Then, there is the "marketplace." Don't be misled. In Washington, the marketplace does not mean a competitive environment in which industries or producers freely compete for the favor of buyers through quality and price differences. That kind of situation would leave the regulator with very little to regulate. In the broadcasting industry, for example, the marketplace requires government assistance in providing programming (product) percentages, ascertainment of community needs and interests, public access to business records, access and equal opportunity for political candidates, and regulation-mandated fairness in the presentation of controversial news issues. Government also makes possible the filing of petitions to deny if a station fails to meet a single petitioner's (viewer's) private version of public interest. The petition to deny is unique to broadcasting. It is the only industry or service subject to government authorized petitions to deny your license which really means your business. No monopoly, no utility, no other business is threatened with utter extinction for violation of rules -- the potential for cruel and unusual punishment is intolerable and cries out for corrective action.

However, the marketplace concept doesn't always require government intrusion. One popular variation of this concept calls for forbearance in the one area where government involvement might be useful -- the setting of technical standards. In our ongoing consideration of stereophonic broadcasting by AM stations, for example, it has been suggested that the government would be overstepping its bounds if it approved only one of the five different systems being proposed. We are urged to "let the marketplace decide" which is best. The fact that a receiver built for one system cannot process a signal transmitted by another system in a neighboring city is of no apparent concern. Nor apparently is the question whether there will be a market for AM stereo at all if there is public confusion about which system or systems to buy.

Competition is another popular buzzword these days. "Competition" means, of course, that all competitors must be equal in size and resources. Competition means that small is good and big is bad. Competition means government-imposed handicaps to ensure that those companies who have devoted many years and resources to develop a successful enterprise cannot fully use that experience and expertise to compete. Competition thus becomes virtually synonymous with another current buzzword -- "diversity."

"Diversity" has come to mean government favoring additional and splinter industries, whether needed or not, to compete with existing industries. This produces variety for many already satiated broadcast markets, new opportunities for favored entrepreneurs, possible redistribution of wealth, the satisfaction of narrower interests and all sorts of opportunities for social and political engineering.

One of the reasons I believe that Washington finds the answers to problems so elusive is that the political center of our nation often suffers from rampant paranoia. When I was under consideration for a seat on the Commission back in 1973 and '74, one of the most persistent and strident charges I had to face was that I was a former broadcaster--a former executive in an industry the FCC is charged with regulating. I was even guaranteed a relatively cordial confirmation if I would accept a seat on the CAB instead of the FCC to avoid the objections due to my broadcast background. I have always regarded that attitude as a curious one since it places an extraordinary premium on lack of practical experience. It results in regulatory agencies which are supposed to be expert arms of Congress being largely populated by those who have no experience in anything but academia or government.

I readily admit to supporting the broadcast and cable industries and the broadcasting system in this country. There's little doubt that even with its faults it is the best in the world. I fail to see where public interest lies in attempting to make it any less than it is. I believe public interest and the nation are best served by healthy, successful, socially conscious industries.

I believe government regulation can be more constructively accomplished in a spirit of mutual cooperation with the regulated industries. (We can learn a lesson from the Japanese. They operate more like a government-industry partnership to advance the economy and well-being of Japan.)

However, when it can be shown, by any reasonably objective standard, that industries the FCC regulates are behaving in a manner that offends the public interest, I am quite willing to impose appropriate sanctions as my voting record readily shows.

Nevertheless, being pro-industry, regardless of how well justified, in a regulatory agency is viewed by many as being automatically anti-public. This oversimplistic view has prevailed among very well-educated, highly-positioned members of the bureaucracy. It is accepted by many--too many--as an article of faith, a litmus test of "correct" thinking.

Business has been viewed as a rapacious, insensitive, profit monger. This attitude has led to some draconian regulatory measures--by both the Congress and the regulatory agencies--that have added unnecessary costs to the products we buy and the services we require. Vast bureaucracy has sprung up to protect us from ourselves at a cost we obviously cannot afford.

For example, I happened to run across a column by William Raspberry recently which pointed out that it would portend disaster for our economy if we were to suddenly eliminate poverty. Poverty is very big business in this country. Raspberry noted that Lyndon Johnson's war on poverty cost something like \$800 million back in 1965. Those same programs and their progeny will, in 1981, cost about \$20 billion. Raspberry notes that the federal government is spending 25 times the amount on poverty in 1981 as in 1965 and points out the obvious fact that the poor are hardly 25

times better off. Of course, as he explained in the column, a lot of that \$20 billion goes to the middle-income people who "...study, count, analyze, chart, graph, fold, staple and, occasionally, mutilate the poor."

An important by-product of much of the studying, counting, analyzing, charting and graphing is the perpetuation of the need to study, count, analyze, chart and graph. As Professor Julian Simon of the University of Illinois at Urbana points out in "The Ultimate Shortage," there is a funding incentive for scholars and institutions to produce bad news about population, resources and the environment. He notes that bad news sells books, newspapers and magazines. And, he quotes Philip Handler, President of the National Academy of Sciences, in his testimony to Congress on the environmental panic of the 1970's. Said Handler: "The nations of the world may yet pay a dreadful price for public behaviour of scientists who depart from ...fact to indulge ... in hyperbole."

Enough for regulatory philosophy and buzzwords; now for some of the more significant recent FCC issues you and other businessman seem most interested in.

Probably, the most contentious and controversial broadcast decision in the history of the FCC was the landmark RKO General Tire decision. Last month the Commission gave final approval to the text of its 4 - 3 decision that found RKO General not qualified to remain a licensee. It sent shock waves, as well it should, throughout the industry. My initial dissent summarized my strong opposition. It was followed by a more detailed seven page dissent.

I think you will find my brief initial dissent interesting.

"I believe the Commission is indulging in gross bureaucratic overkill in denying the license renewal for WNAC-TV. This type of charge and record couldn't possibly warrant even an indictment let alone conviction in a criminal proceeding. Yet the potential fine could be over \$600,000,000.

The record does not warrant such harsh, criminal-like punishment.

The sole judicial decision rendered in the eleven year proceeding was by the FCC Administrative Law Judge who found the licensee qualified. The Administrative Law Judge wisely rejected adding issues to already embarrassingly long and damaging litigation. There was no judicial finding of guilt or violation in either the Justice Dept. or SEC proceedings.

The Justice Dept. allegations were settled by a consent decree; the SEC action by a settlement.

None of the allegations against the parent company, General Tire, impacted the broadcast subsidiary or affected broadcast service. RKO stations have a long history of renewal in the public interest. They are broadcast pioneers with over 25 years of meritorious broadcast service to the public.

I believe the license renewal of WNAC-TV was legally correct and morally mandated. The reversal of the Administrative Law Judge's decision by this Commission based on unproven charges and unsupported staff conclusions represents the type of bureaucratic oppression that is causing a public outcry for reform. "

In strenuously dissenting to what I consider a gross injustice and dangerous precedent, I was again criticized by an activist columnist who wrote - "He proved his unfitness again last month. When the FCC voted to strip RKO General of WNAC Channel 7 and two other TV stations for long and diverse abuses, all of them acknowledged in Federal Court, Quello raged in irrelevant dissent." First, it should be pointed out that it was a 4 to 3 vote by the Commission which went against RKO General. Also, the Administrative Law Judge who heard the case and was intimately familiar with the totality of facts concluded RKO was qualified to remain a broadcast licensee. The Commission's Broadcast Bureau also recommended license renewal. Thus, my dissent was not a position of intemperate isolation, but a reasoned judgment based upon a careful review of the facts. Second, if my dissenting statement was irrelevant, this alleged fact escaped the editors of The Wall Street Journal, TV Guide - with a circulation of over 30 million - The New York Times, The Washington Post, The Washington Star, Fortune Magazine, Broadcasting Magazine and TV Digest, all of which saw fit to quote my statement, many of them in editorials. Also, the writer who presumed to sit in judgment of my legal expertise relied very heavily upon his own ignorance of the legal process. General Tire -- not the RKO subsidiary -- entered into a consent decree with the Dept. of Justice and a settlement with the SEC which resolved all allegations of impropriety which had been raised against the parent company. Neither a settlement nor a consent decree involves any acknowledgement of guilt, a point which the columnist found too subtle to grasp. The salient fact was that neither agency chose to prosecute and neither made any findings as to the gravity of the alleged misconduct.

Some of you have inquired about the status of our proposed radio deregulation. In the radio matter, there is considerable confusion as to what the FCC is or is not proposing to deregulate. I'll be glad to answer any detailed questions after the meeting. I believe the radio proposals represent a good opportunity to get a deregulatory foot in the door, but everyone must realize that FCC efforts are limited by the Communications Act. Only legislation can provide major deregulation dealing with license terms, political broadcasting, government involvement in program format and alternatives or reform in the comparative hearing process. I hope that some time in the near future, the FCC will carefully deliberate and then make constructive recommendations for deregulatory legislation. My personal views advocating complete deregulation have been presented before the House and Senate Subcommittees on Communications and are a matter of official record. If you are interested in comprehensive arguments for total broadcast deregulation written in layman's language, you can write my office for a copy.

Incidentally, broadcasters who manage the greatest communications media don't manage to do a very effective job in communicating their own actions or policy to the overall public. There is a need to dispel exaggerated criticism of deregulation. The FCC would not propose an action that would eliminate public service announcements, reduce or eliminate radio news, or cause widespread unemployment or encourage over-commercialization.

Broadcasters have a community selling job to do -- if or when deregulation is adopted; they will have the responsibility of implementing marketplace competition in the public interest.

In addition to deregulation, other important issues that have been suggested for discussion are:

- Cable deregulation of July 22nd.
- Clear Channel Radio
- The 10 to 9 Khz proposals
- AM Stereo
- Short Form renewals and random audit
- Children's TV Programming
- Direct satellite to home tv transmission
- The Computer Inquiry
- The Future of TV and Cable

Again, I'll be glad to answer questions after the meeting on any of these subjects. I believe my time is up and I'd like to share with you a recent closing message to a broadcast group because the principle enunciated is applicable to most industries.

I closed with: "I hope that you'll eventually come to regard the Broadcast Bureau -- and the Commission -- as your partners in a common effort to provide the best broadcasting service possible. That goal, of course, is a part of the Commission's statutory responsibility and there are many fine people in Washington and around the country dedicated to that goal. It also is the goal of every good broadcaster in the sense that the better you serve the public, the larger the audience you can expect. I know there are many components which come together to build and maintain a successful broadcasting facility, but in my mind, true public service stands out as the only firm base upon which to build a dominant community identity. Public service is the foundation that builds good will, assures community acceptance and, not incidentally, maximizes your share of business."

I enjoyed the opportunity to bring you a little insight into the foibles, faults, and virtues of regulation. Perhaps, some day we can reach the millenium where government and industry will constructively work together to foster a new era of prosperity and well being for our country. I wish the Texas Association of Business and businesses everywhere continued success and growth in the challenging, promising times ahead.

Thank you.