

OFFICE OF COMMISSIONER JAMES H. QUELLO

October 21, 1980

Gene Autry asked for a copy of my luncheon remarks at the recent annual NRBA convention.

Remarks were handwritten the night before-- some thoughts were previously expressed in my appearances before Congressional committees.

However, the "blueprint for action" represents a different and more aggressive approach.

Thought you might be interested in a copy.

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Excerpts from Address by  
FCC Commissioner James H. Quello  
before the Annual Convention of the  
National Radio Broadcasters Association  
Los Angeles, California  
October 6, 1980

Enough said about regulatory philosophy and buzzwords, it's time to discuss a most significant issue that vitally affects you, your listeners, stockholders and the American public--radio deregulation.

There is still considerable confusion as to what the FCC is or is not proposing to deregulate. I believe the FCC radio proposals represent an opportunity to get a deregulatory foot in the door, but everyone must realize FCC efforts are limited by the Communications Act. Only legislation can provide the real major deregulation dealing with license terms, political broadcasting, Section 315 and the fairness doctrine, government involvement in program format and reform or elimination of the comparative hearing process. I hope some day the FCC itself will make constructive recommendations for complete deregulatory legislation.

In the meantime we have an ongoing FCC deregulatory proposal. Frankly, there are some aspects that trouble me. Incidentally, broadcasters who manage the greatest communications media are derelict in communicating their own actions and policies to the public. There is a need to dispel exaggerated public criticism of proposed deregulation. Under existing rules, the FCC would not propose an action that would eliminate public service announcements, eliminate or de-emphasize radio news, encourage over-commercialization or cause widespread unemployment. You have a community selling job to do.

However, the matter is still pending before the Commission so I'm limited in comments on the specific deregulatory issues before the Commission.

However, I have no restriction on my continued staunch advocacy of total deregulation through legislation! It is a matter of public record in my testimony before both House and Senate communications subcommittee hearings.

I said to Congress then and I repeat to you now that the time has come to remove all First Amendment and regulatory constraints from broadcasting. It is past time to give broadcasting full First Amendment rights the same as newspapers-- their biggest competitors and closest cousins.

The reason you don't have your full Constitutional rights is that broadcasters haven't wanted them badly enough--you haven't really started to fight.

Broadcasting has been a powerful but inept sleeping gaint in promulgating and protecting its own vital interests!

Two years ago I urged you to get off your seats (I used a more explicit term) and sell something much more important than broadcast time---I said go out and sell with all your resources and energy the concept of full Constitutional rights--full freedom of press--for you, your media and the overall American public. There were a few noble efforts--but they were uncoordinated, at times divisive and ineffective.

Radio broadcasters had a great deregulatory friend in a courageous and visionary Southern California Congressman, Lionel Van Deerlin, who stated in his initial House Bill "regulation should be necessary only to the extent marketplace forces are deficient." The constructive main thrust of the bill was lost in controversy over details and disagreement on size of spectrum fees. Henry Geller, head of NTIA, also supported deregulation two years ago stating "the more we let radio and TV be the way print is, the better we are."

If you are really determined to gain these vital freedoms, which are rightfully yours, you need to mobilize your forces for a massive coordinated drive---just think of the cumulative impact and sheer power of about 10,000 radio and TV stations concentrating all their resources of personnel, suppliers, public contacts, viewers and listeners! Imagine the effect of all the many listeners, viewers, many friends, relatives and contacts of owners, general managers, program directors, news directors, public relations directors, sales managers, salesmen, engineers, union reps, your advertising agencies, your suppliers, employees!

Just think of the potential of organizations that could join a call to arms or form a confederation for Constitutional freedoms---NRTND, NRBA, NAB, NCTA, AMST, RAB, CUB, UBA, NAPTE, AAAA, ANA, AFA, MPAA, NRB, NABOB, National Association of Spanish Radio Broadcasters (50 stations); all state broadcasting associations; Puerto Rico Broadcasting Association; all major networks; all independent networks; all program producers; VFW; Legion; DAV; Amvets; Chamber of Commerce; Lions; Kiwanis; Rotarians; AMA; all the many new PACs; the many various ethnic educational and religious groups---this is just a start. There are hundreds more. In fact, why not ask the ACLU, the newspaper publishers association, American Bar Association, Aftra, Nabet and IBEW? Why not governors, state legislators, mayors and city councilmen? You could also find a ready, willing and most able volunteer and an impressively powerful ally in the National Religious Broadcasters Assn. who initiated a campaign that generated over ten million letters to the FCC--an alltime record high in government, let alone FCC, history---and it wasn't even a live issue! Remember, the individuals in all these organizations are all consumers. If you took the time to acquaint them with the true facts many could become consumer activists for broadcasting freedoms.

I have roughly outlined a blueprint for action (and success) for the 80's.

What are the more cogent arguments and facts for total deregulation---a practically irrefutable gospel of truth to disseminate to the public? (And, when necessary, to repeat over and over again.)

Your main thrust is simply the time has come to remove all First Amendment and regulatory constraints from broadcasting. It is past time to give broadcasting full First Amendment rights, the same as their biggest competitor and closest cousin--newspapers.

There are irrefutable arguments supporting this premise and the initial House bill supported Constitutional freedoms for radio.

The main thrust of proposed House legislation has been that regulation should be necessary only to the extent marketplace forces are deficient. In other words, wherever the market is open and competitive, regulation should be abolished. This certainly applies to broadcast markets where intense competition exists and is growing apace. Broadcasters compete aggressively against each other and also with all other media including newspapers, magazines, cable TV, outdoor advertising, transportation advertising, direct mail and all other forms.

There are many more TV and radio stations today than newspapers in every sizable 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. Regulatory restraints are no longer justified in today's era of competitiveness, numerous outlets and professional journalism.

The scarcity argument justifying governmental intervention in broadcasting seems 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 numbers 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 and cable 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 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 or a government agency is the proper source for mandating good journalistic or program 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. Even with some programming deficiencies, a government cure with censorship overtones is worse than the industry disease.

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 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. The main purpose was to guarantee dissemination of news and viewpoints to the public free of government control, influence or oversight. It is the public that stand to gain from an all media freedom of the press.

Section 315 and Section 312(1)(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 public 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. Broadcast journalists have earned and rightfully deserve all Constitutional freedoms.

I believe that removing all government restraints including Section 315, the fairness doctrine and Section 312(a)(7), would free broadcast journalism, foster more comprehensive and independent reporting and better serve the American people.

#### OTHER EXCERPTS FROM THE NRBA ADDRESS:

I must admit that along with your invitation I am pleased with the large number of other invitations I received for October, November and December 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 NRBA because radio has been my life's work--my principal career.

I found the transition from the broadcasting business to a regulatory agency quite a challenge. It is a unique, gratifying and sometimes frustrating experience to cap a broadcast 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 in general 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 about 372 alwyers, a great many of them hired 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." Buzzwords are big in Washington.

"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 regulatory version of 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 government-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 (listener or 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 completely unwarranted punishment is intolerable and cries out for corrective action.

Another popular buzzword is "diversity." It 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. In an idealistic quest for more diversity and opportunity, several thousand more radio stations could be allocated within the next two or three years in a marketplace that doesn't support what it already has. I looked up three areas. Last year 39% of Puerto Rican stations, 24% in Michigan and 23% in Virginia lost money. I wonder if thousands of new radio stations really provide a viable opportunity to newcomers.

One of the reasons that Washington finds the answers to problems so elusive is that the political center of our nation often generates 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 only 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 whose principal experience is legal 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 human errors or faults it is the most creative, diversified and objective 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. I have to be governed by existing rules. There have been 71 total denials of licenses in 49 years--I confess I voted to deny 28 in six years--but I feel I can defend the 98% or more of good broadcasters.

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 that have added unnecessary costs to the products we buy and the services we require. Vast bureaucracy has grown and expanded to protect us from ourselves at a cost we obviously cannot afford.

For example, I was fascinated by a column this summer by William Raspberry 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 more 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 government bureaus and to middle-income people who "... study, count, analyze, chart, graph, fold, staple and, occasionally, mutilate the poor." I'm adding my own comment here--somewhat like regulatory agencies do to industries.

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, graph and regulate. As Professor Julian Simon of the University of Illinois 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 just like there is a funding incentive for professional public interest antagonists of broadcasting.