

Speech given by FCC Commissioner James H. Quello
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"MEMORANDUM OPINIONS"

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The title of this speech has little relationship to the official Memorandum Opinion and Orders regularly issued by the FCC. Today I'm passing along my own informal opinions ----- opinions based on a rather unique perspective of almost seven years on the Commission and a previous twenty-eight years in broadcasting. The "column" format permits comment at random on a wide range of subjects that directly affect your present and future in broadcasting.

I hope you find it entertaining and informative if not comforting or inspiring!

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FCC Defined: The Ferris Communications Commission may soon revert to the Federal Communications Commission. In my first year on the Commission (1974), I mentioned that the FCC seemed to stand for "From Crisis To Crisis." I usually explained: "When you are up to your hips in alligators, it is difficult to remember that your initial objective was to drain the swamp."

However, in the last two years, I have the impression the Chairman has determined that FCC stands for the Ferris Communications Commission. The Chairman tended to overlook the fact he is only one of seven votes of a collegial body appointed by the President and confirmed by the Senate to exercise independent judgments in communications matters within their jurisdiction. I believe the Chairman is entitled to his own strong viewpoints in any given case, but I can't agree with the intense lobbying and advance pressuring to make certain his viewpoint prevailed. A Chairman has an inherent edge since he controls agenda items. He has a much closer relationship with Bureau chiefs. He determines allocation of priorities. He also has (and should have) the power of personnel appointment to key jobs. However, in my opinion, Charley did an unprecedented, thorough job of packing the Commission staff in depth with his own personal ideologies and in squelching dissenting staff opinions. He also did a masterful job of dominating the Public Affairs department --- the FCC press operations has been tireless and very effective in its efforts to extol the virtues of the Chairman.

The Chairman's unilateral approach has caused unnecessary administrative problems for him and the Commission -- but enough said. An era is about to pass. I do think it would be a light and appropriate touch if the song "My Way" is used as a musical theme for his going away party. I'd be glad to attend and give a farewell salute to a rather brash Chairman who was an energetic "fast take" on complex communications issues and a real challenge! I strongly disagreed with him on most major broadcast items, but he and a very able staff (with Commissioner Joe Fogarty making certain reason prevailed) made notable initiatives in the common carrier area especially with Computer II.

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Ad Nauseam Note: You are tired of hearing it, but I'm going to repeat it one more time. It is now, more than ever, time for broadcasters to get off their seats and sell something much more important than broadcast time. Sell with all your resources and energy the concept of full freedom of speech and press for you, your media and the overall American public. With proper coordination of all your personnel and supporting organizations you could amass an unstoppable confederation for constitutional freedom before the new Congress. The testimony I presented in well-received, but futile, appearances before the House and Senate Communications Committees provides almost irrefutable total deregulatory arguments. But nothing happens without total commitment.

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A Word About DBS:

I know that many of you are somewhat apprehensive about the future of Direct Broadcast Satellite (DBS) Services. As you know, COMSAT has already asked the Commission to consider its application for such a service and, presumably, there will be others who will want to enter this new field. The Commission and the Congress will be wrestling with the Direct Broadcast Satellite questions in the years just ahead and I shouldn't discuss the merits of any proposal. I can say with some assurance that there will be at least some experimentation with Direct Broadcast Satellites, probably within 5 years. It's my best guess that Direct Broadcast Satellites will prove to be technically feasible and that receiving equipment can be made available at reasonable cost. It's not clear, at this point, how pervasive this service will become when facing competition from terrestrial broadcasting and cable as well as the other video systems which are being introduced such as MDS and video discs. It is clear, however, that television broadcasting is virtually unique in its ability to provide local service to all who want it. It is through the provision of enhanced local services

that I believe television broadcasting will progress in the years ahead. It's conceivable -- even likely -- that there will be some audience shifts but I believe in the long-term viability of television broadcasting and in the innovative ability of broadcasters to provide the kinds of services that will continue to hold and build audiences. Just as radio prospered in the face of the introduction of television, television broadcasting will prosper in the face of the new technology. In the meantime, radio will continue to be the most pervasive, personal medium -- more portable innovations can be expected like wrist radio. The slogan "wherever you go, there's radio," will apply more than ever.

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Not Exactly An FCC Item:

It is past time that we display to Iran and to the world an angry, resolute citizenry united in our determination to defend our citizens and our national interests.

As a combat veteran, I stress that the foremost responsibility of any government is to protect its people and the nation against conquest, subversion and destruction.

I believe our very survival depends upon a patriotic, activated public supporting our national peace through strength policy.

This is not a communication regulatory item, but I strongly believe it is a thought worth communicating and repeating.

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The FCC radio deregulation proposals scheduled for Thursday, January 14th, represent an opportunity to get a deregulatory foot in the door, but remember, FCC efforts are limited by the Communications Act. Only legislation can provide real meaningful deregulation dealing with license terms, political broadcasting, Section 315, the Fairness Doctrine, government involvement in program formats and reform or elimination of the comparative hearing process for both radio and TV.

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A government leader I respect once quipped: "When you get in bed with big government, you are gonna get more than a good night's sleep." Funny, but true.

In the past three years there has been a subtle, unreasoning, frontal assault against broadcasting. Exhibit A is the outrageous RKO-General Tire decision which presented not only gross bureaucratic overkill, but also diabolical manipulation of legal fact. It sent shock waves, as well it should, throughout the broadcast industries, particularly multiple owners. (My strong dissent contains full details). There are many other less serious, but significant actions. You read or know about them, but here are a few that come to mind:

1. CBS "Winner Take All" short-term renewal (My dissent contains full details).
2. The WPIX comparative renewal case (See my supporting statement)
3. The Cowles case (Superior vs. meritorious standard for license renewal expectancy)
4. The shrinking of channel spacing from 10 to 9 kHz (See my dissenting-type of concurring statement)
5. The initial inaccurate "total failure" characterization of children's programming with proposed mandating of specific time and types of programming (See my opposing statement). I confess I chuckled at the statement: "Most people who attack children's television just aren't young enough to know better."
6. The elimination of syndicated exclusivity for broadcasters (full details in my dissenting statement). Up to this point, I advocated and supported all cable deregulation, but I was troubled by the basic inequities of this rulemaking.
7. In general, the "more the better" theory promulgated under the popular buzzword of diversity. This type of diversity means government favoring additional or splinter industries, whether needed or not, to compete with existing industries. This apparently produces variety for already satiated broadcast markets. New questionably viable opportunities for favored entrepreneurs, the satisfaction of narrower interests and all sorts of opportunities for social engineering. (See my dissent to VHF drop-ins and 9 kHz statement).
8. The unrealistic FCC-only EEO requirements for small stations that drastically exceed federal EEOC standards--the very Commission charged with regulating and enforcing equal opportunity employment. I continue to support minority ownership and realistic application of affirmative action.

Frankly, my 28 years in broadcast management were associated with stations and organizations with strong orientation in objective news, public affairs, public service, and civic consciousness. It is difficult for me to understand the distorted generalizations against broadcasting -- mostly by individuals who have very little, or no marketplace experience in broadcast journalism, production, writing or operations.

When I was first under consideration for a seat on the Commission I was opposed because 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 objections due to my broadcast background. I have always been puzzled by that attitude because 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 almost exclusively 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. Even with their faults, they are the best in the world. I fail to see where public interest lies in attempting to make them any less than they are. I believe public interest and the nation are best served by healthy, successful, socially-conscious industries.

I also 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 FCC regulated industries are seriously offending public interest, I am quite willing to approve appropriate sanctions as my voting record shows. The FCC in 49 years has denied 73 licenses; in 6 years I voted to deny 30! Needless to say, these were egregious cases.

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I believe FCC's standards for standing as a party in interest must be revisited and revised to discourage and prevent frivolous or vindictive petitions to deny. I do believe the Commission has recently acted expeditiously in dismissing many petitions.

In my recent appearances I have urged various citizens' groups to take a more constructive approach to dialogue and citizen participation in broadcasting. If implemented in the proper spirit, this dialogue serves both the citizens' group and the licensee. It is, after all, overall public acceptance that determines the success or failure of a station or a program.

On some occasions, citizens' groups give the impression they are more interested in stirring up a controversy and exploiting discontent than in correcting deficiencies or encouraging quality programming. Most groups have a funding incentive for confrontation. I am concerned with some abuse of the license challenge process through unfounded petitions to deny. The time and money spent in litigation could be used in more constructive ways, that is, for innovative programming and added public affairs. I'm concerned that some citizens' groups, representing only a small segment of the total public, seek to impose their individual program philosophies and preferences

on local stations. I believe in broadcaster - citizen dialogue, but I am suspicious of the motives behind some forced, written agreements. A negotiated agreement reached between a licensee and any citizens' group who represents only a small portion of the total community simply does not square with the requirement that a licensee determines for himself the needs and interests of his total community. Also, the overall public is usually not aware of a special agreement that could significantly affect what it sees and hears on his TV and radio set.

If the licensee has ascertained those needs and interests, I question what possible contribution to the public interest can be made by a small segment of that public seeking special consideration for its own viewpoint by negotiating an agreement which is to be enforced by the Commission.

Activist groups, regardless how laudable the objectives, have not been elected or appointed as bargaining agents for the public at large. The FCC itself wouldn't dare even suggest the program demands made by some citizens' groups. We would be charged, and rightly so, with program dictatorship or infringing on First Amendment rights.

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Eventually, petitions to deny should be eliminated. No monopoly, no utility, no other regulated industry is faced with utter extinction because of violation of rules or regulations.

The usual criminal statutes, anti-trust, SEC, IRS, libel and slander laws apply for all other communications and press industries. Why this special, harsh, confiscatory punishment for broadcasters?

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The recent election revealed a strong anti-regulatory mood among the American people. There is a public outcry against oppressive regulatory intrusion in personal lives and in business. It is well timed. The Congress of the United States passes fewer than 200 laws each year. However, regulatory agencies each year enact more than 20,000 regulations ----all of which have the effect of law! I don't have the annual figures of regulations passed by the FCC, but with 382 bright and enterprising attorneys at our agency alone, the temptation is great for creative regulatory expansionism.

But there is a deregulatory mandate from the American people and the new administration. I'm glad. I am, by nature, unabashedly deregulatory (in the true sense).

The new FCC will undoubtedly undergo profound changes. The past three years do not comport with the general philosophies of the new administration. In fact,

I'm not certain they comported with the true philosophies of the outgoing administration. In general, much of what the Ferris Commission accomplished was not so much communications policy in the public interest as social engineering ventures aimed at redistributing claims to spectrum usage. In short, the focus seemed decidedly more on whom and how many were using the spectrum than on public or quality program benefits derived from the spectrum.

This, too, will change---hopefully, for the better.

Perhaps, we are getting closer to the day we reach a millenium where government and industry work together to foster a new era of prosperity and well being for our country.

I enjoyed the opportunity to bring you a personal insight into the foibles, faults and virtues of communications regulation.

I wish your association and good broadcasters everywhere continued success and growth in the challenging, promising times ahead.