Statement of FCC Commissioner James H. Quello
for
Senate Confirmation Hearing for Reappointment
to the
Federal Communications Commission

July 22, 1981

My FCC service the past seven years has been challenging, at times frustrating, other times gratifying, and overall, the most interesting and productive period of my lifetime career.

In the past seven years, we have been involved in a veritable explosion in technological developments, deregulation and reregulation. There have been significant changes and far-reaching, oftentimes controversial developments in widely varied communications subjects such as cable deregulation, radio deregulation, telephone competition, Computer II enhanced AT&T services, DBS, teletext, low power TV, STV, VHF drop-ins, reduced 10 to 9 kHz radio channel spacing, clear channel duplication, additional advertising funding for public broadcasting, proposed deregulation of non-commercial radio, First Amendment proposals, cross-ownership of media, minority ownership, AM stereo development, land mobile cellular radio and many others. The new administration has now embarked on a program of unregulation.

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My position on key policy issues in broadcasting, cable, public broadcasting, and DBS is a matter of public record. In the more significant cases, my position has been emphasized by supporting, concurring or dissenting statements that have been available for public scrutiny.

I applaud this Committee's efforts to produce legislation in the troublesome and vitally important area of telecommunications represented by S. 898. I am generally supportive of the bill and believe that it tracks the Commission's Computer II decision in its final form to a substantial degree. I have consistently supported full and fair competition in the telecommunications industry and I believe that S. 898 goes a long way toward achieving that goal.

I support a competitive telecommunications industry, and believe it would be wasteful and contrary to public interest to prohibit AT&T, a world leader in advanced communications development, from playing a significant competitive role. I recognize the need to provide safeguards against abuse of AT&T's dominant and sometimes monopolistic position in the industry. It's my view that S. 898 provides adequate safeguards through requiring a separate allocation of all revenues and costs between regulated and unregulated services, prohibition of common officers and employees, separate books and records and no more than one director in common, separate marketing and sales activity, etc. I would expect that enforcement of these safeguards would strictly limit the opportunities for cross subsidy and other anti-competitive behavior while, at the same time, permit AT&T to make a significant contribution to the public in the competitive marketplace.

I believe the Commission's general deregulation of radio broadcasting will benefit the public in the years ahead. I also believe television broadcasting will benefit from some deregulation. The introduction of new technologies which compete for the traditional television audiences will, I believe, lend sufficient incentive to broadcasters to provide the best possible service without burdensome regulation.

In my opinion (and, admittedly, from a perspective as a former newscaster and broadcast executive) one of the most important and far-reaching current issues is First Amendment rights which now greatly impacts all telecommunications and the public it serves.

Full First Amendment rights were withheld from electronic media in a previous era of perceived scarcity. Telecommunications channels have now multiplied and continue to expand. I question if there remains a reasonable argument to support a different status for the electronic media from the print media. I fully realize that key changes in the Communications Act are the prerogatives of Congress, not the FCC. However, I respectfully submit the time may be propitious for Congress to review First Amendment rights in view of the current communications explosion (cable, DBS, teletext, LPTV, translators, STV, MDS, video discs and cassettes, increased FM and UHF grants, potential clear channel radio availabilities).

In the past three years, I have advocated full First Amendment rights for telecommunications. At two different national broadcast conventions I have publicly urged broadcasters to get off their seats (in private I used the more explicit term) and sell something much more important than broadcast time. I told them to "Sell with all your resources and energy the concept of freedom of the press and freedom of speech for your medium."

It is a matter of record that I strongly supported the deregulatory thrust of the initial House (Van Deerlin) Bill in 1978. Much of what I advocated then is even more applicable in the deregulatory climate of today.

My total deregulatory philosophy is reflected in my statement supporting the FCC deregulation of radio. To save time I am including the statement and testimony as an addendum.

My experience has made me quite aware that the FCC is an arm of Congress and rightfully subject to continuing oversight. As a member of a regulatory agency, I have tried to be cognizant of the needs and interests of the public and to act responsibly on issues articulated by the public's elected representatives in Congress. I have tried to adhere to the wishes of Congress as expressed in the Communications Act of 1934, as amended. I shall do my best to responsibly implement any amendments or revisions of the Act that may be enacted by Congress.

There are many difficult decisions ahead for the Commission in the vital field of telecommunications and I believe my previous Commission experience could lend continuity to ongoing issues and plans. I also believe my previous practical experience in communications, particularly in the important and contentious broadcast and cable fields, will be helpful as more new technologies evolve and new needs are identified.

This is the extent of my prepared statement. I will be glad to answer any questions.

Attachment: Statement regarding modification or elimination of Commission rules and policies pertaining to AM and FM radio.

Statement by FCC Commissioner James H. Quello
September 6, 1979

Re: Modification or elimination of Commission rules and policies pertaining to commercial AM and FM radio in the areas of non-entertainment programming, ascertainment, commercialization and related fields.

In going forward with this important rulemaking at this time, the Commission has taken an important first step toward deregulation of radio broadcasting. I believe we should continue our efforts to remove wasteful, unnecessary and obstructive government oversight from a highly competitive industry which is fully responsive to the marketplace.

The deregulatory thrust of this notice is timely and sensible. If the first of the options for each of the proposed rules are finally adopted they would provide substantial deregulation, reduced bureaucracy and a concomitant reduced cost of government in keeping with the mood and will of the American taxpayers today. It should also contribute to a less litigious, freer and better broadcast service.

While some of my colleagues have expressed misgivings regarding the self-regulating effects of the marketplace, I have no such concerns. Experience has taught me that the marketplace is a very good regulator indeed. Moreover, the Commission's own data, compiled in support of today's action, shows very clearly that the marketplace and public acceptance, not regulation, is responsible for advancing the radio broadcasting industry in this country to its present pre-eminence in the world.

The time has long since passed when local radio broadcasters and their audiences require extensive oversight from Washington. Virtually all radio markets are replete with diversity, competition and ample incentive to provide good service. It's heartening to note that our data bear out what my own broadcast experience taught me long ago; a broadcaster competing in his own self-interest will go to great lengths to identify the diverse interests which make up his market and then do his best to provide those interests with the best service possible. There are many more radio stations today than TV or newspapers in every sizable market. In many markets there is almost a surplus of radio stations--there is an automatic and constant search for unserved or new program needs.

Today's Commission action seeks comment upon a wide range of options and I applaud the breadth of this approach. It should be understood, however, that primary focus should be placed upon the <u>first</u> of the various options which

constitute the recommendations of the Commission staff. Considering the natural tendency of regulators to regulate, I believe that the staff should be supported in its conclusion that there are some facets of radio regulation which should be left to marketplace forces and not controlled from Washington. If I were required to take final action today, I would support the staff recommendations. Before taking final action, however, I expect to take full advantage of a wide range of comments which I am confident will help to sharpen and clarify all of the issues and which will provide a full and complete record upon which to base a reasoned and thoughtful judgment.

Arbitrary levels of non-entertainment programming serve no useful public purpose. It is clear from our data and from even a minimal exposure to the broadcasting services that non-entertainment programming is demanded by the public. It is equally clear that news and public affairs programming are not demanded by all of the public all of the time. The marketplace--the public taste, and not regulation--should determine how much, what kind and at what times during the broadcast day such programming is broadcast. I believe greater responsiveness to legitimate public needs comes about through public acceptance or rejection in the area served by radio broadcasters.

Arbitrary commercial limitations likewise serve no useful purpose. Stations which persist in exceeding reasonable bounds of commercialization risk and suffer public disaffection. They invariably find that the benefits are short-lived and the marketplace quickly establishes a point of diminishing returns.

The onerous process of ascertainment of community needs and interests, as defined in great detail by this Commission, is a mechanistic exercise which has only served to elevate form over substance. A broadcaster, if he is to survive and prosper, must in his own way know and ascertain his community.

It should be remembered that regulation--all regulation--places a burden upon not only those who must directly submit to regulation but upon everyone. Regulation is not free. Tax dollars must support the work of this Commission. To the extent that work is meaningless or counterproductive, those tax dollars are squandered. I believe those rules and policies considered in today's action clearly fall into those categories.

The public has much to gain by taking a very serious interest in today's action. Broadcasters and non-broadcasters alike should take the time and put forth the effort to examine the issues and provide the Commission with their best thinking. The Commission, in turn, bears the responsibility to put aside narrower interests and to make its decision on the basis of providing the best service to the most people at the lowest costs.

I believe the FCC should continue its deregulatory thrust in the future, but I realize our efforts are limited in scope by the Communications Act. Only legislation can provide major deregulation dealing with license terms, political broadcasting, government involvement in program format and alternatives to the comparative hearing process. I hope some time in the near future the FCC will take appropriate action to deliberate and make recommendations for deregulatory legislation.

My views advocating complete deregulation have been presented before the House and Senate Subcommittees on Communication. The broad deregulatory viewpoints expressed are so relevant to the essence of this rulemaking process that I am including pertinent excerpts as an addendum to this statement.

Addendum to Statement by
FCC Commissioner James H. Quello
September 6, 1979

Re: Modification or elimination of Commission rules and policies pertaining to commercial AM and FM radio in the areas of non-entertainment programming, ascertainment, commercialization and related fields.

September 13, 1978
Comments of FCC Commissioner James H. Quello
on Title IV, H. R. 13015 Before the
House Subcommittee on Communications

I propose clean, decisive, legislative surgery to remove the major pervasive defects and massive economic wastes of broadcast regulation. Unequivocally remove all First Amendment and regulatory constraints! Subject broadcasting to exactly the same regulations and First Amendment constraints as its major competitor and closest cousin--newspapers. This also means eliminating the nebulous, troublesome and out-dated "public interest" standard.

In return, assess broadcasters a practical spectrum usage fee and provide for open marketplace addition of stations that meet reasonable standards of engineering feasibility.

The time has never been more propitious.

This action would most effectively and forcefully implement the visionary main thrust of H. R. 13015--that regulation should be necessary only "to the extent 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. 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's time to remove regulations and allow competitive market forces to operate. This would provide massive deregulation, reduced bureaucracy and a resulting reduction in government costs--all in keeping with the current trend and mood of the American public. Then, too, the public would benefit from a freer, more robust, more venturesome broadcast journalism emancipated from unnecessary restrictive government oversight.

The views expressed here and the supporting arguments to be presented are my own and do not represent an official FCC view. I fully realize that court interpretations and a continuing variety of adversary viewpoints are formidable considerations for legislative action or reform. I am also fully cognizant that present FCC decisions and deliberations must be based on the current Communications Act and existing case law and not on proposed legislative action or re-write. However, I am proposing substantial revision from the unique perspective of over four years FCC service and over twenty-five years in broadcasting. Also, I note that Henry Geller, respected communications lawyer and new head of the National Telecommunications and Information Administration, is a staunch advocate of First Amendment rights. He was quoted by Les Brown of the New York Times: 'The more we let radio and television be the way print is, the better off we are. Let the marketplace answer whether there should be more networks,

not the FCC." I also agree with Mr. Geller's statement in the August 1978 issue of the RTNDA publication where he was quoted: "I think the Fairness Doctrine does impose First Amendment restraints. I think, as I testified recently before the Congress, that if you scrap the public trustee scheme entirely in order to accomplish goals through other means--means of spectrum usage tax or others--that that's very worthy of exploration and that's what re-write is about." I repeat the quote here as a reminder there are knowledgeable people of worthy purposes questioning the propriety of the public trustee concept as applied to current broadcast regulations.

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, because by sheer continued repetition over the years it has become accepted as a 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 some day broadcasting would be treated the same as other journalistic and advertising media. With continuing debate and various court interpretations, it seems this can best be achieved by bold, innovative legislative action. In my opinion, the time has finally come to grant full Constitutional rights of freedom of the press and freedom of speech to broadcasters. This would end years of discriminatory treatment which is no longer justifiable with today's massive competition in all communications media.

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 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 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 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. It is the public that stands to gain from an all media freedom of the press.

Section 315 and Section 312(a)(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 electorate 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 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 better serve the American people.

I'd like to emphasize that my plea is not for freedom from program regulation for broadcasters. I am appealing for freedom from program regulation for the public at large. My experience in broadcasting and with the FCC leads to the firm belief that far too much programming provides no useful function except to satisfy some rule or regulation of the FCC. I have an equally firm belief that much controversial programming which could be of great service to the public is avoided by licensees wary of government requirements.

It is ironic that the regulated--while vociferously complaining about their over-regulated status--are often the last who wish to see this yoke lifted. It is well recognized that regulation carries with it a measure of protection from competition and without regulation there is no such protection. I believe that there are areas of telecommunications which do not readily lend themselves to a totally competitive environment (like telephones), but I don't believe that broadcasting is one of them. It is obvious to anyone familiar with the industry that competiton is already very strong in many markets and it could be an even stronger force without the regulatory constraints which have developed over the years. The public stands to benefit from this potential but not until it is given full opportunity to develop.

I would guess that most large broadcasters may view my proposals with at least mild alarm since they are best able to cope with the maze of regulations and restrictions which we impose. They are able to maintain counsel, hire expert personnel and buy or produce programming to satisfy the public and the government. Presumably, they would prefer "business as usual" to any wide-ranging deregulatory scheme which might contain the seeds of greater competition. My proposals, then, are not calculated to garner wide support among existing licensees. Rather, they are meant to establish a climate whereby the American public can receive more, freer and better broadcasting service. I believe it is a proper goal of the Communications Act of 1934 and of the First Amendment to the Constitution and I believe it is a proper goal for the new Communications Act.

Broadcast licensees should be assessed an appropriate annual spectrum fee and then assigned licenses without expiration dates. At present, broadcast licensees must prepare lengthy applications for license renewal every three years. These applications are then reviewed by the Commission, which must find that renewal is or is not in the public interest. The applications are further subject to challenge from members of the licensee's audience under the very loose application of the principles of standing as a party in interest.

For most licensees, the triennial shipment of pounds of paper to Washington, D. C. is ritualistic, time-consuming, expensive and non-productive. In the vast majority of instances, the Commission makes the public interest finding that permits renewal and the three-year cycle begins anew. In a few cases, renewal is delayed by objections from members of the public. In very few cases, the licensee is forced into a hearing to determine whether he is fit to remain a licensee. And, there are many instances where other parties file "on top" of the licensee in an effort to gain the license for themselves.

The process of license renewal appears to be a very expensive, time-consuming method of ferreting out those few licensees who have failed to meet a subjective "public interest" standard of performance. With adoption of a free marketplace concept similar to newspapers, license renewal would no longer be required. The enormous savings in time and money could be used for more constructive purposes in programming and news.

Some would contend that license renewal time offers the Commission the only real opportunity it has to review the overall performance of its licensees. However, I believe greater responsiveness to legitimate public needs comes about through public acceptance or rejection in the area served by the broadcaster.

What rules would then govern broadcasters? The same law and rules as newspapers or other businesses or professions--criminal codes, libel, slander laws, anti-trust laws, EEOC requirements, SEC requirements, etc. There is no need for discriminatory singling-out of broadcasting for special restrictive regulations--broadcasters generally are as responsible, dedicated and every bit as socially-conscious as other Americans--in media, industry, professional or government groups. Most feel a self-imposed public trusteeship. The few incompetents and miscreants fail and lose their business or jobs or run afoul of the law as in any other profession or business.

Also I believe news objectivity and overall fairness and efficiency are better assured through professional broadcast and print journalists and through professional program executives. Many government-appointed officials, regardless of how well meaning, are handicapped by lack of experience and little understanding of media operations or the practicalities and economics of running a communications business.

Past considerations of the renewal issue have included the argument that a license "in perpetuity" would greatly weaken the competitve spur in the Communications Act. It must be remembered that broadcasting stations, although licensed, are also private business enterprises backed by private capital, subject to the risks and opportunities of entrepreneurship. Broadcasters have no incentive to offend or alienate potential audiences; on the contrary, it just makes good business sense to attempt to serve as much of the potential audience as possible and as well as possible. All media and particularly broadcasting require public acceptance to succeed and even survive. Regulation is supposed to be a rather imperfect substitute for competition where competition either doesn't exist or is restrained by certain market forces. In practically all of the broadcasting markets in this country, competition not only exists but is intense and growing. As stated before, broadcasters not only compete among themselves but with all other media including newspapers, magazines, outdoor advertising, direct mail, etc. Therefore, it would seem reasonable to remove as much regulation as possible in order to permit competitive market forces to operate.

One immediate beneficial effect of open market competition would be elimination of government involvement in news and programming--where it never belonged in a free society.

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 want the record to indicate that I advocate government involvement in appropriate areas--government involvement and direct action was 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.

Also 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. 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 staff 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 citizen activists 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, including the broadcast press, without raising the ominous spectre of censorship because of possible regulatory oversight.

In conclusion, 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.

The laudable deregulatory thrust of HR 13015 should be specifically implemented by granting broadcasting full First Amendment rights and removing all regulatory restraints. The overall public would be the important beneficiaries through massive deregulation, reduced litigation, reduced bureaucracy and a resulting reduced cost to taxpayers. With elimination of renewals, petitions and unnecessary rulemakings, the FCC staff (which included 332 attorneys at last count) could be systematically reduced by probably as much as 40%. The principal remaining broadcast function would be engineering spectrum allocation and enforcement. The bureau reduction could be gradually accomplished through attrition, via transfer, resignation and retirement.

The reduction in bureau staff and government expenses would be in keeping with the mood and will of the American public today. I believe this total proposal would pass convincingly today in any objective public referendum.

Moreover, removing the government restraints of Section 315 and 312 would free broadcast journalism, foster more comprehensive and independent reporting and better serve the American people.