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REMARKS BY
FCC COMMISSIONER JAMES H. QUELLO
BEFORE THE
NEW JERSEY ASSOCIATION OF BROADCASTERS

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My office made one glaring oversight in the generous introduction they prepared for my appearance before this distinguished New Jersey audience. We forgot to even mention, let alone emphasize, that I'm a first generation Italo-American. And, I'm indebted to Fortune Pope, publisher of Il Progresso, and to the Italo-American Congressional Delegation, and particularly to this state which, apparently, has more Italo-American Congressmen per capita than any other state. I'm grateful to the Chairman of the New Jersey Delegation - a senior statesman and a respected power in Congress, Peter Rodino, and to such paisans as Frank Guarini, Mat Rinaldo and Senator Guglielmo Bradlini (did Senator Bradley anglicize his name?)

But I'm especially appreciative for your vote of confidence last spring. Your distinguished service resolution and your letters were a timely source of encouragement and support.

Anyway, that's all behind us -- thanks to the Democrats who fought to keep me around and the Reagan Administration who finally reappointed me.

So now with a new regime in place there is good news from Washington tonight -- at least for broadcasters and advocates of full First Amendment rights. The government mood seems more than deregulatory -- as the new Chairman characterized it -- it's unregulatory.

I never thought I'd see a FCC Chairman more unregulatory than I. We finally have one. He is Mark Fowler who financed his way through college working at a radio station. He has a sense of humor, too. He said they told him "he had the looks for radio." I tell you he has the smarts for Chairman. He is a Republican and I'm a moderate Democrat, but important Commission processes, regulations and "unregulation" transcend or defy party lines. Under his Chairmanship, the FCC seems destined to usher in a new era of freedom and deregulation for communications. The majority of the FCC now advocates a free enterprise marketplace approach to broadcast regulation rather than the public trustee concept. As you know, the new Commission took a momentous step toward gaining full Constitutional freedom for broadcasters when they voted 4 - 2 to recommend legislation repealing the Equal Opportunities and Fairness Doctrine requirements of Section 315 and voting 5 - 1 to repeal the reasonable access requirement for federal candidates of Section 312(a)(7).

The FCC legislative recommendations received some strong surprising support and some expected strong opposition.

Editorials in the Washington Post, New York Times, Chicago Tribune and Broadcasting Magazine supported the Commission action. The president of the Radio-TV News Directors Association, Wayne Godsey, called the FCC decision "possibly the most important step ever taken by the Commission to vindicate the public interest served by the First Amendment". Consumer activists groups eager to maintain government-mandated access opposed the move. Steve Sharp, General Counsel of the FCC, was somewhat surprised on his appearance on station WRC when he was vigorously opposed by conservative Pat Buchanan who felt fairness doctrine and equal time constraints were required to keep the ultra liberal TV and radio commentators and reporters in balance. Sharp and the FCC viewpoint were defended by liberal WRC spokesman, Tom Braden, who advocated freedom of the press.

Chairman Fowler urged broadcasters to support repeal in Congress. He laid the blame on broadcasters themselves for the longstanding curtailment of their First Amendment freedoms with "Where were you when Congress imposed equal time and reasonable access requirements?" I agree.

It is a matter of public record that I proposed total deregulation before both House and Senate communications subcommittees three years ago. A bipartisan deregulatory flag was raised, but not enough people saluted.

I said to Congress back in 1978 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, too often, has been a powerful but inept sleeping giant in promulgating and protecting its own vital interests.

Three years ago I urged broadcasters to get off their 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 the Chairman of the House Subcommittee, Southern California Congressman Lionel Van Deer, who stated when proposing 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, former 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! All are consumers. (I was a consumer long before I became a Commissioner.)

Just think of the potential of organizations that could join a call to arms for freedom of the press 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 (51 stations), all state broadcasting associations, Puerto Rico Broadcasting Association, all major networks, all program producers, VFW, Legion, DAV, AMVETS, Chamber of Commerce, Lions, Kiwanis, Rotarians, AMA, the responsible new PAC's, 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, CWA, NABET and IBEW? Why not get support from 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 Association who initiated a campaign that generated over ten million letters to the FCC--an all-time 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 full broadcasting freedoms with a huge impact on Congress.

I have roughly outlined a plan for action (and success) for 1981-1982.

What are the most 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 newspapers.

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

The main thrust of any proposed House legislation should be that in this era of multi-communications services, regulation is 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 today including newspapers, magazines, cable TV, STV, outdoor advertising, transportation advertising, direct mail and all other forms.

It's now 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.

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, knowhow, 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 only 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, STV, MDS, tele-text, video cassettes, UHF, FM and the development of satellites will provide more media availability than ever before. Future potential is practically unlimited. Then, too, broadcast journalism today is as mature, professional and objective as any media.

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.

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.

I have made the following point before Congress and I believe it is worth emphasizing again before a broadcast audience---

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'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 impractical government requirements.

I would guess that some large broadcasters may view these 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, some 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 please all 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 any new Communications Act.

Also, 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 eventually 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.

With comprehensive unregulation, what rules would then govern broadcasters? The same law and rules as newspapers or other businesses or professions - criminal codes, invasion of privacy, libel, slander laws, anti-trust laws, EEOC requirements, IRS, 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.

However, 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, unless he was serving a specific segment of an audience with a specialized format, 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 the FCC's legislative proposal should be 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 372 attorneys at last count) could be systematically reduced. 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 would foster broadcast journalism, foster more comprehensive and independent reporting and better serve the American people.

With deregulation, or unregulation, I hope we are 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 nation.

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