June 23, 1982

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Concurring Statement of
FCC Commissioner James H. Quello

In re: Deletion of the Syndication and Financial Interest Rule

I concur - reluctantly. I am concurring rather than dissenting because the notice will provide the opportunity to gather updated facts and to thoroughly ventilate and study the issues of this controversial proposal as they apply to communications services of the 80's.

My vote for the rulemaking should not be construed as favoring the final result. I am reserving final judgment and believe there is a heavy burden of proof on the networks to show that deletion of the syndication and financial interest rule (1) is in the public interest and (2) will enhance rather than reduce competition.

I am also concerned with the effect deletion of this rule will have on many already disadvantaged independent stations who rely on syndicated features to gain audience shares and remain competitive.

I am concerned, too, that it may be too early to conclude that the technological inroads of cable, teletext, low power TV, MDS, and STV have significantly diluted network dominance. According to recent public statements of CBS and NBC, network TV will continue to dominate audience shares and programming into 1990.

In May, the President of the NBC Television Network stated to an affiliates annual convention:

> Today, the commercial television networks are the largest and most dynamic entertainment, information and advertising medium to ever exist. And they will remain the dominant communications medium of the future....[T]he future is not passing us by. The future is ours to take. The lion's share [of the video business] will be our business.

Later in May, the President of CBS, Inc. was quoted at the CBS affiliates meeting:

> I am increasingly convinced that there is less change on the horizon than most are predicting. That is a theme that may sound a little different [these days]. I suggest that [changes in the media universe] will be not as large, not as threatening and not as soon as most predict.

The CBS/Broadcast Group VP in charge of research was paraphrased in Broadcasting stating:

> Television network affiliates have nothing to worry about. They are now and will remain -- at least until 1990 -- the dominant video medium of the United States. Indeed, in absolute audience and dollar terms, their dominance will be greater than ever eight years from now.

I am thus concerned that the proposal to repeal this rule may be premature. My concern is heightened by the fact that the Justice Department embraced the rule and even went beyond it in fashioning consent decrees with the three networks beginning in 1978.

It must also be kept in mind that the rule does not bar network acquisition of nonbroadcast rights to television programs. Thus, the networks are free to bargain for rights involving cable television, video tape, video disc, etc. Declaratory Ruling on Section 73.658(j)(ii), 87 FCC 2d 30 (1981), Aff'd sub nom. Viacom International, Inc. v. FCC, No. 81-4119 (2d Cir. Feb. 9, 1982). Arguments that the networks are somehow preempted from participation in the new video delivery systems are, therefore, not totally persuasive.

While the Commission's Network Inquiry Special Staff concluded that the rule did not and could not serve its intended purpose of increasing diversity and competition, the present syndication market appears to be working well and the number of participants appears to have grown significantly since the rule was first adopted. I am very interested in examining the practical consequences of this rule to determine how well the economic theories of the Special Staff are supported by the facts.

I have misgivings about whether an adequate record can be developed upon which to base such far-reaching action as is proposed today. I could favor repeal if it could be shown that there is a need for such relief and if it would not place significant anti-competitive burdens upon program producers or independent TV stations. Many of the new video markets cited by those who favor repeal have not yet developed and may never fully develop. It is somewhat illogical to base actual market projections solely on what is technologically possible. It is conceivable that by the time this rulemaking is completed there will be greatly increased competition to obtain programming. This could provide the basis for repeal, a basis which does not appear to exist at the present time.

Therefore, I am concurring and looking forward to carefully evaluating the comments of all parties.