

SPEECH BY
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BEFORE THE
COLORADO ASSOCIATION OF BROADCASTERS
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As you know, you have as your speaker today someone who has had the dubious distinction of surviving the longest confirmation hearing in the history of the Congress - longer than President Ford's hearing for the Vice Presidency or the confirmation proceedings for Secretary of State Kissinger. But, of course, they were trying for relatively placid non-controversial jobs and did not have the questionable distinction of being a former broadcaster!

I stress former because I made quite a point of stating I definitely was not returning to the broadcasting industry and I wasn't an attorney who would be practicing before the Commission after completing his FCC term. In fact, in this regard, I agree with Congressman Torbert MacDonald's new proposal to provide longer terms for Commissioners but with greater restrictions on practicing before the FCC or being employed by a regulated industry following service as a Commissioner.

Anyway, I was reminded during the hearings of a saying of one of our great presidents, Harry Truman, ----"If you can't stand the heat, stay out of the kitchen"---but I had no idea my opponents were going to burn the whole kitchen down!

At one point in my confirmation hearings, I fantasized that my most ardent supporter was a University of California Law School professor who had a team of law students conduct some research which revealed that no Commissioner had ever been appointed to the FCC or the Federal Radio Commission with a last name beginning with the letter Q. He told Senator Pastore that "although Q constitutes almost five percent of the American alphabet, the number of high-ranking officials

in the government whose name begins with Q has historically been de minimis." So, with a name beginning with "Q", I definitely represented a neglected minority group entitled to special consideration. Of course, in reality, my friends in Michigan said I was always a loner - but not by choice!

During those long confirmation hearings, it seemed to me that the FCC really stood for Federal Creature of Congress. Then, when I joined the Commission and saw myself and my colleagues responding each day to pressures and special agenda items, From Crisis to Crisis seemed a more accurate version of FCC. From the point of view of broadcasters who are forced to fill out Annual Programming Reports, Annual Financial Reports and Annual Employment Reports, you might regard FCC as From Computer to Computer!

A political scientist has divided government agencies into two categories: "deliver the mail" and "Holy Grail." "Deliver the mail" agencies perform neutral, mechanical, logistical functions. They send out Social Security checks, procure supplies - or deliver the mail. "Holy Grail" agencies, on the other hand, have the more controversial and difficult role of achieving some grand, noble civilizing goal.

The FCC started out as a pure "deliver-the-mail" agency. It was established as an engineering traffic cop of the airwaves to regulate broadcast frequencies. But the Congress added an elusive Holy Grail clause to the FCC's charter: the requirement that it uphold the "public interest, convenience and necessity." Today, the FCC is much more than a traffic cop - as you are well aware, it has a vice and morals squad as well!

The current debate on ascertainment of community needs is a good example of the Commission's dilemma in carrying out its Holy Grail mission. On the one hand, there is the goal of requiring broadcasters "to make a positive, diligent

and continuing effort, in good faith, to determine the needs, tastes and desires of the public in their communities." Few would question the validity of this goal. On the other hand, there is serious question whether formal, structured ascertainment procedures are either philosophically desirable or practically effective. I am well aware of wide-spread skepticism about the actual effectiveness of ascertainment.

The Commission, sensitive to the burdens imposed by the current guidelines on ascertainment, has released a Notice of Inquiry and Proposed Rulemaking in Docket 19715, proposing new guidelines for renewal applicants. In the Notice, we proposed that licensees be given approximately a year's notice between the date we release a final order on new ascertainment guidelines and the date they would be expected to file renewal applications under the new procedures. Since Colorado renewal applications are not due until December 1, 1976, I expect that you will be using the new guidelines in connection with your next renewal. This Notice was released after our study of comments from numerous parties who expressed dissatisfaction with our present guidelines.

Washington lawyers Erwin Krasnow and John Quale, in an article in the Public Telecommunications Review entitled "Ascertainment: The Quest for the Holy Grail" contend that the drive for formal ascertainment procedures began as, and remains, a quest for certainty. Conscientious broadcasters want to know more clearly what the FCC expects of them. The Commission wants to tell broadcasters more clearly what it expects. Citizens groups want assurance that they will be heard.

But, where does this quest for certainty end? That question - and the answer, such as it is--applies to all regulation, not merely to ascertainment.

The quest for certainty yields new rules, and further refinement of old ones - but not certainty. Formal ascertainment procedures may prove helpful for some, but they are no final solution; they bring no certainty. Neither does any other regulatory device that touches on the area of program content. The quest for the Holy Grail is ultimately a private affair.

This theme was eloquently stated by Bill Armstrong, a Colorado broadcaster in Comments filed by Armstrong Broadcasting Corporation two weeks ago in Docket 19715.

"True ascertainment of community needs does not result from the formalized process prescribed by Commission rules. It comes about naturally, inevitably, when broadcasters are free to use their own ingenuity to develop programs listeners want to hear.

"In the competition for listeners, fine programming has been developed throughout the history of U. S. radio: great musical presentations, drama, comedy, news, public affairs, on-the-scene reports, exciting programs and personalities brought to listeners without charge in amazing quantity and dazzling diversity, a broadcast achievement without parallel in the world, an accomplishment which came about without government coercion, because of the freedom of broadcasters to innovate in constant competition for audience.

"As the number of radio stations increased, and with the emergence of television, station licensees created specialized formats of amazing ingenuity: Top 40, Middle of the Road, Beautiful Music, Modern Country, Two-Way Talk, All-News, Religious, Event Radio.....to name some of the programming variations created by broadcasters trying to further their own economic interests by offering listeners what they want to hear and competing to offer the best programs in the finest tradition of American enterprise.

"Offhand, it is hard to recall many equally worthwhile programming innovations which can be attributed to 'community ascertainment' or other similar bureaucratic impositions."

A pundit once said, "where you stand depends on where you sit."

I must admit that my perspectives have changed since serving on the Commission, but my basic philosophy on governmental regulation has not shifted. Indeed, I am more convinced today than during my 30 years as a broadcaster, of the wisdom of favoring a socially-conscious free enterprise system over a structure of paternalistic government control.

It is important to take note of a change in national attitudes and opinions. I am no more an expert of the "national mood" than you are, but I can look around, as you can, and see some clear changes in our political life. One of those changes is particularly significant and deserves comment today.

It is apparent that more and more Americans have become skeptical of turning to government as the miracle cure for every real or imagined problem. Perhaps this attitude is only a temporary reaction to the excesses of one administration, or to the unfulfilled promises of the last decade. Perhaps, as some have suggested, it is but one aspect of a growing cynicism about all American institutions.

But I sense, although I cannot prove, that the process is both deeper and more positive than these analyses would suggest. Many of our neighbors - people from all walks of life, and political persuasions - have learned that there are many things government cannot legitimately do, and will almost certainly botch if it tries. At the same time, the rhetoric of individual effort and decentralized government has become respectable again.

Admittedly, this description has been painted in broad strokes --- though I think the picture may be recognizable to many of you. But the discussion can be brought quickly and firmly down to earth. For this is a trend

with direct, observable implications for the regulatory world in which you and I play our respective roles.

When both a William Proxmire and a Roman Hruska introduce legislation to abolish the fairness doctrine, and when a Father Drinan is heard to recommend that the government remove itself from any concern with program content, it is safe to assume that something quite new is happening. Also, your two progressive Senators from Colorado, Floyd Haskell and Gary Hart, have expressed interest in more simple, more stable license renewal procedures and expressed ^{AWARENESS OF YOUR} concern about costs incurred by license challenges.

There is increasing recognition of the dangers of excessive regulation. President Ford has attacked "a massive Federal regulatory structure encrusted with contradictions, excesses and rules that have outlived any conceivable value." President Ford has also forcefully stressed that regulatory agencies carefully weigh the economic impact of their actions. We also have a very investigative-conscious Congress with media coverage usually welcomed.

It is important to observe and reflect upon what is happening - and these are but a few examples.

While these calls for reform are on the legislative and regulatory front, there is also an interesting turn in the comments of many well-known writers about television. Michael Arlen, a television critic who has in the past offered some trenchant and cutting observations about American media - recently said this:

"This is probably a good time in which to be wary of blaming television for too much. For sometimes in recent years it has become a kind

of badge of embattled individualism to blame commercial television - or the 'mass media' - for the flaws and errors and imperfections of our society. If it weren't for television - so various arguments run - our children would be more responsible; our minorities would be less demanding; our middle class would be more serious; our politicians would pay more attention to issues; our popular values would be somehow higher; and, as a nation, we would not have been so sadly and unsuccessfully involved in Indochina."

All of you have had to cope at some time with one or more of the complaints that Mr. Arlen has repeated in this passage. And I doubt that any of you would dispute his conclusion.

"The truth is, obviously, that the audience shapes its television and that television shapes its audience."

Not too many years ago, the most likely place to have heard these sentiments would have been from the platform at an NAB convention, though the ideas might not have been expressed quite so well. Today, this side of the story is beginning to receive the attention it deserves.

What I am suggesting, simply put, is this:

More and more people, whether they realize it or not, have become more sympathetic to the arguments that informed and conscientious broadcasters have made for years.

Now, before you begin to suspect that the FCC has supplied me with a pair of rose-colored glasses for use when delivering speeches, let me emphasize two things. First of all, I do not mean to suggest that your problems are over; many of them remain, some of them are probably permanent, and a few of them are deserved. Secondly, I do not really mean to suggest

that either politicians or the public have somehow consciously accepted your arguments, for your reasons. Nobody out there is saying: "By gosh, the broadcasters were right all along." My point is simply that you now have a more favorable public and political climate than you have enjoyed in recent years.

In part, these changed circumstances have to do with broadcasting's laudable performance during the Watergate crisis. We are now well past that crisis, but its effect on public perception of media remains. There is renewed public respect for media in the area of news and analysis.

Generally, however, I doubt that broadcasters as a group have done or said anything new to precipitate this changed mood. You are beneficiaries of a situation that is not principally of your own making.

So, I believe you should accept the new improved mood with humility - or at least considerable modesty. If a battle has been won even temporarily, it probably is not a victory for you as businessmen, but the victory of a set of principles - the principles of limited government, maximum freedom of enterprise and freedom of speech. While this climate lasts, capitalize on it - not by strident defense of your own interests, but by articulate promulgation of the principles themselves.

The changing mood I have described reflects my own convictions in many ways. I believe that an agency such as the FCC functions best when it concentrates on a few activities which it has the expertise, the imagination and the clear authority to handle.

A principal concern of mine will be to serve and enhance the concept of limited, effective government - a principle that I believe encourages creativity, initiative and progress on the part of broadcasters and, most important, the principle that best serves overall public interest.