

DISSENTING STATEMENT OF COMMISSIONER JAMES H. QUELLO

The issue here is not whether a specific cable system should be given or denied a certificate of compliance to operate in a specific city. The issue, as I see it, transcends the parties directly concerned and reaches out to a far broader and more fundamental question in this somewhat delicate, often frangible, area of dual responsibility for regulation contemplated in the FCC's own rules.

The Commission, in adopting its rules and through adherence to them in prior considerations, has placed the considerable burden of determining the legal, character, financial, etc. qualifications of those who would act as public trustees in the operation of cable systems directly upon local franchising authorities. This procedure presumes - and presumes correctly, in my view - that local bodies, after benefiting from participation by local citizenry, are best able to determine these qualities as they relate to the local situation.

In this instance, it seems to me, the Commission has decided to abandon this principle in order to substitute a federal judgement for a local one. It is argued that this case is not precedent-setting; that federal intervention into normally local processes is necessary, this one time, because of the transcending significance of this particular case. Stated another way, this matter is too important to be left to the local authorities. Ordinarily, in more or less routine matters, the principle of local authority is sound but, in matters of real significance, the decisions must be made in Washington. I'm afraid the logic of that escapes me.

One obvious result, despite protestations to the contrary, is that the FCC is to become the arbiter of matters which the Commission itself has heretofore deemed best left to local authorities. This, I believe, is not sound from either the local or the federal standpoint. If there is to be a genuine division of responsibility in this area, there must be a genuine division of authority with which to carry out that responsibility. If there is to be only an appearance of authority applied cosmetically to the local government, then the Commission must expose itself to public scrutiny of such a policy.

Presumably, the broad, fundamental question is the extent to which this agency and local franchising authorities can share the ultimate responsibility of serving the public interest. I believe that the Commission's rules, as written, contemplate such a sharing based upon sound principles of leaving to each authority those functions for which it is best equipped. Those functions which are nationwide in character and require conformance to national standards can best be performed right here. But, those matters of primary local concern and local judgement should be left in the hands of those most directly concerned with them.

Therefore, I dissent.