

"LOOKING BEYOND THE SQUEAKING WHEEL"
THIRD REGIONAL WORKSHOP
WICHITA, KANSAS
SEPTEMBER 26, 1975

55609

42

BY JAMES H. QUELLO

Walter Lippmann once said that the public interest is "What ^{people} ~~men~~ would do if they thought clearly, decided rationally, and acted disinterestedly." That is a good place for us to begin our dialogue. Having described at the outset an objective which nobody is wise enough to attain, we can discard the assumption that any one has a lock on the truth. Then we can proceed to the more productive task of viewing honestly our points of disagreement. I suspect that Dr. Parker inspired by the Fairness Doctrine invited me to your Regional Work Shop to present differing views on the controversial issue of citizens agreements and license challenges.

As some of you may know, Dr. Parker and I exchanged correspondence earlier this year after a columnist named Lester Kinsolving reported that I had "described the Rev. Dr. Parker's efforts as the work of 'an extremist group.' " When Dr. Parker inquired about the accuracy of that quote, I informed him that "I had never characterized the United Church of Christ as being 'an extremist group.' " But I told him then -- and I shall stress today -- that I have genuine concern over potential or actual abuse of the license challenge process.

When groups that represent only a small segment of the public seek to impose their individual program preferences and philosophies on local stations, then the potential for abuse is clearly present. When those same groups use negotiating tactics that offer the licensee one choice -- either agree to all of their demands or a petition to deny will be filed -- then potential is well on its way to becoming reality.

To raise this concern, however, is not to suggest that you and I cannot begin from certain clear points of agreement. Indeed, because of our different backgrounds and perspectives, it is important for us to do so.

As far as the activities of citizens groups are concerned, I understand that your "Check Your Local Stations" project is intended to create and maintain a relationship between broadcast stations and the public that will foster reconciliation of differences. I commend this approach

without reservation, and hope that your workshop sessions will provide useful suggestions.

As far as the Commission is concerned, I believe that all of you will agree with its concept of licensee responsibility and accountability. In our recent Fairness Report, the principle was stated as follows:

"The responsibility for program material is that of the individual licensee. That responsibility can neither be delegated by the licensee to any network or other person or group, nor be unduly fettered by contractual arrangements restricting the licensee in his free exercise of his independent judgments."

Recognizing this basic principle, we come to the nub of contention -- and that is the extent to which concerned citizens groups may seek to influence the programming judgments of a broadcast licensee without curtailing his discretion in the areas of programming or station operation.

The FCC encourages licensees to maintain dialogue with the citizens they serve and to work out differences between them without seeking Commission action. When dialogue becomes negotiation, however, then I am concerned about what the broadcaster brings with him to the bargaining table. If it is simply an open mind and a desire to gain insight into the needs and interests of all of the community, then I applaud his efforts. On the other hand, if he is offering to depart from his good faith obligations to serve his community in return for peace and tranquility at renewal or transfer time, then I must question his right to do so. If the licensee agrees with all or part of the group's suggestions, he can and should implement his programs accordingly without the need for a presumably binding agreement.

From my many years as a broadcaster, I have a particular concern for petitions to deny a license renewal application unless such petitions are well founded. Most of the problems of citizen/broadcaster agreements have arisen in the context of petitions to deny a renewal application, and this is extremely serious and costly to the licensee, as the citizen group well knows. The obvious costs include litigation itself, which for many small stations can be devastating. And while the licensee can "wait out" deferral of FCC action on his license renewal application, there are still very real consequences of such deferral. These include competitive problems stemming from advertising uncertainty, staff morale problems stemming

from future job uncertainty and the natural reaction that something must be wrong with the station if its license renewal is deferred. For these reasons I think the petition to deny should be used only as a last resort and, if filed, must be based on substantial and relevant grounds.

In his letter of November 26, 1974 to Chairman Wiley, Dr. Parker sets forth detailed arguments favoring agreements between responsible citizen coalitions and broadcasters. He referred to the 1966 landmark case of Office of Communication of the United Church of Christ vs. FCC, and certain of Justice Burger's comments therein. One of these was Justice Burger's election analogy, to the effect that a congressman seeking reelection, usually returns to his district and meets with various public groups -- none of which can speak for the entire public, but each of which expects the candidate to give an accounting of his service to them and to make "campaign pledges" on matters of concern to them. Most candidates respond by giving pledges which commit them to a course of conduct in office -- and some pledges may affect only a relatively small group. Then Dr. Parker states, and I quote:

"...the squeaking wheel may get the oil, so to speak. However, in a democracy, public policy is responsive to the demands of groups which are concerned and participate."

I suggest that the squeaking wheel is not the only one which supports the wagon of overall community interest. Further, I know of no Commission pronouncement which requires the broadcast licensee to respond only to those interests which make themselves heard -- the licensee's responsibility is to ascertain all significant interests of his broadcast area and to program in the public interest.

Dr. Parker further quotes Justice Burger as follows:

"...such community organizations as civic associations, professional societies, unions, churches, and educational institutions or associations may well be useful to the Commission. These groups are found in every community; they usually concern themselves with a wide range of community problems and tend to be representative of broad as distinguished from narrow interests, public as distinguished from private or commercial interests."

I fully agree with Justice Burger and Dr. Parker that community organizations are useful to the Commission in their concerns with community problems and in their efforts to spur broadcasters to achieve higher levels of performance. There may well be good reason for the licensee to heed the suggestions of community organizations in determining the broadcast station's operation or programming performance. However, I find no intimation that such discretion be formalized in a citizen/broadcaster agreement. Somehow, I keep getting the impression that the written agreement is the sine qua non, rather than the cooperation of the broadcaster in advancing the activist group's interests to the extent he deems proper.

Moreover, I believe the Commission has given an overbroad interpretation to the Appeals Court mandate, in *United Church of Christ vs. FCC* back in 1966, to encourage public participation in the renewal process. Chief Justice Burger, then writing for the majority, also stated:

→ "The Commission should be accorded broad discretion in establishing and applying rules for such public participation, including rules for determining which community representatives are to be allowed to participate and how many are reasonably required to give the Commission the assistance it needs in vindicating the public interest. "

Unfortunately, the Commission has chosen to ignore that portion of the mandate and, instead, has accorded standing in renewal matters to virtually anyone who asked for it. There is no real test as to the representativeness of such parties nor of the expectation of benefit to the Commission's processes. It has simply been easier to grant participation than to deny it. The Commission has taken the path of least resistance. As a result, the backlogs continue to grow and justice is delayed and, hence, denied.

Groups and individuals who are interested in extracting agreements from the broadcasters often complain that broadcast licensees who are permitted to use a public resource for gain, are public trustees who are not accountable to the public -- that is to say that the Commission has not been meeting its congressional mandate to see that the broadcasting service is in the public interest. It also ignores the licensee's self-interest in programming to appeal to the broadest possible audiences. On the other hand, if accountability is desirable, I must ask about the accountability of many citizen or activist groups. To whom are they accountable? To the general public? To the government? To themselves?

I'd like to turn now to the issues most often raised in negotiations between broadcasters and citizens groups. These usually involve allegations relating to employment and personnel promotion, ascertainment of community needs and programming. In many petitions to deny, with the exception of some equal employment complaints, these allegations are generally of an unspecified and unsupported nature so as to be meaningless in terms of pointing out violations of rules or policies upon which the Commission can take action. Some equal opportunity complaints have raised enough questions to prompt Commission inquiry of the licensees involved and the Commission has acted vigorously in such instances to prescribe appropriate measures to improve performance.

Far too many allegations of faulty ascertainment or inadequate programming lack the required specificity. What we find, instead, is an expression of a "feeling" of inadequacy. Absent real substance, the Commission must reject the allegations. Unfortunately, the consideration of even unfounded allegations takes time, manpower and money, all of which could be spent in more productive ways.

There is also great concern for "minority" programming although its precise definition is often illusory. Most often, such programming is defined by a

group or an individual within a community who purports to speak for a given minority. Whether this group or individual is, in fact, a spokesman representative of that minority group is often difficult or impossible to determine.

A negotiated agreement reached between a licensee and any citizens group who represent only a small portion of the total community simply does not square with the requirement that a licensee follow the Commission's comprehensive ascertainment procedures to determine for himself the needs and interests of his total community.

If he has ascertained those needs and interests, what possible contribution to the public interest can be made by a small segment of that public seeking special consideration by negotiating an agreement which is to be enforced by the Commission? After all, activist groups, regardless how laudable the objectives, have not been elected or appointed as bargaining agents for the public at large.

The FCC itself wouldn't dare even suggest the program demands made by some of the citizens groups. We would be charged, and rightly so, with program dictatorship, or infringing on First Amendment rights.

In light of the increasing number of citizen/broadcaster agreements that have come before the Commission, particularly with respect to the agreements that attempted to hold the licensee accountable to essentially private interests, the Commission recently invited comments on its role with respect to such agreements concerning programming, employment and other aspects of station operation. On June 10, in Docket 20495, we issued a Proposed Policy Statement and Notice of Proposed Rulemaking dealing with agreements between broadcast licensees and the public. (Should there be some of you who would like to obtain a copy of the document, it is identified as FCC 75-633. The news release summarizing the contents of the document is Report No. 13206, released June 3, 1975.)

We proposed in that proceeding to require that copies of all broadcaster/citizen agreements be placed in a station's public file. We also proposed to consider such agreements only if they were submitted in writing as part of a renewal or other application filed with the Commission, or if they became the subject of a specific complaint or request for Commission ruling. The Commission noted that when it would take cognizance of an agreement, its scrutiny would be mainly in terms of licensee responsibility rather than in terms of permitted and forbidden subject matter.

We indicated that when an agreement was entered into in exchange for withdrawal of a pending petition to deny a license renewal, we still must make a public interest determination before granting the renewal. Therefore, we must first determine whether the petition can be withdrawn and, if so, we must then look at the renewal application, itself, independent of any petition. Thus, the licensee cannot be assured that when he signs an agreement in exchange for withdrawal of a petition that his license will be renewed.

I concurred with the majority's decision that a rule making proceeding is necessary to establish clear guidelines for licensees to follow when they decide it is in the public interest to reach formal agreement with local citizen groups. However, I have serious reservations about the approach the majority outlined.

It is my belief that the Commission should make no official acknowledgement of private agreements between a broadcast licensee and a citizen group except upon complaint that the licensee has abrogated his responsibility as a result of such agreement. I think the Commission should continue to rely on its present policy of licensee ascertainment of needs and interests of the total community and appropriate response to such needs and interests, and the Commission should continue to encourage dialogue between broadcasters and local groups in order to exchange views and to explore suggestions. If a formal agreement should result from such discussion, I agree with the majority that it should become a part of the licensee's public file for the life of the agreement. However, I firmly believe that the general public should be informed of the agreement and its terms. I think the licensee should be required to announce the existence of agreements and their availability in the public file at the time such agreements are executed and at intervals of six months thereafter so long as they remain in force.

Also, I have long realized the need for ascertainment of community interests in broadcast programming. However, I have always believed and continue to believe that all representative community groups should be consulted in the regular process of ascertainment. Program and management decisions should be based on that overall ascertainment and not on the basis of the

demands of one or two groups representing only a portion of the total population served.

I would be among the first to recognize that a few broadcasters, whether through ignorance, carelessness, or even defiance, do not fulfill their obligations on affirmative action or programming. I realize that complaints filed with this Commission concerning such shortcomings are unduly delayed. In my opinion, this Commission should expend much more effort toward expediting the review and resolution of complaints without having to go through the expensive and time-consuming ritual of a formal petition to deny and its subsequent proceedings. I personally believe that we should act more directly and specifically with respect to minority employment problems, but must admit some doubt as to the extent to which we could rule on programming matters other than to determine whether the licensee has made good faith judgments in its programming decisions.

I am sure that we all agree that the Commission should continue to encourage open and fair discussion between each broadcast licensee and the public it serves. It goes without saying that a licensee which maintains dialogue with community groups and openly solicits local public opinion is certainly more attuned to the various wants, desires and problems of all segments of the local population. Conversely, such dialogue also serves to educate members of the general public as to the various restraints under which the broadcaster must operate, including what is physically and economically feasible for the broadcaster to accomplish.

The dilemma faced by the Commission is how to encourage true dialogue while at the same time preserving the licensee's necessary freedom and responsibility, and how to avoid unnecessary government intrusion into the process. I do not believe that it is government "intrusion" to advise citizen groups that they may not deprive licensees of flexibility in certain areas. Further, I think this Commission could properly propose that citizen groups demonstrate their credentials to the licensee before demanding negotiation, and this would not be government "intrusion."

I realize that some of the views that I have expressed here this evening may have ruffled some feathers. I have been candid with you in presenting my personal opinions and attitudes with respect to citizen/broadcaster agreements, ascertainment and petitions to deny. Certainly there will be differing viewpoints about "what's best?", and no one individual or group will possess all of the truth. As I mentioned earlier, I believe that

the "Check Your Local Stations" project contains one important element of the truth, recognizing as it does that the best place to air complaints and resolve differences is the local level. I also believe that the Commission has truth on its side in demanding that the licensee respect and retain his responsibility for program judgments. Without that clear allocation of responsibility, we could find ourselves in the situation described in an article written for the Federal Communications Bar Journal: "The licensee may be transformed... into a frequency broker, auctioning off access to the bidder with the most strident demands."

I must add, however, that we at the Commission must do a better job of making our practice equal our preaching. We insist on licensee responsibility; at the same time, we encourage the filing of legitimate complaints--at the local level or, if necessary, at the Commission level. Yet we sometimes fail to devise complaint procedures that are specific and productive. In so doing, we may simply demonstrate to concerned citizens that the complaint process is unproductive, leaving the costly and time-consuming petition to deny as the only feasible alternative. I think our past performance in the area of EEO practices is an example of this inadequacy, and I hope our final action in the current inquiry on EEO practices will improve the situation so as to facilitate compliance and maximize implementation.

For when government must act, it ought to act as clearly, simply, and effectively as possible. This is one case where the government clearly must act. I continue to believe, however, that the best government is one which adopts a strictly limited definition of its own role.

Moreover, I believe that this view is gaining some support. Perhaps the new skepticism about government is only a temporary reaction to the excesses of one administration or to the unfulfilled promises of the last decade. But I sense, although I cannot prove, that the feeling goes deeper than that--and I see some evidence of it in the field of communications.

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. When a large majority of senators and congressmen of all political philosophies express interest in simpler, more stable license renewal procedures, the impression is strengthened.

There is some evidence of this trend in current writing about television. Michael Arlen, whom you and I know as one of the most perceptive and critical observers of the 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. 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."

I offer this quote not to claim Mr. Arlen as an ally in a cause for which he never enlisted, but to illustrate the fact that our thinking about both the media and the government is beginning to change, and needs to change further. We need to be more realistic, more receptive to complexity, less entangled in slogans, and less inclined to label too quickly our friends and our enemies. As part of that rethinking, we need to ask of government only the things it can realistically and legitimately be expected to do--and, having identified those things, to demand that they be done promptly and well.

One speech will not reconcile our differing notions of what is to be done. However, it may demonstrate that we do share an honest concern for determining the best course of action; it may demonstrate that each of us has contributions to make; and it may demonstrate points of agreement that will help us to work together. For all those reasons, I have welcomed the opportunity to appear before this group.

But the very idea of "working together" presupposes an orderly and rational framework within which differences can be heard, and consensus reached. You and I have a common interest in developing and maintaining that framework. We should look beyond the squeaking wheel. As Nehru, the great Indian democrat, once said:

"Democracy does not mean shouting loudly and persistently, though that might occasionally have some value. Freedom and democracy require responsibility and certain standards of behavior and self-discipline."

The public interest is best served when all of us are able to work in that spirit.

Sept 26, 1975

Office of Communication
UNITED CHURCH OF CHRIST
289 Park Avenue South
New York, N.Y. 10010
(212) 475-2127
Rev. Everett C. Parker, Director

FOR IMMEDIATE RELEASE

WICHITA, SEPTEMBER 27: -- FCC Commissioner James H.

Quello, in a speech here, urged broadcasters to heed programming suggestions of responsible community leaders, but to avoid formal "binding agreements" with community groups.

Mr. Quello addressed participants in a regional workshop on citizen action in broadcasting sponsored by the Office of Communication of the United Church of Christ, a long time proponent of public rights in television and radio.

The workshop is part of a nationwide program of the Office of Communication called "Check Your Local Stations--A Continuing Audit of Broadcast Performance." It is designed to prepare community leaders to form local coalitions for continuing observation of television and radio stations, showing them how to evaluate station performance and how to present their concerns to station management.

Mr. Quello stressed his "genuine concern over potential or actual abuse of the (broadcasting) license challenge process" by groups which "seek to impose their individual program preferences and philosophies on local stations."

(MORE)

A broadcaster who accurately ascertains the interests and concerns of his broadcasting area will program "in the public interest" without a binding agreement with any community group, the Commissioner said.

"Most broadcasters are responsible people," he emphasized. "A negotiated agreement reached between a licensee and any citizens group who represents only a small portion of the total community simply does not square with the requirement that a licensee follow the (Federal Communications) Commission's comprehensive ascertainment procedures to determine for himself the needs and interests of his total community," Mr. Quello stated.

The FCC's role in regulating local broadcasters should be "strictly limited," according to Mr. Quello.

"The best place to air complaints and resolve differences is the local level," he added.

The Commission "should act more directly and specifically with respect to minority employment problems," Mr. Quello said. "But I must admit some doubt as to the extent to which we could rule on programming matters other than to determine whether the licensee has made good faith judgments in its programming decisions."

"I am still a proponent of the Fairness Doctrine," the Commissioner stated when questioned about the FCC requirement that stations must treat controversial issues and air all sides of such issues.

He added that "eliminating restrictions" of the Fairness Doctrine in some cases would give broadcasters the "opportunity to exercise judgment."

(MORE)

The "Check Your Local Stations" workshop will continue here through Sunday, September 28.

Dr. Everett C. Parker, director of the Office of Communication and a champion of public rights in broadcasting for more than a decade, will address the workshop at its closing session Sunday at 11:00 a.m.

#

September, 1975