Statement by FCC Commissioner James H. Quello
at the
ABC Television Affiliates Government Relations Committee
Sheraton Grand Hotel-Capitol Hill
Washington, D.C.
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I am happy to be with you today. There ia a variety of issues I could discuss, such as must-carry, hostile takeovers/friendly mergers, and efforts to deregulate the broadcasting industry. I think you are well aware of my position on these issues. In case you need reminding, I am for a realistic must carry. I oppose the trustee concept in the case of hostile takeovers, and I favor sweeping deregulation of the broadcat industry. It is this last issue, broadcast deregulation that I would like to discuss further.

To be upfront, I am coming here today to gain your support for the legislative proposal package the Commission is submitting to Congress. Never before in my tenure as Commissioner has the Commission made such bold recommendations to deregulate the broadcast industry. To a large degree the FCC through its legislative recommendations has done what it can in suggesting changes to the Act, and now the ball is in your court. Members of Congress need to know that the proposals offered by the FCC are not simply conjectures on behalf of the Commission, but reflect the true desires of the broadcast industry. In short, if these proposals are to be successful, a uniform, cohesive and comprehensive lobbying effort will have to be made by the broadcast industry. I am confident that you are up to the challenge.

I would like to just go through these proposals so that you could understand what the Commission is recommending to Congress. (1) **First we are recommending that Section 326 be amended to read as follows:**

> **"Nothing in this Act shall be understood or construed to give the Commission any power of censorship over the content of communication, and no obligation or condition, including any obligation to afford opportunity for discussion of conflicting views on any issue, shall be promulgated or fixed by the Commission which shall interfere with the right of free speech or of free press."**

In making this recommendation, the Commission stated, "the 'Fairness Doctrine' is a significant government intrusion on the First Amendment rights of broadcasters. The traditional spectrum scarcity argument which has provided the basis of the Doctrine has become increasingly less valid as new technologies proliferate and the number of broadcast facilities increases, particularly as compared with the print media." There is simply no longer any justification for imposing these obligations on broadcasters when such obligations are not imposed upon the print media.

This past summer, the Commission completed its review of the Fairness Doctrine and concluded that the Doctrine inhibits the presentations of matters on controversial issues. Further, the report concluded that the Doctrine is unnecessary to assure

public access to a marketplace of ideas and it disserves the public interest. We did not reach a definitive conclusion as to whether the Doctrine is codified in the Communications Act and essentially, we indicated that we would defer to Congress on this issue. Therefore, we propose that Congress eliminate the Fairness Doctrine.

(2) **We also propose the repeal of the equal time provision, thereby eliminating Section 315 of the Act.**

> **Section 315 requires a broadcaster to afford "equal opportunities" to all legally qualified candidates for public office who request such an opportunity within 7 days following the "use" of the broadcaster's facilities by an opposing candidate. Further, any such sales of broadcast time must be made at a non-discriminatory rate, and during specified periods immediately prior to elections, sale of time must be at the broadcaster's "lowest unit charge" for the category of time being sold.**

This rule has created situations where broadcasters provided no opportunity to legally qualified candidates for public office for fear of having to provide time for all candidates. Such a law may work against providing the opportunity for the public to become more informed about political candidates. The risk posed by favoritism of candidates by individual broadcasters is outweighed by the dangers of government intervention. The Commission would retain authority to investigate and respond to

serious discriminatory practices amounting to abuse of licensee privilege. Personally, I believe that repeal of Section 315 would go a long way toward providing broadcasters the opportunity to present to the public those candidates who are leading contenders for public office.

(3) **The Commission also recommends repeal of Section 312(a)(7). This section was added in 1972 and provides a right of access to candidates for federal elective office.** We believe that changes in the methods of the sale of broadcast time during the past decade have made both the "lowest unit charge" and "the candidate access provisions" essentially obsolete. I believe that repeal of this Section would not jeopardize bona fide candidates' ability to secure broadcast time at reasonable rates. Certainly one could question the First Amendment implication of this Section of the Act. The newspaper industry would not tolerate such an intrusion on First Amendment right. However, because of the "scarcity argument, broadcasters must tolerate such intrusion.

(4) **We recommend restrictions on comparative renewals by amending Section 309 by adding the following:**

> **"(k) in any case in which the licensee of a station licensed under this Title submits an application to the Commission**

for renewal of a license, the Commission shall grant the application if it finds that: 1) the operation of a station has been free of any serious violation of the Act or the regulations and policies promulgated thereunder; and 2) the licensee remains otherwise qualified to be a licensee of the Commission.

1) In acting upon any application for renewal of any station license which is filed by the licensee under Section 308, the Commission shall not have authority to consider the application of any other person for the facilities for which renewal is sought."

The proposed new Subsections (k) and (1) would substantially simplify license renewal proceedings while maintaining public interest standards. I am sure that all of you are familiar with the complex and costly hearing that could evolve when your application for renewal is challenged by a potential competitor. The proposed changes provide a two-tier approach to license renewal proceedings. On the first tier, the imcumbent licensee's performance during the preceding license term may be compared only with the standards set forth in the amendment, and not against any competing applications. On the second tier, if the licensee's performance meets or exceeds these standards, then the Commission must grant renewal of a license. If the licensee's performance fails to meet these standards, then the licensee's application may be designated for hearing on its basic qualifications. I think you can clearly see the merits of this approach. This proposal would save the substantial resources now expended on comparative renewals by licensees, competing applicants, and the Commission.

(7) Regarding Petitions to Deny, **we recommend that Congress amend Section 309(d)(1) to read as follows:**

> **"Provided, however, that a Petition to Deny premised in whole or in part on economic injury to existing stations shall not be entertained insofar as the petition relies on allegations of such injuries."**

The purpose of this language is to overrule the Carol Doctrine. As you know, the Carol Doctrine provides a powerful tool for existing licensees seeking to delay the institution of new, competing stations. Now I am sure that this is not music to your ears, nonetheless, I believe that through competition there will be an even greater likelihood that the public interest is being served.

More importantly, however, **we recommend that Section 309(d) be further amended by adding the following:**

> **"(3). The Commission shall not consider any Petition to Deny filed as a consequence of an applicant having failed or refused to provide the petitioner, its agents, representatives or employees, or any third party designated by a petitioner directly or indirectly, with any item of tangible benefit in return for forbearance from the filing of such a petition.**
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> **4). If there is pending before the Commission a Petition to Deny any application, it shall be unlawful for the petitioner and the applicant to enter into an agreement whereby the petitioner withdraws its petition in exchange for the payment of money, the transfer of assets or anything of value, or the provision of any item of tangible benefit**

by the applicant, or on its behalf, to the petitioner, its agents, employees, representatives or designees in excess of an amount representing the actual cost incurred by the petition in connection with the prosecution of its petition. For the purpose of this subsection, a petition shall be deemed to be pending before the Commission from the time such petition is filed with the Commission until an order of the Commission granting or denying it is no longer subject to rehearing by the Commission or to review by any court.

5). Any applicant or any licensee from which money or other tangible benefits has been demanded or requested in return for the forbearance from filing, or for the withdrawal of, a Petition to Deny shall have a civil cause of action against any person who has made such demand or request and shall be entitled to recover from such person actual damages including, but not limited to, reasonable attorney fees and other litigation cost reasonably incurred in defending against any petition filed or not withdrawn as a consequence of the applicant's or licensee's failure or refusal to accede to the demand of the request."

I believe if adopted, these revisions would end what I consider to be in some cases the equivalent of extortion. The Commission believes that these proposed amendments would be of substantial benefit in curbing any abuses in the Petition to Deny and citizen/broadcaster agreement procedures. More importantly, none of these proposals should in any way chill legitimate petitioners from filing petitions to protect the public interest.

The Commission also **recommends amending Section 309 to address the issue of broadcast deregulation. We propose the following amendment:**

"(j) In evaluating a new application, license renewal application, assignment and transfer application, or major modification application of any radio or television station, the Commission may not designate for hearing or otherwise consider any issue pertaining to the following matters: 1) the procedures used to ascertain the problems, common needs, and interest of the service area; 2) the percentage of broadcast time dedicated to nonentertainment programming; 3) the percentage of broadcast time dedicated to commercial announcements; and 4) the maintenance or public availability of program logs."

This amendment essentially codifies the Commission's radio and television deregulation orders by prohibiting in radio and television licensing hearings the designation of any issues regarding the incumbent licensee's ascertainment of community needs, the percentage of nonentertainment programming broadcast, the percentage of commercial time broadcast, or the maintenance of programming logs.

Other legislative **proposals include amendments addressing Section 307(b) referring to the geographical distribution of licenses.** Currently, Section 307(b) requires the Commission to provide a fair, efficient, and equitable distribution of radio services to each of the several states and communities. The Commission proposes an amendment to this section that would enable it to allocate broadcast facilities on the basis of the greatest demand to an entire service area rather than on a more restricted basis to a specific community of license.

We are also **recommending that Section 318 be amended to allow the Commission to make special regulations governing the granting of licenses for the use of automatic radio devices and for the operation of such devices.** Our proposed amendment does not require or encourage broadcasters to abolish the use of human operators for actual operations. However, the amendment authorizes the Commission to permit broadcasters to make the decision as circumstances require, to substitute automated technology for human operators. Broadcasters' reliance on such new technology will allow stations to become more cost-effective and efficient.

We propose amending Section 319(d) pertaining to construction permits. This amendment would permit the Commission, after making a finding that the public would be benefitted thereby, to waive the requirement of a construction permit for a broadcasting station. This amendment would facilitate the construction permit/licensing process into a simple one-step procedure.

Finally, we propose amending Section 308(b) and 319(a) by deleting references to "citizenship," "character," "financial," and "technical" qualifications. These sections relate to Commission requirements contained in the various applications.

These references are merely advisory and do not mandate specific requirements. However, some individuals have indicated that this language is mandatory. The difference of opinion between Commission interpretation and public interpretation has resulted in a great deal of confusion. By deleting specific references and substituting a phase such as "qualifications the Commission may prescribe" the Commission would have greater discretion in discharging its overall public interest responsibility.

I know I have described only briefly the sweeping deregulatory recommendations the Commission is making to Congress for legislative action. I hope that you will take the opportunity to study each of these proposals in greater detail and provide the necessary support for Congressional action on these matters. It will take a lot of work on your behalf, but I remind you that Rome was not built in a day. If progress is to be made in these areas, then Congress will have to hear from you. Go forth and let your cause be known. Thank you.