STATEMENT ON "MUST-CARRY" FOR THE RECORD

OF THE COMMISSION MEETING AUGUST 7, 1986

OF COMMISSIONER JAMES H. QUELLO

I want 3 or 4 minutes to personally clarify my position for the record of this meeting. This is particularly fitting as I was the dissenter in the FCC's decision not to appeal the Quincy decision. I continue to believe that our must-carry rules were constitutional, as written. The courts had sustained our rules in the past and I believe the Quincy court had a contrary view, perhaps, in part, because the Commission became over the years negligent in continuing to articulate the compelling governmental interest that still exists even in the 1980s. More importantly, I want to emphasize my belief that we are not maximizing the most compelling argument of government interest for the limited must-carry we are proposing today -- the substantial government interest enunciated in Section 307(b) of the Communications Act.

First, I want to address head-on the preposterous charge in the press and heard occasionally within the halls of the Commission that there is a political "taint" to these proceedings. The press quotes from the very subjective self-serving opinions of expert attorneys well paid for representing cable clients who state we have permitted "political pressures to infest this vital process."

There is an inference that Congress has succumbed to the so-called powerful broadcast lobby -- the same powerful lobby that despite years of all-out intensive efforts has not been able to convince Congress to repeal Section 315 or the Fairness Doctrine or to codify the Commission's radio or TV de-regulation. This is the same broadcast lobby that Senator Packwood, then Chairman of the Senate Communications Subcommittee, described as not being able to lobby themselves out of a paper bag -- that was two years after I characterized broadcasters before a convention audience of 1500 as a "huge inept sleeping giant in defending its own interests."

I believe members of Congress have the right and even the obligation to express their views publicly on important subjects affecting the public interest in vital communications. This particularly applies to regulatory agencies.

I submit that this unprecedented Congressional support for some kind of reasonable must-carry had to be generated by the belief that justice and reason prevail in the communications marketplace. It was the very first time that I can recall in my 12-1/2 years on the Commission that I saw a letter requesting Commission action signed by every member, Republican and Democrat, of the House Communications Subcommittee. This Congressional outcry is intrinsic testimony to the strong governmental interest in must-carry.

I want to express my appreciation for the helpful thought-provoking proposals of Senator Danforth; NTIA Director, Al Sikes; and Communications Subcommittee Chief Counsel, Tom Rogers.

Our proposal today seems to represent a sincere attempt to adopt a workable, reasonable, compromise position. The compromise which is being adopted by the Commission is an improvement over the industry compromise in that it provides some special relief for public broadcasting. It also takes into consideration the plight of new UHF stations by eliminating the minimum viewership requirements for the first year. Consequently, I plan to agree with the result, under the premise that something is better than nothing.

I previously stated that I believe the Commission's must-carry rules, struck down by the Quincy court, were defensible had the Commission had the will to defend them. I dissented from the majority's decision to accept the Quincy ruling without protest. I continue to believe that comprehensive must-carry rules are necessary to protect our system of free over-the-air television broadcasting and the government's legitimate interest, pursuant to Sections 1 and 307(b) of the Communications Act, in fostering a system accountable for serving the public interest. Cable, once installed, is a geographic bottle-neck with little or no program accountability to any public or government authority unlike broadcasting that is required to maintain a programming/issues list and a local studio presence as evidence of its obligation to serve the needs and interests of its local community.

I opposed the initial A/B switch proposal because I believed it generally overlooked the norms of human behavior and common sense. It was not credible that most cable subscribers would maintain antenna systems solely to receive the less popular television stations their cable systems choose not to carry. Also, unless antenna systems are maintained in good working condition, and not prohibited by local regulation, the presence of an A/B switch is of no avail. However, the current A/B switch proposal is well worth trying. It has the potential of providing future empirical data on the marketplace feasability of the A/B switch. I hope it will provide the answer to the must-carry dilemma.

Public broadcasting, although specially acknowledged in the Commission's plan, is certainly losing much of the coverage one might expect for a service chartered by Congress which continues significant funding. The diversity of views contemplated by Congress and supported through the years by this Commission can only be diminished under this well-meaning plan which relegates to one video transmission pipeline a gatekeeping power over all video services that are licensed to serve the public interest in the area. While some may view elimination of must-carry requirements as a triumph of the marketplace, I view it as an unbalanced skewing of the marketplace to favor one participant over another. And, public broadcasting -- created specifically to stand outside of the marketplace and offer alternative educational and cultural television fare -- stands to lose carriage of many of its stations.

I regret that we have not adopted broader must-carry rules because the experimental course we have chosen is still inadequate to redress the critical marketplace imbalances fostered by the Quincy decision. Nevertheless, our action today provides a much needed transition study period of partial must-carry with ample latitude for cable to exercise First Amendment judgments. I fervently hope that our system of free television broadcasting, which serves virtually all of the nation, is not seriously impaired by a misguided effort to preserve alleged First Amendment rights of a monopoly program distribution pay service that serves less than half of our citizens.

In my opinion, the over-riding imperative is the substantial government interest in the continued ability of stations to have practical, workable, access to the public they are licensed to serve. It is vitally important, too, that these licensed entities continue to have the capability of providing a diversity of viewpoints in a free competitive marketplace as ordained by Congress and supported through the years by both Congress and the FCC.