

INTEROFFICE MEMORANDUM

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TO: Chairman Fowler  
FROM: Commissioner Quello  
RE: Must Carry  
DATE: August 6, 1986

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Mark, we are very close to reaching a consensus that should produce a 5-0 vote on must carry. It is my understanding that a compromise on the language characterizing the future rulemaking has been reached. I appreciate that.

Unfortunately, however, there is still evidently strong opposition to granting my wish that the Commission rely upon Section 307(b) as a secondary, back-up rationale for justifying must carry. Since none of my colleagues have denied that this is a strong, if not the strongest, argument, I simply cannot be satisfied unless there is some reliance on Section 307(b). And I also want to be assured that our General Counsel is permitted to use that argument in defense of our rules.

I want to point out that my insistence on this point in no way represents an unwillingness to compromise. Keep in mind the following. I originally believed that the A/B switch would be unworkable. I'm now willing to give it a chance. I originally fought for appealing Quincy and recently continued to urge full must carry, especially for public stations. I lost. I am now going along with the A/B switch, a 5 year sunset, a consumer choice principal rationale, and a heck of a lot less than full must carry. In a nutshell, I think I'm entitled to something more than dropping one sentence and one word regarding our future rulemaking.

I am also concerned that the Commission exert its best efforts to ensure that the interim plan survives court review. Without a 307(b) argument, I don't believe that we can claim a serious effort to meet the Quincy court's constitutional concerns.

cc: Commissioner Dawson  
Commissioner Patrick  
Commissioner Dennis  
Chief, Mass Media Bureau  
General Counsel