ALASKA BROADCASTERS ASSOCIATION

LUNCHEON ADDRESS: "FCC UPDATE"

By COMMISSIONER JAMES H. QUELLO

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Thanks for the gracious introduction and warm welcome. I'm happy to be considered a friend of both commercial and public broadcasters in Alaska. It's a friendship that comes naturally to me. You see, I didn't have to search for a mutuality of interests. As my friend Augie Hiebert and many of you know, I was a civically active broadcaster for 28 years and a former president of the Michigan Association of Broadcasters. I also served as MAB legislative chairman for ten years.

What most of you don't know is that I was born and raised in an Alaska of the lower states, Laurium, Michigan. Laurium is about 620 miles north of Detroit and practically surrounded by Lake Superior in the very peak of the Upper Peninsula. It is famous for being the home of George Gipp -- the original Gipper (my older brother attended high school with him). Incidentally, I really like the actor who played the role of the Gipper. Laurium is also known for its early fall and late spring blizzards and 30 degrees below zero winter weather. It is now a defunct copper mining town and not nearly as exciting or promising as Alaska. I dislike being disloyal to my old home town, but today it is a much better place to be <u>from</u> than <u>in</u>.

44-1

I have also been told there are very few one way airplane tickets sold to Laurium. However, you did learn how to survive winters there and I learned that you don't eat yellow snow.

Also salmon don't come near Laurium or Copper Harbor to spawn. Salmon come to Alaska because it's such a nice place for anything to spawn in. In fact with all the long wintery nights, invigorating cold air, cozy houses, and all the incentives to spawn, I'm surprised Alaska isn't the population explosion center of America!

You should appreciate that Alaska, the 49th state in the Union seems to be first in the minds and hearts of national regulators and legislators. In fact, Senator Ted Stevens, the strong majority whip in the Senate, backed by stalwart fellow Alaskan Senator Frank Murkowski, makes damn sure that Alaska remains first in your heart and mind. Senator Ted reminds me of my old friend from Michigan, Chairman John Dingell -- He too makes a great friend and a terrible enemy. I'm glad to call them both friends. (Humorous anecdotes here)

Now on to Alaska and the more recent contentious issues at the FCC.

I'm happy to report that the Mass Media Bureau informed me there aren't any pending Alaskan broadcast issues at the FCC. Apparently all licenses are in good order and the bureau reports that Alaska was granted 50 KW for all regional radio stations and that all Class 4c are authorized 50 KW.

It seems that Alaska is a model in the use of good old fashioned AM radio because AM benefits from the greater propagation capabilities.

I'm told that the recent agreement regarding AM daytimers reached with the Mexican government has no effect on broadcast stations in Alaska. There are no daytime-only stations in Alaska due to the extreme swings in signal propagation at the higher latitudes. In any event, the agreement permits approximately 1700 AM daytime stations in the lower states to broadcast up to two hours after sunset (local time). Approximately 300 other stations will be able to stay on all night. These new all-night stations operate on channels that previously had to be cleared after sunset so that they would not create any interference with Mexican stations. These new all-night stations will be able to stay on-air so long as they do not cause interference. You can see that it is a great boon to AM stations in the lower states.

The most contentious broadcast issues at the FCC may not impact you Alaskan broadcasters as much as others in the more densely populated areas of the country. However, I would like to take this opportunity to present my viewpoints on the major controversial issues of must-carry, and the unprecedented number of mergers and sales within the past two years. If time permits, I'd like to touch on the U for V swaps, the upcoming fees for FCC licenses and the continuing danger of license renewal challenges.

As you may have concluded from the uproar in Congress and the trade press, the most controversial broadcast issue for the year was and is "must-carry." I'd like to personally clarify my position as I was the lone dissenter in the FCC's decision not to appeal the Quincy decision that found our must-carry rules unconstitutional. I continue to believe that our must-carry rules were constitutional, as written. The courts had always sustained our rules in the past and I believe the Quincy court had a contrary view, perhaps, in part, because the Commission became negligent over the years in continuing to articulate the compelling governmental interest that still exists even in the 1980s. More importantly, I don't think we sufficiently emphasized the most compelling argument of government interest for the limited must-carry we proposed -- the substantial government interest enunciated in Section 307(b) of the Communications Act.

First, I want to address the preposterous charges made in the press and repeated occasionally within the halls of the Commission that there was a political "taint" to the must-carry proceedings. The press quotes were from the very subjective self-serving opinions of expert attorneys well paid for representing cable clients who stated the FCC had permitted "political pressures to infest this vital process."

I believe members of Congress have the right and even the obligation to express their views publicly on important rule-making subjects affecting the public interest in vital communications. This right or obligation particularly applies to regulatory agencies that are considered arms of Congress.

I submit that this unprecedented Congressional support (and that included strong support from Senators Ted Stevens and Frank Murkowski) for some kind of reasonable must-carry had to be generated by the belief that justice and reason must be made to 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 by itself is intrinsic evidence of the strong governmental interest in must-carry.

We even received very helpful and thought-provoking must-carry proposals from Senator John Danforth, the Chairman of the powerful Senate Commerce Committee; NTIA Director, Al Sikes; and House Communications Subcommittee Chief Counsel, Tom Rogers.

The proposal the Commission adopted seems to represent a sincere attempt to adopt a workable, reasonable, compromise position. The compromise was an improvement over the previous industry compromise in that it provided some special relief for public broadcasting.

It also took into consideration the plight of new UHF stations by eliminating the minimum viewership requirements for the first year. Consequently, I agreed 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 if the Commission had the will to defend them. I dissented from the majority's decision to accept the Quincy ruling without appeal and protest. I agree with Congressman Al Swift, a knowledgeable Communications Committee leader, who charged the FCC took a dive on "must-carry." The court practically invited an appeal stating it would be willing to consider a recrafting of the rules. 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 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 as many are by local regulation, the presence of an A/B is of no avail. I don't have much enthusiasm for the current A/B switch proposal but it may be well worth trying. It has the potential of providing future empirical data on the marketplace feasability of the A/B switch. I hope the A/B switch will provide the answer to the must-carry dilemma -- but in my opinion, it is a long shot. In the meantime, we have a reasonable must-carry proposal in place -- subject to reconsideration and possible further court appeal.

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 continued its significant funding. The diversity of views contemplated by Congress and supported through the years by this Commission can only be diminished under our 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 on August 7, 1986 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 broadcast 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.

I have also expressed concern about the turmoil and disruption caused by the unprecedented number of station sales, take-overs and mergers the past two years. I don't believe the recent instability serves overall public interest.

When a broadcast property is challenged by a take-over or a license challenge, top management's first priority, and logically so, is to defend the company or the license. Programming including the most vital news and public affairs programming, will inadvertently or vertently, receive less commitment and time from key top management. All the resources of the licensee are concentrated on fighting or negotiating with the take-over challenger.

I believe broadcasting more than other industries requires stability and long range planning capability to maximize service to the public. In some cases like CBS, the huge debt incurred in fighting off take overs or proxy fights results in the company serving debt rather than serving the public.

Unfortunately and perhaps, unintentionally, the FCC has contributed to this destabilizing take-over and merger mania the past two years.

We first fostered a climate that made take-overs relatively easy. At one time, the FCC public interest approval required to take-over a broadcast property was considered a formidable requirement. Now it was found to be not only possible but relatively easy.

The FCC actions fostering the easy sale, merger or take-over climate encompassed a variety of actions including the following: the new trustee concept to facilitate and expedite hostile take-overs, elimination of the three year holding rule; the simplification of financial qualification requirements by only requiring a simple personal certification, the extended 12-12-12 limit on station ownership, the new more liberal ownership attribution rules, and the easing of license renewal and license transfer requirements.

I have to admit I supported most of the measures, but I would like to re-establish the three year and the financial responsibility rules. I vigorously dissented to the trustee concept in hostile take-overs.

Other factors that caused the gold rush to stake a claim in broadcast properties were (1) the increased awareness two years ago that broadcast properties were great cash flow vehicles and relatively underpriced; and, (2) the incentives of an attractive depreciation allowance for new owners.

My general attitude questioning take-overs by professional financial raiders was initially expressed in my by-line article in The Los Angeles Times (March 22, 1985). The key last two paragraphs read:

"The financial community should realize that broadcast properties should not be considered just another takeover game. Potential buyers have to meet the requirements of not only the Securities and Exchange Commission and the Justice

Department but also the FCC, which is required to make public interest finding before a transfer of control or ownership. The requirement for FCC approval is something that potential raiders should keep in mind.

Our broadcasting system requires a degree of stability that is not enhanced by excessive financial manipulation and speculation."

I naturally don't oppose all mergers and sales. Many of the purchases and mergers between communications companies serve the public interest. My main concern was with professional raiders and financial opportunists with little or no broadcast or communications background or commitment. I was once quoted and I repeat "I don't think I was appointed by the President and ordained by Congress to accommodate a bunch of fast buck artists trading broadcast properties like commodities."

I think the public and the broadcast industry would be well served by some return to stability. I suggest more careful scrutiny and more rigid procedural requirements for hostile take-overs. This would tend to assure that control of broadcast properties that were carefully developed over years of public service, remain in the hands of responsible, experienced communications executives and owners.

I can predict with virtual certainty one of the changes in the broadcasting industry over the next four years. On April 7th of this year, the President signed into law the Consolidated Omnibus Budget Reconciliation Act of 1985 which,

among other things provides for fees to be paid to cover the costs of regulation. The Commission stated its intention to put the fee schedule into effect within a year of that April 7th date. On July 9th, we released Notice of Proposed Rulemaking proposing a schedule. My best guess is that the Commission will conclude that proceeding in mid to late October and we should be ready to start collecting fees well before the April 7th, 1987 deadline. Our costs of collecting the fees will be paid from the fees collected with the remainder going to the general treasury. As you are probably aware, the proposed fees appear reasonable and it should be a sensible plan to recover some regulation costs.

And in conclusion, a little word of warning on the vital subject of your license security. Remember there is still a continuing possible threat to your license at license renewal or transfer time. And remember, that in the case of a comparative renewal challenge the final decision could ultimately be determined by the U.S. Court of Appeals rather than the more deregulatory minded FCC.

I have been told that with the elimination by Congress, in 1982, of dollar limits on settlement agreement payments, license challengers can now demand large amounts of money to withdraw their competing applications. Unfortunately, underworked, opportunistic, hungry lawyers are becoming more willing to file competing applications and petitions to deny license transfers or assignments on a contingent fee basis.

Remember that it is relatively easy for an opportunistic challenger to outpromise with a paper showing what you actually had to perform in programming and public service.

This Commission believes in maintaining a reasonable renewal expectancy, but don't take it for granted. Be diligent in keeping your program/issues list on a quarterly basis. Keep a regular record of all issue programming. I'd strive to be a leader in community issue programming and in civic service. If in doubt, consult your communications lawyer.

In my 12-1/2 years in the FCC, I was delighted to be able to actively participate in sensible broadcast de-regulation and the elimination of burdensome reports and excessive paperwork. The veteran broadcasters among you must appreciate the fact that you never had it so good!

So it is encumbent on all broadcasters to prove that de-regulation and even further, un-regulation, really works and serves the public interest.

It's a serious responsibility. I know you will be equal to the task.

I wish you and all socially conscious broadcasters continued success and fulfillment in the promising years ahead.