DRAFT REMARKS FOR

ASPEN PANEL

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As I understand it, this meeting is principally concerned with three major areas of interest: broadcasting, programming and cable activities. All three are exciting, complex and--from a regulator's perspective--unsettled. Attempting to project advances in technology over the next four years is difficult. Trying to fathom the program preferences of the American public four years in advance is virtually impossible. And, the fact that there will be a presidential election in 1988--midway through the projection period--lends uncertainty about the regulatory climate.

I hasten to add that the regulatory climate isn't likely to change dramatically within that four year period whatever the outcome two years hence. Deregulation of broadcasting and cable is generally regarded as a phenomenon of the Reagan administration. However, it was well underway before Mr. Reagan occupied the Oval Office. Cable deregulation was being deregulated at a fairly rapid pace all through the Carter years. The groundwork for the breakup of the telephone system was being done during the Ford and Carter administrations both in the Congress and in the courts.

In broadcasting--both radio and television, AM and FM--there has been a concerted effort particularly over the past four or five years to remove as much regulation as possible in the belief that marketplace forces are better able to regulate industries than is government. I admit to subscribing generally to that precept. However, there are times when reliance upon marketplace forces is misplaced. For example, while I voted to remove the three-year, anti-trafficking rule several years ago, I would not do so today. In fact, I would reinstate the rule or something closely approximating it if I had that opportunity now. I believe that repeal of the three-year rule contributed to the relative instability we have witnessed over the past several months in the broadcasting industry. There are many other contributors, of course, perhaps chief among them the use of trustees in hostile takeover attempts. Other contributors include the increase in multiple-ownership limits from 7-7-7 to 12-12-12; requiring only certification as to financial qualifications, the easing of license renewal and license transfer requirements and incentives of attractive depreciation allowances for new owners.

I certainly would not support repeal of the financial interest and syndication rule at this time. There is some preliminary evidence that the relationship between producers and the networks are changing and the role that syndication plays in the financing of programming may be changing as well.

I don't believe the Commission should concurrently make changes which would be likely to only further confuse matters.

Since I believe modification of the old 7-7-7 rule is a contributor, albeit minor, to the present instability in the broadcast industry, I do not believe that the Commission should revise it further at this time. Under more stable circumstances sometime in the future, it might be appropriate to revisit the rule.

Recent action by the United States Court of Appeals for the District of Columbia Circuit has some important implications for the Fairness Doctrine. As you know, the Commission has been somewhat ambivalent with respect to the Fairness Doctrine and whether it was mandated by the Congress. The Court of Appeals appeared to have eliminated that ambivalence by finding that the Doctrine was not mandated by Congress but only permitted under the public interest mandate of the Communications Act. However, the Court found that the Commission is bound by the equal time requirements of Section 315. These findings were in the context of a teletext case but, since the court found that teletext couldn't be distinguished from broadcasting under the Act, they seem to have important implications for broadcasting as well.

Since one of the topics listed for this conference is UHF-VHF swaps, I'll briefly outline my position on this topic. However, it is not one of my favorite subjects. The issue is on a back burner and, so far as I'm concerned, it should stay there for the foreseeable future. While there are conceivably some benefits for some public broadcasting stations, I have concluded that any benefits are significantly outweighed by the costs of such a policy. In an earlier speech, I said "an intriguing idea whose time has not come and may never come. The long-range implications are too negative and there is overwhelming opposition from a large majority of PBS and commercial TV operators."

The cable industry looks considerably different, today, than when I first joined the Commission in 1974. There is little doubt that cable was overregulated back then. It seems likely that it is underregulated now. The celebrated Quincy case raised the First Amendment rights of cable operators far above conflicting rights of others in our society, including the First Amendment rights of broadcasters. The Preferred case, out in California, suggested that the cable industry's First Amendment rights included the right to use utility company poles and the streets and ways of a city. That case went back to the district court for more thorough consideration. The issue is bound to return, however, and its resolution will carry with it some profound implications.

Contrary to some popular legal lore, the compulsory license was intimately tied to must-carry in the process by which the compulsory license became law. Those who participated in the crafting of the compulsory license legislation are unequivocal in their recollection of a nexus between compulsory license and must-carry although the legislative history may not be so unambiguous.

Because the Commission's most-recent attempt to satisfy the Quincy court is covered by our ex parte rules, I cannot comment upon the virtues of that undertaking other than to say that I gave it very unenthusiastic support. The court will have an opportunity to review our efforts and pass judgment upon them. As most of you know, I was an early and continuing strong advocate of must carry.

All of the foregoing on cable is by way of saying that the regulatory situation with respect to cable is unsettled and is likely to remain so for some time. When the legal situation is straightened out, there are likely to be some interesting technological changes to deal with. For example, many of you might have noted an item in the September 8th Communications Daily proclaiming that the "(f)irst fiber optic cable system to transmit programming digitally to households is being built by Southern Bell in housing development Hunter's Creek

near Orlando, Florida." Southern Bell does not intend to operate the system, of course, but the capacity is there for someone else to use. Southern Bell, and others, have noted that the cost of high-quality fiber and associated equipment is coming down and the price of copper is going up. At some point, estimated by some to be within five years, it will be economical for telephone companies to install fiber, instead of copper, to provide only voice service to a residence. Given the likely demand for various data services in the next century, it seems likely that more and more fiber will be installed to be ready for that demand. Significant portions of that data capacity will probably be available for digital video services.

Should the Preferred case or its progeny be ultimately upheld, it seems likely that cable will become a competitive service within many communities. That brings us to another of the major topics before this meeting, programming. With the common carrier world moving toward the Integrated Services Data Network (ISDN) environment, given the immense capacity of fiber optic cable, video distribution problems will be greatly diminished. Sources of program supply seem destined to become even more important than they are today.

Those with the talent and resources to provide programming for the ever-growing demands of the marketplace in the years just ahead will be positioned for success. The market for programming has mushroomed in just the past ten years. The next ten should be explosive.

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 on year of that April 7th date. On July 9th, we released a 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. It may even, in a small way, provide some increased entitlement to your FCC license.

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 friendly 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 may be 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 from a regulation viewpoint, 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. For your sake and for this de-regulatory Commission's sake, you must be equal to the task.

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