VIEWS

MUST-CARRY RULES FOSTER IMBALANCES

By James H. Quello
Commissioner, FCC

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 1980's.

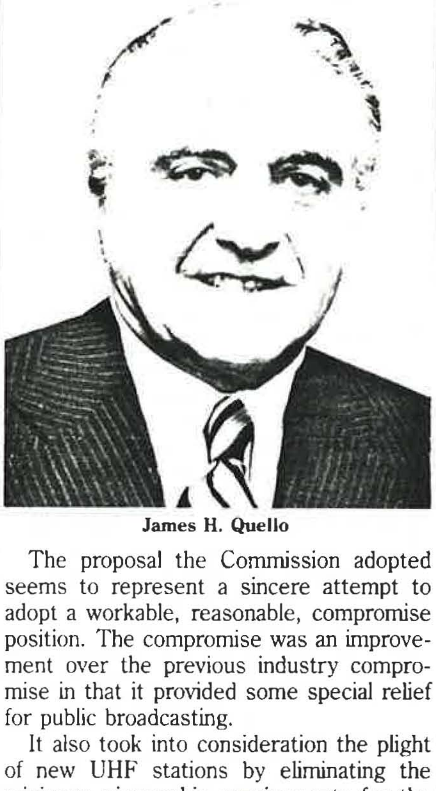
More importantly, I don't think we sufficiently emphasized the most compelling argument of government interest for the limited must-carry we proposed—the substantial government interest enunciated in Section 307(b) of the Communications Act.

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 12½ 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.



James H. Quello

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

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(This article was adapted from a speech by Commissioner Quello delivered to the Alaska Broadcasters Association, September 19.)

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TAXTALK

Tax Reform: A Closer Look

By Richard J. Romanoff, C.P.A.

As this article is being written, the Senate and House of Representatives have agreed upon the final form of the 1986 tax reform bill. This legislation must still be passed by both Houses of Congress and signed by the President. It appears to be a certainty. While the tax bill is not yet the law of the land I am taking the liberty of beginning a series of columns which will cover the major aspects of both individual and business tax reform. In most respects, it is a completely new ballgame and all taxpayers must go back to the drawing board and examine their investment, financial and tax philosophies.

Individual Retirement Accounts

One of the changes which attracted the most press and will have an impact upon the most taxpayers is the elimination of the ability for every person with earned income to claim a tax deduction for money contributed to an individual retirement account.

The new rules provide that people with both adjusted gross incomes in excess of $50,000 and who are members of a qualified pension or profit sharing plan, will not be permitted to deduct a contribution to an IRA. This rule is the same rule that used to exist when individual retirement accounts were first introduced in the 1970's. It was not until recently that all people with earned income were able to contribute to an IRA. People with lower amounts of earned income will still be able to contribute to an IRA, but the total amount will phase out from $2,000 down to $0 as adjusted gross income approaches $50,000. The amount of IRA deduction can range from $1 up until $2,000.

Personal Service Corporations

One of the lesser known provisions which will have a substantial effect on many individual taxpayers is one that relates to personal service corporations. These corporations, while primarily used by professionals, are also used by salaried individuals who prefer to have a corporation represent them in the marketplace. Income is paid to this corporation which in turn pays certain expenses and a salary to the individual. One of the techniques that has been used is to have the personal service corporation select a year-end other than December 31.

So, for example, if the corporation selected a February 28 year-end and paid its salary to the person performing the services (i.e. the shareholder) in February, he would effectively defer tax on income earned from March 1 through December 31 into the following year. This advantage is being eliminated for tax years that begin on or after January 1, 1987. These types of corporations must all change their year-end to December 31, 1987. In order to ease the burden of double income in the year of change, the earnings of these corporations will be taxed to the shareholder over a four-year period. On a go-foward basis, however, people will have to arrange their cash flow so as to enable them to make their tax payments currently as opposed to the constant deferral.

S Corporations

A decision always was made by owners of closely held corporations as to whether they wanted to be taxed as a regular corporation or an S corporation. The advantage of an S corporation is that the taxable income of the corporation is taxed directly to the shareholders and the corporate tax is avoided. This option will now become extremely popular under the new tax bill. The reason for it is quite simple. Under the new law the maximum individual tax rate will be 28%. The maximum corporate tax rate will be 34%. There is no advantage to accumulating money in a corporation because it can be distributed to the shareholders and taxed at the lower rate. The rate structure is now such that it is more advantageous to pass the corporate profits through to the shareholders and have them pay tax only at the individual level. Because the income tax rates are due to come down in phases over the next two yeas, the timing of the election to be an S corporation is something that is very important and must be watched very carefully. ▭

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(Questions of general interest will be answered in this column. Send to: "Tax Talk," c/o The NATPE Programmer, 330 W. 58th St., Suite 6-A, New York, NY 10019.)

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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. ▭