

COMMENTS BY FCC COMMISSIONER JAMES H. QUELLO
BEFORE THE AMERICAN ADVERTISING FEDERATION
WILLARD HOTEL, WASHINGTON, D.C.

MARCH 13, 1987

I'm delighted to be here at the invitation of my longtime friend, Howard Bell, before a prestigious gathering of the American Advertising Federation.

And I especially appreciate the gracious introduction. In fact, I appreciate any gracious introduction from any unregulated entity. You see -- many introductions lately seem formulated for the purpose of testing a speakers' tolerance for humor.

In a recent speech titled "FCC -- From Crisis to Crisis," the MC (Master of Ceremonies) an old friend, introduced me saying, "The crisis situation at the FCC has become so pervasive, it has caused our speaker today many a sleepless afternoon." Of course, the emcee wasn't from a regulated industry.

Another toastmaster with a light smirk introduced me at my "Inside View of Regulatory Washington" speech with "And now here's the dope from Washington, Jim Quello."

They say happenings come in three so I wasn't too surprised recently when a letter addressed only to "That Idiot at the FCC" found its way to my office in-box. I quietly dispatched it to another more appropriate office.

My sense of humor seems destined to be tested even in my own office. Recently I wore a silk tie from China with a design of a beautiful hand painted panda. A longtime associate remarked it was a very distinctive tie, but he reminded me that pandas mate only once a year and said "No doubt your wife gave it to you."

However, I'm not always treated like Rodney Dangerfield -- The TAT-7 event several years ago illustrated most dramatically the real importance of being an FCC Commissioner. (Italian overseas story)

I'm particularly pleased to be facing a courageous group that has withstood the taunts of liquor and cigarette advertising and false advertising and is now determined to make a most significant social contribution to the salvation of mankind (and incidentally to advertising bottom lines) by initiating comprehensive advertising campaigns for condoms. I was advised by my trusty legal assistant not to touch the subject and at my age it is relatively easy to comply literally and figuratively!

Anyway, I'm a strong First Amendment advocate -- generally, if it is legal to sell, it should be legal to advertise -- but please in good taste and with a sense of social responsibility. My simple plea -- don't make First Amendment advocates ashamed that they have to defend you.

Now from the untouchable to the touchable subjects: Advertising is not directly regulated by the FCC, but is somewhat impacted by FCC regulatory jurisdiction over broadcasting, cable, satellites, telephone, and teletext.

I think the greatest impact the FCC has had on advertising in the 13 years I have served on the Commission has been our efforts to authorize additional distribution channels for advertising messages. Such additional channels include the growth of UHF-TV, cable TV with their advertiser-supported cable channels, low power television, teletext, MDS, and direct broadcast satellite services, not to mention the growth of radio with additional allocation of over 1,000 stations. The increasing new distribution channels provide greater opportunities to target specific audiences at a hopefully-competitive cost-per-thousand price.

Perhaps the second most significant action by the Commission in my list of "significant actions" is the elimination of commercial time guidelines. I am convinced that, over time,

advertisers and broadcasters will experiment with new and innovative advertising formats. I believe there is no limit to creativity in the advertising industry,. Perhaps by eliminating some of the regulations imposed on broadcasters, and indirectly on advertisers, greater efficiencies can be introduced in the development of advertising messages for a wider variety of distribution channels. One example is new programming sponsored by real estate firms showing homes for sale. It was previously prohibited as a program length commercial.

With the deregulation efforts at the FCC come increased responsibilities for broadcasters, and I might add, advertisers. As the marketplace orientation to public policy progresses, broadcasters and other licensees will be affected more directly by consumer expectations and demands. If there is shelving or neglecting of the increased responsibilities brought on by deregulation, then there is the likelihood that the public will play a more active role in petitioning the FCC, and in the case of unfair and deceptive advertising, the Federal Trade Commission.

It is important to realize that my colleagues and I at the FCC have maintained that we have the right to establish guidelines governing advertising. However, we chose an alternative approach of marketplace-based policy.

So while the present Commission is not inclined to regulate such things as "good taste," it seems clear that future Commissions will have such options should they desire to exercise them. Conceivably the Commission could make an extreme public interest finding that advertising should be limited or prohibited from interrupting programming continuity -- or even that advertising should be permitted at only certain times of the day.

The FCC prefers not to regulate the content of broadcast programs or advertising. Actually, the First Amendment and Section 326 of the Communications Act expressly prohibit us from program content censorship -- this includes advertising content, at least to some extent.

In my opinion, the best means of assuring a marketplace approach to policy formulation is to assume the responsibilities and social consciousness such an approach affords the telecommunications industry and those industries, such as advertising, who play a key role in the financial support of licensees.

In no case do we pass advance judgment on any advertiser or advertisement. But neither do we allow the licensee to claim that "truth in advertising" is solely the advertiser's problem. To do that would be to violate a first principle of broadcast regulation: The licensee is ultimately responsible for what he allows to be broadcast.

The Federal Trade Commission has a mandate to protect the public against unfair and deceptive advertising, while the FCC must broadly protect the public interest, convenience, and necessity in the granting of broadcast licenses. Over the years, regulation at both Commissions have been formulated to implement various interpretations of our mandates. I can't speak for the FTC. However, at the FCC I do know that in some instances rules formulated years ago to protect the public interest have become antiquated and in some cases have actually stymied the public's interest. A review of our rules has led us to eliminate many that imposed unnecessary burdens on licensees. We also enacted rules that authorized new services to meet the public's needs. The Commission's deregulation of TV illustrates the now well-established FCC attitude. The FCC not only relied on a marketplace policy approach on eliminating commercial guidelines, but also voiced First Amendment concerns regarding commercial speech. The Supreme Court has increasingly recognized the First Amendment implications in regulating commercial speech.

Remember, there are influential groups in Washington that simply believe advertising, and particularly TV-radio advertising, is socially and economically harmful. Opponents of advertising claim commercial broadcasting is not an informative, entertaining, free service to the public, but is rather an over-commercialized, profit dominated advertising business that costs the public in increased prices for products and services.

They say that TV, the most powerful vehicle for information and enlightenment is dedicated in the United States to selling goods at the lowest possible advertising cost -- at the lowest cost per thousand. Mass audience is delivered, if necessary, by depictions of violence and sex, escape drama, by newscasters in an almost frenzied adversarial zeal to discredit the government of their own country, and by vapid comedy and quiz shows with too few enlightening programs calling for serious reflection. The argument continues (with some validity) that broadcasting is using up the highest paid creative skills of our nation, not to enlarge the human spirit, but to sell soap, cars, underarm deodorants, condoms and vaginal antiseptics at additional costs and high profits.

The "bottom-line" message of the critics is: TV and radio are the most powerful communications instruments in the history of civilization. They should be developed not for the narrow goals of sales and profits but to inform and enlighten the public and support and inspire the beleaguered spirit in our society. They have a point that broadcasters and advertisers alike should heed. The best defense is a constructive sense of social consciousness and responsibility by broadcasters and advertisers.

Commercial radio in the United States is only about 66 years old; television has been of significance a little more than half that long. The framework of government regulation of both

the radio and television industry go back, of course, to 1927 -- at a time when those very few broadcasters then in the business were begging the government to bring order out of chaos in the use of frequencies. These early broadcasters were primarily interested in technical matters -- equipment and frequency allocations. (They got more than they bargained for -- they got a general guide -- the "public interest" -- a term which has been and will continue to be reasonably subject to change -- and the source of a lot of uncertainty.) So actually the FCC was initially established as an engineering traffic cop -- as you know it has since taken on vice and morals responsibilities.

As Congress debated on what form the commercial broadcasting industry should take, there were some choices to be made. One of these choices was whether broadcasting in the United States would be a "common carrier" public utility type of industry with its time being available and being sold on a first come, first serve, basis at rates fixed by a government agency.

Congress emphatically rejected this choice and opted instead for a risk-capital, private enterprise system supported by advertising. Let me repeat. Congress approved an advertiser supported industry.

Thus, commercial broadcasting as we know it, grew to where it is today over 8,812 commercial radio and 1,000 commercial television stations, not including 409 low power TV stations, providing broadcast services to the people of this country.

Advertising is an important, indeed vital, part of that system. For without advertising, the American system of broadcasting as we know it today would most assuredly and completely collapse. Sometimes as I philosophize about the industry, the thought crosses my mind that advertising may well be this nation's principal guarantee against a government supported and controlled broadcast industry. Advertising underwrites the programming, the uncensored news and other services provided by the most varied and sophisticated broadcasting service in the world.

With my background, I believe advertising and marketing are vital forces in the American way of life. But what I believe, and you believe, and the critics believe about whether or not there should be broadcast advertising is not the issue here. Long ago, as I have already pointed out, when the framework of the American system of broadcasting was established, it was decided that the principal broadcasting service should be advertiser supported and free to the general public. The American people through Congress, rejected the support of broadcasting through the concept of license fees and rejected the creation of a government controlled broadcasting monopoly (which is characteristic of broadcasting systems in other countries).

As you are well aware, we have an alternative broadcasting system, Public Broadcasting, which is partially supported by government funding and which performs a distinguished and distinctive service to the American people. It, too, deserves and enjoys the support of many in the advertising industry through enhanced underwriting -- advertisers are associating with quality programming and enhancing their public relations.

And now a closing word about quality in broadcasting and advertising. "Quality" is a general term hard to specifically define in advertising or broadcasting -- but you know it when you see it.

I realize that in this age of computer buys and data processing systems, qualitative analysis of the media-buy is difficult, but I wonder if in the quest for gross rating points and demographics-targeting, we are not overlooking one of the most important factors in commercial effectiveness, the quality of the environment in which the commercial is presented. I guess it is a Utopian dream to expect that stations with the highest quality in programming, advertising standards, and production will guarantee the largest audience. Nevertheless, the public acceptance of advertisers associating with this type of station or program can provide a qualitative advertising impact not usually reflected in lowest common denominator ratings.

So advertising, broadcasting's life-line support system, is important -- vitally important -- not only to the health of broadcasting but to the well being of the American public. As a business-experienced Commissioner, I am most interested in seeing that the broadcasting and advertising industries in this country remain in good health -- physically, morally and financially -- so that they can continue to maintain quality programming free to the American people to better serve the public interest.

Advertising, through creating and supporting a wide variety of quality programs and maintaining high professional standards, can and must play a vital role in assuring American people the best broadcasting service in the world. Even more, advertising, broadcasting, industry and government -- all of us, must work together to assure that Americans do remain the best informed, the best served and the most gainfully employed people in the world.