

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

OFFICE OF COMMISSIONER
JAMES H. QUELLO

July 8, 1987

The Honorable Thomas R. Bliley
213 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Bliley:

This is in response to your questions submitted June 12 regarding the Federal Communications Commission Reauthorization Hearing. The questions and answers are as follows:

A) What is your opinion of H.R. 1786, the Telephone Decency Act?

I wholeheartedly support the intent of the Act. I believe the use of the nation's telephone networks for the purpose of disseminating sexually-explicit entertainment is inappropriate, particularly where this material is easily accessible by children. However, it is not clear to me that the Act is sufficiently narrow to avoid conflict with the First and Fourteenth Amendments to the U.S. Constitution. The courts have found that the FCC does have authority to restrict "indecent" language in radio broadcasting but only when it is likely that such language will be heard by children. It is clear that obscene language has no protection, but I am told that the standard for a finding of obscenity is a local community test which is beyond the reach of this Commission. The ruling in Pacifica appears to have been founded on the ubiquity of radio receivers and the fact that, given their low cost and small size, there is no practical way to limit their use by children.

B) What is your understanding of the FCC's ability to take action against obscenity in the media which it is empowered to regulate? Would actions taken to deny license renewal or impose fines preclude criminal penalties by the Department of Justice?

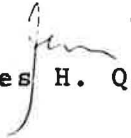
The deliberate broadcasting of material found to be obscene is clearly a violation of the law and would open a range of sanctions up to and including license revocation. The use of any regulated electronic media for the dissemination of obscene material also violates the law and is subject to sanctions. The FCC is not empowered to enforce criminal statutes and, thus, I believe that the Department of Justice would retain independent authority in that area.

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- C) I am uncertain...about your position on cable television and subscription broadcast television. How do you plan to proceed on complaints of obscenity and indecency in those areas?

Cable television and broadcast subscription services are, by definition, services with limited access. Subscribers must affirmatively act to have access and, thus, control remains with the subscriber. Furthermore, those who wish to subscribe to a service but to deny access to children may use a locking arrangement to exercise control. Obscenity, of course, remains subject to criminal penalties. However, it seems unlikely that the courts would uphold our authority to regulate indecency in these restricted media.

Sincerely,


James H. Quello

cc: Committee Minority Staff

*Tom: Mary sends her best to you...
thinks the FCC are "moral nerds" and doesn't
want to understand legal complications.
Best,
James*