

SEPARATE STATEMENT OF  
COMMISSIONER JAMES H. QUELLO  
CONCURRING IN PART AND DISSENTING IN PART

OCT 27 1988

Re: Report on the Compulsory License for Cable Retransmission  
of Broadcast Signals (General Docket No. 87-25)

As the report to Congress currently reads, I am concurring with that portion of the report recommending that Congress repeal the compulsory license for distant signals. Furthermore, I am dissenting to the recommendation that the compulsory license be repealed for local broadcast signals, or in other words, I recommend maintaining the compulsory license for local broadcast signals. In the best of all possible worlds, I would recommend that Congress first address the issue of must-carry. However, in the event Congress does not reimpose must-carry rules, I would then recommend elimination of the compulsory license for local broadcast signals.

I am concerned that with full copyright liability cable operators will have an additional variable to consider when making their determination whether to carry local signals -- the cost associated with retransmitting broadcast signals. It is conceivable that under full copyright liability cable operators may choose not to carry local broadcast signals due to the costs of programming retransmission rights. The report does not analyze the cost of full copyright liability on the individual consumer.

I will agree that absent must-carry rules and with compulsory license, the cable industry is enjoying a free ride at broadcasters' expense, and this cannot continue indefinitely.

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Rather than recommending that Congress eliminate the compulsory license, I would prefer recommending that Congress first consider reinstituting must-carry rules. The report states that in the event must-carry rules are reimposed compulsory license also would have to be reimposed. If Congress acts on the Commission's recommendation to eliminate compulsory license before addressing the must-carry issue and then decides to reimpose must-carry rules, then Congress may find itself with the task of reimposing both rules.

I also want to go on record disavowing myself from the economic analysis attempting to demonstrate that transactions costs on a per-subscriber basis are less today than in 1976. By distributing transactions costs across cable subscribers you have to take into consideration the increase in the total number of cable subscribers since 1976. Holding cable subscribers constant, transactions costs may have actually increased over the years. The economic analysis of transactions costs may lead one to conclude that such costs associated with the current scheme of distributing copyright royalties may undermine the rationale used by Congress to impose compulsory license in the first place -- the transactions costs under full copyright liability would be too burdensome.

I also disassociate myself from what could be interpreted as criticisms lodged against Congress and the Copyright Royalty Tribunal.