

**Remarks by Commissioner James H. Quello**

**Before the State Bar of Michigan  
Arts, Communications, Entertainment and Sports Section**

**Lansing, Michigan on September 20, 1989**

I'm delighted to be back in my home state of Michigan -- when you are from Washington these days, you are glad to be anywhere.

But in my case, I'm really honored to appear before the annual convention of the Michigan Bar Association. After all, I'm basically an Upper Peninsula Hillbilly, born and raised in Laurium -- the top of the Copper Country.

All my roots are really deep in Michigan. My wife and I both graduated from Michigan State. Her dad, M. H. "Dad" Butler was a beloved coach at U of D and later Detroit Parks and Recreation Commissioner. I went to work for WXYZ and the Lone Ranger in Detroit after returning from a non-scenic 33 month overseas tour 1942-1945. I then went to WJR and became VP-GM in the thriving year of 1960 BC (Before Cable). My claim to local fame is that I'm the guy who promoted J. P. McCarthy to morning drive time on WJR. He has been No. 1 in the market for 22 years and today is much more socially secure than his former boss who is now an FCC Commissioner. I also worked on WJR's original application for WJRT television in Flint.

I also owe my appointment and FCC confirmation to the Michigan Congressional delegation of 1974. My good friends, Senator Bob Griffin and then VP, Jerry Ford pushed hard for my nomination and my good friends, Senator Phil Hart, Judge Damon Keith and Congress members John Dingell, Martha Griffiths, Bill Ford and Lu Nedzi acted as witnesses and assured my confirmation. The Michigan state legislature, too, went all out on my behalf in 1974 with a gangbuster unanimous resolution supporting my FCC appointment.

Today, Michigan can be proud of the national leadership displayed by Communications Chairman "Big" John Dingell, and Senators Carl Levin and Don Riegle. Republicans Bill Broomfield and Guy Vander Jagt are also outstanding leaders in the nation's capital.

But enough for "This Is My Life." I'm here to expound upon the government regulatory world. It is a world dominated by lawmakers and lawyers -- most of them bright, dedicated and possessing high priced capabilities upon leaving government. Three of these bright lawyers are new commissioners and one has been designated chairman. Andrew Barrett, Sherrie Marshall are the two new Commissioners and my good friend Al Sikes is the new chairman. The fourth new commissioner is expected to be appointed this fall. My special assistant, Dr. Brian Fontes, is among the well qualified aspirants to that commissionership.

I'll try to paraphrase some friendly advice to the new commissioners similar to what I remember receiving upon joining the commission. I'll also add a line or two of my own.

First, a bit of advice, add all "your oversight Senators and Congressmen" to the fourth commandment." You will find that it is a good idea to honor them.

Remember you are now a confirmed bureaucrat, so don't worry about mistakes. Remember that when a bureaucrat makes a mistake and then persists in making it, it soon becomes policy.

Among the truisms someone was good enough to share with me, tongue in or out of cheek, was "master the art of dynamic inaction." Use your old army training -- don't volunteer. If in an unguarded moment you do volunteer, make sure there are people more knowledgeable than you to handle the project (this should be no problem, the complete FCC staff qualifies for this type of assignment); perform your daily minutiae with effervescent sincerity. Also keep in mind that the longer you are here, the more you will appreciate the seniority system. And finally, remember that social regulation cannot repeal the laws of physics, but it may make you more popular.

Now back to the real regulatory world -- most of you probably expect me to provide a special insider's insight into the future policies and operations of the new FCC. The best I can offer is an educated guess.

The future policy of the commission will be principally proposed by a very capable former head of the NTIA and two and eventually three new commissioners. It is now a fact that I'll be the only one with longtime institutional memory and recall -- a handy quality that might occasionally be useful to the enthusiastic, hard driving, regulatory new blood we now have on board. As you know, we operated with only three commissioners for over a year. In fact, I'll have to personally get used to operating without my awesome one vote veto power. Under conditions that existed until only one month ago, if one commissioner chose not to attend a meeting, there was no legal quorum for official business! Incidentally, I remember Chairman Mark Fowler's classic remark over five years ago when asked "What is the difference now that the commission has been reduced from 7 to 5 members?" His terse reply, "I have two fewer rears to kiss" -- he used the more explicit term for rear, but I withheld it out of respect for this prestigious audience.

It is true that once a chairman proposes an item or agenda, he must generate the votes from a majority of his fellow commissioners to effect his proposal. Consequently, a new chairman must hope for compatible commissioners and probably should have a voice in their selection. As you probably know, a commissioner's duties encompasses the complete range of governmental and legal responsibilities -- legislation (rule making), enforcement, judicial review and decisions and executive management.

I expect a Bush administration commission to continue a marketplace deregulatory policy, but with a more moderate, less ideological approach. I hope and expect improved working relationship with Congress. It is already apparent to me that Chairman Sikes has inaugurated an era of regulatory glasnost and perestroika. The next move is to speed up commission processes and effect more prompt action on applications and issuance of notices.

I have served under both Democratic and Republican controlled commissions. As you know, only three of the five commissioners can come from the same party. I was relatively comfortable with the different social and legal approaches to regulation. Fortunately, most commissioners don't decide complex policy issues by partisan Democratic or Republican votes. The issues are decided on the legal record and the individual commissioner's determination of logic, reason and serving public interest.

It is hard to believe that I'm in my sixteenth year as an FCC commissioner with almost 2 more years to go. I've seen a productive evolution from overregulation to deregulation to unregulation, to marketplace self regulation with occasional counterproductive lapses into unregulatory excess. I'm glad I was around to contribute to the long overdue deregulatory transition that eliminated tons of paperwork and over-intrusive government regulations. I'm also glad I was around to register a dissent when our actions struck me as counterproductive.

Several years ago the trade press quoted me correctly stating, "I do deregulation but not anarchy."

I disagreed with the majority of commissioners on several major issue such as repeal of must carry, repeal of the three year holding (anti-trafficking) rule, disclaiming of the public trustee concept for broadcasters, repeal of UHF Impact Policy, the proposal to institute UHF-land mobile sharing without a demonstrated need for more land mobile spectrum, limited spectrum allotment for HDTV, broadcast spectrum auctions, flexible use, the initial financial interest and syndication proposal, and others. I have also expressed concern and shifted burden of proof on the significant telco-cable NPRM and expressed reservations about replacing our current comparative process for granting licenses with random lotteries.

Despite expressions of misgivings in some quarters worrying about marketplace competition replacing regulation, we still haven't deregulated either the FCC or the Federal Communications Bar Association lawyers out of business. As attorneys you should know that the communications marketplace is brimming with present and future contentious billable hours on issues in the broadcasting, cable, telephone and satellite fields. Let me reel off a few of the more significant FCC issues: (Select only two issues and explain ramifications.) pros and cons of the Fairness Doctrine; reinstituting must carry; repealing portions of compulsory licensing for cable; telephone price caps for BOCs; lifting some restrictions of the MFJ implementation;

implementing our recent syndex reinstatement; broadcast cross-ownership waivers; telco-cable cross-ownership; trunking standards for public safety spectrum; network-cable cross-ownership; networks providing sales representation for their affiliates; reinstating the three year holding rule for broadcast properties; comparative renewal reform and license renewal expectancy; power increases for AM and FM radio; the problem of negotiated radio interference rights; legislative proposals to AM radio deregulation; enforcement of obscenity statutes and indecency rules; prohibiting UHF for VHF swaps; development of compatible terrestrial HDTV; DBS; MMDS; EEO regulation; the questionable lottery process for broadcast spectrum; spectrum auction; flexible use and negotiated interference rights for broadcast spectrum; salary adjustments for government execs; transfer fees; possible ban on beer and wine and other advertising, etc. Each of these controversial subjects could be the basis of a separate speech in itself. There are also many other issues and items requiring legal analysis that are voted daily by circulation. It's obvious there is enough contentious litigation to go around for communications lawyers and the FCC to stay in business for years ahead.

Some uncharitable souls even profess that law firms have incentives to promote regulation, generate crisis and regulatory contention. Surely such base motivation is far beneath such an august profession -- one of the world's oldest or close to being

the world's oldest, I am told. I was recently mailed a copy of part of a will that demonstrates the continuing problem of unfavorable private, if not public, perception of the legal profession. Even I had to smile when I read this to the New York Communications Bar Association and I quote and brace yourselves:

"No attorney or firm or group of attorneys, nor any bank shall for any reason whatsoever receive any money, property or valuables from my estate as I have already, while living, involuntarily contributed far more than my share to the benefit of this crooked bunch of miserable bastards who prey upon the misfortunes of others."

This outlandish quote containing some bare element of truth should take care of the usual deprecating lawyer stories for the day. Oh yes, I was considering working in a laugh line like "Airbags are redundant in a lawyer's car." However, my loyal legal assistant suggested I could refine and immensely popularize the statement with a simple one word substitution -- commissioner for lawyer. Good suggestion, also with some bare element of truth. However, I decided not to use it today. I'll save my other two or three standard lawyer stories for a more appreciative non-lawyer audience.

The legal and regulatory power of the FCC has been overestimated, underestimated, challenged, debated and damned.



The distinguished columnist and scholar, William F. Buckley, Jr., interviewing a former FCC Chairman some time ago said, "I think it fair to say that the FCC chairman and his distinguished colleagues wield greater economic power than all the courts put together." that is undoubtedly overstating FCC power -- although the impact and ramifications of some of our decisions are agonizing and rather awesome. The function and jurisdiction of the FCC as an independent regulatory agency has been defined by the Communications Act of 1934 and guided by the Constitution. The FCC was established by the Congress as an expert agency to implement the Act. We remain subject to oversight by the Congress.

The Senate and the House in the exercise of oversight authority make certain that regulatory agencies maintain a becoming humility. The numerous inquiries from oversight and other committees are a regulatory fact of life. The questioning is intense and detailed. Commissioners are constantly reminded they are an "arm of Congress," the duly elected representatives of the people. In fact, I wouldn't be surprised if someday a question would be included in a hearing -- "Is there anything known only to you and not this committee that could possibly be used to embarrass, discredit, or impeach you. Please state and remember you are under oath."

One of my favorite quotes is from my longtime friend, Chairman John Dingell of the House Committee on Energy and Commerce, who gave me fair advance warning years ago when I first sought an FCC appointment. When I was first nominated, he said "What do you want the damn job for? - you will be beaten up by Congress and overruled in the courts." He didn't even mention abuse by the press. We do get beaten up from time to time, but a great majority of our decisions are sustained in court. At last count, we had 282 government attorneys at the FCC -- bright, dedicated and well able to compete with their much higher paid counterparts from the private sector.

As I mentioned, some of the decisions are awesome. Arguments pro and con are very persuasive. You listen, read, deliberate, soul-search and agonize. You consult your staff assistants. Sometimes you even wish you could flip a coin. The first and foremost consideration is which action best\_serves overall\_public\_interest? In this case, what is the public interest? Where do reason and justice predominate? What arguments are the most persuasive? Which viewpoint or action scores the most points legally, ethically and morally?

Finally, it's "H" hour and "D" day -- the Commission votes. promptly after the Commission votes on a significant controversial issue, four things invariably happen. First, the losing parties immediately charge the Commission with not serving the public interest. (You haven't served their private economic interests or adopted their business proposals, hence

you are not serving the public interest in their view.) Your motives, qualifications and integrity are impugned. Sometimes your jurisdiction is challenged.

Second, the losing parties generate as much public opposition as possible. They damn you in Congress, in the press and among friends and organizations sympathetic to their case or viewpoints. (Frequently the objective is to cause public criticism, a tough oversight hearing, or a legislative reversal.)

Third, the losing parties who invariably consider their arguments as not having been fully appreciated or fairly judged, petition us to reconsider our ill-considered action.

Fourth, the FCC decision is appealed in court -- the third and fourth are perfectly legal and ethical recourses. I would like to be spared the machinations and rhetoric of the first two even though they keep the legal meters running.

In discharging its regulatory responsibilities, the FCC should keep in touch with the mood and will of the people and of their elected representatives in congress. I once told an exceptionally bright and technically correct legal assistant that working directly for a non-lawyer commissioner will be a broadening experience in practical regulation. I smiled,

"You will see how we apply social and political solutions to highly technical legal problems." Most FCC decisions are strictly legal matters, but the most significant ones require consideration of all policy perspectives with an emphasis on the policies expressed by Congress.

In closing I want to state that my approach to communications issues is more journalistic than legalistic so I find great solace and guidance in a quote expressing President Franklin Roosevelt's view of the role which administrative agencies should play in government. That great president said,

"A common sense resort to usual and practical sources of information takes the place of archaic and technical application of rules of evidence, and an informed and expert tribunal renders its decisions with an eye that looks forward to results rather than backward to precedent and to the leading case. Substantial justice remains a higher aim for our civilization than technical legalism."

This is sage advice from a great historic American. I intend to apply that principle of substantial justice as we confront the contentious exciting communications developments of the 90s. And I hope all your litigations and judgments result in substantial justice.

**Remarks Before the State Bar of Michigan**

**Sent to the Following:**

Press, FCC

Al Sikes

Sherrie Marshall

Andrew Barrett

Ken Robinson

Charlie Schott

Chairman John Dingell

Sen. Don Riegle

Cong. Guy Vander Jagt

Susie Quello

Diane Watson

Daren Benzi

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