

Remarks by
Commissioner James H. Quello
Before the
Kentucky Broadcasters Association
Louisville, Kentucky
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FCC ISSUES AND (LIMITED) ANSWERS ON FOX, FINSYN, AND CABLE RE-REG

I am particularly pleased to be here with you in fascinating Louisville When you are from Washington, you are glad to be anywhere, particularly when you can go to a place that doesn't have more lawyers than waiters. Today I'm enjoying the welcome relief from shoot-outs both in the halls of Congress and in the city streets.

I'm also delighted to be here for less facetious reasons. It is my very first appearance before the Kentucky Association. I feel at home with this broadcast audience. I don't have to search for a mutuality of interest for my opening remarks. Broadcasting was my primary lifetime career and I have an inherent interest in its continuing vitality and growth. As a former president and 11 year legislative chairman of the Michigan Association of Broadcasters, I can easily relate to your regular management problems as well as to your goals and priorities in program service, civic integration and government relations.

Speaking of government relations, I was gratified and flattered that Senator Wendell Ford added his personal endorsement to my Kentucky speaking invitation. You, and all of us, are indeed fortunate to have this knowledgeable, highly respected senator on the vital Senate Communications Subcommittee.

I have also enjoyed a friendly relationship with your able, amiable congressman on the House Communications Subcommittee-- I refer to my fellow "paisan," Romano Mazzoli. Also, Kentucky, and the FCC too, are fortunate in having the distinguished Hal Rogers on the powerful Appropriations and Budget Committee. May all their tribes increase!

Another reason for my special affinity for Kentucky is someone who is a relative newcomer to Kentucky -- but certainly not new to successful broadcast operations -- dynamic Diane Sutter. Ms. Sutter was one of the communications leaders responsible for my receiving the 1988 national AWRT Silver Satellite Award when she was president-elect of that prestigious organization. That award, Diane, apparently was the catalyst for five different awards that followed -- I affectionately refer to them as my "pre-posthumous" awards. You see, I have personal reasons for that terminology.

Last month I reached another significant or unmentionable chronological milestone in my life! I scowled in a mirror and whispered "You old fossil -- you are over 75 years old and probably in the dawn of your senility but as long as you have 70% of your marbles (a good Washington norm), I'll let you hang in there." Actually, I feel too young to be that old! Someone recently asked me "What kind of a year did you have, Jim?" I said "Great! I was here when it started and I was still here when it ended." But there could be some advantage to age when going through the inquisitional kind of confirmation hearings they have these days -- with the involuntary celibacy of the golden years, I could say with conviction: "No, I'm not a womanizer -- at my age, I'm now a fantasizer."

I really don't worry about age because I am comforted by my delusions of adequacy. Also, I'm guided somewhat by the late Malcolm Forbes' saying "You are never too old until you admit it or are no longer around to deny it." I had the privilege of briefly talking to Mr. Forbes in Washington only five days before his unexpected passing. He exuded vitality and personality.

He seemed never too old to live life to its fullest -- I always admired his vitality, even though I never made the lush party in Morocco.

On another personal note, I've been lucky in getting 52 annual marriage license renewals without any petitions to deny. Mary claims she never considered divorce -- murder several times, but divorce never. Our longevity is a testimonial to the value of a woman's sense of humor. Besides, she was always willing to let me have her way. And when she wants my opinion, she gives it to me. Let the record show, I'm for marriage. If it weren't for marriage, many men might go through life thinking they had no faults at all. Also, I know the secret of a successful marriage, I'll share it with you men -- when you are wrong, admit it. When you are right, keep quiet!

On a more temperate note, I want to share with this audience my favorite classic quote on the positive aspect of aging. It is by that great German philosopher Goethe who said "It is only necessary to grow old to become more charitable and even indulgent. I see no fault committed by others that I have not committed myself." I try to keep that saying in mind before passing personal judgments on others.

Well, enough about "This is My Life" and personal judgments. The FCC this year faces critical public interest judgments on major issues affecting the future development of telecommunications in America. There are too many complex issues

to include in any one speech so I have selected three current, much publicized subjects for discussion.

All the trade press and major daily papers last week reported the contentious Fox waiver. That decision approved a limited waiver of our financial interest and syndication rules for the Fox Broadcasting Company, allowing Fox to provide up to 18-1/2 hours of programming to its affiliates. The waiver is limited to a period of one year, or until we change our rules, whichever comes first. I believe the FCC decision represented an earnest statesmanlike compromise. It served the public interest by encouraging development of a competitive 4th national network that FCC studies the past 20 years have determined to be in the public interest. It strengthens 112 mostly under-privileged UHF stations that are part of the 129 Fox network in keeping with a long established FCC policy of encouraging UHF development. It provides for additional TV children's programming -- Fox proposed 5-1/2 hours of children's programming for fall 1990 as part of its 18-1/2 hours of total network programming. It also encourages competitive network coverage of national news events as live news events of national importance will not count against the 18-1/2 hour program limitation.

One year from now Fox will be subject to whatever regulatory regime that may be adopted. Hopefully, this will incorporate a

consensus reached by the parties in the current finsyn negotiations. Currently Fox is only programming 9 hours per week. As of November 1989, ABC provided 83 hours of network programming, CBS 115.5 hours and NBC 100 hours.

At this time it seems more appropriate to characterize Fox as a temporary one fourth (1/4) network rather than the fourth network. The FCC emphasized that its grant of a limited, temporary waiver of the financial interest-syndication restrictions and of the prime time access rules does not affect or does not foreshadow the outcome of the pending finsyn proceeding and should not be used by private negotiating parties as to how they should or should not proceed.

Fortunately, the second subject I have selected, financial interest-syndication, is currently a restricted proceeding that can't be discussed. This means I don't have to keep talking on the subject, and you don't have to over-analyze my remarks, trying to second-guess what the Commission plans to do. Some time ago, I characterized it as a battle of the wealthy vs. the very rich. Suffice it to say that Congress and the FCC are hoping the studios and producers and the major networks can come to some mutual agreement by June 14 -- otherwise the FCC will complete an ongoing Notice of Proposed Rulemaking and decide the issue.

Cable and telco-cable proposals are contentious, complex issues with major ramifications for the TV consumer and for the future evolution of telecommunications in America. The cable-broadcast controversy is either further complicated or mitigated by media companies that have substantial ownership in both broadcasting and cable. The companies read like a media Who's Who: Cox Enterprises, Chronicle publishing, Heritage Media, King Broadcasting, Landmark Communications, Media General, Multimedia, Inc., Providence Journal Co., E. W. Scripps Co., Times Mirror Co., Viacom International and the Washington Post.

Cable legislation and regulation is further impacted by a comprehensive Senate draft of a re-regulation bill, and house hearings. Also, the FCC is addressing three major cable issues with a report to Congress promised by July 30th.

The major ongoing FCC issues are (1) an omnibus cable inquiry, (2) reconsideration of effective competition standards, and (3) telco-cable entry recommendation to Congress.

The Commission adopted a comprehensive Notice of Inquiry last December 12th seeking comments on the contentious items of cable rates, exclusive franchising, ownership concentration and possible vertical and horizontal integration limitation.

This will culminate with the Commission's Report to Congress in late July 1990.

Two other major cable issues were not included in the omnibus inquiry. The Commission's policy triggering cable rate regulation -- the effective competition standard -- was the subject of an FCC Notice of Proposed Rulemaking issued last January. The other issue, the all important, controversial NPRM recommending that Congress eliminate the existing telco-cable cross ownership restrictions, was issued in the spring of 1989. The comments from all parties have been received and are being carefully analyzed by the Mass Media staff. This is a pending rulemaking that could probably be completed some time this fall depending upon congressional action. I issued a statement shortly after the initial NPRM vote placing a heavy burden of proof on telephone companies. The principal thrust of my statement was that there are many complex problems to resolve and regulatory safeguards to enact before telephone companies should be authorized to provide full program services with their monopoly telephone lines. I repeat what I first stated four years ago -- both the technological potential and problems are mind-boggling for telco entry into cable. Congress and the FCC must carefully analyze the problems and critical ramifications.

Now, as I said before, the three cable television proceedings are quite contentious. The Commission has been flooded by many thousands of pages of comments and reply comments from all the interested parties. I think if you laid all the comments end to end they would stretch from Washington to Louisville . . . but they still wouldn't reach a conclusion. It's up to us at the FCC to try and make sense of it all.

In my opinion the crucial public interest issue is whether cable re-regulation or telco entry will be a threat or a boon to preserving free local television for all the public. The ultimate installation of fiber optics into the home that would enable nationwide telco entry into cable is probably 10 years or more away. Yet the recommendations of the Commission in late July 1990 and actions by Congress in late 1990, or more likely in 1991, will be most significant in setting the course for future telecommunications evolution in America.

In the meantime, Senator John Danforth with 16 Senate co-sponsors, introduced sweeping legislation last November proposing cable re-regulation to restore equity in the TV marketplace.

In April the Senate incorporated some of Senator Danforth's proposals in a comprehensive draft bill released through Senate Communications Subcommittee Chairman Daniel Inouye.

The key provisions of this thoughtful Senate draft cable re-regulation bill are:

- "Effective competition" would be redefined so that 30 percent of households in a system's service area would have to subscribe to a competing multichannel video service, or that the community must be served by more than one alternative service, such as MMDS. Systems without effective competition would be subject to rate regulation by the local franchising authority, but under the oversight of the FCC and according to guidelines it sets.
- A system can opt out of the compulsory license or be subject to a new must-carry scheme.
- The must-carry plan would require systems with 12 or fewer channels to carry three local signals; those with up to 20 channels to carry four and outlines a graduated scale of up to 125 channels, requiring 20-30 percent of total channels to be local broadcast signals. Over 125 would be 33 percent.

- Operators would be forced to carry a broadcast signal on its over-the-air channel or on the channel it occupied before mid-1985, if the broadcaster prefers.
- The FCC would be required to set restrictions on vertical integration and cross-ownership between cable and alternative services such as DBS.

If the draft bill is eventually legislated into law, many of the cable companies would appear to be, and properly so, without effective competition. It would then be the challenging task of the FCC to provide a free enterprise rate guideline for local cities that would prevent undue escalation of rates, but still provide cable systems with reasonable incentives for growth and technological development.

It is still not determined what effect the upcoming FCC recommendations to Congress will have on the final cable legislation.

FCC findings and recommendations in these vital cable issues will be forwarded to the Senate and House Communication Committees the end of July for consideration in final legislation that will probably be adopted in 1991.

There are many other major issues before the FCC -- further license renewal and challenge reforms, AM radio improvement, obscenity/indecency enforcement, along with the regular complaints, applications and enforcement actions. It's a fascinating daily agenda -- Busy enough so that I don't have time to gracefully grow old. In fact, I've been celebrating my 39th birthday for 37 years!

So, I'll pause on that happy note and add a final closing thought. I've said it before and I think it is worth repeating -- at my age, an active tennis playing senior citizen, all I want is what all of you want -- a decent effective government in a strong socially and economically progressive America.

COPIES SENT TO THE FOLLOWING:

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