

**Separate Statement of Commissioner James H. Quello  
In the Matter of Reexamination of the Effective Competition  
Standard for the Regulation of Cable Television Basic Service Rates**

I wholly support the Commission's decision to redefine the effective competition standard for the regulation of basic cable rates. I have long believed that the three-signal test had become outmoded, and I am pleased to see that our standard is changing to keep pace with the radically altered media environment. Time will tell if we have made the correct choice.

In addition to the rule changes, I am particularly gratified to see that the Commission is investigating further whether over-the-air broadcasting can provide "effective competition" to cable television in the absence of must carry rules. To me, it has always seemed to be a matter of simple logic that no medium can be an effective competitor when its marketplace adversaries can block access to the audience. As the House Committee Report on H.R. 5267 concluded, stations dropped from a cable system "effectively will cease to exist."<sup>1</sup> I am troubled about the fate of free over-the-air broadcasting if stations can be made to "vanish," and it is a special matter of concern where the dropped stations are public television stations.<sup>2</sup> Congress created public broadcasting as an alternative voice that provides educational and informational series with the intent that these services be accessible to all citizens. The Commission fails its mandate to protect the public interest if it allows that goal to be thwarted.

In addition to loss of cable carriage, broadcasters face the possibility of channel repositioning. This is the practice of moving over-the-air broadcasters carried on cable systems from one channel to another. This practice can be particularly harmful to broadcasters since it may erode audiences and affect advertising rates. Channel switching can be even more devastating to broadcasters during critical audience "sweeps" periods. As more and more cable systems sell advertising in direct competition with over-the-air broadcasters, cable operators may have the potential power to thwart competition from broadcasters. Since over-the-air broadcasting's only source of revenue is advertising, compared with cable's dual revenue stream of advertising and subscription fees, a stable channel position may be particularly important to a viable broadcast industry. Commenters to the Further Notice should provide the Commission with detailed data on channel repositioning, when repositioning occurs, costs, if any, for a stable channel position, and any other relevant information.

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<sup>1</sup>H.R. Rep. No. 101-682, 101st Cong., 2d Sess. 58 (1990).

<sup>2</sup>The Mass Media Bureau Report on signal carriage found that cable systems dropped more than 100 local public stations. Staff Report, Policy and Rules Division of the Mass Media Bureau, Cable System Broadcast Signal Carriage Report, September 1, 1988. Moreover, from 1990-91, at least seven additional public stations (serving more than 263,179 subscribers) were dropped. See *Comments of America's Public Television Stations*, February 14, 1991 at 10 n.21.

I am quite aware that the Court of Appeals has twice invalidated FCC must carry rules. The first time, the Commission never attempted to compile data in support of the rules, and the second time — in my opinion — the Commission went out of its way to avoid marshalling adequate support. Assuming commenters to this Further Notice provide the Commission with hard data, it will be the first true test of the viability of must carry rules. I am looking forward to reading the comments.