

SPEECH BY COMMISSIONER JAMES H. QUELLO
AT COMMUNITY CONFERENCE ON
"COMMUNICATIONS POLICY IN THE PUBLIC INTEREST"
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FCC Issues - One Commissioner's Answers

I'm happy to be here in "Tim Wirth Land" to participate in your conference on "Communications Policy in the Public Interest." As an active, effective member of the House Communications Subcommittee, Congressman Wirth is vitally interested in fostering communications in the public interest - which also happens to be the prime objective of the FCC. It was this mutuality of interests plus a nudging from this persuasive representative of the people that caused me to rearrange my schedule so I could be here with you in Boulder.

Then, too, I could share with you the experiences at my four most recent speaking engagements - all related to public interest and citizen concern with broadcasting. Groups were: The Southern California Broadcasters Annual Community Service and Leadership Seminar; The American Council for Better Broadcasting Conference at the University of Wisconsin; Faculty - Student's Seminar and Classes at Bowling Green University; Faculty Communications Department lunch at Temple University followed by a Broadcast Pioneer dinner in Philadelphia. All these groups had concerns and laudable objectives - similar to yours. I answered over 40 questions and engaged in some lively dialogue in the course of these five appearances. I think we all benefitted from the exchange of viewpoints and philosophies.

I thought it appropriate and interesting to discuss with you today the six most-asked questions from these groups. They, no doubt, are among the questions uppermost in your minds, too.

1. What is "public interest"?
2. What are your concerns with citizens' group participation in broadcasting? Does FCC encourage or discourage?
3. What is the regulatory power of FCC - what is the biggest problem for a Commissioner?
4. What's your opinion of "Family Viewing" and "Prime Time Access"?
5. Why did the Commission approve the recent section 315 exemptions on political debates and government news conferences?
6. What is the Commission doing about the new CB explosion?

Each of the questions could be a speech in itself so I'll do my best to summarize in my prepared remarks the first three questions which bear directly on the subject of this conference and I'll briefly ad-lib the answers to Questions 4, 5 and 6.

First, the Congress fashioned the Communications Act of 1934 and required licensees to operate their stations in the public interest. The phrase was deliberately vague so that the Congress and FCC could apply broad interpretation and

implementation to the many facets of broadcast regulation as it developed. I have asked experts at the FCC for definitions - they varied according to individual philosophy and theory. I believe the late Walter Lippman defined it in good practical terms (with no legal authentication). He said "Public interest is what men would do if they thought clearly, decided rationally, and acted disinterestedly." This definition provides an objective which nobody is wise enough to attain, but does prescribe a goal worth striving for. Actually, the term "public interest" serves as a general overall guide - it is subject to varied interpretation and it's a source of some uncertainty to the regulated industries. I once defined it, in perhaps oversimplistic terms, to Mr. John De Butts, Chairman of the Board of AT&T as it applied to the telephone industry: "The best service to the most people at the most reasonable cost".

On the second question relating to citizens' group participation, the Commission encourages dialogue and citizen participation in broadcasting. If implemented in the proper spirit, this dialogue serves both the citizens' group and licensee. It is, after all, Public Acceptance that determines the success or failure of a station or of a program.

You should notify stations when you are displeased with a program but don't forget to register your approval when a particular good quality program pleases you.

I urge citizens' groups to take a constructive approach to dialogue with a station. On some occasions, citizens' groups give the impression they are more interested in stirring a controversy and exploiting discontent than in correcting deficiencies or encouraging quality programming. I am concerned with some abuse of the license challenge process through unfounded petitions to deny. The time and money spent in litigation could be used in more constructive ways, i.e., for innovative programming and added public affairs. I'm concerned that some citizens' groups representing only a small segment of the total public, seek to impose their individual program philosophies and preferences on local stations. I believe in community ascertainment by broadcasters, in broadcaster-citizen dialogue, but am suspicious of motives behind some written agreements. A negotiated agreement reached between a licensee and any citizens' group who represent only a small portion of the total community simply does not square with the requirement that a licensee follow the Commission's comprehensive ascertainment procedures to determine for himself the needs and interests of his total community.

If the licensee has ascertained those needs and interests, what possible contribution to the public interest can be made by a small segment of that public seeking special consideration by negotiating an agreement which is to be enforced by the Commission? After all, activist groups, regardless how laudable the objectives, have not been elected or appointed as bargaining agents for the public at large. The FCC itself wouldn't dare even suggest the program demands made by some citizens' groups. We would be charged, and rightly so, with program dictatorship or infringing on First Amendment rights.

Many of our regulatory actions over the past decade have been aimed at greater public input and citizen participation. They have been aimed at qualitative, rather than quantitative, improvements in the broadcasting service. In addition to encouraging dialogue with citizens through the ascertainment process, we have required that broadcasters maintain a public file containing documents pertinent to the operation of their stations in the public interest. We also require that stations actively solicit public comment on the extent to which viewers or listeners believe stations have satisfied their public interest responsibilities. And, we have adopted a document entitled, "The Public and Broadcasting - A Procedure

Manual" aimed at encouraging and assisting members of the public to take an active interest in promoting a quality broadcasting service. Each station is required to keep a copy of that manual in its public file where it is available for inspection during normal business hours.

We have recently opened periodic en banc Commission meetings to the public to provide an opportunity for interested citizens to present their views to the full Commission. And, we have just opened a new Consumer Assistance Office at Commission headquarters in Washington to help citizens get the information they need to effectively participate in the activities of the Commission.

Those are some of the positive actions we have taken in an effort to improve broadcasting service and there will be more in the future. There is an effective limit, however, to what the FCC can do to improve the quality of what you watch on television and hear on the radio. Ultimately, of course, the American people will demand and receive the kind of service from broadcasters they want. The positive efforts of interested citizens can and do reflect themselves in improvements.

I would be among the first to recognize that a few broadcasters, whether through ignorance, carelessness, or even defiance, do not fulfill their obligations on affirmative action or programming. I have expressed my personal attitude to broadcasters many times: "I'm with you when you are right and I'm dangerously knowledgeable when you are wrong." I realize that complaints filed with this Commission concerning such shortcomings are unduly delayed. In my opinion, this Commission should expend much more effort toward expediting the review and resolution of complaints without having to go through the expensive and time-consuming ritual of a formal petition to deny and its subsequent proceedings. I personally believe that we should act more directly and specifically with respect to minority employment problems, but must admit some doubt as to the extent to which we could rule on programming matters other than to determine whether the licensee has made good faith judgments in its programming decisions.

I am sure that we all agree that the Commission should continue to encourage open and fair discussion between each broadcast licensee and the public it serves. It goes without saying that a licensee which maintains dialogue with community groups and openly solicits local public opinion is certainly more attuned to the various wants, desires and problems of all segments of the local population. Conversely, such dialogue also serves to educate members of the general public as to the various restraints under which the broadcaster must operate, including what is physically and economically feasible for the broadcaster to accomplish.

The dilemma faced by the Commission is how to encourage true dialogue while at the same time preserving the licensee's necessary freedom and responsibility, and how to avoid unnecessary government intrusion into the process. I do not believe that it is government "intrusion" to advise citizens' groups that they may not deprive licensees of flexibility in certain areas. Further, I think this Commission could properly propose that citizens' groups demonstrate their credentials to the licensee before demanding negotiation, and this would not be government "intrusion."

I have been candid with you in presenting my personal opinions and attitudes

with respect to citizen/broadcaster agreements, ascertainment and petitions to deny. Certainly, there will be differing viewpoints about "what's best?", and no one individual or group will possess all of the truth. For example, I believe that the United Church of Christ "Check Your Local Stations" project contains one important element of the truth, recognizing as it does that the best place to air complaints and resolve differences is the local level. I also believe that the Commission has truth on its side in demanding that the licensee respect and retain his responsibility for program judgments without that clear allocation of responsibility. We could find ourselves in the situation described in an article written for the Federal Communications Bar Journal: "The licensee may be transformed...into a frequency broker, auctioning off access to the bidder with the most strident demands."

I must add, however, that we at the Commission must do a better job of making our practice equal our preaching. We insist on licensee responsibility; at the same time, we encourage the filing of legitimate complaints -- at the local level or, if necessary, at the Commission level. Yet, we sometimes fail to devise complaint procedures that are specific and productive. In so doing, we may simply demonstrate to concerned citizens that the complaint process is unproductive, leaving the costly and time-consuming petition to deny as the only feasible alternative. I think our past performance in the area of EEO practices is an example of this inadequacy, and I hope our final action in the current rule making on EEO practices will improve the situation so as to facilitate compliance and maximize implementation.

For when government must act, it ought to act as clearly, simply, and effectively as possible. This is one case where the government clearly must act. I continue to believe, however, that the best government is one which adopts a strictly limited definition of its own role. Moreover, I believe that this view is gaining some support. Perhaps the new skepticism about big government is only a temporary reaction to the excesses of one administration or to the unfulfilled promises of the last decade. But I sense, although I cannot prove, that the feeling goes deeper than that--and I see some evidence of it in the field of communications.

QUESTION #3:

"What is the regulatory power of the FCC - What is the biggest problem for a Commissioner?" The regulatory power of the FCC - it has been overestimated, underestimated, challenged, debated and damned. Of course, the function and jurisdiction of the FCC as an independent regulatory agency has been defined and guided by the Constitution and by the Communications Act of Congress. The FCC was established as an "Arm of Congress."

William F. Buckley, Jr., interviewing FCC Chairman Wiley last fall, said "I think it fair to say that Mr. Wiley and his distinguished colleagues wield greater economic power than all the courts put together." That is no doubt overstating FCC power -- although the impact and ramifications of some of our decisions are agonizing and awesome. However, the Senate and the House in the exercise of oversight authority make certain that all regulatory agencies maintain a becoming humility. The numerous inquiries from oversight and

acial study or investigatory committees are a regulatory fact of life. The questioning is ethical, intense and detailed. In fact, someone humorously said that someday a question would be included in an inquiry -- "Is there anything known only to you that could possibly be used to embarrass, discredit, or impeach you? Please state and remember you are under oath."

My good friend, Congressman John Dingell, gave me fair advance warning. When I was first nominated, he said "What do you want the damn job for? -- you will be beat up by Congress and overruled in the court." So we do get beat up by Congress from time to time, but a majority of our decisions are sustained in court.

The biggest problem facing Commissioners? -- Well, one of them would be decision-making.

As I mentioned, some of the decisions are awesome. Arguments pro and con are equally persuasive. You listen, read, deliberate, soul-search and agonize. You even wish you could flip a coin in some cases. 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? 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 vote three things usually happen. First, the losing litigant or proponents immediately charge the Commission with not serving the public interest. (You haven't served their private interests or adopted their proposals, hence you are not serving public interest in their estimate). Your motives are frequently impugned and your judgment criticized.

Second, the losing litigants or proponents damn you in Congress, in the press and among friends and organizations sympathetic to their cause or viewpoints.

Third, the FCC decision is appealed in court--the third is a perfectly legal and ethical recourse. Just spare us the first two steps--chances are, we have suffered enough making the initial decision.

I have concentrated on the first three questions (the ones most related to the theme of your conference) in my allotted time. I'll be glad to discuss with you informally or on a panel the other three "most-asked" questions.

I enjoyed being with you today. The exchange of views will be helpful to me. I want to assure this group that you have "access" to my office anytime. We should all work together to encourage further growth and improvement so as to assure the best broadcasting and communications system in the world for the American people.