

DISSENTING STATEMENT OF
COMMISSIONER JAMES H. QUELLO

In Re: Limitations on State-Local Franchise Fees

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I dissent to the action of the majority since I believe the expression of "basic policy" set forth in the Declaratory Ruling may have been precipitate. In my opinion, we should have instituted a rule making proceeding in order to obtain comments from the cable industry and other interested parties since we have now in effect amended Section 76.31(b) by adoption of this Ruling.

Section 76.31(b) provides in essence for a franchise fee limitation of from 3 to 5% of the franchisee's gross subscriber annual revenues from cable television operations. In interpreting "gross subscriber revenues" as used in this section, the Commission has stated that it is meant to include only those revenues derived from regular subscription service, but does not include revenues derived from per-program or per-channel charges, leased channel revenues, advertising revenues, or any other income derived from the system. See Clarification of Cable Television Rules and Notice of Proposed Rule Making and Inquiry, FCC 74-384, 46 FCC 2d 175 (1974). The majority now states that our basic policy is that state and/or local franchise fees assessed on any basis broader than "gross subscriber fees" are permissible so long as the fee payable may be translated into a percentage of gross subscriber revenues and that percentage does not exceed the 3 to 5% range. This does not square with the express language of Section 76.31(b) and, in my opinion, constitutes an amendment of this rule.

I recognize that our new "basic policy" will not cost the cable operator any more than a maximum of 5% of his gross subscriber revenue figure. However, I note that Article 28 of the New York State Executive Law provides that the Commission on Cable Television of the State of New York (CCT) shall collect from each cable system an amount determined by formula, not to exceed 2% of the gross receipts of such system during the year. Section 28 also provides that any municipality may impose on a cable system an assessment which, when added to the amount payable to the CCT, does not exceed the maximum amount permitted by applicable federal laws, rules or regulations. Thus, CCT has priority in assessment of franchise fees.

My concern here is that the assessment by CCT of a franchise fee on gross receipts of a cable system which provides a pay-cable service, leased channels, and possibly carries some advertising, with concomitant higher gross revenue, may result in a "due bill" to CCT substantially greater than the 3% (or whatever percentage) franchise fee which the system heretofore