

Office of
COMMISSIONER JAMES H. QUELLO
FEDERAL COMMUNICATIONS COMMISSION

The Honorable Ernest F. Hollings
United States Senate
Washington, D.C. 20510

September 21, 1992

Dear Chairman Hollings,

I am writing to register my support for the cable bill that you and your staff have so diligently drafted.

In 1990, after much and sometimes heated internal debate, all five Commissioners agreed to make a number of recommendations regarding cable television legislation. The resulting Report to Congress included recommendations that:

1. Congress should adopt a must carry regime so long as the compulsory copyright system remains in effect;
2. Congress should mandate must carry for public television stations;
3. Congress should encourage the emergence of multichannel competitors to cable by prohibiting unreasonable refusals to sell programming to the competition;
4. Congress should act to prevent coercion by cable operators who demand a percentage interest in a programming service as a condition of carriage;
5. Congress should encourage leased access of cable by strengthening the statutory requirements for leased access;
6. Congress should strengthen the authority and ability of local franchising authorities to enforce reasonable and effective customer service standards; and
7. Congress should forbid local franchising authorities from unreasonably denying a franchise to potential competitors.

In one form or another, many of these proposals have been embodied in the legislation before you. Of course, much has happened since 1990, both in terms of further cable rate increases and in development of proposed legislative solutions to stem such abuses. In particular, the addition of retransmission consent to the bill is essential to help ensure that broadcasters receive fair compensation for the value of

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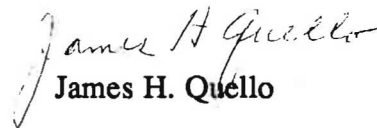
their programming. Also, the legislation controls the cost of both basic and premium services, as well as for other charges, thus benefitting consumers.

The legislation places general jurisdiction with the FCC where it properly belongs. Together, Congress and the FCC can assure fair and equitable treatment for all parties and work to minimize administrative burdens.

As you well know, it is difficult to get agreement on all provisions in any legislative process. And there are honest disagreements on some parts of this bill. On balance, however, S. 12 will benefit the consumer and will help assure the continued viability of universal free television for all the public.

Ultimately, I believe S. 12 and the associated Conference Report represents sound, well considered legislation and should be passed.

Sincerely,


James H. Quello

cc: Senator Daniel Inouye
Representative John Dingell
Representative Edward Markey

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WEDNESDAY, SEPTEMBER 23, 1992

VOL. 12, NO. 185

Today:

SENATE APPROVES CABLE BILL, 74-25: Margin called veto-proof. Bill goes next to President Bush for promised veto. Override effort likely to be among final actions of this Congress. (P. 1)

NEW BOOK FINDS MORE COMPETITION IN LOCAL EXCHANGE: Long distance seen as more of monopoly market, while competition is termed 'illusion' by authors of follow-up to 1987 *Geodesic Network* study. (P. 2)

AT&T AND FCC DISPUTE TARIFF REQUIREMENTS for smaller carriers in Appeals Court oral argument. Issue to come up at Nov. Commission meeting. (P. 3)

Margin Called Veto-Proof

SENATE HANDS CABLE BILL BACKERS BIG VICTORY, 74-25

Relentless ad campaign and heavy campaign spending failed Tues. to block cable reregulation measure (S-12), which Senate passed by solid 74-25 margin. Bill's opponents picked up 7 votes, mostly from senators who hadn't voted when original measure moved through Senate in Jan. But proponents also scored, picking up important vote in Hollywood ally Sen. Bradley (D-N.J.). Margin would be sufficient to override veto by President Bush and left proponents with more votes for bill than they started with in Senate 9 months ago.

Vote was anticlimactic, almost as if steam had run out of debate. There was none of last-min. hyperbole or high-profile sparring in newspapers that had marked conclusion of House action; about most observers had to chew on Tues. were: (1) Letter from FCC Comr. Quello strongly endorsing measure as beneficial to consumers: "On balance... S-12 will benefit the consumer and will help assure the continued viability of universal free television for all the public." He said proposed shift of much cable oversight to FCC was "proper" and that "together, Congress and the FCC can assure fair and equitable treatment for all parties to work to minimize administrative burdens."

(2) Appearance for vote by Democratic vice presidential candidate, Sen. Gore (D-Tenn.), who was S-12 co-sponsor. However, his reappearance in debate at this late point hadn't been advocated by some proponents for fear it would polarize bipartisan coalition supporting measure by appearing to inject election-year partisanship into final vote. Bill handlers got around problem by having Gore insert strong supportive statement in *Congressional Record* last week. (3) *Washington Post* op-ed article by Sens. Gorton (R-Wash.) and Lieberman (D-Conn.) upbraiding newspaper for opposing bill. "It is hard to see what more this bill could do to increase competition, short of lifting the ban on telephone companies' providing cable in their local service areas -- a step the cable industry has fought tooth and nail," they wrote.

Vote indicated cable-Hollywood-White House alliance had made few inroads in Senate after all, despite winning extra day of lobbying through deal with leadership to put off final action until Tues., in exchange for promise to end 102nd Congress on schedule in Oct. Senate had passed S-12 in Jan. with 73-18 vote, which left opponents facing difficult task of persuading 16 senators to join 18 already against bill if veto were to be sustained. Some of conversions became apparent last week (CD Sept 21 p1) but in end opponents managed to persuade only 5 senators to switch to oppose bill -- Chafee (R-R.I.), Fowler (D-Ga.), Lott (R-Miss.), Nickles (R-Okla.), Seymour (R-Cal.). Opponents also picked up 2 new votes in Sens. Boren (D-Okla.) and Cranston (D-Cal.), who hadn't voted in Jan.

Defections forced bill proponents to pull out stops and ensure that all senators voted (tally was unusual in that all 100 senators did, with Sen. Mack [R-Fla.] voting present since he has family ties to cable industry). As result, proponents worked the 8 Jan. nonvoters hard, winning 6 to their side -- notably Bradley, who has received most contributions in Congress from film industry. Others: Bond (R-Mo.), Harkin (D-Ia.), Kerrey (D-Neb.), Riegle (D-Mich.), Wofford (D-Pa.). Fifty Democrats and 24 Republicans voted for bill, while 7 Democrats and 18 Republicans opposed it.

Opponents still held out hope that some of support would be soft enough to convert in veto showdown, which some lobbyists said may be possible if effort is cast in election-year terms. "This is obviously a tough fight, and it isn't over," NCTA Pres. James Mooney said. "We will continue to work with the White House to gather enough support to sustain a veto." But NAB Pres. Edward Fritts said S-12 foes have "hit their high-water mark. Although there be some slight shifting back and forth of votes on a veto override, we expect the vote totals to remain about the same." Veto override could end up at last min. of session. Congressional leaders are planning to stay in town until noon Oct. 5 to ensure opportunity for veto override vote. Two-thirds majority of those voting is needed to override veto -- 67 if all 100 senators cast ballots.

Senate vote appears to show proponents also have enough votes to block any final efforts to stall override effort in final hours of session. Proponents called on President to sidestep another entanglement with Congress that could keep Bush and rest of Nov. candidates in town for additional valuable campaign week. In colorful House floor statement full of allusions to Hollywood, House Telecom Subcommittee Chmn. Markey (D-Mass.) said this week that: "It is my hope that... when this bill is sent up the road to *Casablanca*, the President *Will Do the Right Thing* and follow what should be his *Basic Instinct*. President Bush should sign the cable bill, so that we may finally *Broadcast News* to consumers of their *Deliverance* from outrageous monopoly rate hikes." Citing Republican leaders who supported bill (Hatch [Utah], Simpson [Wyo.] and Thurmond [S.C.]), Wireless Cable Assn. Pres. Robert Schmidt said "President Bush has to take notice. Sustaining a veto would be perilous because the leaders of his party withstood monied pressure and distorted public opinion and joined 50 Democrats to vote for this important legislation." But CATA Pres. Stephen Effros said his analysis of vote convinced him veto still could be sustained.

Maintaining 'Unnatural Competition'

NEW BOOK FINDS LOCAL EXCHANGE MORE COMPETITIVE THAN LONG DISTANCE

Competition is more of reality in local exchange markets than in long distance business, in which competitors to AT&T are being kept alive through regulation, according to book to be published later this month by 3 attorneys who work in or with RHCs. They predict that MFJ will be abandoned within decade at most, with 5 years most likely frame.

Book, *The Geodesic Network II: 1993 Report on Competition in the Telephone Industry*, was written as follow-up to 1987 report on competition written for Justice Dept.'s triennial MFJ review by consultant Peter Huber. Huber is one of 3 authors of new book; others are John Thorne, Bell Atlantic asst. gen. counsel, and Michael Kellogg, partner in law firm Mayer, Brown & Platt, which represents RHCs on MFJ matters and where Huber is of counsel. Introductory chapter we saw has distinctive local exchange emphasis, but Thorne said there will be chapters with material with which telcos won't agree, including on local exchange and mobile services.

Looking back at divestiture, authors wrote that planners of Bell System breakup "fundamentally misunderstood the role of wire and radio in both local and long distance telephony. And they confused past regulatory policy with future economic reality." Key technology will be radio, authors contended, predicting that new services would come easily to local exchange from new providers while telcos still would have to cope with billions of dollars in "obsolete copper plant." It's difficult "to embrace the technology that is going to wipe tens of billions of dollars of undepreciated assets off your balance sheets," book said. It will be radio technology that will accelerate evolution of geodesic network that Huber suggested -- network characterized by large number of switching points and short hauls for traffic.

On other hand, fiber appears to be dominant technology in long distance market in which costs of transmission have been declining sharply -- situation that classical economists would describe as "natural monopoly," term once applied to local exchange or to cable. Reason that there are 3 large, facilities-based carriers (AT&T, MCI and Sprint) is that "antitrust lawyers and utility regulators expect them to survive, and heads would roll if they didn't," Thorne, Huber and Kellogg said: "Government can maintain unnatural competition, just as it can maintain unnatural monopoly, and that is precisely what government is doing." AT&T could wipe out all of its competitors easily if restrictions from politicians and antitrust laws were eliminated, authors said: "Competition in the long distance market is an illusion, a triumph of yesterday's elegant theory over today's economic fact."

Under their theory, AT&T is "buying protection" to keep regulators away by helping MCI and Sprint keep their market shares, using equal charge rule as one method. Keeping competition in business also has helped AT&T's bottom line, authors said, because while its access costs have dropped \$10 billion, prices have fallen \$8 billion -- result of FCC's price cap regulation. One argument for having multiple carriers is that users need backups in case of net-

Broadcasting's

TV FAX

■ CABLE BILL GOES TO BUSH

■ HDTV TEST SET FOR NEXT WEEK

■ WONDER YEARS, DESIGNING WOMEN OFF TO GOOD START

WEDNESDAY □ SEPTEMBER 23, 1992



BROADCASTERS WIN IN SENATE PASSAGE OF CABLE BILL—Supporters of cable reregulation bill (S. 12) won smashing 74-25 Senate passage of conference report yesterday—well under 30+ votes cable industry representatives were expecting.

"This is obviously a tough fight and it isn't over. We will continue to work with the White House to gather enough to sustain a veto," said NCTA President Jim Mooney. NAB President Eddie Fritts said: "Cable bill foes have hit their high-water mark." But CBS lobbyist Martin Franks said broadcasters were not yet claiming total victory, keeping in mind potential ability of White House to turn nine votes on veto override. S. 12 co-author John Danforth (R-Mo.) said he hoped President Bush would reverse his veto message sent last week.

CABLE BILL RALLY—

Immediately after news of Senate vote on cable bill conference report, Bill Clinton's running mate, Senator Al Gore (D-Tenn.) announced rally to be held in Morganton, N.C. (where cable rates have gone up 148% since 1986), to press President Bush to sign bill rather than veto it as promised. Rally will be held tomorrow at 8:30 a.m. at Morganton's Old Burke County Courthouse.



QUELLO PRAISES S. 12—On heels of FCC Chairman Alfred Sikes's statement

denouncing cable bill (TV FAX, Sept. 22) comes FCC

Commissioner James Quello praising it. "On balance...S. 12 will benefit the consumer and will help assure the continued viability of universal free television to all the public," Quello said in letter to Senate Commerce Committee Chairman Ernest Hollings.

GOOD DEBUTS FOR WONDER, WOMEN—Two new off-net strips—*The Wonder Years* and *Designing Women*—triggered in syndication on Monday to favorable first-day re-

COME BACK IN MIAMI—CBS O&O WCIX(TV) Miami installed directional antenna aboard its temporary transmission tower yesterday, enabling it to increase power and reach into south Dade County while suppressing power northward, thereby protecting Scripps Howard's NBC affiliate WPTV West Palm Beach. WCIX has been operating under temporary authority near Hallandale, Fla., since Hurricane Andrew toppled its 1,850-foot tower in Homestead month ago. CBS has assured FCC it intends to rebuild Homestead facility but expects it cannot see delivery of replacement tower by Oct. 14, when its temporary authority expires.

HDTV TEST SET FOR NEXT WEDNESDAY—

Advanced Television Research

Consortium (NBC, Philips Research, David Samoff Research Center, Thomson

Consumer Electronics and Compression Labs Inc.) will use NBC O&O WRC-TV Washington to provide first over-the-air demonstration of Advanced Digital HDTV Wednesday, Sept. 30, week from today. System completed lab tests in mid-August and will become third digital system to be demonstrated publicly.

ABC, TRUCKERS DO DEAL—

ABC News and American Transportation Television Network have struck deal whereby broadcaster will exchange material with soon-to-be launched direct broadcast satellite service. ATTN, ad-supported network which will be carried to truckstops nationwide beginning in October, has also named Kate Sullivan and Tom Ellis as anchors. Sullivan is former KCAL-TV Los Angeles

anchor and Ellis is featured reporter on WNBC-TV New York and anchor of Boston edition of *Inside Edition Extra*.

PONDEROSA GANG STILL RIDING HIGH—Marking its 19th year in syndication, *Bonanza*, distributed by Republic Television Domestic Television, has been sold in 92 markets—including nine of top 10 markets—representing 72%

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