

*Fairness Doctrine: It is the right of public to be informed,
rather than the right of any individual
to broadcast his views.*

National ADDRESS TO THE
NEW YORK ASSOCIATION OF BROADCASTERS
BY

COMMISSIONER JAMES H. QUELLO

FRIDAY, NOVEMBER 12, 1976

New York

I'D LIKE TO TALK WITH YOU, TODAY,

ABOUT SOME OF THE ISSUES WHICH THE COMMISSION

WILL BE CONSIDERING IN THE MONTHS AHEAD. AND,

PERHAPS I CAN RELATE SOME OF THOSE ISSUES TO

THE EFFORTS WHICH HAVE BEEN ANNOUNCED TO

REWRITE THE COMMUNICATIONS ACT OF 1934. I'D

LIKE TO DISCUSS LICENSE RENEWAL, FORFEITURE

AUTHORITY, SECTION 315 AND THE FAIRNESS DOCTRINE,

CABLE TELEVISION, SATELLITE NETWORKING, *Quickly*

on SATELLITE-TO-HOME BROADCASTING AND THE

GOVERNMENT'S ROLE IN MATTERS INVOLVING PRO-

GRAM CONTENT.

Family Viewing

McGowan petition

*adopted a Report and order for
rules and policies to facilitate participation
in Commission proceedings*

Started as a petition for rule making by FCB

VHF Disputes

THERE HAVE BEEN A GREAT MANY CHANGES
IN COMMUNICATIONS DEVELOPMENTS SINCE 1934 AND
I BELIEVE THAT IT IS ENTIRELY APPROPRIATE THAT
CHAIRMAN LIONEL VAN DEERLIN'S SUBCOMMITTEE
BEGIN THE ENORMOUS TASK OF BRINGING THE
COMMUNICATIONS ACT UP TO DATE. THE CHANGES
IN TECHNOLOGY, ALONE, HAVE BROUGHT ABOUT
NEW MODES OF COMMUNICATION NOT CONTEMPLATED
WHEN THE ORIGINAL ACT WAS WRITTEN. AND, THE
CONGRESS WILL HAVE THE BENEFIT OF MORE THAN
40 YEARS EXPERIENCE WITH THE PRESENT COMMUNI-
CATIONS STATUTE IN CONSIDERING THE NEW VERSION.

I HOPE TO BOTH OBSERVE AND PARTICIPATE
IN THE REWRITING OF THE COMMUNICATIONS ACT---AND
I URGE EACH OF YOU TO COOPERATE AND OFFER YOUR

OWN APPROPRIATE CONTRIBUTIONS SO THAT THE
NEW ACT WILL BETTER SERVE OVERALL PUBLIC
INTEREST.

THE COMMUNICATIONS ACT IS, AFTER ALL,
THE BEDROCK OF VIRTUALLY ALL REGULATION--OR
NON-REGULATION--OF THE VARIOUS COMMUNICATIONS
INDUSTRIES IN THIS COUNTRY. AS A FORMER BROAD-
CASTER, MYSELF, I KNOW HOW MUCH YOU CAN CON-
TRIBUTE TO A BETTER UNDERSTANDING OF THIS
NATION'S BROADCASTING SERVICE. AND, BETTER
UNDERSTANDING IS LIKELY TO RESULT IN BETTER LAW.

I'M NOT SUGGESTING THAT YOU, AS BROAD-
CASTERS, BECOME INVOLVED IN THE LEGISLATIVE
PROCESS SOLELY--OR EVEN PRINCIPALLY--TO PROTECT
YOUR OWN BUSINESS INTERESTS. I'M SUGGESTING THAT

YOU MAKE YOUR CONTRIBUTION TOWARDS WRITING
LEGISLATION THAT WILL ENHANCE THE SERVICE THAT
ALL BROADCASTERS BRING TO THE AMERICAN PUBLIC.
I CAN'T PREDICT WHAT CHANGES WILL BE MADE IN
THE ACT, BUT YOU CAN BE SURE THAT THE SAME
PUBLIC INTEREST STANDARD WHICH HAS GUIDED THE
FEDERAL COMMUNICATIONS COMMISSION FOR THE
PAST FORTY-TWO YEARS WILL PREVAIL. / THEREFORE,
~~ONLY WHEN YOUR PRIVATE INTERESTS COINCIDE WITH~~
THOSE OF THE PUBLIC WILL YOUR VIEWS BE LIKELY
TO BE PERSUASIVE.

AGAIN, I MAKE NO PRETENSE OF PREDICTING *what they*
NEXT COMMUNICATIONS ACT WILL LOOK LIKE, BUT
I DO HAVE SOME VIEWS REGARDING CHANGES WHICH
I BELIEVE WOULD BE IN THE PUBLIC INTEREST. / AND,

SINCE I AM SPEAKING BEFORE A GROUP OF BROADCASTERS, I'D LIKE TO SHARE WITH YOU SOME OF MY THOUGHTS ABOUT CONSTRUCTIVE CHANGES WHICH WOULD AFFECT BROADCASTING.

I AM CONFIDENT THAT THE FCC COULD ADEQUATELY MEET ITS RESPONSIBILITIES AND THAT THE PUBLIC INTEREST WOULD BE SERVED, FOR EXAMPLE, IF THE RENEWAL OF BROADCASTING LICENSES WERE CONSIDERED EVERY FIVE YEARS. THE COMMISSION NOW REQUIRES CONTINUOUS ASCERTAINMENT OF PUBLIC NEEDS AND INTERESTS AND RESPONSIVE PROGRAMMING. WE NO LONGER ENCOURAGE YOU TO WAIT UNTIL SIX MONTHS BEFORE RENEWAL TIME TO DO YOUR ASCERTAINMENT. THEREFORE, A FIVE YEAR PERIOD INSTEAD OF THREE WOULD SEEM

TO HAVE VERY LITTLE, IF ANY, NEGATIVE IMPACT
ON THE NATION'S BROADCASTING SERVICE. / ON THE
OTHER HAND, THERE ARE SOME POSITIVE ASPECTS
OF EXTENDING THE LICENSE PERIOD. / CERTAINLY,
IT WOULD REDUCE YOUR WORK LOAD INsofar AS
PREPARING THOSE VOLUMINOUS FILINGS IS CONCERNED.
BUT, BEYOND THAT, IT WOULD GIVE THE COMMISSION
AN OPPORTUNITY TO TAKE A CLOSER LOOK AT THE
RESULTS OF YOUR LABORS. / I KNOW THAT THE VAST
MAJORITY OF BROADCASTERS CAN TOLERATE THE
EXTRA SCRUTINY. / THE FEW WHO CAN'T MUST MAKE
ROOM FOR THOSE WHO ARE BETTER QUALIFIED OR
BETTER MOTIVATED.

THAT BRINGS ME TO A SUBJECT THAT IS
AN, UNPLEASANT ONE... BOTH FOR YOU AND FOR ME.

YOU MAY HAVE NOTICED A RATHER DRAMATIC
INCREASE IN THE FREQUENCY WITH WHICH LICENSE
RENEWALS ARE DENIED. ^{*the past two years*} FRANKLY, IT BOTHERS ME
TO DENY A LICENSE RENEWAL. IT BOTHERS ME THAT
BROADCASTING IS VIRTUALLY UNIQUE IN THAT A
MAJOR PART OF THE INVESTMENT--OF BOTH MONEY
AND EFFORT--THAT GOES INTO A BROADCAST FACILITY
CAN BE WIPED OUT BY A MAJORITY VOTE OF A
FEDERAL COMMISSION. LET ME HASTEN TO POINT
OUT THAT NO RENEWAL HAS BEEN DENIED DURING
MY TENURE ON THE COMMISSION WITHOUT VERY
SERIOUS AND DETAILED ^{*soul-searching*} ~~CONSIDERATION~~ BY EACH
COMMISSIONER. LICENSES ARE NOT LIFTED FRIVO-
LOUSLY. EVEN SO, THERE MIGHT HAVE BEEN OCCASIONS
WHEN SOMETHING SHORT OF THE "DEATH PENALTY"

WOULD HAVE ADEQUATELY ALTERED A WAYWARD
BROADCASTER'S PERFORMANCE AND RAISED HIS
SERVICES TO THE PUBLIC TO AN APPROPRIATE
STANDARD.

THE NEW COMMUNICATIONS ACT, I BELIEVE,
SHOULD SIGNIFICANTLY INCREASE THE COMMISSION'S
FORFEITURE AUTHORITY TO ACCOMMODATE THIS
PROBLEM. AS THE STATUTE IS NOW WRITTEN, WE
ARE SOMETIMES FACED WITH A SERIOUS RULE
VIOLATION WHICH DEMANDS STRONG CORRECTIVE
ACTION AND HAVE ONLY THE OPTIONS OF AN ALMOST
INSIGNIFICANT FINE OR DENIAL OF RENEWAL. THE
SHORT-TERM RENEWAL HELPS TO FILL THIS GAP
BUT I BELIEVE MUCH GREATER FORFEITURE AUTHORITY
COULD BE USED TO ENCOURAGE ERRANT BROADCASTERS
TO COMPLY WITH THE RULES AND PROVIDE AN

ACCEPTABLE STANDARD OF SERVICE TO THE PUBLIC.
I THINK THE RECORD WILL SHOW THAT WE HAVE
NOT MISUSED THE FORFEITURE AUTHORITY WE NOW
HAVE AND WOULD NOT BE INCLINED TO BE CAPRICIOUS
IN OUR USE OF GREATER AUTHORITY.

I RECENTLY DID AN INFORMAL SURVEY OF
THE RELATIVELY LARGE NUMBER OF DENIED RENEWALS
OVER THE PAST TWO YEARS HOPING TO FIND SOME
PATTERN OF EGREGIOUS BEHAVIOR WARRANTING SUCH
HARSH ACTION. INDEED, SUCH A PATTERN DID
EMERGE AND I'D LIKE TO PRESENT IT TO YOU TO
ILLUSTRATE THE KIND OF BEHAVIOR LEAST LIKELY TO
SUCCEED. IN AN OVERWHELMING MAJORITY OF CASES,
WE FOUND THAT THE ERSTWHILE LICENSEE HAD
SIMPLY AND PERSISTENTLY LIED TO THE COMMISSION

ABOUT IMPORTANT MATTERS DIRECTLY BEARING ON
THE COMMISSION'S PUBLIC INTEREST RESPONSIBILITY.
THE COMMISSION HAS REPEATEDLY POINTED OUT THAT
IT MUST BE ABLE TO RELY UPON REPRESENTATIONS
MADE BY ITS LICENSEES IF IT IS TO EFFECTIVELY
CARRY OUT ITS STATUTORY RESPONSIBILITIES TO THE
CONGRESS AND TO THE PUBLIC. UNHAPPILY, THERE
WERE A FEW BROADCASTERS WHO IGNORED THE WARNING.

THE SECOND CATEGORY OF LICENSEE BEHAVIOR
MOST RESPONSIBLE FOR LOSS OF LICENSE WAS FRAUD...
USUALLY IN THE FORM OF FRAUDULENT BILLING OR
"DOUBLE BILLING." AGAIN, THE COMMISSION HAS^S
MADE IT VERY CLEAR THAT IT CONSIDERS FRAUDULENT
BILLING TO BE A VERY SERIOUS VIOLATION OF ITS
RULES AND POLICIES. NEVERTHELESS, A FEW BROAD-
CASTERS FAILED TO HEED THE WARNING.

THE FACT IS THAT THE LAW AND FCC REGULATIONS HOLD THE BROADCAST LICENSEE TO A MUCH HIGHER STANDARD THAN IT DOES THE AVERAGE BUSINESSMAN. A BROADCASTER IS LICENSED TO SERVE THE PUBLIC AT LARGE AND BEARS A HEAVY RESPONSIBILITY. I HAVE GREAT PRIDE IN THE INDUSTRY...PRIDE WHICH IS JUSTIFIED, IN PART, BY THE FACT THAT THE VAST MAJORITY OF BROADCASTERS EXCEED THE HIGHER STANDARD IMPOSED BY GOVERNMENT AND ENTHUSIASTICALLY SEEK NEW AND BETTER WAYS TO SERVE THE PUBLIC.

I BELIEVE THAT BROADCASTERS PERFORMED A GREAT PUBLIC SERVICE IN THE RECENT DEBATES BETWEEN THE PRESIDENTIAL AND VICE PRESIDENTIAL CANDIDATES. WHETHER YOUR TEAM WON OR LOST, WE ALL GOT A BETTER LOOK AT THE CANDIDATES

THAN WE WOULD HAVE WITHOUT THE DEBATES.

I ENTHUSIASTICALLY SUPPORTED THE REINTERPRE-
TATION OF SECTION 315 WHICH MADE BROADCAST
COVERAGE OF THE DEBATES POSSIBLE.

IN REWRITING THE COMMUNICATIONS ACT,
I WOULD HOPE THAT THE CONGRESS TAKES A FRESH
LOOK AT SECTION 315. FRANKLY, I THINK THERE'S
ROOM TO QUESTION WHETHER SECTION 315 HAS SERVED
THE PUBLIC WELL. MY EXPERIENCE HAS BEEN THAT
IT HAS NOT SERVED TO PROMOTE THE OPEN AND
ROBUST DEBATE REFERRED TO BY THE SUPREME
COURT IN THE RED LION CASE. ON THE CONTRARY,
MY EXPERIENCE HAS BEEN THAT IT HAS HAD THE
EFFECT OF CHOKING OFF DEBATE BY LIMITING
MEANINGFUL EXPOSURE OF CANDIDATES. PERHAPS

SECTION 315 COULD BE REPLACED BY LANGUAGE
ENCOURAGING ACCESS BY CANDIDATES WITHOUT
IMPOSING THE RESTRICTIVE, MECHANICAL "EQUAL
OPPORTUNITIES" FORMULA. CLEARLY, THE
PRACTICALITIES OF BROADCASTING AND BROADCAST
VIEWING AND LISTENING DO NOT CONFER "EQUALITY"
BY SUCH A PROCEDURE. I SHOULD THINK THAT A
FAIRNESS DOCTRINE APPLICATION TO POLITICAL
CANDIDATES MIGHT BE MORE APPROPRIATE THAN
THE PRESENT, RIGID "EQUAL TIME" STRICTURE.
IT MAY BE THAT THE STATUTE SHOULD STRIVE FOR
GREATER FLEXIBILITY TO PERMIT THE COMMISSION
TO TRY A VARIETY OF APPROACHES AND AFFORD
BROADCASTERS GREATER JOURNALISTIC JUDGMENT
WITH THE GOAL OF PROMOTING OPEN AND ROBUST

*Right of
public to be
informed rather
than the right of
any individual to
be heard
over
years*

DEBATE AMONG OUR POLITICAL CANDIDATES. IN MOST OF OUR CITIES--CERTAINLY IN ALL OF OUR MAJOR CITIES--THE SHEER NUMBERS OF BROADCAST FACILITIES WOULD SEEM TO ENSURE EACH CANDIDATE AT LEAST SOME OPPORTUNITY TO PRESENT HIS OR HER VIEWS TO THE PUBLIC.

OF COURSE, THE ENVIRONMENT IN WHICH THE NEW COMMUNICATIONS ACT WILL BE WRITTEN WILL BE GREATLY CHANGED FROM THAT OF THE 1930'S BECAUSE OF THE MANY ADVANCES IN TECHNOLOGY AND THE INTRODUCTION, OVER THE PAST 58 YEARS, OF NEW MEANS AND METHODS OF COMMUNICATION. TELEVISION, OF COURSE, CAME INTO POPULAR USE LONG AFTER THE PRESENT ACT WAS WRITTEN AND SUCH MODES OF COMMUNICATION AS CABLE TELEVISION AND SATELLITE TRANSMISSION

WERE HARDLY EVEN CONTEMPLATED. MULTI-POINT DISTRIBUTION SYSTEMS AND PUBLIC BROADCASTING WERE UNKNOWN.

IN THE CASE OF CABLE TELEVISION, I WOULD HOPE THAT ANY NEW STATUTE WOULD RECOGNIZE, ADEQUATELY, THE UNIQUE CAPABILITIES OF CABLE AND, AT THE SAME TIME, THE NEED TO PRESERVE THE UNIVERSAL BROADCAST SERVICE.

Syndicated service, exclusivity and more distant regional competition
THERE CAN BE NO DOUBT THAT CABLE TELEVISION AND PAY TELEVISION ARE HERE TO STAY AND THAT CABLE OPERATORS AND BROADCASTERS MUST BE AFFORDED FULL OPPORTUNITY TO SERVE PUBLIC INTEREST. HOWEVER, SOME CONFLICT CAN BE EXPECTED TO CONTINUE, ~~I SUPPOSE~~, BUT I'M CONFIDENT THAT THE TWO IMPORTANT SERVICES WILL BOTH SURVIVE

AND PROSPER. AND I HOPE WE CAN ENCOURAGE AND
DEVELOP REASONABLE, PEACEFUL, CO-EXISTENCE
BETWEEN BROADCASTERS AND CABLE. *a blessing on both
your houses ==*

IN THE CASE OF SATELLITE TRANSMISSION,
THE CORPORATION FOR PUBLIC BROADCASTING AND
THE PUBLIC BROADCASTING SERVICE HAVE PLACED
BEFORE THE COMMISSION A PROPOSAL FOR TYING
PBS STATIONS TOGETHER BY SATELLITE, WHICH SHOWS
GREAT PROMISE. THOSE WHOSE RESPONSIBILITY IT IS
TO REWRITE THE COMMUNICATIONS ACT WILL BE
AWARE OF THE CURRENT STATE OF THE ART AND
WILL, DOUBTLESS, BE LOOKING AHEAD TO ENVISION
MANY COMMUNICATIONS USES FOR SATELLITE TECHNOLOGY.
AS RECEIVING ANTENNAS BECOME SMALLER AND CHEAPER,
OF COURSE, THERE IS LIKELY TO BE SOME CONSIDERA-
TION OF DIRECT SATELLITE-TO-HOME BROADCASTING.

NOW, I RECOGNIZE THAT EXISTING BROADCASTERS
CAN HARDLY BE THRILLED BY THAT PROSPECT BUT
THE TECHNOLOGY AND THE POTENTIAL FOR INCREASED
UNIVERSAL SERVICE WILL BE HERE AND IT SEEMS
LIKELY THAT THE ECONOMICS WILL BE WORKED OUT.
WHERE WOULD THAT KIND OF SITUATION LEAVE
TODAY'S BROADCASTERS? WELL, IF I WERE A BROAD-
CASTER, I THINK I WOULD BE WORKING VERY HARD
TO IMPROVE BOTH THE QUANTITY AND QUALITY OF
MY LOCAL PROGRAMMING SINCE LOCAL SERVICE
MIGHT WELL EMERGE AS THE SOLE JUSTIFICATION
FOR THE CONTINUED EXISTENCE OF OUR PRESENT
SYSTEM OF BROADCASTING. / IF THERE ARE BROAD-
CASTERS WHO CONSIDER HIGH-QUALITY, LOCAL
PROGRAMMING TO BE AN EXPENSIVE NUISANCE, I

SUGGEST THEY RE-ORIENT THEIR THINKING ON THE
SUBJECT. LOCAL PROGRAMMING MAY BE THE
INDUSTRY'S PASSPORT TO THE FUTURE. I'M NOT
HERE TO DELIVER A MESSAGE OF GLOOM ~~AND DOOM~~
BUT TO SUGGEST THAT THE INDUSTRY'S RECORD OF
HIGH-QUALITY LOCAL PROGRAMMING SERVICE MIGHT
NEED SOME ATTENTION SINCE THAT RECORD MAY BE
ASKED TO SUPPORT A VERY HEAVY BURDEN OF PROOF
SOMEWHERE DOWN THE ROAD.

INSOFAR AS LOCAL SERVICE IS THREATENED
BY NETWORK ENCROACHMENT, I BELIEVE IT'S IMPORTANT
TO, AGAIN, LOOK TO THE FUTURE I HAVE JUST
HYPOTHESIZED FOR GUIDANCE. I'M NOT PREPARED
decide how
TO SAY THAT THE NETWORKS HAVE GONE TOO FAR
IN PREEMPTING THE TIME OF THEIR AFFILIATES. I

THINK IT'S CLEAR, HOWEVER, THAT FURTHER
EXPANSION OF NETWORK TIME AT THE COST OF
LOCAL PROGRAMMING WOULD BE VIEWED WITH
CONCERN BY AT LEAST SOME MEMBERS OF THE
COMMISSION.

*Note withdrawing expansion plans
Reasonable advance clearance
concerning network inquiry - Could well at least need for an exhausting, time*

THE QUESTION OF PROGRAM CONTENT IS
LIKELY TO BE ADDRESSED BY THE CONGRESS IN
LIGHT OF PUBLIC CONCERN OVER SEX AND VIOLENCE
ON TELEVISION. I WOULD HOPE THAT SECTION 326
OF THE CURRENT ACT WHICH PROHIBITS CENSORSHIP
WILL REMAIN. BUT CONTINUED EXCESSES MIGHT WELL
FORCE THE CONGRESS OR THE COMMISSION INTO AN
ADDED REGULATORY ROLE WHICH THEY HAVE
TRADITIONALLY TRIED TO AVOID.

I'M CONCERNED THAT SOME OF THE COMMENTS
I HAVE MADE HERE TODAY--TAKEN OUT OF CONTEXT--

MIGHT BE INTERPRETED AS FORECASTING A BLEAK
FUTURE FOR THE BROADCASTING INDUSTRY. / ON THE
CONTRARY, I BELIEVE THE INDUSTRY CAN AND
WILL REMAIN HEALTHY AND WILL CONTINUE TO
IMPROVE AND EXPAND ITS VALUABLE SERVICE TO
THE PUBLIC IN THE YEARS AHEAD.

CHARLES KETTERING, THE AUTO INDUSTRY
GIANT, ONCE SAID: "MY INTEREST IS IN THE FUTURE
BECAUSE I AM GOING TO SPEND THE REST OF MY
LIFE THERE." TODAY, I HAVE TRIED TO ENCOURAGE
YOU TO DEVELOP SIMILAR INTERESTS.

THANK YOU.