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**COMMISSIONER JAMES H. QUELLO'S
ANSWERS TO KEY COMMUNICATION QUESTIONS
POSED BY KAGAN**

Confidence in sectors of the telecommunications industry:

Over the past twenty-five years technological development has spurred an unparalleled period of growth in the telecommunications industry as a whole. Existing players, like television and radio broadcasting and mobile radio services, have grown in number; entirely new industries, like DBS, cellular radio and cable television, have been created; and still others, like HDTV, PCS and digital satellite radio, are in the process of being created. And of course developments in computer technology are revolutionizing the way we all live and work. I have seen figures indicating that collectively telecommunications goods and services are soon expected to comprise a double-digit segment of our Gross National Product.

With this expansion in the number and types of electronic communications technologies, and particularly with the advent of digital transmission, has come a corresponding need for formerly separate parts of the telecommunications industry to realize that the lines between industries are blurring and to take advantages of the opportunities this presents. Television broadcasters, for example, have come to recognize that the television and the computer may soon become indistinguishable and that the single-channel broadcast television station is now challenged to exist in an increasingly multichannel world. Terrestrial radio broadcasters will in the future face a market that includes multiple channels of satellite-delivered digital radio broadcast services. Cable television must face competition from telephone company-provided broadband video dialtone systems, at the same time it seeks to compete with telephone companies in the provision of local voice and video distribution service. And cellular radio, an industry only itself about ten years old, will shortly face competition from PCS systems.

I have confidence in the ability of these various components of the telecommunications industry to adapt to the new marketplace realities - but my confidence has one caveat. And that caveat is, to the extent existing regulation of these industries inhibits their ability to fairly respond to competition, that regulation must be changed. For example, some degree of rate regulation of basic cable services is necessary until effective competition to cable service is available - but cable rate regulation must not be so restrictive that it inhibits cable systems from installing the technology that will enable them to compete with telephone companies in the provision of broadband video, voice and data systems. Telephone companies must be given sufficient pricing flexibility to enable them to update their local distribution networks and respond to emerging competition

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for their customers, and barriers to entry must be eliminated so that this competition can continue to grow.

In sum, if regulation can be recalibrated to both recognize and enhance the inter- and intra-industry competition that technological development is making possible, I believe that we can be quite confident that the current growth in the telecommunications industry will continue.

The 1990's definition of universal service:

One of the most difficult, and certainly most important issues, raised by the development of technology is how to define universal service in today's world. And this question unavoidably raises another closely-related one: however we define it, who should pay for it?

Clearly we need to assure that the basic components of broadband communications technology are available to all Americans, regardless of where they live or what their circumstances are. But doing this, particularly in a market environment in which the old system of monopoly-provided telephone service is beginning to become competitive, is much easier said than done. This is because competition is making the complicated subsidy-ridden system of internal telephone industry payments more and more untenable, and it is that subsidy system that provides for the level of universal service employed today.

So the real issue is, how can we change the definition of universal service at the same time the whole system of payments that support universal service is also being forced to change? This dual challenge is being addressed not only by the Commission, but also by NTIA and by the Congress. I expect the Commission will take a further step in the near future to make some specific proposals on some elements of a revised approach to universal service. While it's premature for me to predict today precisely what those steps would entail, it is surely correct to say that the Commission will be focused on tackling this issue in the weeks and months to come.

Defining and inaugurating local telephone competition:

Competition for local telephone service is beginning to emerge and will continue to grow. Early competitors like MFS and Teleport established beachheads in the business communities in large cities, offering special access services with advanced technologies at competitive rates. The Commission has attempted to encourage the growth of these competitive local loop services

through a series of orders allowing competitors expanded opportunities to interconnect to the local loop. And several states like New York and Illinois have innovatively adjusted their intrastate regulatory programs to extend allow relaxed regulation to local telephone companies in return for these telcos taking the steps necessary to truly bring about competition in the provision of local telephone service. In our vote last month to make interim adjustments to the LEC price cap plan, this Commission also stated that any system of telephone price regulation has to not only recognize the advent of competition, but also stimulate it where it is possible to do so. We expect to issue a Further Notice of Proposed Rulemaking in the LEC price cap proceeding within the next several months, and I would expect that our proposals for the structure of the final price cap plan will reflect these principles.

In the record of the price cap proceeding a number of companies, including GTE, Sprint and NYNEX, offered specific proposals on how the Commission could both gauge the extent of local competition and then appropriately calibrate its degree of price regulation to reflect it. The general thrust of these proposals is, the greater the degree of actual competition, the less the need for restraining the pricing flexibility of the LECs. In the Further Notice in the price cap proceeding we will ask for comment on what the appropriate measures for competition should be, and what price adjustments should be made in response to them.

Mergers in the telecommunications industries:

With the emergence of new industry competitors and the convergence of video, voice and data transmission technologies, consolidations and mergers in the telecommunications industry are, in my opinion, completely expectable and generally good. I have never thought that "big" is necessarily synonymous with "bad." Indeed, the synergies of these combinations are probably necessary to enable the participating companies to maximize the advantages derivable from new technologies and market opportunities. I would fully expect this pattern of inter- and intra-industry mergers to continue.

The evolving relationship between telephone and video markets:

With the increasing proliferation of broadband transmission technologies and digital compression, a collision between the video, voice, and data markets was inevitable. Broadband transmission systems have the capability to deliver, via one wire to the home, the entire menu of entertainment and information

services the average American might want or need. So, not surprisingly, the cable and telephone industries are locked in a struggle over what entity will be the first to provide the wire and the services.

But the real question is, will the average American - at least in the short term - want or need so many services and, if so, would one provider be preferred over several providers? And that to me is the most difficult question to analyze. Certainly, at least as far as I'm concerned, hundreds of channels of video are not necessarily something I would go out of my way to buy. Nor, frankly, are some of the more cutting-edge interactive video and data services. I do believe that, at least for the foreseeable future, a significant number of consumers might prefer to have access to over-the-air broadcasting, especially in HDTV, and buy nonbroadcast video entertainment from DBS or cable rather than go with the variety of services that an interactive broadband digital system could provide. But that, of course, is the very bet that the industry players are hedging now: beyond a point, no one can predict consumer demand for new and untested services before the services in question have been rolled out and tested in the marketplace.

But this is only one piece of the puzzle. The other piece, of course, is the ability of existing cable systems to upgrade their plant and secure the regulatory authority needed for them to offer telephony over their existing cable systems. In my view, this Commission needs to be concerned that our efforts to rate regulate cable in the interests of consumers not be so harsh that we make it impossible for cable to upgrade their facilities to provide local telephone service. This essentially requires balancing the short-run benefit to consumers in lower subscription rates with the long-run benefit to consumers of having access to competing sources of state-of-the-art broadband services. And, as I have said previously, Congress and this Commission must work together to eliminate other barriers to cable entry into telephony. But the final determination will be by Congress with possibly advice from the FCC.

Constructing the information superhighway:

One of the principal mistakes people make in talking about the information superhighway is in thinking that it has yet to be "constructed." Chairman Hundt has said, and I quite agree, that the information superhighway is really composed of all the telecommunications infrastructure now in existence - that is, broadcasting, cable television, wired telephony, wireless, and satellite - as well as the broadband interactive digital systems that are now on the drawing board. So, to a considerable extent, the information superhighway already exists. Consumers

are already using parts of the information superhighway -- but it has not reached its full competitive potential. In my view what this Commission needs to do is make sure the regulations we apply to the various industries comprising the information superhighway reflects the changing nature of the markets for telecommunications services. We must not unwittingly inhibit the ability of any industry to play its part in these evolving markets by applying regulations that were adopted for marketplace conditions that no longer exist.

Dealing with "sensitive content" issues:

For the twenty years I have been a member of this Commission I have argued that Commission intrusion into the editorial judgment of broadcasters and cable operators is, as a general matter, contrary to the First Amendment. The exceptions to this general precept are so narrow that they almost prove the rule. For example, Congress has enacted legislation mandating that the Commission assure that indecent programming is not broadcast at hours when it is accessible by unsupervised children. In our attempts to devise regulations that walk the fine constitutional line between restricting indecent material to hours when children cannot reasonably be expected to stumble across it and prohibiting it outright, the Commission has met with a series of adverse court decisions. These decisions generally say that, although the Commission had been too restrictive in the hours to which we have sought to limit the broadcasting of such programming, the Commission's definition of indecent programming is valid, as is the fact that there is a legitimate societal interest in safeguarding children from its unintended reception. So, broadcast indecency is a narrow exception to the general "no content regulation" rule.

Many people would argue that cable "must carry" rules are also a general exception to my general "no content regulation" principle. To this I would respond that in my view must carry is NOT content-based. A broadcast station's right to carriage on a cable system does not turn on the content of the broadcaster's speech. Rather, it turns on whether the broadcaster is located in the market served by the cable system and the fact that that cable system can effectively cut off its subscribers' access to over-the-air stations that are not carried on the system. For these reasons, and because broadcasters are licensed to serve the needs and interests of the local community and cable operators are not, I do not find must carry rules to be an unconstitutional intrusion against the First Amendment rights of cable operators.

The Commission's recent issuance of a Notice of Proposed Rulemaking looking at ways to improve broadcasters' performance in providing childrens' programming is one other "sensitive

content" issue? Unlike the Commission's rules on indecent programming and must carry, which were specifically legislated by the Congress, Congress declined to give the Commission specific authority to require that broadcasters air a minimum number of hours of childrens' programming. I therefore believe that any Commission attempt to adopt rules prescribing the amount of childrens' programming a broadcaster must air would run afoul of the Supreme Court's recent admonition that the Communications Act does not give this Commission carte blanche to enforce its notions of what programming would be "good" for broadcasters or cable operators to provide. The fact that childrens' programming is now available from a multiplicity of sources, including cable, computer, and VCR, further weakens the case for FCC-prescribed rules on minimum hours of broadcast childrens' programming. For similar reasons, I believe we must continue our current efforts to critically assess the rest of the rules we currently apply to broadcasting to make sure that they continue to make sense in the current multichannel environment.

Characteristics of and challenges to privacy protection:

Most of the current problems in privacy protection, such as security of Internet messages, electronic funds transfer and the like, involve media that are not directly regulated by the Commission. Thus, most of these problems will ultimately be debated and resolved by the Congress, the courts, and other agencies rather than by this Commission. To the extent that aspects of our regulation of the telephone industry involve privacy issues like the availability of customer proprietary network information to telcos providing network interconnections, or whether new "caller ID" services should have a blocking capability, the Commission has been sensitive to the need to correctly balance individual privacy needs with both the First Amendment rights of network users and the interactive capabilities of the intelligent networks themselves. But our regulatory mandate is frankly a lot more limited than the extent of the privacy problems that are currently developing.

Clearly, as networks become more intelligent the capacity to derive a variety of information about the people who subscribe to them increases. During the past several years federal and state legislators have enacted a series of laws attempting to protect information that consumers do not wish to have divulged. The Commission has served in an advisory capacity in a number of these legislative efforts based on our technological expertise and I would expect this effort to continue, whether or not this Commission winds up with the primary responsibility to regulate in this area.

The next phase of America's telecommunications future:

The next phase of America's telecommunications future? In a word: convergence. And technological convergence is only one facet of the convergence I see occurring; the other facets are the marketplace and industry convergence that technology is also producing. For example, as PCS makes a new form of wireless local telephone competition possible, we have seen a consortium of cable television system operators and Sprint form a partnership to bid for PCS licenses. Why? Because that entity, if successful, could position itself to offer wired and wireless local voice, video and data service, as well as long distance voice and video service. At the same time, telephone companies are not only building broadband voice, video and data distribution systems but also joint venturing with program producers to produce programming for this and other types of distribution media.

The issue is often framed as, who will win and who will lose? Will the telephone companies win out over cable in offering interactive broadband voice, video, and data services? Who will be the ultimate victor in the war to offer competing local telephone service, the cable industry or AT&T or MCI? How will broadcasting, even with more than one channel thanks to digital compression, survive in the 500 channel world of wired broadband service? And who is going to buy all the combined cellular and PCS services that are going to be available from at least five different competitors in each market?

I tend to think that framing the issue in terms of winning and losing is myopic, and that the current wave of interindustry mergers and joint ventures is a recognition of the fact that there are clear synergies among the various segments of the telecommunications industry that can be utilized cooperatively to exploit the new service possibilities that new technology is opening up. I think the next phase of our telecommunications future will feature existing players teaming up, primarily together but sometimes with new entrants, to exploit these new market opportunities.

Which leads me to what I think is the real challenge for the next phase of our telecommunications future: namely, whether we can be assured that a competitive marketplace necessarily means that small businesses and entrepreneurs can still come into the market and succeed. Given the magnitude of the investment necessary to break into the industry, telecommunications is increasingly becoming an industry that may not be conducive to many small players. As this phenomenon becomes more pronounced it will force public policymakers to balance the short-term economic efficiencies and other benefits that accrue from large-firm ownership with our traditional notions of the longer-term benefits seen to result from more diversified ownership.