

Remarks by Commissioner James H. Quello  
Before the  
National Cable Television Association  
Board Luncheon  
Dallas, TX - May 7, 1995

Heartfelt thanks for this most distinctive and memorable of what I humorously call my pre-posthumous awards. As a fugitive from the actuarial law of averages, I especially appreciate receiving this distinctive honor while I'm here to enjoy it and enjoy your company.

This type of recognition is especially gratifying because I have been around long enough to have voted against all of you at least once. In fact, when I expressed similar appreciation for my widespread support in a reception following my fourth confirmation, the audience, composed mostly of unruly Washington lawyers and regulatory malcontents, yelled "twice." I even threatened them with "thrice." But this is all part of the give and take of government and industry. At my age, I consider my service at a hectic FCC as a staging area for purgatory -- and even that dismal imperative will depend upon some kind of merciful salvation.

As I mentioned after my last confirmation, everyone must remember that commissioners are paid by public funds and appointed to represent the public. So, if private interests conflict with the public interest, the public interest must prevail. I have also been compelled to occasionally remind some telecommunications leaders that no industry should consider itself more influential or more powerful than the government acting in the public interest.

As you know, while I supported the 1992 Cable Act, my primary interest was retransmission consent rather than rate regulation. But you did incur the formidable opposition of consumer groups and broadcasters. There was a need for demonstrating some corrective action.

Having said that, the cable industry, under the leadership of one of the best trade associations in Washington, NCTA, and the very effective Decker Anstrom and Dan Brenner, have demonstrated corrective action and then some. Moreover, you got more continuing regulation than you need and more than the FCC can effectively handle. I realize these regulations have been painful to this industry, both fiscally and emotionally.

With the advent of DBS, phone companies providing TV programming under the FCC's video dialtone rules, MMDS, and digital TV channel compression, it is time for Congress and the FCC to initiate substantial changes in cable regulation.

Today, the FCC must provide the cable industry with opportunities to move forward in an environment that will allow it reasonable growth and profitability. We must remember that if cable is to be a player in the future multi-channel competitive information superhighway, it must have investment capabilities from a profitable business to install advance technology capabilities.

Making sure you have investment capability is crucial, but it is not the only area in which federal regulators need to change the law to assure your industry a fair chance to compete in the market. A pressing need that must also be addressed is the elimination of entry barriers to new lines of business like local telephony. It is unfair and it is wrong that telephone companies have the ability to compete with you in your core product market while in most places you cannot compete with them in theirs. And finally, the law must assure that where you do face competition in your core business, the rules governing you and your competitors do not unfairly favor one industry over another.

In this context I would like to say a few specific words about the Commission's current video dialtone regime. I have been reviewing the comments submitted recently in the video dialtone and cable-telco rulemaking proceedings. I am increasingly of the view that telephone companies wishing to become actively involved in programming activities on video dialtone systems should be regulated under Title VI. Video dialtone began as an exception to a law - the cable-telco crossownership ban. Thanks to the Constitution and the courts, that law no longer exists - but, ironically enough, the exception does. Moreover, the exception has acquired a life of its own, with a unique and increasingly complex series of rules and rulings. In my view this Commission should recast its rules to do the sensible thing: regulate a true video common carrier under Title II and anything else under Title VI. And if a video dialtone system is regulated under Title VI, it should not be subject to Title II regulation for the same services. Simply put, if something looks like a duck, walks like a duck, and quacks like a duck, odds are it is a duck and ought to be treated accordingly. For the same reason, if and when cable can provide phone service, you should be required to provide that service in the same manner as your competitors.

I believe cable should be deregulated as soon as there is viable competition from a competitive multi-channel provider -- without waiting for the outdated 15-50% formula. We are soon approaching the era when competition will replace regulation to everyone's benefit -- consumers, government, industry and advance technology.

Finally, the Commission needs to do a much better job recalibrating its existing cable regulations to account for the unique problems faced by small systems. And on that front, I am happy to report there is good news. Finally, after two years of arguing consistently -- some might say incessantly! -- that small cable systems, perhaps the most hapless victims of rate regulation, are in desperate need of relief,

this agency is at long last doing something meaningful. On Friday, we circulated rules that define a small system as an MSO of 400,000 subscribers or less, with an average system size of 15,000. The rates of systems that fall within this category will be presumptively reasonable under our new small cable system price cap rules if they are less than \$1.24 per channel. Moreover, the filings for small systems will consist of a one-page form that consists of a simple formula requiring operators to supply only three items of data. These and other mechanisms in the item we circulated on Friday should, at long last, provide small systems with the relief they need to survive in the increasingly competitive marketplace. I want to congratulate Cable Bureau Chief Meredith Jones for finally getting this done.

I cannot close today without briefly saying something about the Advanced DBS situation. I was taken completely by surprise last Friday to read in the press that Advanced's orbital slots had been yanked under color of authority by the Chief of the FCC's International Bureau. I will not, at this point, comment on the merits of what the Bureau did or on the implications of its action on small cable systems and on other DBS providers, because I fully expect -- indeed, I look forward -- to having this staff decision presented to the Commission for its review. Suffice it to say, however, that in the humble judgment of this twenty-year FCC veteran this important a decision should never have been made on bureaucratic autopilot without the consideration and consent of all five Commissioners, whether or not the Bureau possesses the technical authority to make it. I commit to you that I will do everything I can to assure that Advanced is given a speedy and fair review of the Bureau's action on its appeal to the Commission.

Government officials must remember that it was private investment and industry entrepreneurship, not government investment or regulation, that developed, warts and all, the most comprehensive, diversified and best cable service in the world. This will also be true with DBS, and with other multichannel video delivery systems that will define the electronic media market in the coming years.

So, it is time that government work with the cable, TV, phone and computer industries in a constructive spirit of mutual cooperation to maximize progress. I am particularly hopeful that Congress will at long last provide us with a reasonable regulatory road map by enacting a telecommunications bill this session that will remove anti-competitive restraints from your industry. Working together, we can expedite the multi-channel, multi-faceted telecommunications wonders of the future and assure that Americans continue to be the best informed, the most gainfully employed and the best served people in the world.

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