Luncheon Remarks by Commissioner James H. Quello
Before the
Washington Metropolitan Cable Club

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There has been lots of talk lately about different perspectives among the Commissioners on the benefits of cable regulation. I want to dispel these rumors forthwith!! We agree on lots of issues, not the least of which is our mutual belief that there has been tremendous growth in the cable industry since we rolled back rates 17%. However, there is a slight difference in our respective opinions as to just where that growth occurred. Some might say that growth has taken place in the number of cable subscribers since rates were rolled back 17%. But I, on the other hand, believe that cable has really grown in the number of accountants and lawyers that have been employed in order to interpret the volumes of rules and policies we have adopted to implement rate regulation. (Unfortunately, I must admit to participation in the initial phases of implementing these burdensome and unwieldy rules.)

Regardless of whether you share my viewpoint or not, this growth in cable has been good for some segments of the economy. Cable rates may have been rolled back 17%, you may be dealing with rules and policies that make the IRS code look like a walk in the park by comparison, you may even be staring down the loaded barrel of competition from DBS and telephone companies, but look on the bright side! You have added dollars to the pockets of all those needy and worthy accountants and lawyers. That has got to make you feel better about your important contribution to the economy.

In place of the speech I had prepared for today, I want to share a few thoughts on a topic that's probably uppermost in your minds: the impact of yesterday's court decision on cable rate regulation. But, rather than focusing on who won what and who lost what, thereby rehashing old arguments, reopening old wounds, and continuing the divisiveness of the last three years, I would like to challenge both the industry and the Commission to move forward in the environment now facing us all. For the cable industry, that environment is one of rapidly developing technology and approaching, if not already present, competition.

Because of the rapid changes in this environment even within the last year, many of the issues in yesterday's court decision are essentially moot. The environment for the Commission, on the other hand, is one of regulatory conservation: doing more with less, and doing only that which is absolutely necessary. Rate regulation, given the arrival of DBS and the imminent arrival of video dialtone, must be considered in light of this regulatory reality.

This regulatory reality is continuing to reshape itself even as I speak. Yesterday's court decision was but the latest development in a series of events that has occurred since I spoke to the NCTA Board in Dallas just one month ago. During this month many important things have happened. But, just as significant, many other important things have not happened. First, the House Commerce Committee voted out a comprehensive telecommunications bill, the Communications Act of 1995. The message of that notably bipartisan bill is the same message I have been sounding in recent months: there is a need to reform our current regulatory processes; a need to provide some relief from cable rate regulation in light of dramatic changes in the marketplace; and a need to adopt a regulatory approach that emphasizes parity between similarly situated service providers. These are goals I strongly support, both in legislation and in our own approach to regulating multichannel video providers. In particular, I support efforts by Congress and this Commission to deregulate cable as soon as there is viable competition from one or more competitive multichannel providers -- without waiting for the outdated 50-15% formula. The key word in this sentence being viable -- which means another multichannel competitor available in the market.

Second, the Progress and Freedom Foundation issued a Report that has sent chills through the hearts of even the staunchest of government bureaucrats. In a statement issued last week, I expressed my viewpoint that, while the Report contains some very well-considered opinions, its proposals are about ten years too advanced. Until we see whether Congress passes comprehensive telecommunications legislation, any dramatic restructuring is premature. Moreover, any move to shift regulation to the states must be tempered by the realization that historically, many states have not embraced competition, the key to regulatory freedom. Many policies in the past that have resulted in increased competition have been initiated by the federal government, not by the states, including the Open Skies policy, competition in the provision of telephone equipment and long distance service, and the requirement that franchise authorities authorize competing systems. Given that future telecommunications systems will be primarily interstate in nature, over telephone wires and wireless interconnected webs, a uniform federal policy will be vital to ensuring the future vitality of increasingly complex communications systems.

I turn now to what, notably, has not occurred in the month since the NCTA convention in Dallas. First, the Commission has yet to adopt an upgrade incentive plan --indeed, I have yet to see a proposal from the Bureau. In the meantime, the marketplace continues to grow with the increase in DBS subscribership, MMDS subscribership, and the imminence of video dialtone (or whatever it happens to be this month). Cable operators are stuck wondering how they will finance the system upgrades they will need to compete against these ever-stronger competitors. I will continue to press the Cable Services Bureau and my colleagues to adopt a reasonable upgrade incentive form that will provide this industry with the certainty it

needs to remain competitive. Reasonable upgrade incentives must be accompanied by appropriate cost accounting.

Which leads us to the second event that has not occurred in the month since the NCTA convention. In my NCTA speech I said that if something looks like a duck, walks like a duck, and quacks like a duck, odds are, it's a duck. In the same way, if video dialtone systems are going to be built and run, to all intents and purposes, like cable systems, odds are they too are ducks -- Title VI ducks. Unfortunately, however, we still don't know if a duck is a duck. Video dialtone remains one of the more confusing and quickly changing communications constructs in the history of the FCC, and its fate is not any clearer today than it was one month ago. However, my position, unlike the position of the telephone companies, remains the same: If something looks like a duck, walks like a duck, and quacks like a duck, I'd look silly trying to say it's really a turkey.

Last, but not by any means least, the future of small cable operators still hangs by a very thin thread. And believe it or not, this time it is not because of the Commission's failure to adopt rate relief for small operators. Rather, it is because the Commission's well-intentioned International Bureau unfortunately cancelled orbital slots that were earmarked ultimately for a head-end in the sky for small cable operators. I understand the International Bureau is working hard on this matter. In the meantime, small cable operators are once again sitting on the pins and needles with which they have become intimately familiar in the last three years. Because delay harms everyone involved, I will push for speedy Commission action on this matter.

So in closing I would say the real significance of yesterday's court decision is that it closes the first chapter of cable regulation under the 1992 Act. In that sense it was an important decision. But even more important than this closing of Chapter One is the beginning of Chapter Two -- and that chapter, in a very real sense, has yet to be written. On the outstanding issues featured in Chapter Two, including deregulating cable rates, adopting an upgrade incentive plan, providing regulatory parity between multichannel video programming providers, and relief for small systems, I will continue to advocate prompt, reasonable action balancing the public interest, the need to remove impediments to competition, and the need to remove government whenever and as soon as possible from regulating industries in the place of competition. Needless to say, I look forward to seeing how events in this vital new chapter unfold.