

Separate Statement

of

Commissioner James H. Quello

Re: Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service

Underlying my analysis of every aspect of this item is one vitally important proposition: that the preservation of a universal, free, over-the-air television service is critical to the health of our democratic society. The promises of a high definition picture are exciting; the many channels of a digital system are enticing; and the potential ancillary uses of the spectrum are alluring. Nonetheless, without the backbone of a free, over-the-air broadcast system, these service enhancements, and, more importantly, the underlying programming produced, will be available only to those in our society who can afford to pay. In my judgment, this result would not serve the overall public interest and therefore should not be contemplated.

It will be with this overriding principle in mind that I will decide the many issues before us in this proceeding. For example, I am at this time inclined toward: (1) requiring that the predominant use of the ATV spectrum be for free over-the-air broadcasting, and that a two- to four-hour per day minimum HDTV requirement be imposed; (2) concluding that existing broadcasters have primary eligibility for the ATV spectrum; (3) finding that current public interest obligations remain in place; (4) determining that a transition period should be based on the realities that will likely face broadcasters in constructing new and expensive facilities, as well as the consumer acceptance of this new technology; (5) devising some relief for small market/small station broadcasters and noncommercial broadcasters; and (6) attaching must carry obligations and retransmission consent rights to all free programming streams provided by broadcasters.

In structuring this new digital world, we must also be ever-vigilant against the threat to free, over-the-air broadcasting posed by any "social contract" between broadcasters and the Federal government. The social contract envisioned by some would slowly and painfully extract from broadcasters control over the content of the programming that they air in exchange for the ATV spectrum. My response to this proposal is threefold: (1) How can the public interest be "contractually" reduced into a simple, standard pabulum for a diverse industry? (2) What evidence is there that the current public interest requirements applicable to broadcasters are not working and that Big Brother needs a new regulatory mechanism as restrictive as a "social contract"? (3) What about the First Amendment?

The public interest is not now, and has never been, a static, isolated concept. Rather, the public interest was designed as a mechanism for reflecting the public's ever-changing moods and interests, as well as the complexion of the marketplace. The marketplace today is very different from the marketplace of ten years ago. Broadcasting today is a single-channel medium in an ever-growing, multichannel, multimedia world.

Also, why should we be imposing additional regulatory burdens on broadcasters, the only universal free medium which is facing more and more multichannel competition from 100+ cable channels, DBS, MMDS, VCRs and now even the Internet? We are now in an era of more competition and less, not more, regulation, particularly in the area of program content.

Perhaps as important, if not more important, than the issues we address in the proceeding before us today is an issue that is not currently before us. Some parties have suggested that the Commission should auction this spectrum rather than give it to existing broadcasters in exchange for their analog channel. There are several fatal flaws with this proposal. First, auctioning the spectrum would threaten to change the fundamental nature of free, over-the-air broadcasting by putting the spectrum into the hands of those with the most money, rather than those that are the most interested in serving the public interest. Second, auctioning the spectrum in less than 6 MHz blocks would spell the death of HDTV, which is technically incapable of operating with less than 6 MHz of contiguous spectrum. Third, auctioning the spectrum would substantially impede the ability of broadcasters to compete with their multichannel competitors. How could broadcasters of the future, with one channel, possibly compete with the hundreds of channels provided by its multichannel competitors?

We should remember that HDTV and digital compression were developed primarily by the communications industry over a period of seven years, not by the government. In my opinion, current broadcast licensees who undergo the expense and risks of implementing HDTV and compression techniques with their assigned frequencies should be entitled to use their new channels to improve and expand free over-the-air service. If broadcasters are allowed to use some of the capacity for nonbroadcast subscription services, broadcasters should pay reasonable spectrum fees.

The importance of the decisions we will ultimately reach in this proceeding cannot be overstated. This proceeding marks the evolution of television broadcasting beyond black and white, beyond color, to a digital world in which the potential exists for the public to receive much, much more than just one channel of free programming. However, if the fundamental nature of our free, over-the-air broadcasting service changes, digital television will become a technology of haves and have-nots. Those who have money will receive all of the exciting new services this technology offers; those without money will receive nothing. I cannot support any decisions by this Commission that would lead to that outcome.