

April 8, 1996

Separate Statement  
of  
Commissioner James H. Quello

Re: Implementation of Cable Reform Provisions of the  
Telecommunications Act of 1996, CS Docket No. 96-

This item goes a long way toward implementing, in as straightforward a manner as possible, the cable-related provisions of the Telecommunications Act of 1996: adopting rules where possible, seeking comment where necessary, and adopting interim rules in the meantime. Thus, I generally support adoption of this Order and Notice of Proposed Rule Making.

With one exception. I fail to understand why there is any need to seek comment on how we should permanently implement one of the more important and straightforward provisions of the 1996 Act: the new fourth prong of the effective competition test. This prong provides that effective competition exists if a LEC or its affiliate "offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator...."

Perhaps as important as what this provision says is what it does not say: this prong does not include, as do the other three prongs, a pass and/or penetration test. Did Congress omit a number intentionally, so that the Commission would find effective competition whenever a LEC offers service in the franchise area, regardless of the extent of such offering? I believe so. This interpretation of the Act is consistent with both the explicit language of Section 301(b)(3), and with the underpinnings of the 1996 Act, which eliminates rate regulation on the cable programming services tier in three years, and in many other respects minimizes the regulatory burden on cable operators.

Thus, I would have felt entirely comfortable adopting the straightforward language of the Act without seeking further comment in an NPRM. However, while this was my preferred approach, I voted for this item confident that the record will ultimately support my reading of the 1996 Act, and that the Commission will act expeditiously to adopt final rules in this very important proceeding. We should strive to promptly provide certainty to the cable industry on the matters contained in the NPRM portion of this item in order to end the roller coaster ride of regulation that cable operators have had to endure since passage of the 1992 Cable Act.