

Statement of Commissioner James H. Quello
Re: Children's Programming and Future Intentions

May 28, 1996

I'm calling this meeting today to emphasize that it is time to end the internecine conflicts at the FCC over different interpretations of the Children's Television Act and to avoid a potential license renewal hassle in June.

The FCC is faced with many vital decisions in implementing the historic 1996 Telecommunications Act. This will require a cooperative exchange of ideas among Commissioners and their staffs with the goal of reaching consensus decisions on complex communications issues affecting the nation.

The FCC can't afford another heated debate at license renewal time on various Commissioners' interpretations as to whether or not broadcasters have met their obligations under the Children's Television Act.

Neither Congress nor the FCC have enacted quantitative standards for children's television, yet some Commissioners believe that a quantitative minimum of three hours per week is required to meet CTA license renewal obligations. I have stated that the Commission can't enforce a standard or rule that doesn't exist in the statute and hasn't been adopted by the Commission. Nevertheless, different interpretations could result in wasteful time-consuming debates over TV license renewals requiring individual review of every station.

To resolve the Children's Television rulemaking proceeding and to avoid contentious debates in the upcoming filing of June television license renewals, I have proposed a compromise. Here is how it would work:

First, the Commission would extend current television licenses as they come due for an incremental period that would bring them to the eight-year term allowed by Congress in the 1996 Telecommunications Act. This will provide a necessary cordon sanitaire of time to carefully and more equitably craft practical proposals and increase the probability of Commission consensus.

Next, the Commission would issue a Report and Order in the Children's Television proceeding that would, among other things, adopt a new definition of programming that is specifically designed to serve the educational and informational needs of children. We would also define other requirements, such as a separate listing of children's programming in the station's issues/program list.

The Commission would also specify a minimum number of hours of qualifying programming below which the broadcaster's efforts are presumptively not in

compliance. This minimum would be an absolute "floor" and, as such, specifying it would be consistent with the terms of the Children's Television Act insofar as the Act requires all broadcasters to present **some** programming for children.

This "floor," therefore, would **not** be the "magic" number that would earn the broadcaster a renewal, **nor would any such number be set forth as either a rule or a processing guideline.** Instead, broadcasters would be given the flexibility to meet their requirements **either by programming alone, or by programming plus other efforts.**

As of a date certain specified in the Children's Television Report and Order, each television licensee would be required to file with the Commission, and place in a separate section of its station file, its plan for fulfilling its obligations under the Children's Television Act as implemented in the Children's Television Report and Order between the time their extended license term is granted and the time their license renewal would next come due.

As stated previously, television broadcasters would have the option of meeting their obligations either by broadcasting a certain amount of qualifying programming or by a combination of such programming plus other, non-programming efforts specifically designed to increase the overall amount of qualifying programming broadcast in the local market.

If the broadcaster chooses to meet its obligation by programming alone, the Children's Television Report and Order would, in lieu of a hard-and-fast number, provide that the average, or mean, amount of qualifying programming currently broadcast should be the criterion against which broadcasters should make their own commitments, and the Commission would expect broadcasters to meet or beat this amount. The average amount of qualifying programming currently broadcast would be determined by an industry-wide survey.

If, on the other hand, the broadcaster chooses to meet its obligation by programming more than the stated minimum of qualifying programming but less than the industry average or mean, the broadcaster must engage in other efforts demonstrably intended to increase the overall amount of qualifying children's programming broadcast in the local market. Such efforts might include, but not be limited to, engaging in joint ventures with programmers and/or noncommercial stations to underwrite the production and/or presentation of qualifying children's programming. This approach is intended to avoid the constitutional and practical problems that attach to a governmentally-dictated number of hours. It would give broadcasters the flexibility intended under the Children's Television Act while, at the same time, providing sufficient guidance to the industry to craft, and the Commission to assess, proposals that will comply with the intent of the Act.

I believe that serving educational and informational needs of children is an essential component of television service in the public interest. I have urged broadcasters repeatedly in speeches from coast to coast to increase their emphasis on children's programming to comply with Congressional intent.

I have also stated repeatedly that there is no marketplace failure in children's educational and informational programming as that term is currently defined. There are 73 such programs already being broadcast, and the record of the children's television proceeding contains a survey of 559 stations showing that they broadcast more than three hours of such programming per week. Also, there are 1600 low power community stations and they claim that 90% of their stations broadcast children's programming. In addition to broadcast programming, cable television has multiple channels of children's programming, including Nickelodeon, Discovery, the History Channel and A & E.

I have also mentioned the availability of VCRs and the Internet as further supplementary alternatives for educational and instructional programming for children. However, I have never stated or implied that VCRs are a substitute for broadcast children's programming, much less made a ludicrous statement like "let them eat VCRs."

The principal Constitutional question that continues to bother me is: Should any government agency be able to exercise control over the leading news and information media in the nation by mandating how much and what specific programs to broadcast? In answering this question, we should all keep in mind a 1994 Supreme Court ruling with broad implications for the FCC which stated:

"The FCC's oversight responsibilities do not grant it the power to ordain any particular type of programming that must be offered by broadcast stations. The Commission may not impose upon them its private notions of what the public ought to hear."

Educational and informational programming for children is a valued beneficial service. It should be an essential part of programming for every TV station. My personal view is that three hours per week is a reasonable amount, but to avoid the Constitutional problem of me or any other government official imposing our personal programming views on the industry, the quantitative hours must be based on industry norms (based on the new definition) rather than government edict -- or better still, based on voluntary pledges by the industry reflecting current practices.

Overall, I'm glad to see the extent to which broadcasters, many of whom are family men with children of their own, have steadily increased the amount of educational and informational programming for children in response to the Children's Television Act. My proposal, by basing the number of hours broadcast on the industry norm, is intended to continue that pattern.

Broadcasters' commitments to children's programming could be undertaken individually or by or on behalf of the industry or station groups. In light of this fact, the FCC should convene a broadcast industry summit meeting in order to provide broadcasters with an opportunity to present to the Commission their voluntary proposals for complying with the Children's Television Act.

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