

Remarks by Commissioner James H. Quello
Before the
Federal Communications Bar Association

Washington, DC - June 11, 1996

Your generous introduction and the accolades appearing in your FCBA publication are particularly appreciated now that I'm in transition from the senior golden years to the super superior platinum years.

I'm gratified that performing my duties in accordance with my unassailable 1991 campaign platform of "delusion of adequacy and 75% of my marbles --a good Washington norm" has found charitable widespread acceptance.

And I still like to quote these three stages of life--youth, age, and you look great! I feel reasonably great. I'm grateful my physiology hasn't caught up with my chronology, but, I have some homely facts to share with you about aging.

For example, when some thoughtful friend tried to console me with "Remember Jim, that the age of an eagle is better than the youth of a pigeon," instead of agreeing with "true," I replied "Thanks for the kind thoughts but the era of chasing pigeons is over for this pacified, home-disciplined, office-trained old eagle."

I told him I now read Playboy magazines for the same reason I read National Geographic--to see fascinating places I'll never get to visit. Another mixed blessing of aging is you no longer have to worry about avoiding temptation, temptation avoids you.

And some of you may remember that as long as eight years ago, I started to play X-rated movies backwards because then like now, I like to see people get dressed and go home. My body may be starting to reject me, but age hasn't affected my memory. In fact, I can't even remember the last time I forgot something.

I also developed a much stronger ecumenical sense as I grew older. I personally now accept all religions because I don't want to blow an opportunity for some kind of merciful eternal salvation on a religious technicality.

Enough for this heavy part of speech, now for the more extraneous issues. You can tell that I agonized over this speech. Now, it's your turn.

As a non-lawyer, I consider it a signal honor to be invited as a luncheon speaker for the August Federal Communications Bar Association.

It is especially gratifying because the present and future of the FCBA is in such dedicated hands. Henry Rivera, your president, is a highly respected former fellow Commissioner and close friend. And more than incidentally, a strong tennis partner. Your incoming president, Kathy Abernathy, is my former legal advisor and a bright star among a distinguished list of what I proudly and over-statedly call the Quello alumni. With the alumni growth that may be associated with my staying around a little longer, my alumni-Q club could play an influential role in determining the leadership of this prestigious association. It is a heady contemplation for this non-lawyer who has regularly confessed that his approach to FCC deliberations is necessarily more journalistic than legalistic.

Nevertheless, I have repeatedly proclaimed that all I am, ever was or hope to be at the FCC, I owe to the communications expertise of my dedicated staffs -- all but three in my 22 years service were lawyers. In a larger sense, all Commissioners are indebted to the FCC bureau chiefs and department heads, most of whom are lawyers.

So, that takes care of any demeaning lawyer jokes -- you won't hear them from me today. (It says here, pause for applause.)

After thinking it over, I have to stop bragging about how great my staff is. They get offers they can't refuse, and I can't match. In private industry, I would have pleaded with my CEO to match or surpass their offers.

It is a government weakness, perhaps a necessary budgetary limitation, that we can't match top industry offers in money, benefits or contractual increases to keep our best lawyers or potential key executives. I would have sought increased compensation to keep Brian, Mo, Ken, Dave, Bob, Kathy, Bill and many of our bureau chiefs and department heads. The net result we now have \$40,000 to \$115,000 a year FCC lawyers competing against \$150,000 to \$500,000 a year distinguished alumni. We are fortunate in being able to keep a basic corps of capable people dedicated to public service.

A few years ago, I became so impressed with the attractive emoluments of the legal private sector that I contemplated, or perhaps fantasized, forming a one-stop shopping center for legal, government and press representation. The new firm would be composed of politically balanced FCC and Hill all-stars specializing in coordinated campaigns to achieve client objectives. I can just visualize the aggressive ads so popular these days -- "Do you have a communications business? Problems? If so, you are just one phone call away from having our expert agents in law, press and government relations on your side with well coordinated creative campaigns to

achieve your goals. Special for this month only, take advantage of our special package of less bilious billables. Remember, call today." We would also have convenient catch titles for the options in the Q (for quality) services: 1-Q legal only; 2-Q legal and Hill representation; 3-Q legal, Hill and press representation -- now for the 4-well, for the fourth Q service, we would recommend a rival overpriced law firm.

Incidentally, in a depressing moment of self-evaluation, I realize that no one ever offered me an attractive job. I am contemplating enlisting the AARP in a suit or possibly a class action suit charging the communications industry and lobbying firms with discrimination against senior citizens or against old Italian-Americans.

I also think the huge AARP membership should assume a much greater activist role and petition Congress and demand four hours of TV programming a week to serve senior citizens with particular attention to the millions facing discrimination in employment, and particularly those in retirement communities and facing neglect in nursing homes. Members of Congress are well aware that most seniors have the time and inclination to vote. There are many other worthwhile social and charitable causes that merit broadcast attention. You will find most of them regularly treated in the issues/ programs listings of broadcast licensees.

Should Congress amend the First Amendment to authorize the government to specifically mandate quantities of TV programming for worthy social or political purposes? Could the government budget be increased to include hiring experienced broadcast program or news directors to objectively handle this additional government responsibility?

I'm appalled at the ideas I have expressed here, but as a longtime former newsman and broadcast executive, I may be a little out of date or I may lack the political sophistication necessary to scrap the First Amendment.

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."

This statement is even much more applicable to direct content regulation like Children's TV than to Must Carry.

However, the Children's TV Act has become such a charged emotional and political issue that an impressive 220 members of Congress have signed a letter to the Commission. Last week, it was announced that 32 Senators had signed letters

urging 3 hours. So much for my reaction to the initial 104 signatures, by stating I was impressed by the 331 that had not signed it. Nevertheless, Congress in enacting the CTA provided flexibility and did not specify three hours. Then too, the FCC never voted any quantitative standard. Both avoided Constitutional problems.

But let the record show that all of us are interested in encouraging quality programming for children, but some of us also have First Amendment concerns with government exercising control over the leading news and information medium in the nation by mandating how much and what specific programs to broadcast. I also believe young children should be educated on the vital importance of the freedom guaranteed by the First Amendment.

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

I have urged them to show me and everyone what free broadcasting can really do for quality children's programming on a voluntary basis without the heavy, unconstitutional hand of government mandating quantitative rules. A survey of 559 TV stations in the official record of the Children's TV proceeding shows that broadcasters have voluntarily responded with over three hours a week.

So, how do I reconcile my recent proposal on Children's TV with the First Amendment? I have attached a copy of my recent proposal to be distributed with this speech. I believe my children's proposal is less intrusive of the First Amendment because it does not involve the FCC in mandating a quantitative standard either as a rule or as a processing guideline. I have no pride of authorship. The proposal incorporates the key ideas of Commissioners Ness and Chong in previous proposals. It also avoids a controversial FCC attempt to enforce ex post facto a standard on renewal applicants that doesn't exist or a rule that was never voted.

Briefly, I proposed a compromise, and it is still only a proposal, to end the impasse on the Children's TV rulemaking at the FCC and to avoid time consuming license renewal hassles that would require contentious individual review of every station's application.

I was greatly influenced in proposing a compromise by the many pressing decisions we have in implementing the historic 1996 Telecommunications Act. There is the need for a cooperative exchange of ideas among Commissioners and their staffs with the goal of reaching consensus decisions on complex communications issues affecting the nation -- issues with much greater future public interest value than the children's educational/informational issue. With many competing telephone,

cable, and wireless industries all seeking "a fair advantage," a well-reasoned outcome will require the undivided attention of the Commissioners and FCC staff.

In this regard, I have long believed that the supposed social benefits from three hours of children's programming are being vastly overestimated. Children's programming won't cure major social problems like children's health, children's welfare, disease, poverty, crime, drugs, lack of school education or lack of family unity. On the other hand, linking schools, libraries and hospitals with the Internet and the electronic superhighway is but one of the many provisions in the Telecom Act and the administration's undertakings that will unquestionably bring real benefits to children's welfare.

Nevertheless, 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. Many broadcasters have already expressed their preference for the presumptive license certainty of volunteering three hours. The FCC is making progress towards developing a compromise acceptable to all commissioners. But, the childrens' programming issue has not been finally resolved .

I'm glad I had the opportunity to clarify my CTA position, but, I would have preferred more fascinating topics.

For instance, a speech suggestion that appealed to me was the "most" approach like "most rewarding, most amusing, most embarrassing, most controversial, most memorable." I now wish I had time for it. You eventually will be able to read all experiences in detail in my book after I leave the FCC.

Skimming from the top--

Most memorable: My record breaking 8 day initial confirmation Senate hearing in 1974 and 12-1/2 minute confirmation at my third re-appointment Senate hearing in 1991. The details will be one of the more fascinating and intriguing chapters in the book.

Most embarrassing: An embarrassing press quote years ago that I mistakenly thought was off-the-record. The only recourse I had was to blame the press. At a regular commission meeting attended by the press I said " I was unfairly treated by the press--They used the lethal device of quoting me exactly verbatim." Every reasonable

person knows I need a legal filter for my ad libs. I can't stand that kind of unfair treatment."

Potentially Most Embarrassing: Bombastically, expressing my objections about a commission vote in my 2nd rookie year at the FCC with gross army type invectives in my office with a reporter present-- Tack Nail mercifully said "Jimmy Jack, why don't you talk it over with your legal assistant and then call me." I never forgot it and trusted him as a good friend ever since.

Most Rewarding: Initiating the landmark PCS service and auctions and implementing the Cable Act during my interim chairmanship followed by laudatory letters from President Clinton, and congressional communications leaders. Also, 31 distinguished service awards and citations. I call them my "preposthumous" awards that I attribute to venerability of age. "Once you become venerable, you get credit for virtues you never had, and I'm grateful."

Most Controversial: FinSyn, Cable implementation, Children's TV Act, and the upcoming implementation of the 1996 Telecom Act.

Most Interesting Industry Characters: John De Butts, former ATT chairman, Ted Turner, John Malone, Ward Quaal, Tom Murphy.

Most Impressive and all other "mosts": to be published later.

Incidentally, as a non-lawyer I am consoled and energized by the wise advice of FDR, one of our greatest presidents. The FDR quote: "In administrative agencies, common sense and a forward-looking approach must take precedence over technical legalism and a view to the past."

However, the FCC is still primarily a legal ball game. I believe at least three and more likely four commissioners should be lawyers. I personally was educated by and benefitted from the legal expertise both within and outside the FCC.

I applaud your overall contribution to the FCC process. With the implementation of the 1996 Telecom Act you are needed now more than ever. The humorously called "Lawyer Relief Act of 1996" was anything but a relief act for the heavily burdened FCC.

I'm impressed with your knowledge, respect your professionalism, enjoy your sense of humor and appreciate your friendship.

In closing I want to share my favorite quote with you that applies to everyone, but particularly to leaders in the profession and industry. "Resolve to be tender with the young; compassionate with the aged; sympathetic to the striving and tolerant of the weak and wrong--Sometimes in life you will have been all of those."

As probably the most senior citizen in the room I have lived through all these stages. I wish all of you well and hope you can productively navigate through all the trying stages of life enjoying health, happiness, and continued fulfillment.

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.