

**UNITED STATES GOVERNMENT
FEDERAL COMMUNICATIONS COMMISSION
INTEROFFICE MEMORANDUM**

(3)

permanent file

TO: Chairman Reed Hundt

FROM: Commissioner James H. Quello

DATE: July 9, 1996

I appreciate your taking the time last evening to read and respond to my memo. I appreciate your candor, and I hope you will in turn appreciate mine as I answer your letter.

First of all, I must respectfully disagree with your observation that my memo "contradicts [my] repeated public and private statements to the effect that [I] would support the processing guideline, while writing a separate statement expressing [my] points of disagreement." I agreed in principle to concur in the adoption of a three-hour processing guideline containing a reasonable degree of flexibility; as I point out in my memo, however, the staff draft doesn't contain one.

In addition, as I also point out, we have never discussed, much less agreed to, the proposition that by concurring with the adoption of such a processing guideline I would also be concurring in the extraneous and gratuitous resurrection of outmoded legal and economic precedent that lays the groundwork for turning the regulatory clock on broadcasting back twenty-five years. Imagine, therefore, my distress at finding, first, the inclusion of such material, and now, your apparent unwillingness to even consider removing it.

On your subordinate points about the need to include this material as (a) a defense of the CTA or (b) a defense against my separate statement, I would simply say that (a) as I said in my memo, an extended legal analysis of the constitutionality of the CTA is unnecessary in writing a sound Report and Order; and (b) the less objectionable the Report and Order ultimately is, the less, obviously, I would be inclined to write at length about it.

Let me be plain. This draft does not contain the type of three-hour processing guideline I thought we had agreed to adopt. And even if this problem did not exist, the inclusion of so much material that I never could or would have envisioned, much less agreed to, is in any event outside the four corners of any tacit agreement we may have had. In fact, had you deliberately set out to produce a draft calculated to draw my partial dissent, you unfortunately could not have done a better job.

I agreed not to block the adoption of a reasonable three-hour processing guideline complemented by a revised definition. I did not agree to help erect a framework that will shackle broadcasters into a discarded paradigm of overregulation today and, more importantly, for years to come.

If you cannot agree, as I have requested, to having our staffs work these points out, I will be willing to vote the staff draft, as you suggest. But in doing so I will concur in only specific sentences and paragraphs, and dissent to the rest because it is not consistent with any agreement we had.

If you insist upon this course and you have third vote for the material to which I will dissent, then this should be no problem to you. On the other hand, you may wish for several reasons to rethink your apparent "all or nothing" approach. I am, as I said in my memo and always, prepared to work with you towards a consensus result.

I do feel it would be the ultimate irony if, in choosing not to avail yourself of this opportunity, you thereby forego the Commission's ability to do something positive for children's television simply because it is not precisely what you would have done. I have already made that accommodation with my own strongly-preferred outcomes in an attempt to reach a positive consensus result. I sincerely hope that, given what I believe to be your sincere interest in improving children's television, you can find it in yourself to achieve that goal by making a comparatively modest accommodation of your own.


James H. Quello
Commissioner

cc: Commissioner Susan Ness
Commissioner Rachel Chong
Roy Stewart
William Kennard
Blair Levin