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Public-Interest Twist in Broadcast Takeovers

By JAMES H. QUELLO

One of the more fascinating topics in broadcasting-industry circles these days is the likelihood or possibility of hostile takeovers of broadcasting properties.

Such takeovers were generally considered virtually impossible a few years ago, because any change in control of a broadcasting station must be formally sanctioned by the Federal Communications Commission. The conventional wisdom held that an incumbent licensee could delay any hostile suitor by lengthy commission proceedings so as to effectively thwart a takeover.

Interest in the subject has been heightened considerably in recent weeks as a result of inquiries at the FCC about the formal transfer-of-control process. Commission officials have indicated that our transfer process would not be used as "shark repellent" to protect incumbent licensees against hostile takeover attempts. This view has given rise to much speculation about possible takeover targets.

At the risk of tipping the balance too far in the other direction, I would like to point out that the commission must be involved directly in any such attempt.

The FCC derives its authority and its guidance from the Communications Act of 1934. Section 310(d) of that act specifies the following:

"No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the commission and upon finding by the commission that the public interest, convenience, and necessity will be served thereby."

Thus the commission is required to find that any transfer of control, hostile or otherwise, serves "the public interest, convenience and necessity . . . ." The commission has considerable latitude in making this determination.

Historically the commission has inquired into the financial qualifications of the person seeking control. We have considered whether the applicant was likely to provide an acceptable service. We have generally insisted that the proposed transferee demonstrate motives beyond mere financial gain.

All corporate takeovers must occur under the scrutiny of the Securities and Exchange Commission and the Justice Department. Where broadcast properties are involved, the Federal Communications Commission also must be involved. FCC involvement need not be accompanied by great delay, as was once imagined. But commission involvement will not be pro forma.

In the often rough-and-tumble corporate world, the government attempts to protect shareholders and competition. In telecommunications businesses there is an additional layer of government involvement. The government, through the Federal Communications Commission, also seeks to protect those for whom service is being provided.

In the course of considering an application for transfer of control of a broadcasting license, I would have to satisfy myself that the applicant was interested in and capable of providing an acceptable level of service to the public. If it were clear to me that public needs and interests were not being adequately addressed by any applicant, I could not support a transfer.

The financial community should realize that broadcast properties should not be considered just another takeover game. Potential buyers have to meet the requirements of not only the Securities and Exchange Commission and the Justice Department but also the FCC, which is required to make a public-interest finding *before* a transfer of control or ownership. The requirement for FCC approval is something that potential raiders should keep in mind.

Our broadcasting system requires a degree of stability that is not enhanced by excessive financial manipulation and speculation.

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