

April 4, 1985

SEPARATE STATEMENT
OF
COMMISSIONER JAMES H. QUELLO

In re: Application of the Committee for Full Value of Storer Communications, Inc. for consent to transfer of control of Storer Communications, Inc.

The interests of all parties involved in this proxy fight -- and the interests of the public -- are served by very prompt Commission action on this matter. Accordingly, I wholeheartedly support the decision to grant expedited consideration to these issues.

On the other hand, I believe that the Commission's staff exceeded its delegated authority by acting on an application that clearly presents "novel questions . . . which cannot be resolved under outstanding precedents and guidelines." See 47 C.F.R. Sec. 0.283(a)(14)(ii). It is unfortunate that this matter was not referred to the Commission in the first instance. Further, even tentative answers to these crucial procedural questions may have significant impact both on the progress of this controversy and on the corporate strategy of other incumbent licensees and their shareholders. Therefore, in an effort to avoid sending any signal in advance of Commission consideration of this application and the related pleadings, I would have supported a Commission stay of the staff's action.

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FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

IN REPLY REFER TO:

Storer Communications, Inc.
c/o Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington, D. C. 20036

Gentlemen:

This is in reference to your "Motion for Expedited Action on 'Application for Review' and on 'Contingent Motion for Stay or Other Interim Relief,'" filed April 1, 1985, in connection with the staff's action as to the applications and pleadings filed by you and by The Committee for Full Value of Storer Communications, Inc.

You request expedited action and a stay of the staff action, unless rendered moot by a grant of your application for review. You state that if the Commission fails to issue a ruling on your application for review by April 8, 1985, "Storer will deem such inaction to have been a denial of this motion. . . ." You state that you will seek judicial review in the event of such a denial.

You filed your application for review and the motion described above on April 1, 1985. The Media Access Project, the Telecommunications Research and Action Center, and Action for Childrens Television filed a joint pleading on this matter on April 2, 1985. On the following day, the National Black Media Coalition filed a similar pleading. Given the extent of the pleadings, the issues and arguments raised, the time needed to draft an appropriate document, and the time needed for Commission consideration, action on the application for review by April 8, 1985, is not anticipated.

Nonetheless, we recognize the importance of a prompt ruling for the parties to this proceeding, and the possibility of an appeal that might be filed by a losing party. Accordingly, your request for expedited action is granted. The staff, therefore, is preparing an appropriate document for presentation to the Commission as promptly as possible. We anticipate that we shall consider such a document by April 12, 1985, which is more than three weeks before the scheduled May 7, 1985 shareholders meeting.

We have adopted a four-element test that parties must meet in order to obtain a stay. These elements are: (1) the likelihood that a petitioner will prevail on the merits; (2) the likelihood of irreparable injury to the petitioner in the absence of a stay; (3) the injury to other parties in a proceeding that might arise from the grant of a stay; and (4) any injury to the public interest that might ensue. See, e.g., Virginia Petroleum Jobbers Association v. F.P.C., 259 F.2d 921 (D.C. Cir. 1958) and Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977). If Storer's existing Board is displaced, you state that there would be no party to file an appeal and no opportunity for judicial review of the Commission's action. This would, you assert, deny Storer and the public the opportunity for judicial review of the issues presented.

We do not concede that there would be no subsequent opportunity for judicial review, if the present Board is removed. In any event, we need not address that issue because we have granted your request for expedited action, and this matter will be addressed well in advance of the May 7 shareholder meeting. We can therefore find no irreparable injury to you or the public resulting from the time needed to consider your pleadings. Because you have not met this element of the four-element test, you have not presented sufficient cause to merit a stay at this time. Your arguments on the merits of your petition, along with the pleadings of the other parties, will be reviewed when we consider this matter in the near future.

BY DIRECTION OF THE COMMISSION

William J. Tricarico
Secretary

cc: Warren C. Zwicky, Esq.
Dean Burch, Esq.
Stephen A. Sharp, Esq.

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