

Concurring Statement  
of  
FCC Commissioner James H. Quello

In re: Notice of Inquiry on Tender Offers and Proxy  
Contests Involving Publicly Traded Licensee  
Corporations.

I support issuance of this Notice of Inquiry since it raises difficult questions on which public comment will be most welcome. I wish to emphasize, however, my concerns about the use of a short-form transfer to a trustee as a means of simplifying the process for a hostile takeover of a corporate broadcast licensee.

As the Commission has recently had full opportunity to consider,<sup>1</sup> Section 310(d) of the Act<sup>2</sup> requires advance Commission approval of any proposed transfer of ownership or control of a broadcast license. Section 309 sets out procedural requirements for consideration of these applications, and it specifically requires a formal opportunity for public comment on the applicant's qualifications.<sup>3</sup> The Act provides only two exceptions to these procedural requirements: applications for involuntary assignments or transfers and applications that "[do] not involve a substantial change in ownership or control."<sup>4</sup> To accomplish a hostile tender offer, substantial ownership changes, accompanied by a transfer of ultimate control over the licensee, must occur. Such a transaction cannot be characterized reasonably either as involuntary or as less than substantial. Accordingly, a crucial question of statutory authority must be resolved before the Commission could apply this approach.

---

<sup>1</sup> Committee for Full Value of Storer Communications, Inc., 57 Rad. Reg. (P&F) 1651 (1985), aff'd sub nom. Storer Communications, Inc., v. F.C.C., No. 85-1247 (D.C. Cir., May 14, 1985).

<sup>2</sup> 47 U.S.C. 310(d).

<sup>3</sup> 47 U.S.C. 309(b) and 309(d).

<sup>4</sup> 47 U.S.C. 309(c)(2)(B).

I am also concerned about the policy implications of authorizing the removal of a qualified licensee prior to considering and approving an application for the transfer of the license to a qualified successor. After transfer to the trustee has been accomplished, questions may arise about the qualifications of the proposed ultimate licensee. Then assignment to a non-trustee licensee could be long delayed. As the trustee's term is extended, the possibilities would multiply for administrative difficulties to arise (e.g., questions about insulation of the trustee from the beneficiary) that could require detailed Commission oversight. We must consider both the degree to which the trustee concept can be expected to work over an extended period, and we should question whether the special obligation of broadcast licensees to program in the public interest could be affected adversely by a trustee arrangement.

Finally, I would like to see some discussion of whether the adoption of novel procedures is in fact essential to a neutral government attitude toward hostile takeovers of corporate broadcast licensees. It is possible that potential "raiders" might employ takeover strategies that would comport with existing procedures while assuring that shareholders can enjoy full voting rights.

These are important questions, and I hope interested persons take advantage of this opportunity to influence future Commission actions in this area.