

July 12, 1985

Summary of Dissenting Statement
of
FCC Commissioner James H. Quello

In re: Applications of Eugene McCarthy, Trustee, for
Commission Consent to Acquire Control of
Multimedia, Inc.

The majority has determined that extraordinary procedures are necessary to ensure that Multimedia's shareholders will have an opportunity to consider Mr. Cooke's offer at the same time as they consider the management proposal for restructuring the corporation. Effectuation of that policy goal is only appropriate if the Commission can conclude that there is no conflict with its mandate as set out in the Communications Act. Under that Act, the Commission's first responsibility is not to protect shareholders' interest but to protect the public interest. Therefore, our primary concern must be the potential effect on the public of using these procedures.

In my view, the public is not well served by authorizing the ouster of a qualified licensee prior to determining that the successor is fully qualified. In fact, irrespective of my personal view, this is the policy determination that has been made by Congress and expressed in Section 310(d) of the Communications Act -- approval of the transfer must precede its effectuation. The majority's trustee plan does not comport with this requirement and the associated procedural requirements of Section 309(b) and 309(d).

In particular, the efforts of the majority to bring its trustee plan into conformance with the requirements of the Act cannot succeed. Clearly, ownership of Multimedia would be transferred if the tender offer is successful, and, in my view, control of Multimedia's facilities must pass with the transfer of that license. To hold otherwise contradicts the key element of the present system whereby the Commission relies on exclusive licensee supervision and control of station operations. See e.g., Trustees of the University of Pennsylvania, 69 FCC2d 1394, 1396 (1978).

The STA authority Congress has granted the Commission under Section 309(f) of the Act does not add support to the majority's position. There are no "extraordinary circumstances requiring temporary operations in the public interest," and it cannot be found that "delay in the institution of such temporary operations would seriously prejudice the public interest." 47 U.S.C. 309(f). The facilities of Multimedia are currently operating, and Mr. Cooke has represented that he does not intend to change those operations. No extraordinary circumstances require temporary operations by a trustee.

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In addition, STA authority only permits a temporary change in station operations pending Commission consideration of an application for full authority. In this case, summary action to terminate the STA would not be possible since it would modify the trustee's license (and cause the stations to go dark). Further, unlike the situation in previous STA grants, in this case there can be no return to the conditions in effect prior to grant of the STA. Once the trustee has acquired the shares of Multimedia, he will have effected an irreversible transfer of ownership and control. For all these reasons, the proposed change is clearly beyond the scope of authority contemplated by a special "temporary" authorization.

In sum, I see the majority's attempt to accomplish a half-way transfer without full procedural requirements as akin to an attempt to accomplish a half-way pregnancy. Before you know it, you are already all the way there. I dissent.