

**Statement of
Commissioner James H. Quello
Concurring in Part and Dissenting in Part**

In re Applications of STOCKHOLDERS OF RENAISSANCE COMMUNICATIONS CORPORATION and TRIBUNE COMPANY

Today's decision approves the transfer of control of Renaissance Communications Corporation to the Tribune Company. As a result of the merger, Tribune will own a total of 16 television stations and 5 radio stations, as well as a variety of newspapers.

Although I concur with respect to the transfer of control, I respectfully dissent from the portion of the decision which denies Tribune's request for a permanent waiver of our newspaper-television cross ownership rule so that it could retain ownership of both the *Sun-Sentinel* newspaper in Ft. Lauderdale and WDZL(TV)(Ch.39) in Miami, Florida. I would have preferred, instead, to grant Tribune a waiver, conditioned on the outcome of a review of our newspaper-television cross ownership rule and the waiver criteria it imposes.

The majority's decision today relies on a newspaper-television ownership rule which, in my opinion, is out-dated, over-regulatory, and all too often flies in the face of common sense. I would use this case involving Renaissance and Tribune to evaluate the continuing viability of this rule in light of today's marketplace, and not that of 23 years ago. When the rule was written, newspapers held a much more dominant position in the overall market place and significantly fewer television stations were present nationwide. To the extent that the Commission is relying on the newspaper-television cross ownership rule, I believe that it should ensure that the rule reflects today's market dynamics. In this instance, because of the fundamental changes in the South Florida market (Dade, Broward, and Palm Beach counties) since the rule was passed, I believe that Tribune deserves an analysis based on the market demands and the competitive, de-regulatory framework of rules as they apply today.

The market at issue in South Florida is one which is highly competitive with no fewer than 23 separately owned television stations, 69 radio stations (49 of which are separately owned), 6 separately owned daily newspapers, and at least 15 weekly community newspapers. WDZL(TV) is a UHF station, and although the *Sun-Sentinel* has a high circulation in Broward County, where it is published, it lags significantly behind the *Miami Herald* in the South Florida area. Even considering the various potential definitions in the record for the relevant market, the HHI index produces a result that is only either unconcentrated or moderately concentrated. Consequently, I believe that reliance on the other competitive factors in the market provides justification for a waiver. Moreover, Tribune insists that the management, operation, and editorial control of both entities would continue to be separate.

The fact that the Commission has only granted two waivers of the cross ownership rule in the past twenty years should, in my mind, raise serious doubt as to the standards for not only the rule, but for the waivers. While we have regularly evaluated our other ownership rules in light of current market factors, we refuse to do so here. The majority rationalizes its

limited review of the waiver showing on the grounds that we stated, when we adopted the rule, that parties should not seek a waiver premised on views rejected at the time that we adopted the cross ownership rules. The rule, however, was adopted in 1975, over 20 years ago. To assume that our views have not changed as the competitive marketplace has evolved is to put government regulation in an outdated time capsule. Fortunately, the Commission, in other contexts, has recognized that in considering waivers it need not follow the decision-making process used in previous waivers, nor must it follow the strict rationale used in developing the original rule. Citadel Communications Co., Ltd., 8 FCC Rcd. 855, 858 (1993). I believe that this principle should guide our decision here. The majority further states that the mere existence of a significant number of media outlets in the South Florida market cannot be regarded as an "exceptional circumstance." However, the issues of diversity and competition are the very basis for the rule, and should, in my opinion, always be central to our reasoning for granting or denying a waiver request.

I believe that this Commission needs to initiate a rulemaking concerning the cross ownership rule for newspaper and television owners. It seems to me that the rule, and any waivers thereto, should be clear cut and modeled after today's marketplace, not that of twenty years ago. If the market in which cross ownership occurs is viable and competitive, and there is no undue adverse effect on the market by the grant of the waiver, this Commission owes it to the entities involved to take a hard look at the serious repercussions of denying the waiver. If the public interest is served by the combination, there is no competitive harm as a result, and the overall market viability is not seriously effected, then we should not be restricting these combinations.