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Decision 84 04 054 APR 1 8 1984

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of ICS Communications, a California Corporation, Metromedia, Inc., a Delaware corporation, and John W. Kluge, an individual, for authorization for transfer of control.	Application 84-03-08 (Filed March 2, 1984; amended April 3, 1984)

O P I N I O N

Applicants ICS Communications (ICS), a California corporation certificated to perform public utility radiotelephone utility (RTU) service in Southern California, Metromedia, Inc. (Metromedia), parent corporation of ICS, and John W. Kluge (Kluge), an individual who is a stockholder and an officer and director of Metromedia, request authorization under Public Utilities Code § 854 for Kluge to control ICS through his proposed control of Metromedia. The application shows that it was served on the ten entities which compete with ICS in Southern California. Notice of the filing of the application appeared in the Commission's Daily Calendar of March 6, 1984. No protests to the application have been received.

By Decision (D.) 82-11-53 dated November 17, 1982, this Commission authorized Metromedia to control ICS. Metromedia is a group broadcasting company which owns and operates seven television stations in major metropolitan areas, as well as seven AM and six FM stations in 10 major metropolitan areas, and the Texas State Networks. Metromedia is also a major radio common carrier (RCC) through ownership of RTUs (RCCs) in New York, New Jersey, Rhode

Island, New Hampshire, Texas, Connecticut, Massachusetts, Illinois, and Southern California. It likewise owns a long distance telephone reseller in Texas, and has an ownership interest in the non-wire cellular system serving the Baltimore, Maryland/Washington, D.C. area. Other business interests of Metromedia include its Foster & Kleiser Division which manages outdoor advertising businesses in 20 major metropolitan ares; the production and distribution of television programs through Metromedia Producers Corporation and Metrotape; and ownership of the Ice Capades and Harlem Globetrotters. Metromedia's stock is publicly traded and is held by in excess of 6,000 different accounts. Metromedia had a consolidated net worth of $198,470,000 as of December 31, 1983 and had a consolidated net income for the calendar year ending on that date of $102,179,000. ICS had a consolidated net worth of $33,875,370 as of December 31, 1983 and a consolidated net income for the calendar year ending on that date of $1,357,370.

Kluge owns more than 25% of Metromedia's stock. No other individual owns as much as 5% of Metromedia's stock. Kluge has been with Metromedia for approximately 25 years. He is currently President, Chief Executive Officer, Director, Chairman of the Board of Directors, Member of the Executive Committee, and Member of the Proxy Committee of Metromedia. Through his stock ownership and his corporate offices Kluge has exercised de facto control over the management and operations of Metromedia for 25 years.

Pursuant to a proposed leveraged management buy-out plan Kluge and three Senior Vice Presidents of Metromedia have proposed to buy out the other stockholders of Metromedia. The buy-out will be accomplished through the merger of JWK Acquisition Corporation (JWK), of which Kluge is presently the sole stockholder, into Metromedia, the surviving corporation. The buy-out will be financed by (i) capital contributions of Kluge and three other principal executives of Metromedia (Robert M. Bennett, George H. Duncan and Stuart Subotnick); (ii) by loans from a consortium of banks led by Manufacturers Hanover Trust Company (including Bank of America, Security Pacific National Bank, Union and Wells Fargo Bank) in the approximate amount of $1,300,000,000; (iii) by issuance of non-voting redeemable preferred stock and warrants to the Prudential Life Insurance Company in the amount of $125,000,000; and (iv) by issuance to Boston Ventures Limited Partnership of Class A non-voting Common Stock in the amount of $10,000,000.

The capital contributions of the Management Group (Kluge, Bennett, Duncan, and Subotnick) would be effected through contribution by Kluge of 4,500,000 common shares of Metromedia to JWK prior to consummation of the merger, such shares forming part of the capital of Metromedia after the merger, and net cash contribution or investment by the Management Group of $12,000,000. Consummation of the merger is contingent upon, among other things, receipt of necessary regulatory approvals, execution of the above-mentioned financing arrangements in the amount of approximately $1.45 billion, and a shareholder vote. Upon consummation of the merger, all of the voting stock of Metromedia, the surviving corporation will be owned by the four principal executives of Metromedia, Kluge owning 92.6284%, and the other three principal executives (Bennett, Duncan, and Subotnick) each owning 2.4572%. Following consummation of the buy-out, Kluge will exercise _de jure_ control of Metromedia's management and operations. All shares of stock of Metromedia, the surviving corporation, issued to Kluge, Bennett, Duncan, and Subotnick, as well as the shares of Class A common non-voting stock to be issued to Boston Ventures Limited Partnership, will be pledged to the lending banks. Additionally, all of the voting common stock of Metromedia owned by Mr. Kluge will be transferred to an irrevocable voting trust. Prior to his death or disability, Kluge, as a voting trustee will exercise sole discretion in voting the

Metromedia common stock held by the Trust. The current officers of Metromedia will continue to serve as the officers of Metromedia following consummation of the buy-out. After the buy-out the business affairs of Metromedia will continue to be conducted in substantially the same fashion as they are presently conducted.

Applicants contend that the proposed transfer of de jure control will be in the public interest because of Metromedia's continued commitment to maintain the level of service now provided to subscribers by its current licensees and to enhance that service through the provision of additional high quality, innovative point-to-point microwave, paging, two-way mobile telephone and cellular offerings. Applicants believe that Metromedia's ability to provide such service is demonstrated by its record in the operation of numerous broadcasting and radiotelephone facilities throughout the country. Metromedia is possessed of considerable technical research and development resources that will continue to be applied to the improvement and expansion radiotelephone facilities, and has the financial resources more than adequate to support its plans for radiotelephone services.

Several purported class action lawsuits have been filed on behalf of stockholders of Metromedia in Delaware. The parties to the lawsuits have reached an agreement in principle to settle the suits. The agreement in principle provides that, in addition to the consideration previously proposed to be paid in the transaction, holders of Metromedia common stock will receive for each share one-half warrant to purchase a new issue of subordinated debentures of Metromedia, with one warrant entitling the holder to purchase $25 principal amount of such debentures. The warrants, which will be exercisable during the period beginning approximately three years and ending approximately five and one-half years after merger, will entitle the holder to purchase the subordinated debentures subject thereto at 95% of their principal amount. Such debentures, which will bear interest at a rate of 16% per annum, will be issued only in principal amounts of $1,000 or whole multiples of $1,000. Accordingly, 40 warrants will be required to purchase such a debenture. Such debentures will rank pari passu with the subordinated discount debentures maturing 14 years after the merger that form part of the consideration previously proposed to be paid in the merger. The agreement in principle also commits Metromedia to pay a 19¢-per-share dividend prior to consummation of the proposed buyout. The agreement in principle is subject to completion of a definitive settlement agreement and approval by the Court of Chancery of the State of Delaware. While the Management Group, Metromedia, and their independent advisors and consultants are of the opinion that the initial merger consideration was fair and equitable, nevertheless, Metromedia and Kluge have agreed to settle the pending litigation as being in the best interests of the shareholders, the Management Group and Metromedia, particularly in view of the protracted and costly litigation that would otherwise ensue.

This matter was not listed on the agenda distributed to the public. An emergency exists sufficient to act under Public Utilities Code § 306(b) in that loan commitment fees in the range of several hundred thousand dollars a month are now being charted by the banks for the loan commitments made to finance the subject transaction and any delay in our approval of the transaction will result in the unnecessary waste of a great deal of money.

Findings of Fact

1. ICS is a public radiotelephone utility performing service in Southern California.

2. By D.82-11-53, dated November 17, 1982, the Commission authorized the control of ICS by Metromedia.

3. Metromedia is a multimillion dollar group broadcasting company which owns and operates television stations and radiotelephone utilities and has other diversified business interests.

4. Kluge, through his stock ownership in Metromedia and his corporate offices with that company, has exercised de facto control over the management and operations of Metromedia for 25 years.

5. Pursuant to a proposed leveraged management buy-out plan Kluge and 3 Senior Vice Presidents of Metromedia propose to buy out the other stockholders of Metromedia.

6. Upon consummation of the buy-out plan all voting stock of Metromedia will be owned by the four principal executives of Metromedia, Kluge owning 92.6284% of the stock and the other three pricipal executives owning 2.4572% each.

7. Kluge, as a voting trustee of a voting trust intended to be set up with the voting stock will exercise sole discretion in voting the Metromedia common stock held by the trust.

8. Following consummation of the buy-out current officers of Metromedia will continue to serve as officers of Metromedia and the business affairs of Metromedia will continue to be conducted in substantially the same fashion as they are presently conducted.

9. Kluge's proposed control of ICS through his majority ownership of the common voting stock of Metromedia is not adverse to the public interest.

10. A hearing is not necessary.

Conclusion of Law

The application should be granted.

A.84-03-08 ALJ/rr/md/vdl *

O R D E R

IT IS ORDERED that John W. Kluge is authorized to control ICS Communications as provided in the appliction.

This order is effective today.

Dated APR 18 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Joseph E. Bodovitz

Joseph E. Bodovitz, Executive Director