

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
MOBILEMEDIA CORPORATION, et al.)
)
Applicant for Authorizations and Licensee)
of Certain Stations in Various Services)

WT DOCKET NO. 97-115

To: The Commission

**WIRELESS TELECOMMUNICATIONS BUREAU'S
MOTION TO DISMISS REQUEST TO DEPOSE COMMISSION PERSONNEL**

1. On May 6, 1997, MobileMedia Corporation and its subsidiaries ("MobileMedia") filed a Motion for Leave to Depose Commission Personnel. The Acting Chief, Wireless Telecommunications Bureau, hereby requests that the Commission dismiss MobileMedia's request for relief with prejudice.

2. MobileMedia seeks to take the depositions of four current and one former Commission employee, to wit, Howard Davenport, Myron Peck, Gary Schonman, and Anthony Mastando (all currently employed in the Commission's Wireless Telecommunications Bureau), and Michele Farquhar (formerly employed in the Commission's Wireless Telecommunications Bureau). MobileMedia states, in connection with the issue specified at para. 14(b) of the Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing for Forfeiture, FCC 97-124 (released April 8, 1997) ("Show Cause Order"), that the deposition testimony of these individuals is necessary for three reasons, i.e.,

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to "establish what [MobileMedia's] counsel told these Commission personnel about the Company's internal investigation, what the Commission personnel understood they were told, and how they responded to what they were told."

3. It is well established that the Commission will not entertain requests to depose Commission personnel concerning matters related to their employment in the absence of an affirmative finding by the Presiding Judge in this proceeding that the proposed examination relates to matters that are relevant to the issues designated for hearing. Rainbow Broadcasting Company, FCC 961 (released February 9, 1996); Scripps Howard Broadcasting Company, 9 FCC Rcd 4880 (1994). In the instant case, MobileMedia has neither sought nor obtained any such affirmative finding by the Presiding Judge. Since an affirmative finding by the Presiding Judge as to relevancy is required before the Commission will consider a request to depose a Commission employee, and the Presiding Judge has made no affirmative finding in this instance, MobileMedia's request to depose Messrs. Davenport, Peck, Schonman, and Mastando and Ms. Farquhar is procedurally defective and should be dismissed.

4. Moreover, given the expedited schedule governing this case, the Commission should rule conclusively at this time that the dismissal is with prejudice. MobileMedia advances three reasons for seeking the subject depositions, none of which has merit. First, MobileMedia states that it seeks to ascertain statements that MobileMedia's own attorneys made to the subject Commission personnel. Assuming, arguendo, that such information

satisfies the threshold test of relevancy,¹ there is no basis for obtaining this information through the non-routine process of deposing Commission personnel when the information sought -- statements made by MobileMedia's counsel -- can be readily obtained from the individuals who actually uttered them. Surely, MobileMedia's counsel know what statements they have made to the Commission's staff.²

5. The Bureau further submits that MobileMedia's other stated purposes for seeking to take the subject depositions are also without merit because they are patently irrelevant. MobileMedia maintains that it requires the depositions to ascertain "what the Commission personnel understood they were told" by MobileMedia. There is no demonstration that this information is relevant to the issue at para. 14(b) of the Show Cause Order. The issue at para. 14(b) seeks to determine the facts and circumstances surrounding the preparation and submission of MobileMedia's October 15, 1996, Report. What Commission personnel may or may not have understood is irrelevant to determining whether MobileMedia lacked candor in the preparation and submission of its Report. Furthermore, none of the Commission personnel in question was involved in the preparation and submission of the Report to the Bureau, and none of the Commission personnel in question has direct personal knowledge about the preparation and submission of the Report to the Bureau. MobileMedia also states that it must depose the subject Commission personnel to ascertain "how they responded to

¹ 47 C.F.R. § 1.311(b).

² "Parties should seek such information from the person with direct knowledge of the facts. The purpose of discovery is to find the potential witness and to determine what he knows -- not what he has related to the Commission's investigator." Report and Order in Docket No. 16473, 11 FCC 2d 185, ¶ 11 (1968).

what they were told." However, MobileMedia again fails to demonstrate how such information is relevant to the designated issue. Moreover, the manner in which the Commission staff responded to what they were told has no bearing on the facts and circumstances surrounding the preparation and submission of the MobileMedia Report. Additionally, it sheds no light on whether MobileMedia lacked candor in its Report.

6. In sum, MobileMedia's request is procedurally defective and substantively unavailing. Accordingly, the Motion for Leave to Depose Commission Personnel should be dismissed with prejudice.

Respectfully submitted,
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May 7, 1997

CERTIFICATE OF SERVICE

I, Rosalind Bailey, a secretary in the Enforcement Division, Wireless Telecommunications Bureau, certify that I have, on this 7th day of May 1997, sent by regular First Class United States mail, copies of the foregoing "Wireless Telecommunications Bureau's Motion to Dismiss Request to Depose Commission Personnel" to:

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