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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 97M-101
71354

In the Matter of	)	WT DOCKET NO. 97-115
	)	
MOBILEMEDIA CORPORATION, et al.	)	
	)	
Applicant for Authorizations and Licensee of Certain Stations in Various Services	)	

MEMORANDUM OPINION AND ORDER

Issued: June 3, 1997 Released: June 6, 1997

1. Under consideration are "Motion For Determination Of Relevance Concerning Proposed Depositions Of Certain Commission Personnel" filed May 19, 1997 by MobileMedia Corporation and its subsidiaries (MobileMedia), and Wireless Telecommunications Bureau's Opposition To Motion Of MobileMedia For Determination Of Relevance Concerning Proposed Depositions Of Commission Personnel filed May 23, 1997.

2. On May 6, 1997, MobileMedia filed with the Commission a motion for leave to depose several former and present Bureau personnel. By Order released May 9, 1997, the Commission, without ruling on the merits, stated that it would not entertain the request to depose these personnel in the absence of an affirmative finding by the Presiding Judge that "the proposed examination relates to matters that are relevant to the [designated] issues." Now before the Presiding Judge is MobileMedia's motion seeking such determination.

3. MobileMedia's motion is procedurally defective and must be dismissed. Section 1.315(a) of the Rules provides that "a party to a hearing proceeding desiring to take the deposition of any person upon oral examination shall give a minimum of 21 days notice in writing to every other party, to the person to be examined, and to the presiding officer...." The pending motion clearly does not satisfy the Notice' requirements spelled out in Section 1.315. In this connection, MobileMedia asserts in the instant motion that it "served timely notice on May 6, 1997, of its intent to depose the foregoing individuals." (p. 4). However, the motion filed with the Commission, like the instant motion, does not comply with the Notice requirements of Section 1.315. Even assuming arguendo, the instant motion is treated as the equivalent of a "Notice," it would still be defective since service was not made on the persons to be examined. Thus, the deponents have not been afforded an opportunity to respond, as provided for in Section 1.315(b). MobileMedia's failure to comply with the due process notice requirements spelled out in Section 1.315 precludes a ruling on whether the proposed depositions should be allowed and compels dismissal of its motion. [1] [2]

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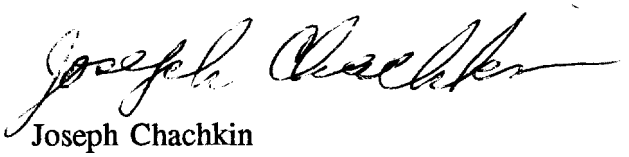
[1] Section 1.315 contains a 21 day notice requirement which the Presiding Judge does not have the authority to waive. Also, the hearing is scheduled to begin June 10. It is therefore

Accordingly, IT IS ORDERED, That the "Motion For Determination Of Relevance Concerning Proposed Depositions Of Certain Commission Personnel" filed May 19, 1997 by MobileMedia Corporation IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION



Joseph Chachkin
Administrative Law Judge

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clearly too late for MobileMedia to serve proper Notices. In this connection, depositions were to be completed by May 27.

[2] With regard to MobileMedia's concern that the deponents may dispute the testimony offered by its counsel at the hearing, such fears are groundless since the Bureau does not intend to call any of these individuals in its direct case. Should the Bureau elect to do so in the rebuttal phase, the Presiding Judge would entertain a request at that time to depose such persons.