

DOCKET FILE COPY OF ORIGINAL MAIL SECTION

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

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FCC 97M-83

DISPATCHED
WT DOCKET NO. 97-115

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

MEMORANDUM OPINION AND ORDER

Issued: May 9, 1997

Released: May 13, 1997

1. On May 6, 1997, MobileMedia Corporation, et al. (MobileMedia) filed, pursuant to Section 1.301(b) ¹ of the Rules, a request for permission to file appeal of the Presiding Judge's ruling (MO&O, FCC 97M-80, released May 7, 1997). The ruling denied MobileMedia's Emergency Motion for Special Relief and Stay of Proceedings. The appeal will be disallowed.

2. Section 1.301(b) provides that the request for permission to appeal "shall contain a showing that the appeal presents a new or novel question of law or policy and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception." MobileMedia's showing fails to justify an interlocutory appeal.

3. MobileMedia's motion for special relief sought (1) an immediate finding that a solution consistent with the Commission's Second Thursday precedent (Second Thursday Corp., 22 FCC 2d 515 (1970)) is available and may be pursued by MobileMedia; and (2) a 10 month stay of further proceedings to permit MobileMedia to pursue and finalize a transfer or assignment of the subject authorizations and applications through a sale to a third party or a plan of reorganization that transfers ownership to MobileMedia's creditors. MobileMedia's request for relief was denied because MobileMedia failed to demonstrate that individuals who may be involved in the misconduct will not derive a benefit from favorable action on the application. Specifically, MobileMedia has not shown that there is a mechanism available to prevent wrongdoers holding stock in the company from enriching themselves from the sale of their publicly traded stock at an increased price (MO&O, par. 10). Second, in order to insure that a wrongdoer will not benefit from the transfer, it is necessary to first identify all the wrongdoers. It is not possible to do so on the basis of the present record. In fact, the issues designated by the Commission seek to obtain that information. (MO&O, par. 11). MobileMedia's argument that the determination whether Second Thursday should apply to

¹ MobileMedia is required to seek permission to appeal under Section 1.301(b) since the ruling complained of is not an interlocutory ruling appealable as a matter of right under Section 1.301(a) or an appeal from a final ruling under Section 1.302 of the Rules.

publicly traded licensees presents "a new or novel question of law or policy" (Request, page 2) misses an essential point. All licensees seeking relief, regardless of the makeup of the entity, must show that individuals involved in the misconduct will not derive a benefit from favorable action on the application. As discussed above and in the MO&O, MobileMedia has not done so. Whether MobileMedia or other publicly traded licensees should, as a matter of policy, be allowed Second Thursday relief is not ripe for determination here since this essential prong of Second Thursday has not been satisfied.

Accordingly, IT IS ORDERED, That the "Request For Permission To File Appeal" filed May 6, 1997 by MobileMedia Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script that reads "Joseph Chachkin".

Joseph Chachkin
Administrative Law Judge