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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	)	
	)	WT Docket No. 97-115
Applicant for Authorizations	)	
and Licenses of Certain Stations	)	
in Various Services	)	

To: The Commission

SUPPLEMENTAL COMMENTS OF MOBILEMEDIA CORPORATION

MobileMedia Corporation and its licensee subsidiaries, debtors-in-possession ("MobileMedia"), by their attorneys, hereby submit the following supplemental comments in connection with the pending petitions that seek reconsideration and/or clarification of the Commission's June 6, 1997 Order in the above-captioned docket. These comments supplement those filed by MobileMedia on July 14, 1997.[1]

As an initial matter, MobileMedia again urges -- indeed, all parties have urged -- that the stay be left in place so that a sale or reorganization may be pursued consistent with the Commission's *Second Thursday* doctrine. As the company and its creditors have consistently

[1] "MobileMedia Inc.'s Consolidated Comments on the Petitions for Partial Reconsideration, Clarification Or Special Relief," filed July 14, 1997. In addition, comments were filed on July 14 by The Chase Manhattan Bank, Agent for Secured Prepetition and Postpetition Lenders, and by The Official Committee of Unsecured Creditors of MobileMedia Corporation.

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informed the Commission, the stay is absolutely critical to the survival of the company and continues to serve the public interest in the protection of innocent creditors and the accommodation of federal bankruptcy law.

At the same time, however, it is evident from the various further requests and comments that the list of MobileMedia officers, directors, and senior managers required by paragraph 18 of the Stay Order is over inclusive, encompassing at least some individuals who cannot under any theory be considered "suspected wrongdoers" under the *Second Thursday* doctrine. The most obvious example is the group of current officers who were hired *after* the wrongdoing is alleged to have taken place.[2]

Some of the individuals on the list will have opportunities to clear themselves through other Commission proceedings in which they are involved or may be involved. Those proceedings provide the appropriate decision-making forum for those individuals, and MobileMedia is not seeking to disturb paragraph 18 in that respect or to interfere with efforts by companies such as Western Wireless Corporation to seek relief in connection with such proceedings. However, there is currently no comparable process available for others on the list who are not now, and are not likely ever to be, involved in such proceedings. Yet, the inclusion of those individuals on the paragraph 18 list clearly creates adverse practical consequences for them.

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[2] As reflected in the paragraph 18 list, the following persons became officers of MobileMedia after October 15, 1996 (the date on which MobileMedia's counsel submitted the October 15, 1996 investigation report to the Commission that is the subject of Issue 14(b) specified in the hearing designation order): Joseph Bondi (January 30, 1997), Roberta Boykin (November 21, 1996), H. Andrew Cross (November 25, 1996), Ronald R. Grawert (February 11, 1997), and Steven Gross (November 25, 1996).

As indicated in its July 14 comments, MobileMedia does not oppose the establishment of a collateral process by which these individuals may seek to be removed from the paragraph 18 list - so long as the Commission makes clear that the process has no effect on the stay or on MobileMedia's ability to proceed with a reorganization consistent with *Second Thursday*. While several other parties have also expressed support in principle for a process that does not affect the stay, there is currently before the Commission no *specific* proposal for a process by which the individuals who are not involved in any other FCC application or proceeding could seek removal of their names from the paragraph 18 list. If the Commission believes that such a process would be appropriate for those individuals and wishes to provide guidance concerning what the process should be, a specific proposal might be helpful to the Commission as it considers the pending petitions and related pleadings.

In that spirit, MobileMedia outlines below a series of steps that the Commission and individuals who are otherwise without a Commission process could follow. We emphasize that the proposed process would *not* involve a hearing -- and certainly not a resumption of the hearing stayed in this matter -- and thus would not defeat the purpose of the stay. To the contrary, it would protect the stay, allowing the bankruptcy proceeding to go forward on one track while providing an administratively efficient procedure on a parallel track for the affected individuals to seek removal from the paragraph 18 list consistent with an established and familiar legal standard.

> ***Step 1***. Within a certain brief deadline, any individual encompassed within these comments would be allowed to submit to the Bureau a "Petition for Removal" with supporting affidavits and documentation addressing whether, and to what extent, the

individual participated in the wrongdoing alleged in the MobileMedia Hearing Designation Order.[3]

Step 2. Based on the showing made in the petition, and on any other relevant sworn statements or documents of which the Bureau is aware, the Bureau would determine whether it believes a substantial and material question of fact exists as to whether the individual had engaged in cognizable wrongdoing. For this purpose, the Bureau and Commission could easily apply the familiar legal standard that governs the evaluation of petitions to deny.[4]

Step 3. Within a specified period, the Bureau would submit to the Commission its recommendation with respect to any such petitioner either that the individual be removed from the paragraph 18 list (because the Bureau believes there is not a substantial and material question of fact), or that individual not be removed from list (because the Bureau believes there is a substantial and material question of fact).

- In the interest of fairness to the individuals, we believe that any recommendation of *non*-removal should be accompanied by a statement of reasons and a specification of the evidence relied on by the Bureau to support its adverse determination, and the individual should have an opportunity to comment thereon before the Commission acted.

Step 4. The Commission would thereupon issue an order (or orders) adopting or rejecting the Bureau's recommendations. The order(s) would remove from the paragraph 18 list all individual petitioners as to whom the Commission found no substantial and material question of fact indicating cognizable involvement in wrongdoing. (If any individuals remained on the paragraph 18 list at the end of this process because a substantial and material question remained as to their involvement in cognizable wrongdoing, the Commission could at that time entertain proposals for an appropriate further procedure to resolve those questions. Because that situation might not arise, however, it need not be addressed now.)

- All determinations would be based on the evidence presently available and could be revisited in future proceedings based on new or newly discovered relevant evidence.

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[3] Order To Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing for Forfeiture, FCC 97-124 (April 8, 1997) ("HDO").

[4] *See Kern Broadcasting Corporation*, 10 FCC Rcd 6584, 6585 (¶ 8) (1995). Of course, the Commission and its Bureaus routinely make such determinations when they rule on petitions to deny urging disqualification of an applicant on character grounds.

This or a similar process would provide an ordered mechanism for considering requests of individuals for removal from the paragraph 18 list. Most importantly for MobileMedia and its innocent creditors, the proposed process can be implemented without a hearing and without disturbing the *Second Thursday* stay. Indeed, adoption of this parallel process would not prejudice the Commission's consideration of whatever sale or reorganization plan is ultimately be submitted to the Commission for approval under the *Second Thursday* doctrine. The Commission will retain full discretion to review MobileMedia's *Second Thursday* application for compliance with applicable policy and to rule on that application accordingly.[5]

Again, MobileMedia offers this as a suggested procedure which would have the least disruption to the Commission but would allow demonstrably innocent parties to seek removal of their names from the paragraph 18 list. However, the Commission should make clear that

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[5] In suggesting the foregoing process with regard to the paragraph 18 list, we also observe that the Commission may feel that certain of the current MobileMedia officers -- particularly those who did not join the company until after October 15, 1996, and thus by definition could not have been involved in any of the wrongdoing alleged in the HDO -- can be ordered removed from the paragraph 18 list now without need to submit a petition or a showing. *See supra* note 2.

no process which it might entertain would in any way interfere with or otherwise affect the stay or MobileMedia's right under the stay order and applicable law to pursue a sale or reorganization that is consistent with the requirements of *Second Thursday*.

Respectfully submitted,

MOBILEMEDIA CORPORATION

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July 21, 1997

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I hereby certify that on this 21st day of July, 1997, I caused copies of the foregoing "Supplemental Comments of MobileMedia Corporation" to be delivered via first-class mail to the following:

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