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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

To: The Commission

**WIRELESS TELECOMMUNICATIONS BUREAU'S COMMENTS
ON THE PETITION OF HELLMAN & FRIEDMAN CAPITAL PARTNERS II, L.P.
FOR LIMITED WAIVER AND FOR EXPEDITED QUALIFICATIONS FINDING**

1. On July 23, 1997, Hellman & Friedman Capital Partners II, L.P. ("Hellman & Friedman") filed a petition for limited waiver of the procedures governing the processing of applications in which MobileMedia Corporation's ("MobileMedia") former or current officers, directors or senior managers have attributable interests, as set forth in Paragraph 18 of the Commission's Order, FCC 97-197 (released June 6, 1997) ("Order")¹. The Hellman & Friedman petition further requests an expedited determination of the qualifications of four of its principals who served on MobileMedia's Board of Directors,² to hold non-MobileMedia licenses. For the reasons discussed herein, the Acting Chief, Wireless Telecommunications Bureau ("Bureau") recommends that the Commission deny the Hellman & Friedman petition.

¹ The Order grants MobileMedia Corporations' request for a stay of the proceeding for the purpose of allowing the company an opportunity to obtain relief under the Commission's Second Thursday doctrine. Second Thursday Corp., 22 FCC 2d 515 (1970), recon. granted, 25 FCC 2d 112 (1970).

² The four Hellman & Friedman principals include F. Warren Hellman, Tully M. Friedman, John L. Bunce, Jr., and Mitchell R. Cohen. According to the Hellman & Friedman petition and supporting documents, Mr. Friedman resigned from the MobileMedia Board of Directors effective March 11, 1997. See Hellman & Friedman Petition, at 3, n. 3 and Attachment 3.

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BACKGROUND

2. Hellman & Friedman seeks a waiver of the procedures established under Paragraph 18 of the Order concerning the processing of its applications during the pendency of the MobileMedia stay. Paragraph 18 of the Order instructs staff in all Bureaus and Offices that any radio application in which a former or current officer, director or senior manager of MobileMedia holds an attributable interest "shall not be granted" without determining whether such individual engaged in the wrongdoing that formed the basis of the Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture, FCC 97-124 (April 8, 1997)("HDO").³ The Order further directs that to the extent a Bureau or Office recommends granting any such application, it shall refer the matter to the Commission for disposition.⁴ Four of Hellman & Friedman's principals serve as Directors on MobileMedia's Board.⁵ As such, applications in which Hellman & Friedman holds an attributable interest fall within the provisions of Paragraph 18 of the Order.

3. Hellman & Friedman is also associated with multiple companies that are prosecuting applications simultaneously before several different Bureaus (*i.e.*, the Wireless Telecommunications, Cable Services and International). Thus, under the procedures set forth in Paragraph 18, the issue of Hellman & Friedman's involvement in the MobileMedia wrongdoing may necessarily be reviewed and resolved by at least three different Bureaus. Hellman & Friedman claims that such a process is "inappropriate and inefficient" and requests

³ Order, at ¶ 18.

⁴ Id.

⁵ See Footnote 2, supra.

a waiver of the Paragraph 18 procedures. It maintains that such a determination should remain with the Commission in this instance, and that the Bureaus' role should be limited to commenting on the evidence.

ARGUMENT

4. While characterized as a request for a "waiver", the Hellman & Friedman petition is in essence nothing more than a petition for reconsideration of the Commission's Order. Although Hellman & Friedman claim that they are only seeking a waiver of the procedures as to themselves, they in fact represent a class of interest holders whose position should have been presented to the Commission under the reconsideration procedures of Section 1.106 of the Commission's Rules. Specifically, the class includes interest holders implicated in MobileMedia, like Hellman & Friedman, which are associated with multiple companies prosecuting applications before different Bureaus. Viewed in this light, the petition is subject to the strict filing deadlines contained in Sections 1.106 and 1.4(b) of the Commission's Rules, 47 C.F.R. §§ 1.106 and 1.4(b), namely 30 days from the release date of the Order. Here, the release date of the Order is June 6, 1997 resulting in a filing deadline for Hellman & Friedman's petition of July 7, 1997.⁶ As the petition was not filed until July 23, 1997, more than two weeks after the filing deadline, it is untimely and, therefore, should be summarily dismissed. See, Section 1.106(f) of the Commissions' Rules, 47 C.F.R. § 1.106(f).

5. Even were the petition considered to be properly characterized, it must

⁶ Because the actual filing deadline (i.e., July 6, 1997) fell on a Sunday, the deadline for filing petitions for reconsideration in this instance was the next business day, i.e., Monday, July 7, 1997. See Section 1.4(j) of the Commission's Rules.

nevertheless be rejected as premature. The subject of Hellman & Friedman's waiver request - i.e., the Paragraph 18 procedures -- is the focus of five petitions for reconsideration or clarification currently pending before the Commission.⁷ Thus, the Commission may modify the procedures in question, thereby rendering Hellman & Friedman's waiver request moot. Accordingly, the petition should not be considered at this juncture.

6. Finally, the petition's proposed alternative procedure for processing applications unduly restricts the Commission's ability to fully assess the qualifications of Hellman & Friedman. Under the proposed procedure, the Commission would be confined to reviewing record evidence compiled to date in making its character determination.⁸ The proposal, however, fails to take into account that the record in this matter is not fully developed. See HDO, at ¶ 12 ("[T]he Commission does not have all the relevant facts before it.") Because of the issuance of the stay, evidence which normally would have been obtained through the hearing process is absent. Moreover, the proposal disregards the plain language of Section 308(b) of the Communications Act, 47 U.S.C. § 308(b), which provides that the "Commission, at any time after the filing of such original application and during the term of any such licenses, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked."

⁷ Western Wireless Corporation, Triad Cellular Corporation, Mark Witsaman, Debra Hilson and Santo Pittsman filed timely petitions with the Commission seeking reconsideration or clarification of Paragraphs 17 and 18 of the Order. A number of comments on these petitions were filed with the Commission and are currently under consideration as well. Hellman & Friedman did not file a petition for reconsideration or comments on those that were filed.

⁸ See e.g., Hellman & Friedman's petition, at 8-9.

7. Accordingly, the Bureau requests the Commission to either dismiss or deny the petition for limited waiver and for expedited qualifications finding filed by Hellman & Friedman Capital Partners II, L.P.

Respectfully submitted,
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August 1, 1997

CERTIFICATE OF SERVICE

I, Rosalind Bailey, a secretary in the Enforcement and Consumer Information Division, Wireless Telecommunications Bureau, certify that I have, by first class U.S. mail, on this 1st day of August 1997, sent copies of the foregoing "Wireless Telecommunications Bureau's Comments on the Petition of Hellman & Friedman Capital Partners II, L.P. for Limited Waiver and For Expedited Qualifications Finding", to:

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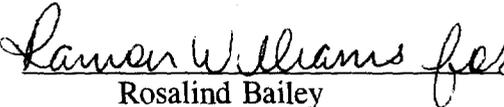
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