

FEDERAL COMMUNICATIONS COMMISSION

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

DISPATCHED

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

WT DOCKET NO. 97-115

ORDER

Adopted: August 7, 1997 ; Released: August 8, 1997

By the Commission:

1. By this order, we reconsider in part our action staying the hearing in this proceeding. MobileMedia Corp., FCC 97-197 (released June 6, 1997) ("June 6 Order"). Upon further consideration of the facts and circumstances of this case, we find that certain aspects of our stay order not relating directly to the stay itself should be clarified and modified. We also grant two motions to intervene.

I. BACKGROUND

2. The Commission designated this proceeding for hearing after MobileMedia Corporation (MobileMedia) disclosed the results of an internal investigation (the "October 15 Report" or the "Report"), which concluded that on numerous occasions MobileMedia had filed notifications that falsely reported the construction of facilities that had not in fact been built. MobileMedia Corp., FCC 97-124 (released April 8, 1997) ("HDO"). The October 15 Report also disclosed the identities of certain members of senior management who participated in the deception. The Wireless Telecommunications Bureau (Bureau) then conducted a further investigation. The HDO designated issues regarding the facts and circumstances surrounding the deceptive filings, including which officers, directors, and senior management officials of MobileMedia were involved in misconduct.

3. In its June 6 Order, the Commission stayed the hearing to permit MobileMedia to avail itself of relief under the Commission's Second Thursday doctrine. Under Second Thursday, we may approve the license transfer application of a licensee designated for hearing on its character qualifications that also has filed for bankruptcy "if individuals charged with misconduct will have no part in the proposed operations and will either derive no benefit from

favorable action on the [assignment or transfer] application or will receive only a minor benefit which is outweighed by equitable considerations in favor of innocent creditors." Second Thursday Corp., 22 FCC 2d 515, 516 ¶ 5 (1970). MobileMedia has filed for reorganization under Chapter 11 of the Bankruptcy Code.

4. In paragraph 18 of the MobileMedia Corp. stay order, we also addressed whether individuals within the scope of this proceeding would be permitted to acquire additional telecommunications interests during the pendency of the stay. Paragraph 18 provided:

We take this opportunity to reiterate that the scope of the HDO includes whether any former or current MobileMedia officers, directors and senior managers have engaged in serious wrongdoing. In this regard, we instruct Commission staff in all Bureaus and Offices that any radio applications in which these former or current officers, directors or senior managers have attributable interests shall not be granted without resolution of this issue, either in the context of this hearing, if Second Thursday relief is ultimately not granted, or in the context of another specific application. To assist in this effort, the Chief, Wireless Telecommunications Bureau, within 10 days of the release date of this order, shall provide to all Bureaus and Offices a copy of this order, along with a list of all such persons. A copy of the list should also be provided to the Chairman and the Commissioners. In addition, to the extent a Bureau or Office recommends that any application in which such an individual holds an attributable interest should be granted, it shall refer the matter to the Commission for disposition.

In response to this directive, the Bureau, on June 16, 1997 submitted a list of 91 individuals. Subsequently, on June 25, 1997, the Bureau substituted a revised and corrected list of 43 individuals.

5. We have received six petitions for reconsideration or clarification of the June 6 Order, and responsive pleadings.<sup>1</sup> These petitioners contend that Paragraph 18 is overly broad

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<sup>1</sup> They are: (1) an Emergency Petition for Limited Reconsideration or Clarification, filed July 3, 1997, by Western Wireless Corporation, (2) a Petition for Partial Reconsideration, filed July 7, 1997, by Triad Cellular Corporation, (3) a Motion of Mark L. Witsaman for Reconsideration and/or Clarification of Paragraphs 17 and 18 of the Commission's June 6, 1997 Order, or, in the Alternative for Other Relief, filed July 7, 1997, (4) a Motion of Debra P. Hilson for Reconsideration and/or Clarification of Paragraphs 17 and

in light of general Commission policy. Because these petitioners' views essentially parallel our own in material respects, we will not set them out at length.

## II. DISCUSSION

6. Preliminarily, we wish to rectify an ambiguity in paragraph 18. In directing the Bureau to compile its list of former and current officers, directors, and senior managers, we intended to include only individuals who were associated with MobileMedia during the time period relevant to this proceeding. Only such individuals could have had involvement in MobileMedia's misconduct. Consequently, five individuals -- Joseph Bondi, Roberta Boykin, H. Andrew Cross, Ronald R. Grawert, and Steven Gross -- should not have been included on the list because they joined MobileMedia afterwards.

7. On reconsideration, we now believe that paragraph 18 is overly broad in another respect. Ordinarily, when the Commission designates an application or license for hearing, we do not automatically defer the sale or acquisition of co-owned facilities pending the outcome. Rather we limit such assignments and transfers only where there has been a determination at the time of designation that allegations warranting the designation of the original facility should also bear on the operation of other facilities. See Grayson Enterprises, Inc., 79 FCC 2d 936, 940-41 ¶ 10 (1980). See also Commission Announces Modification of Grayson Enterprises Policy on Transferability of Broadcast Licenses, 53 RR 2d 126 (1983); Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1223-25 ¶¶ 92-95 (1986). Under this policy, we retain the discretion to take appropriate action at a later time if further proceedings warrant it.

8. We have reexamined the information before us at the time of designation and conclude that paragraph 18 was overly broad in scope and that the allegations against MobileMedia are sufficient to raise questions only as to the qualifications of four individuals. Of the 43 former and current officers, directors, and senior managers of MobileMedia on the Bureau's revised list, only seven were named in the October 15 Report as individuals who may have had information relevant to the filing by MobileMedia of inaccurate information with the Commission. Of these, the October 15 Report alleges that Gene P. Belardi, former Secretary and Regulatory Counsel, and Kenneth R. McVay, former Secretary, Vice President, and General Counsel, were primarily responsible for carrying out the deception of the

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18 of the Commission's June 6, 1997 Order, or, in the Alternative for Other Relief, filed July 7, 1997, (5) a Petition of Santo J. Pittsman for Clarification or, in the Alternative, Reconsideration of the Commission Order of June 6, 1997 Regarding a Process for Resolving Issues Pertaining to Him Personally, filed July 7, 1997, and (6) a Petition for Limited Waiver and for Expedited Qualifications Finding, filed July 23, 1997, by Hellman & Friedman II, L.P.

Commission and that they were fired by MobileMedia because of their involvement. According to the Report, there is an unresolved dispute as to the responsibility of John M. Kealey, former Director, President, and Chief Operating Officer, and Gregory M. Rorke, former Director and Chief Executive Officer. The Report states that Belardi and McVay accuse Kealey and Rorke of approving the deceptive filings, which the latter, however, deny. Based on the information now before us, we find that, substantial and material questions of fact have been raised with respect to these four individuals. Thus, no application in which any of these four individuals has an attributable interest may be granted until the qualifications question has been resolved in that or the MobileMedia proceeding.

9. The Report does not make specific allegations of wrongdoing regarding other officers and employees. It alleges that some MobileMedia employees had general knowledge of the inaccurate filings. Exhibits attached to the Report indicate that Mark Witsaman, Debra P. Hilson, and Santo J. Pittsman, who are currently officers of MobileMedia, may have had some degree of knowledge of the wrongdoing. However, no evidence has been presented that they were participants in any deceptive practices, that they approved the deception, or that their activities otherwise raise a substantial and material question concerning their qualifications to be a licensee. We will therefore exclude them from the scope of paragraph 18.

10. In view of the foregoing, all individuals on the Bureau's revised list other than the four named in paragraph 9 are hereby excluded from the scope of paragraph 18. Applications involving those excluded from the list may be granted on delegated authority upon a finding that the applicants are otherwise qualified. Consistent with our policy, such grants are subject to further proceedings if warranted by findings of misconduct. Additionally, because the result of this change would also be to release all restrictions on MobileMedia applications, we instruct the staff that the grant of any applications filed by MobileMedia shall be conditioned on the outcome of any decision in this proceeding.

11. Finally, we also grant petitions for intervention filed by The Official Committee of Unsecured Creditors of MobileMedia Corporation and its affiliates, and The Chase Manhattan Bank, as agent for the secured lenders to MobileMedia. These entities have demonstrated their standing to intervene as of right in this proceeding. See 47 U.S.C. § 309(e); 47 C.F.R. § 1.223(a).

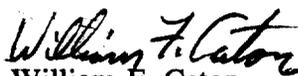
### III. ORDERING CLAUSES

12. ACCORDINGLY, IT IS ORDERED, That the Emergency Petition for Limited Reconsideration or Clarification, filed July 3, 1997, by Western Wireless Corporation, the Petition for Partial Reconsideration, filed July 7, 1997, by Triad Cellular Corporation, the Motion of Mark L. Witsaman for Reconsideration and/or Clarification of Paragraphs 17 and 18 of the Commission's June 6, 1997 Order, or, in the Alternative for Other Relief, filed July

7, 1997, the Motion of Debra P. Hilson for Reconsideration and/or Clarification of Paragraphs 17 and 18 of the Commission's June 6, 1997 Order, or, in the Alternative for Other Relief, filed July 7, 1997, the Petition of Santo J. Pittsman for Clarification or, in the Alternative, Reconsideration of the Commission Order of June 6, 1997 Regarding a Process for Resolving Issues Pertaining to Him Personally, filed July 7, 1997, and the Petition for Limited Waiver and for Expedited Qualifications Finding, filed July 23, 1997, by Hellman & Friedman II, L.P., ARE GRANTED to the extent set forth herein and otherwise DISMISSED as moot, and that MobileMedia Corp., FCC 97-197 (released June 6, 1997) IS MODIFIED as set forth above.

13. IT IS FURTHER ORDERED, That, the Petitions for Intervention, filed June 11, 1997 by The Official Committee of Unsecured Creditors of MobileMedia Corporation and its affiliates, and The Chase Manhattan Bank, as agent for the secured lenders to MobileMedia ARE GRANTED and the petitioners ARE MADE parties to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary