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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

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

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

WT Docket No. 97-115

REPLY COMMENTS OF SECURED LENDERS

The Chase Manhattan Bank, as agent for the secured lenders to MobileMedia Communications, Inc., a subsidiary of MobileMedia Corporation ("Secured Lenders"), respectfully files these reply comments in support of the Applications for Transfer of Control and Petition to Terminate and for Special Relief (collectively, the "Application") filed by MobileMedia Corporation ("MobileMedia") and Arch Communications Group, Inc. ("Arch") on September 2, 1998, and supplemented by those parties pursuant to Section 1.65 of the Commission's rules on October 5, 1998. Secured Lenders filed comments in support of the Application on November 16, 1998.

As the Secured Lenders emphasized in their comments in this proceeding, termination of the MobileMedia hearing and grant of the Application will safeguard the interests of innocent creditors in accordance with the principles of *Second Thursday*^{1/} and advance the public interest. In particular, prompt Commission approval is required to expedite MobileMedia's

^{1/} *Second Thursday Corp.*, 22 FCC 2d 515, 516, recon. granted in part, 25 FCC 2d 112 (1970).

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emergence from bankruptcy and prevent further harm to its numerous innocent creditors, including these Secured Lenders.^{2/}

Secured Lenders strongly support the principal findings and conclusions set forth in the Wireless Telecommunications Bureau's Consolidated Comments ("Bureau Comments") on this issue. First, because "the four individuals charged with misconduct will have no role in future operation[s] . . . [and] will not benefit from the transaction," the Bureau correctly observes that "the transaction . . . complies with the requirements of *Second Thursday*." Bureau Comments at 8, 10.^{3/} The Bureau further finds that the proposed merger will "not have an adverse impact on competition . . . [and indeed] could enhance competition in paging markets . . . [by] enabling Arch to become a more effective competitor by improving its ability to market paging services nationwide." *Id.* at 20-21. Finally, the Bureau concludes that the transaction, if approved, will "protect . . . the interests of innocent creditors" and "[serve] the public interest." *Id.* at 37-38.

Secured Lenders support each of these determinations. For the same reasons, however, the Secured Lenders strongly disagree with the Bureau's suggestion that the Commission should withhold action on MobileMedia's transfer request or condition a final grant on the right to take subsequent enforcement action in light of MobileMedia's final report under its

^{2/} As the Secured Lenders noted in their comments, *LaRose v. FCC* requires the Commission to "accommodate the policies of federal bankruptcy law with those of the Communications Act." *LaRose v. FCC*, 494 F.2d at 1145, 1146 n.2 (D.C. Cir. 1974).

^{3/} The "informal comments" filed by Orbital Communications Corporation ("Orbcomm") plainly miss the mark. The clarification order released by the Commission on August 8, 1997, *see MobileMedia Corp.*, 12 FCC Rcd 11861 (1997), specifically excluded Mr. David A. Bayer from the list of suspected wrongdoers in this proceeding. Accordingly, Mr. Bayer's qualifications no longer are in issue.

new, self-imposed FCC compliance program. *See id.* at 11. Secured Lenders respectfully submit that no basis exists for the Commission to defer or condition its approval to the proposed transaction. Any further delays will only result in the further deterioration of MobileMedia's business to the detriment of its innocent creditors.

The Bureau contends that deferring or conditioning its grant is justified because, “[o]nce the transfer . . . is consummated, it will be too late to take any enforcement action against MobileMedia.” *Id.* at 12. That suggestion is unfounded. Indeed, the Bureau points to no authority as support for its assertion, and there is none. Nothing prevents the Commission from initiating subsequent enforcement action against MobileMedia if that should prove necessary in light of the final report under the compliance program. Even if the parties had proposed an asset sale here, the Commission could still take post-consummation enforcement action.^{4/} *A fortiori*, where Arch and MobileMedia have proposed a stock transaction in which a MobileMedia entity (MobileMedia License Co. L.L.C.) will continue to hold the company's FCC authorizations,^{5/} the Commission will have jurisdiction over that entity after grant of the Application, as it does now.

Delaying or conditioning a grant of the Application is particularly unwarranted on the present record. MobileMedia, under the supervision of the former Chief of the FCC's Private Radio Bureau, has implemented a comprehensive compliance program specifically designed to

^{4/} The Commission has concluded, for example, that reporting conditions and obligations arising from EEO violations follow as a matter of law and pass automatically to assignees. *See, e.g., Central States Network*, 12 FCC Rcd 3959 (1997); *San Luis Obispo Limited Partnership*, 9 FCC Rcd 994 (1994).

^{5/} *See Applications for Transfer of Control and Petition to Terminate and for Special Relief at 1.*

ensure strict adherence to Commission rules and regulations. As part of this program, MobileMedia has engaged in an extraordinary and unprecedented effort to review the compliance with Commission rules of all of MobileMedia's over 3,000 transmitter sites. To date, this exhaustive, meticulous effort has yielded only a handful of geographical coordinate discrepancies and potential rule violations, many of which appear wholly attributable to MobileMedia's predecessors and none of which does the Bureau suggest might implicate MobileMedia's basic character qualifications.^{6/} Particularly in light of the mandate of *LaRose*, there is no basis in these circumstances for delaying MobileMedia's emergence from bankruptcy to the detriment of its innocent creditors and the general public. The Commission should not defer or condition its consent to the proposed transaction on the basis of any prospective MobileMedia violations, where it retains full authority to take post-consummation enforcement action.^{7/}

^{6/} See MobileMedia Report on License Reconciliation Project (November 12, 1998); Second Report on License Reconciliation Project (November 24, 1998).

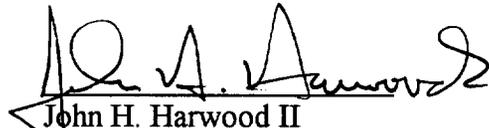
^{7/} In *Eagle Radio, Inc.*, 13 FCC Rcd 13869 (1998), for example, the Commission concluded that serious allegations of broadcast indecency were insufficient to implicate the basic qualifications of the licensee and warrant holding up the proposed license assignment -- even in the absence of a bankruptcy. There, the Commission simply imposed a forfeiture and approved the proposed transaction.

For the foregoing reasons, Secured Lenders strongly urge the Commission to act to terminate the MobileMedia hearing and grant the Application, and to do so promptly so that MobileMedia's proposed emergence from bankruptcy is not delayed.

Respectfully submitted,



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November 25, 1998

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I, Michael A. McKenzie, hereby certify that on this 25th day of November 1998, I caused copies of the foregoing "Reply Comments Of Secured Lenders" to be served by hand delivery, unless otherwise indicated, on the following:

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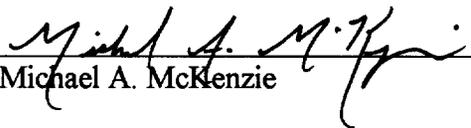
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