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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

EX PARTE

Mr. William F. Caton,
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, DC 20554

Re: In re Application of Mobile Communications Holdings, Inc. for Authority to Construct, Launch, and Operate a Low Earth Orbit Satellite System in the 1610-1626.5 MHz/2483.5-2500 MHz Band, File Nos. 11-DSS-P-91(6), 18-DSS-P-91(18), 11-SAT-LA-95, 12-SAT-AMEND-95

Dear Mr. Caton:

This letter responds to the April 24, 1996 letter from the Small Business Administration ("SBA") to Chairman Reed E. Hundt concerning the low-earth orbit mobile satellite service ("Big LEO MSS") applicant, Mobile Communications Holding, Inc. ("MCHI"), and its appeal of the Bureau's Order deferring the MCHI application.^{1/} Motorola Satellite Communications ("Motorola") is an interested party in this proceeding because it has already been

^{1/} In re Application of Mobile Communications Holdings, Inc. for Authority to Construct, Launch, and Operate a Low Earth Orbit Satellite System in the 1610-1626.5 MHz/2483.5-2500 MHz Band, DA 95-132 (rel. Jan. 31, 1995) ("MCHI Order").

promptly and efficiently.^{6/} As the Commission correctly noted in its Big LEO Report and Order, smaller firms unable to satisfy the financial standard for satellite systems are not precluded from entering the satellite market because "ownership of a space station is not mandatory," but it can "be leased or bought, and earth stations can be acquired at relatively low costs."^{7/}

Second, the MCHI Order correctly rejected each of the external financing commitments presented by MCHI in support of its application. SBA insists, however, that the Bureau was somehow discriminatory in its treatment of MCHI and unfairly "diminish[ed] [the] value of every single financing source cited by MCHI."^{8/} As the Bureau correctly recognized, however, each of MCHI's external financing commitments were unsatisfactory because they only included "general statements of support for MCHI's application. . . [and] do not establish management commitments to expend the funds necessary to construct, launch, and operate the space segment of MCHI's proposed system."^{9/} The Big LEO Report and Order specifically requires external financing to be "irrevocably committed" and "not rest on contingencies."^{10/}

Despite MCHI's deficient showings, the SBA believes that MCHI's external financing commitments should somehow be "deserving of the credibility vested in it by MCHI."^{11/} The Commission's financial standards for Big LEO MSS systems, however, were crafted precisely to avoid having to rely upon an applicant's "word" that it has the necessary financing to proceed with its system.

^{6/} For example, the inability of Norris Satellite Communications ("Norris") to raise sufficient capital for its Ka-band satellite system allowed Norris to "warehouse" an orbital slot for over four years. The International Bureau quite appropriately withdrew this orbital slot from Norris just under two months ago. See Norris Satellite Communications, Inc., DA 96-363 (rel. March 14, 1996).

^{7/} Big LEO Report and Order, 9 FCC Rcd at ¶ 26 n.36.

^{8/} SBA Letter at 2.

^{9/} MCHI Order at ¶ 11.

^{10/} Big LEO Report and Order at ¶ 32. Indeed, even the SBA admits that the judgment of the Bureau "may be correct" with respect to the external financing commitments of MCHI. See SBA Letter at 2.

^{11/} SBA Letter at 2.

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
May 8, 1996
Page 2

granted authority to construct, launch, and operate a Big LEO MSS system which would directly compete with the system proposed by MCHI in its application.^{2/}

Although Motorola respects the SBA's advocacy on behalf of small businesses, its letter is misguided, and should be rejected by the Commission in deciding upon MCHI's appeal of the MCHI Order.

First, the SBA's letter demonstrates a fundamental misunderstanding of the scarce public resources that are being assigned to Big LEO MSS applicants. The Commission's adoption of financial standards is not "overly" stringent or intended to erect market entry barriers to small competitors.^{3/} Instead, as the Commission correctly indicated in its Big LEO Report and Order:

[T]he sharing plan we proposed in the Notice, and which we adopt today, does not accommodate all pending applicants and leaves little or no spectrum available for expansion of existing systems or the development of future MSS systems within the United States.^{4/}

Accordingly, the Commission adopted a financial standard stringent enough to ensure that a license was not granted to an underfinanced applicant who would delay service to the public, and would "preclude an applicant that possesses the necessary financial resources from implementing its plans."^{5/} The stringent standard was not adopted to deprive small businesses of market opportunities in the satellite industry, but to ensure that the public resource of satellite spectrum is used

^{2/} In re Application of Motorola Satellite Communications, Inc. for Authority to Construct, Launch, and Operate a Low Earth Orbit Satellite System in the 1610-1626.5 MHz/2483.5-2500 MHz Band, 10 FCC Rcd 2268 (1995).

^{3/} See Letter from Jere W. Glover to Chairman Reed E. Hundt at 2 (April 24, 1996) ("SBA Letter").

^{4/} Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 FCC Rcd 5936, ¶ 27 (1994) ("Big LEO Report and Order").

^{5/} Big LEO Report and Order, 9 FCC Rcd at ¶ 30.

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
May 8, 1996
Page 4

Instead, by demonstrating either through its balance sheets that the applicant has enough internal resources, or with irrevocable external commitments, the Commission will have reasonable assurances that an applicant is be able to proceed immediately with implementing its system if granted a license.^{12/}

The Commission should deny MCHI's appeal of the International Bureau's MCHI Order because MCHI has failed to meet the Commission's financial standard for Big LEO MSS systems. In contrast to the claims of the SBA, the Commission's financial standard for Big LEO MSS applicants is not "overly stringent." but precisely tailored to ensure that an applicant does not "tie up scarce spectrum resources while preventing other qualified entities from providing service to the public."^{13/}

Sincerely,



Philip L. Malet
Counsel for Motorola Satellite
Communications, Inc.

/srh-m
cc: See Certificate Of Service

^{12/} The different standards for internal and external financing are (contrary to the statements of the SBA) not an effort by the Commission to favor more highly capitalized applicants over less capitalized ones. Instead, the different standards merely reflect the Commission's experience in satellite licensing which demonstrates that a balance sheet showing is sufficient for internal financing, while the tenuous nature of external financing requires fully negotiated irrevocable commitments. See Big LEO Report and Order at ¶ 26.

^{13/} Big LEO Report and Order, 9 FCC Rcd at ¶ 28.

CERTIFICATE OF SERVICE

I, Sandra R. Hammond-Murdico, do hereby certify that a copy of the foregoing **Ex Parte Letter to William F. Caton** have been sent, via first class mail, postage prepaid (or as otherwise indicated), on this 8th day of May, 1996 to the following:

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