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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

DEC 2 2.1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

_____)	
In re Applications of:)	
MOBILE COMMUNICATIONS)	File Nos. 11-DSS-P-91(6)
HOLDINGS, INC.)	18-DSS-P-91(18)
For Authority to Construct, Launch,)	11-SAT-LA-95
and Operate the ELLIPSO Elliptical)	12-SAT-AMEND-95
Orbit Mobile Satellite System)	
_____)	

PETITION TO DENY

TRW Inc. ("TRW"), by its attorneys, and pursuant to the Commission's November 21, 1994 public notice,^{1/} hereby petitions the Commission to deny the above-captioned applications of Mobile Communications Holdings, Inc. ("MCHI") for authority to construct, launch, and operate a satellite system in the new mobile satellite service at 1.6 and 2.4 GHz (the "Big LEO" service).^{2/} TRW, MCHI, and several others have filed applications with the Commission seeking to establish Big LEO

^{1/} Public Notice, Report No. DS-1481 (released November 21, 1994), errata Public Notice, Report No. DS-1482 (released November 30, 1994).

^{2/} MCHI's applications and amendments will be collectively referred to herein as the "Amended Application."

systems,^{3/} and TRW has previously established itself as a party-in-interest in MCHI's application. For the reasons stated below, the Commission should deny MCHI's Amended Application.

I. INTRODUCTION

In its Amended Application, MCHI claims that it complies with the rules and policies, including financial requirements, that the Commission adopted in its Report and Order in Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1625.5/2483.5-2500 MHz Frequency Bands, FCC 94-261 (released October 14, 1994) ("Report and Order").^{4/} In the Report and Order, the Commission formally adopted as its Big LEO financial standard the requirement that each applicant demonstrate the financial ability to build and launch all satellites for which it

^{3/} In addition to TRW and MCHI, AMSC Subsidiary Corporation, Loral/Qualcomm Partnership, L.P., Constellation Communications, Inc., and Motorola Satellite Communications, Inc. have filed amended applications with the Commission seeking to establish MSS services in these bands.

^{4/} See Amended Application at 5. Initially, MCHI's entire financial showing was submitted under a request for confidentiality. MCHI subsequently distributed most of the materials that had been subject to its Request for Confidentiality, leaving only non-critical portions of three letters in redacted form.

has applied, and to operate its system for one year after the launch of the first satellite in its constellation. Report and Order, FCC 94-261, slip op. at ¶ 38. This financial standard must be met either with internal funding in the form of current assets and operating income or with "irrevocably" committed debt or equity financing. Id. at ¶ 28. Furthermore, new Section 25.143(b)(3) of the Commission's Rules requires each Big LEO applicant to demonstrate its financial qualification on the basis of the documentation contained in its application. See 47 C.F.R. § 25.143(b)(3).

MCHI estimates the construction, launch, and first-year operating costs for its system to be \$564,000,000. Amended Application, Exhibit 3 at 1. MCHI states in its Amended Application that it has cleared this financial hurdle through a combination of internal support by the applicant's shareholders, equity investments, and vendor and other financing. Id.

In support of this proposition, MCHI relies on a series of letters that it alleges demonstrate MCHI's financial qualifications. Id. In reality, MCHI's submissions in support of its financial qualifications are nothing more than a woefully inadequate balance sheet and a series of broad, illusory expressions of interest in the ELLIPSO project.

The documents comprising the material portions of MCHI's financial showing and alleged financing commitments can be fairly summarized as follows:

- MCHI and Subsidiaries Consolidated Balance Sheet dated August 31, 1994. Amended Application, Exhibit 3, Appendix B ("Balance Sheet"). The Balance Sheet shows MCHI with current assets of \$309,654 and no operating income.
- Letter from M. F. Borkowski, Vice President and General Manager, Westinghouse Electric Corporation, Electronic Systems Group to David Castiel dated November 15, 1994 ("Westinghouse Letter"). Westinghouse states that, "as a member of the Ellipso team, [it] has committed significant financial resources and the support of its engineers to the development project, and [is] committed to continuing to support the team's efforts to move forward to completion of an operating system, subject to normal business reviews and market conditions."
- Letter from Bill C. Tankersley, Director, Space Systems, Harris Corporation to David Castiel dated November 16, 1994 ("Harris Letter"). According to Mr. Tankersley, who may or may not be an officer of Harris, "Harris has committed significant financial and technical resources to the development [of the ELLIPSO] project to date. We are committed to continuing the support under the terms of our present business agreement with MCHI."
- Letter from Trevor Nash, Director, Barclays De Zoete Wedd Limited to David Castiel dated November 16, 1994 ("BZW Restatement Letter"). Mr. Nash, whose status is likewise unclear, restated "BZW's commitment to the Ellipso project as financial adviser to MCHI. In this capacity, we

will continue to commit our worldwide professional resources to ELLIPSO. We . . . remain strongly committed to the project's success."

- Letter from Trevor Nash, Director, Barclays De Zoete Wedd Limited to David Castiel dated November 16, 1994 ("BZW Opinion Letter"). Mr. Nash opines that MCHI may be able to obtain debt and equity financing subject to certain limitations. However, the BZW Opinion Letter "does not constitute a commitment by BZW to provide any financing or a guarantee by BZW that any financing in fact will be obtainable."
- Letter from Shmuel Peretz, Vice President Finance, Israel Aircraft Industries Limited to David Castiel dated November 8, 1994 ("IAI Letter"). IAI states that, "as a team member, with our other MCHI partners, [we] are prepared to support MCHI's efforts to raise the necessary funds in the financial market for the ELLIPSO system, subject to normal business reviews of market conditions and progress to assure acceptable levels of risk and return."
- Letter from Charles Bigot, President and CEO, Arianespace, to David Castiel dated November 16, 1994 ("Arianespace Letter"). Arianespace agrees to provide 15 percent of the financing required to provide launch services (\$45,000,000) through the issuance of convertible debentures and to "assist [MCHI] in negotiating with [Arianespace's] European banks a credit arrangement that will address up to 85% of the total price of the Launches, contemplated under the [Launch Services Agreement between MCHI and Arianespace]."
- Letter from John Keitt, Jr., Attorney-In-Fact, Cable & Wireless, plc. to David Castiel dated November 16, 1994 ("Cable & Wireless Letter"). Cable & Wireless states that it has "acquired approximately 2% of the common stock of MCHI and an option to increase our participation in MCHI

and to participate in the operation of the ELLIPSO System in key markets."

- Letter from David Archer, Executive Director, Spectrum Network Systems Ltd. to David Castiel dated November 16, 1994 ("Spectrum Letter"). Spectrum states its intention to form a group known as Spectrum Asia to invest \$100,000,000 for the development of the ELLIPSO system, conditioned upon grant of an FCC license and subject to no material change or changes in circumstances occurring, as determined by Spectrum in its absolute discretion. The Spectrum Letter also states that the parties will enter into a final agreement by January 31, 1995, which agreement is apparently subject to certain limitations on the right to acquire and offer ELLIPSO services.
- Letter from Milton S. Goldstein, Vice President, Satellite Transmission Systems, Inc. to Jeff Amerine, ELLIPSO Program Manager at Westinghouse Electric Corporation, dated November 15, 1994 ("STS Letter"). Satellite Transmission Services offers to accept a request by Westinghouse that it defer payments up to \$10,000,000 under a to-be-negotiated service contract, and notes "the acceptance of the financing is intended to demonstrate our commitment to be a team member on this and future Projects."

None of these submissions -- individually or in the aggregate -- is sufficient to demonstrate MCHI's financial qualifications under the Commission's Rules. Accordingly, under the ground rules established in the Report and Order, the Commission has no choice but to dismiss MCHI's Amended

Application for failure to comply with the Commission's service rules.^{5/}

In this respect, the Commission should also deny MCHI's bald and unsupported request for a generic waiver of "the MSS Above 1 GHz rules." See Amended Application at 9. Such a waiver would be completely inappropriate.^{6/}

II. MCHI'S INTERNAL FINANCES ARE NOT SUFFICIENT TO MEET THE COMMISSION'S FINANCIAL QUALIFICATIONS.

A. MCHI's Balance Sheet Does Not Demonstrate Sufficient Current Assets Or Operating Income To Finance Its Project.

Section 25.143(b)(3) of the Commission's Rules requires each applicant for space station system authorization in the 1.6/2.4 GHz mobile satellite service to demonstrate on the basis of the documentation contained in its application that it is

^{5/} As the Commission noted in its Report and Order:

[g]ranted an under-financed space station applicant a license may preclude an applicant that possesses the necessary financial resources from implementing its plans, and consequently service to the public may be delayed.

Report and Order, FCC 94-261, slip op. at ¶ 30.

^{6/} Because MCHI is financially unqualified, TRW does not proceed to any discussion of the technical proposal presented in the Amended Application.

financially qualified to meet the estimated cost of the construction and launch of all proposed satellites in its system and the estimated operating expenses for one year after the launch of the initial space station. Specifically, each applicant must submit, supported by affidavit, a balance sheet and documentation of any financial commitments reflected in the balance sheet, including loan agreements and service contracts, demonstrating that the applicant has sufficient current assets and operating income to satisfy the Commission's financial standards. 47 C.F.R. § 25.140(d)(1).

MCHI's Balance Sheet, as submitted in Exhibit 3 of its Amended Application, shows that MCHI has total current assets of just \$309,645. In addition, MCHI's Balance Sheet states that it "and its subsidiary Ellipsat International, Inc. have entered into contracts with outside parties that allow them to receive up to approximately \$8,400,000, contingent upon their obtaining certain license approvals and reaching certain project milestones." MCHI Balance Sheet.^{1/} These assets, taken together, do not cover MCHI's estimated cost of construction,

^{1/} MCHI did not provide documentation of these alleged contracts as required by the Commission's Rules. 47 C.F.R. § 25.140(d)(1).

launch and first-year operating expenses for ELLIPSO of \$564,000,000. Accordingly, MCHI's Balance Sheet does not demonstrate that MCHI has met the Commission's Big LEO financial standard.

B. MCHI's Proffered Shareholder "Financing" Is Not Cognizable Under The Applicable Commission Financial Standard.

MCHI states in its Amended Application that some of the costs of its system will be covered by internal support from its shareholders, including Westinghouse Electric Corporation, Harris Corporation, Israel Aircraft Industries, Barclays De Zoete Wedd Limited, and Fairchild Space. Amended Application, Exhibit 3 at 1.^{8/} However, MCHI's apparent reliance on its shareholders is misplaced.

First, and to the extent that MCHI is purporting to rely on the wherewithal of its corporate shareholders to demonstrate that it can self-finance the ELLIPSO program, MCHI cannot overcome the fact that the Commission's rules require financing to be based on the current assets and operating income of the applicant itself or a parent company in combination with a

^{8/} Notably, no letter or other statement of interest from Fairchild Space was included with MCHI's Amended Application.

management commitment from that parent company to expend the necessary funds to complete the system. 47 C.F.R. § 25.140(d)(1).^{2/} As noted on Section II.A above, MCHI's Balance Sheet shows that its shareholders have not made the commitments necessary to allow MCHI to self-finance. The asset side of the Balance Sheet is devoid of any indication that these "commitments" have ripened to the point of cognizability, and MCHI has only \$3 million in paid-in capital. Amended Application, Exhibit 3, Appendix B.

The Commission has stated that where a company is owned by more than one entity -- i.e., is not a wholly-owned subsidiary -- it will require a firm financial commitment to expend the necessary funds to complete the project from all parent companies upon which the applicant is relying. Licensing Space Stations in the Domestic-Fixed Satellite Service, 50 Fed. Reg. 36071, ¶ 13

^{2/} The Commission expressly stated that the requirement of appropriate management commitments would apply to Big LEO Applicants:

[M]anagement of the corporation providing the funding must commit that absent a material change in circumstances, it is prepared to expend the necessary funds. Those applicants relying on financing from parent corporations must make the same showing with respect to the parent corporation's commitment.

Report and Order, FCC 94-261, slip op. at ¶ 35.

(Sept. 5, 1985) ("1985 Processing Order"). Nothing less than a showing of current financial capability is acceptable for demonstrating compliance with the Commission's satellite financing standards. Id. at ¶ 8. As the Commission has stated, applying "a 'due diligence' or 'reasonable assurance' standard or another standard less than requiring the demonstrated ability to proceed immediately with construction and launch would allow some permittees to tie up orbital locations for several years while attempting to bring their financing plans to fruition, and would prevent qualified applicants from implementing their plans to provide service to the public." Id. The letters and other materials that MCHI submitted in its Amended Application are nothing more than general expressions of interest in the Ellipso program and demonstrate that MCHI's shareholders have not provided the level of "commitment" that is required by Sections 25.140 and 25.143(b)(3) of the Rules.

For example, BZW, MCHI's third-largest shareholder, states in a November 16, 1994 letter that it is "delighted to restate BZW's commitment to the Ellipso project as financial adviser" and that it is "strongly committed to the project's success." BZW Restatement Letter. This is not a commitment by a shareholder or anyone else to fund a portion of ELLIPSO; it is

merely a statement of intent -- and a vague one at that -- to occupy the role of financial adviser.^{10/} No dollar amounts were mentioned at all. As a commitment letter submitted for purposes of Section 25.143(b)(3), the BZW letter is worthless.

Similarly, Westinghouse, Harris, and IAI, respectively, have failed to provide information sufficient to satisfy the stringent requirement of Section 25.140(d) (as made applicable by Section 25.143(b)(3)). Westinghouse states merely that it is "committed to continuing to support the team's efforts to move forward to completion of an operating system, subject to normal business reviews and market conditions." Westinghouse Letter. Harris is "committed to continuing [its] support under the terms of [its] present business agreement with MCHI." Harris Letter. IAI lacks even the non-committed level of obligation that Westinghouse and Harris provided, stating merely that it is "prepared to support MCHI's efforts to raise the necessary funds in the financial market for the ELLIPSO system." IAI Letter.

^{10/} BZW's role even in this limited and somewhat distant regard is questionable. In a second letter dated November 16, 1994, BZW, addressing MCHI's likelihood of securing future debt and equity financing, states that the letter "does not constitute a commitment by BZW to provide any financing or a guarantee by BZW that any financing will be available." BZW Opinion Letter. MCHI has not provided the agreement or even the terms thereof (see 47 C.F.R. § 25.140(d)(2)), and again, no specifics are included.

In short, none of MCHI's shareholders has expressed anything more than vague support for the ELLIPSO system, and its two largest shareholders -- DC Limited Partnership and Venture First Associates -- have not even done that. Furthermore, Fairchild Space, which was identified as a provider of "internal support" in MCHI's Amended Application, has not submitted any letter. Clearly, MCHI does not have from its shareholders any cognizable "commitments" to expend the funds necessary to complete MCHI's proposed system.

**III. MCHI'S DEBT AND EQUITY FINANCING
ARRANGEMENTS ARE NOT SUFFICIENT TO MEET THE
COMMISSION'S FINANCIAL REQUIREMENTS.**

It is clear as well that the letters from MCHI's shareholders would fail to pass muster under Section 25.140(d)(2) if they were considered to be sources of external financing. If an applicant's balance sheet does not demonstrate that it has sufficient current assets and operating income to meet the Commission's financial qualifications -- and in MCHI's case the tendered balance sheet clearly does not -- the applicant must submit information regarding the terms of any fully negotiated loan or form of credit intended to be used to finance the proposed system, including the identity of the creditors, the

amount credited, and detailed terms of the credit arrangement including any contingencies. 47 C.F.R. § 25.140(d)(2)(i). As noted above, the Commission requires an applicant to demonstrate that it has satisfied the Commission's financial standards based on the documents contained in its application. 47 C.F.R. § 25.143(b)(3).

Similarly, the applicant must submit the terms of any fully negotiated sale or other placement of any equity or other form of ownership interest in the same level of detail. 47 C.F.R. § 25.140(d)(2)(ii). The Commission will not accept any financing arrangements contingent upon further performance by either party, such as marketing of satellite capacity or agreements to raise additional financing. 47 C.F.R. § 25.140(d)(2)(iii). See also Report and Order, FCC 94-261, slip op. at ¶ 32. Simply put, the financing must be "irrevocably" committed. Id.

The Commission has defined "irrevocably" committed external financing as "financing that has been approved and does not rest on contingencies which require action by either party to the loan or equity investment." Report and Order, FCC 94-261, slip. op. at ¶ 32. Specifically, the instrument of financing must demonstrate that the lender (1) has already determined that the applicant is creditworthy; and (2) absent a material change

in circumstances, is prepared to make the loan immediately upon grant of a Commission authorization. Id. In addition, "to ensure that the system is completed in a timely manner if revenues are not available as soon as anticipated, [the Commission] requires a commitment that a lender is prepared to finance the entire cost of the system." Id. MCHI's financial showing with respect to debt and equity financing does not meet any of these requirements.

First, MCHI relies on a letter from BZW stating that, in its opinion, financing could be successfully arranged for up to 20 percent of the construction launch and operation costs of the ELLIPSO system, subject to certain assumptions. BZW Opinion Letter. However, this letter represents only BZW's advice as MCHI's investment adviser. It expressly "does not constitute a commitment by BZW to provide any financing or a guarantee by BZW that any financing in fact will be obtainable." Id. Accordingly, the BZW Opinion Letter does not constitute any commitments -- irrevocable or otherwise -- to MCHI's proposed

system. The letter is merely opinion regarding the possible availability of financing.^{11/}

MCHI places similar reliance on a letter submitted by Cable & Wireless, plc., which states that Cable & Wireless has "acquired approximately 2% of the common stock of MCHI and an option to increase [its] participation in MCHI and to participate in the operation of the ELLIPSO System in key markets." Cable & Wireless Letter. However, MCHI does not provide the Commission with details of the transaction sufficient to determine whether the alleged commitment represents irrevocable financing. No value is given for the purchase of the common stock; no details are given regarding the value or nature of the "option" to increase participation in MCHI or to participate in the operation of ELLIPSO.

In addition, MCHI relies on a letter submitted by Spectrum Network Systems stating Spectrum's intentions of forming a group known as Spectrum Asia to invest \$100 million for the development of the ELLIPSO system. Spectrum Letter. Clearly, no

^{11/} In this respect, the BZW Opinion Letter runs afoul of Section 25.140(d)(2)(iii), which provides that "[a]ny financing arrangements contingent on further performance by either party, such as marketing of satellite capacity or raising additional financing, will not satisfy the requirements of paragraph (c) of this section." 47 C.F.R. § 25.140(d)(2)(iii).

such group had been formed as of the November 16, 1994 deadline for financial showings. Again, the myriad contingencies in the proffered arrangement require the rejection of the source under Section 25.140(d)(2)(iii).

In its letter, Arianespace agrees to provide 15 percent of the financing required to provide launch services (\$45,000,000) through the issuance of convertible debentures and to "assist [MCHI] in negotiating with [Arianespace's] European banks a credit arrangement that will address up to 85 percent of the total price of the Launches, contemplated under the [Launch Services Agreement between MCHI and Arianespace]." Arianespace Letter (emphasis added). Section 25.140(d)(2)(iii) operates to require the rejection of the offer of assistance in securing financing for the \$255 million balance of the launch costs. Section 25.140(d)(2)(i) and (ii) preclude the Commission from crediting even the \$45 million in putative convertible debentures.^{12/}

The letters supplied by AEC-Able Engineering, Inc. and Satellite Transmission Systems, Inc. also fall victim to the

^{12/} MCHI has totally failed to provide details of the proposed transaction, and without such detail, the claimed \$45 million in "vendor financing" is not reliable.

operation of Section 25.140(d)(2)(iii). With respect to AEC-Able, it "agree[s] to arrange the financing" required to provide certain services assertedly worth \$93 million to MCHI. AEC-Able Letter.^{13/} Nothing has yet been arranged, so MCHI cannot rely on the pledge. In any event, it is unclear whether the services to be supplied by AEC-Able are even part of the \$564 million in first-year operating costs.

The letter from Satellite Transmission Systems, Inc. ("STS") is even more baffling -- and troubling. STS writes not to MCHI but to Westinghouse, and purports to accept Westinghouse's request that STS defer payments of up to \$10 million, which are to result from a contract that has yet to be negotiated. STS Letter. The unreliability for financial qualifications purposes of an offer to defer payments under a contract that has yet to become a contract is obvious. MCHI, however, should be made to explain why -- assuming the "STS Contract" referred to in the STS letter somehow even involves MCHI -- Westinghouse is making and receiving offers relating to ELLIPSO without copies of the correspondence even being sent to MCHI principals. See STS Letter at 2; MCHI Form 430 at Exhibit VII.

^{13/} Precisely what "services" AEC-Able is to provide is not known to TRW, since the description of the service was redacted.

Finally, and to the extent that MCHI alludes to projected revenues from its proposed ELLIPSO system as a potential source of system funding, its reliance is misplaced. Specifically, MCHI states that in its Amended Application, it will generate revenues from the phased introduction of commercial service which can, in turn, be used to finance subsequent stages of development." Amended Application at 5.

In its Report and Order, the Commission considered and expressly rejected the concept of allowing Big LEO applicants to rely on projected revenues in attempting to meet the Commission's financial requirements. Report and Order, FCC 94-261, slip op. at ¶¶ 29, 34. The Commission determined that such a requirement would not promote the global availability of Big LEO service:

A system that relies too heavily on operating income from its first satellites for its completion could easily become stalled before it is able to provide domestic or global service that meets [the Commission's] service requirements. Any applicant that cannot demonstrate the capability to launch more than a limited number of satellites should not be considered for licensing at the expense of potential entrants that could provide global service and continuous domestic service.

Id. at ¶ 34.

In sum, not one of MCHI's proffered sources of external financing for ELLIPSO meets the rigorous standards of Sections 25.143(b)(3) and 25.140(d)(2). Despite MCHI's attempts to dazzle the Commission with a variety of illusory commitments and insufficient financing plans, the fact remains that MCHI has not gotten its financial house in order. Statements that MCHI could raise financing in the future are wholly irrelevant to the proceedings at hand and lend no weight whatsoever to MCHI's financial qualifications.

Even if the letters MCHI provides could be credited, however, MCHI would still have only \$317.9 million of the \$564 million it claims to require. Assuming that Westinghouse, Harris, BZW, and IAI each would contribute its pro rata share of the \$564 million (using the percentages in MCHI's most recent FCC Form 430 report), MCHI would have \$69.9 million in internally-generated funds. If the \$100 million asserted for Spectrum's to-be-formed group, and the \$45 million, \$93 million, and \$10 million in vendor financing claimed for Arianespace, AEC-Able, and STS, respectively, are permitted to be included, the total would grow to \$317.9 million. In other words, under the best-case scenario, MCHI would still be left facing a \$246 million financing shortfall.

Under these circumstances, the Commission has no choice but to deny MCHI's Amended Application for failure to comply with the Commission's Big LEO service rules.^{14/}

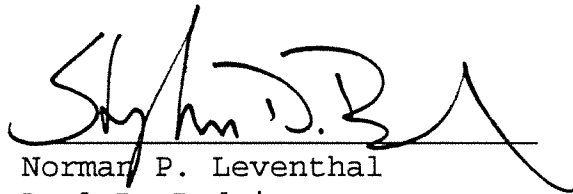
IV. CONCLUSION

MCHI's Amended Application does not meet the financial requirements set forth by the Commission for the provision of Big LEO service. For all of the reasons expressed herein, the Commission should deny MCHI's Amended Application.

Respectfully submitted,

TRW Inc.

By:



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December 22, 1994

Its Attorneys

^{14/} Since MCHI elected to contend that it is financially qualified, rather than to defer its financial showing (See Report & Order, FCC 94-261, slip op. at ¶ 41), the Commission cannot now allow MCHI to defer. To do otherwise would condone a wasting of applicants' and Commission resources, and penalize the one applicant that did, in fact, elect to defer its financial qualifications showing.

CERTIFICATE OF SERVICE

I, Cristina M. Lirag, hereby certify that a true and correct copy of the foregoing "Petition to Deny" was mailed, first-class postage prepaid, this 22nd day of December, 1994 to the following:

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Cristina M. Lirag

CERTIFICATION

I hereby certify that I am the technically qualified person responsible for preparation of the engineering information contained in this "Technical Clarification and Erratum"; that I am familiar with Part 25 of the Commission's Rules and Regulations; that I have either prepared or reviewed the engineering information submitted herein; and that it is complete and accurate to the best of my knowledge.

By: _____



Dr. David Castiel
Chairman and Chief
Executive Officer

January 29, 1991