BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
MOBILE COMMUNICATIONS HOLDINGS, INC.	)	File Nos. 11-DSS-P-91(6) 18-DSS-P-91(18)
	)	
For Application to Construct the ELLIPSO™ Elliptical Orbit Mobile Satellite System	)	

To: Chief, International Bureau

OPPOSITION TO REQUEST FOR CONFIDENTIALITY

CONSTELLATION COMMUNICATIONS, INC. ("Constellation"), by its attorneys, pursuant to §1.45(a) of the Commission's Rules, hereby opposes the November 16, 1994 request for confidentiality of financial documents ("Request"), as supplemented on November 18, 1994 ("Supplement"), filed by Mobile Communications Holdings, Inc. ("MCHI") concerning its above-captioned Application. For the reasons which follow, Constellation urges that confidentiality should be denied and the documents for which confidentiality has been requested should either be returned to MCHI and be given no consideration by the Commission or should be made available for public inspection pursuant to §0.457(e) of the Rules.

In the Report and Order in CC Docket No. 92-166 (Mobile Satellite Service) ("R&O"), 76 RR 2d 202, 214 (1994), the Commission directed each Big LEO applicant, including MCHI, to file, by November 16, 1994, materials demonstrating its financial qualifications "to build and launch all satellites for which it has applied... and to operate its system for one year after launch of the first satellite in it constellation". This requirement is

firmly grounded in the Commission's statutory authority under §319(a) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. §319(a), to require the filing of specified "facts...as to the... financial...ability of the applicant to construct and operate the station...."

While MCHI's November 16, 1994 Amendment to its Application paid lip service to the R&O's financial qualifications informational requirement by including "all financial information in Exhibit 3" (Request at ¶3), MCHI originally asked (Request at ¶4) that the entire Exhibit be shielded from the public and from the other Big LEO applicants and be "reviewed in confidence by the Commission and returned to MCHI after the Commission has satisfied itself that these materials demonstrate the applicant's financial qualifications". In its Supplement (at 1), MCHI now requests confidentiality only for five letters from Exhibit 3 which allegedly help demonstrate its financial qualifications. In the alternative, MCHI requests permission to "redact certain language from these items before disclosure".

It is well established that an applicant's financial information will be disclosed when it is "relevant to a significant and material question of fact arising in a Commission proceeding". Knoxville Broadcasting Corp., 87 FCC 2d 1103, 1105 (1981). A fortiori, full disclosure is necessary where, as here, what is at issue is an applicant's basic financial qualifications as set forth in its amended Application. Here, all other Big LEO applicants have submitted similar financial information in response to the R&O's directive, and it would be patently inequitable and

contrary to administrative due process for the Commission to: (1) adjudicate the probity and adequacy of MCHI's financial documentation in secret without revealing the basis for its conclusions; and (2) prohibit the other Big LEO applicants and the public from assisting the Commission's examination of MCHI's financial qualifications by inspecting and critiquing MCHI's showing, just as MCHI will do with their documentation. See Melody Music, Inc. v. FCC, 345 F.2d 730 (D.C. Cir. 1965)(similarly situated applications must be processed under the same procedural and substantive standards).

Moreover, MCHI's Request does not comply with the established standards for non-disclosure of financial information under §0.459 of the Rules and §552(b)(4) of the Freedom of Information Act, 5 U.S.C. §552(b)(4). Specifically, MCHI must demonstrate that "disclosure would be likely to, inter alia, cause the party submitting those materials substantial competitive harm". New York Telephone Co., 5 FCC Rcd 874 (1990). More must be supplied than generalized allegations of competitive harm -- or MCHI's claim of "sensitive commercial and financial information" (Request at ¶2). See National Exchange Carrier Ass'n, 5 FCC Rcd 7184, 7184 (1990).

Likewise, the suggestion in the Supplement that only limited access to MCHI's financial information should be allowed is faulty. Limiting access to the other Big LEO applicants is unwieldy, and, again, it would result in prohibited preferential treatment of MCHI's application, because the proposed limitations would exclude the general public and other interested parties

from examining MCHI's financial qualifications and commenting thereon. Finally, Constellation submits that MCHI's fallback request for the right to redact its documents if they are not accorded confidentiality should be rejected as untimely under the R&O's November 16, 1994 filing deadline. Whatever MCHI financial documents are not accorded confidentiality should be made available for public inspection, or should be returned without redaction privileges, for the redaction process would give MCHI an additional opportunity to reshape its financial showing which the other Big LEO applicants will not have. See Melody Music, Inc. v. FCC, supra.

WHEREFORE, in light of the foregoing, Constellation respectfully asks the Commission to deny MCHI's request for confidentiality and either return the five documents at issue to MCHI without consideration or make them available for public inspection.

Respectfully submitted,

CONSTELLATION COMMUNICATIONS, INC.

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Dated: November 28, 1994

CERTIFICATE OF SERVICE

I, Yvonne Corbett, a secretary in the law offices of Rosenman & Colin, do hereby certify that a true and correct copy of the foregoing "Opposition to Request for Confidentiality" was sent by first-class mail, postage prepaid, or hand-delivered, this 28th day of November, 1994, to each of the following:

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