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Satellite and Radiocommunication Division
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of	)	
	)	
Mobile Communications Holdings, Inc.	)	File Nos. 11-DSS-P-91(6)
	)	18-DSS-P-91(18)
	)	11-SAT-LA-95
	)	12-SAT-AMEND-95
and	)	
	)	
Loral/Qualcomm Partnership, L.P.	)	File Nos. 19-DSS-P-91 (48)
	)	CSS-91-014
	)	21-SAT-MISC-95
for Authority to Construct, Launch, and Operate a Low Earth Orbit Satellite System in the 1610-1626.5 MHz/ 2483.5-2500 MHz Band	)	

CONSOLIDATED REPLY

Mobile Communications Holdings, Inc. ("MCHI") submits this Consolidated Reply to the Oppositions discussed herein filed in response to MCHI's Application for Review and Request for Clarification ("MCHI Application") arising from the above captioned proceedings.[1] The Federal Communications Commission's ("Commission") staff decisions, variously, granted Loral/Qualcomm Partnership, L.P. ("LQP") a Mobile Satellite Service ("MSS")

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[1] Because MCHI filed a consolidated Application for Review concerning both the LQP and the MCHI Orders, a significant number of (and in the case of LQP alone, two separate) oppositions were filed. Rather than file two separate five-page replies, MCHI has consolidated this Reply into a single ten-page document. See 47 C.F.R. § 1.115(f)(1).

license to operate an above 1 GHz low-Earth orbiting satellite system ("Big LEO"), and deferred consideration of MCHI's Big LEO license application because it found that MCHI did not demonstrate that it is financially qualified to serve as a Big LEO licensee. In addition, the MCHI Application requests clarification that deferred applicants have until January 31, 1996 to file amended applications which will be processed as and when they are filed. Oppositions to the MCHI Application were filed by TRW, Inc. ("TRW"), AMSC Subsidiary Corporation ("AMSC"), Motorola Satellite Communications, Inc. ("Motorola") and LQP (collectively, the "Opposing Parties").

I. The Opposing Parties Fail to Rebut MCHI's Contention That The Staff Arbitrarily and Capriciously Found One Similarly Situated Applicant, LQP, Financially Qualified and Another, MCHI, Financially Unqualified

In the MCHI's Application, MCHI demonstrated that in the LQP Order the Commission's staff ignored two separate evidentiary bases for finding that the Loral Corporation ("Loral") was not adequately committed to expend the necessary funds on behalf of LQP: (1) Loral's management letter dated November 14, 1994 only provided an equivocal commitment "to expend the necessary funds, or take all reasonable steps to cause LQP to raise and expend the necessary funds, to construct and launch ... and to operate the satellite system for one

year,"[2] and (2) statements contained in the SEC documents of Loral and Globalstar confirm that Loral is not fully committed to expend the necessary funds on behalf of LQP.

In their Oppositions, LQP and AMSC rely on the same case to argue that the Commission should not review the SEC filings of Big LEO license applicants to determine their financial qualifications.[3] LQP and AMSC, however, fail to disclose in their Oppositions that the financial qualification standard at issue in MMM Holdings was significantly more lenient than the Big LEO financial standard.[4] In MMM Holdings, the Commission found that a cellular or television license applicant need only demonstrate that it has

> reasonable assurance that the necessary funds will be available... [citations omitted] The applicant is not required to establish a binding legal certainty that the loan will be available [citations omitted] and the essence of reasonable assurance is '[a] present firm intention to make a loan, future considerations permitting.'[5]

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2 Letter form Michael B. Targoff, Senior Vice President of Loral Corporation to the Federal Communications Commission, Washington, D.C. (November 14, 1994) ("Loral Letter") (emphasis added).

3 See LQP Opposition (concerning LQP) at 7-8 and AMSC Opposition at 6, n.5 (each citing MMM Holdings, Inc. for Transfer of Control of LIN Broadcasting Corporation, 4 FCC Rcd 8243 (1989) ("MMM Holdings").

4 MMM Holdings, 4 FCC Rcd at 8246.

5 Id. (quoting Merrimack Valley Broadcasting, Inc., 82 FCC2d 166, 167 (1980)).

In this context, a footnote in MMM Holdings (cited by both AMSC and LQP) states that "risk factor analyses in stock prospectuses . . . are not admissions that such worst-case scenarios will develop."[6] MCHI submits that the MMM Holdings case is irrelevant to this proceeding because the dispositive factor here is not that Loral disclosed potential worst-case scenarios but that it affirmatively stated that it had no intention of providing funding in excess of $107 million to LQP. In this case, the Commission need only observe that the subject SEC documents in the record reveal that Loral stated affirmatively that it is only committed to expend 6.9% of LQP's total necessary funds (a lower percentage than MCHI's committed funds) and is not committed to cover the balance of such necessary funds if LQP fails to raise them from external sources.[7] Accordingly, because the staff accepted Loral's equivocal management commitment,[8] if the Commission

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6 Id. at 8250-51, n.15.

7 We note that TRW suggests that because Westinghouse and IAI have minority shares in MCHI, they should not be treated as corporate parents of MCHI for financial qualification purposes. TRW at 4. TRW, however, fails to mention that Loral has committed to dilute its interest to a 25% minority share (lower than Westinghouse's expected 30% share in MCHI), and therefore, under Melody Music v. FCC, 345 F.2d 730, 732-733 (D.C.Cir. 1985) ("Melody Music"), if the Commission accepts TRW's argument, it cannot treat Loral as LQP's corporate parent.

8 AMSC is the sole Opposing Party to contend that in the LQP Order the staff considered a clarification letter from Loral dated December 29, 1994 (which substantively belies SEC document statements of Loral and Globalstar). See AMSC Opposition at 6. AMSC is mistaken because the text of the LQP Order fully quotes the equivocal language of the first Loral Letter, although the footnote following the

(continued...)

affirms the staff's grant of the LQP license, then it must also accept MCHI's financial showing and therefore find MCHI financially qualified.

II. The Opposing Parties Fail to Persuasively Dispute that the Filing Procedure for Deferred Applicants Requires Clarification

In the MCHI Application, MCHI cited several instances where the Commission and its staff ambiguously suggested that deferred applicants may re-submit amended applications and have them processed on a first-come, first-served basis until January 31, 1996, and that this decision has not been finalized.[9] Most of the ambiguity centers on the meaning of the word "until" used by the Commission and its staff in the context of deferred applicants having "until January 31, 1996" to file amended applications.[10]

None of the Opposing Parties offer compelling evidence contrary to MCHI's interpretation of the Commission's filing deadline. To support their opposing view, Motorola and LQP cite paragraph 41 of the Big LEO Order that uses the same ambiguous phrase "until January 31, 1996" and otherwise fails to

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[8](...continued)
text fails to properly cite the source. We note that another Opposing Party, TRW, shares MCHI's view that the staff ignored the December 29, 1994 the letter from Loral. TRW Opposition at 6-7.

[9] MCHI Application at 13-17.

[10] In addition, in the MCHI Order the staff used the equally ambiguous phrase "no later than January 31, 1996." MCHI Order at 11, para. 30.

resolve the ambiguity.[11] Motorola further argues that MCHI's interpretation could result in an administrative burden for the Commission. In addition, LQP states that MCHI's request for clarification is "premature" and does not merit consideration until one of the deferred applicants files an amended application. By contrast, MCHI submits that accepting applications as and when they are received would serve the public interest and outweigh the inevitable administrative burdens associated with accepting such applications because the Commission has recognized that it is of vital importance to the domestic economy to license MSS as expeditiously as possible. Further, the deferred applicants require clarification as soon as possible in order to have adequate notice of the filing requirement to which they are subject. Accordingly, MCHI strongly recommends that the Commission clarify that deferred applicants must file amendments no later than January 31, 1996 and that such applications will be processed and granted as and when they are received.

III. The Opposing Parties Various Procedural Attacks Against MCHI Are Without Merit

Motorola and LQP raise certain procedural claims against the MCHI Application in an attempt to preclude the Commission from addressing the substantive issues raised by MCHI. Motorola contends that the MCHI Applica-

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[11] See Motorola Opposition at 8, n.27 and LQP Opposition at 11.

tion is not ripe for Commission review.[12] Specifically, Motorola argues that the Commission must first determine whether the staff has made a "final action" under delegated authority before it can assert jurisdiction to consider the MCHI Application.[13] Motorola argues further that "[t]here is no doubt that a final determination with respect to MCHI's [license application] has not been made by the International Bureau" and therefore the Commission has no authority to review the staff actions in dispute.[14] MCHI submits that this procedural argument of Motorola is based upon a misunderstanding of a basic principle of administrative law.[15]

Motorola apparently confuses the "long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted" with

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12 Motorola Opposition at 3-4.

13 Id.

14 Id. at 3. Motorola correctly does not claim that the staff's grant of LQP's application is not final and, thus, this argument does not reach the MCHI Application's request to reconsider that decision.

15 None of the authorities cited by Motorola to support its assertion stand for the principle that an agency's staff decisions must be final before they can be reviewed by an agency. Rather, the cited cases merely reaffirm the separate and distinct administrative law principle that agency decisions must be final before the courts can assert jurisdiction. See Motorola Opposition at 3, n.7 and 4, n.10.

the FCC's internal administrative practice.[16] Decisions by agency staff are only final where the public (or the agency on its own motion) does not seek review of the staff decision within a certain period of time.[17] The Commission's procedural rules provide the public with an opportunity to request a Commission review of any staff action.[18] Applications for Review are a vehicle by which a staff decision may become a final agency decision which, in turn, may be appealed to the courts.[19] Therefore, contrary to Motorola's assertions, Section 1.115 contains no requirement that only "final orders" by the staff can be reviewed by the Commission. Rather, Section 1.115(a) merely states that "[a]ny person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission" (emphasis added).

The MCHI Application sought Commission review of the staff's decisions to (1) not grant a Big LEO license to MCHI, (2) find MCHI to not be financially qualified at this time, (3) defer consideration of the MCHI license application subject to MCHI demonstrating its financial qualifications no later than January 31, 1996, (4) find LQP financially qualified and (5) grant LQP a

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16 Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 50-51 (1938) (citation omitted).

17 See 47 C.F.R. §§ 1.102, 1.103.

18 47 C.F.R. § 1.115.

19 See 47 U.S.C. § 402(a).

Big LEO license. MCHI submits that these decisions constitute staff "actions" for purposes of Section 1.115(a). Moreover, even if the doctrine cited by Motorola applies by analogy, MCHI submits that the subject decisions would meet the applicable standard.[20]

Regarding a separate procedural matter, LQP[21] argues that the IAI and Westinghouse Letters submitted with the MCHI Application for Review constituted new questions of fact or law which the staff had no opportunity to pass.[22] Therefore, LQP contends that the Commission cannot consider the substantive issues raised in the MCHI Application.[23] The MCHI Application, however, included the letters to clarify existing factual matters that the staff misconstrued regarding the nature and extent of the commitments made by IAI and Westinghouse. The factual matter that IAI and Westinghouse were committed to the MCHI ELLIPSO™ project was established previously in this proceed-

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[20] MCHI submits that the staff decisions at issue in this proceeding (if MCHI had not filed the subject MCHI Application) "determine rights or obligations, or have some legal consequence." Capital Network System, Inc. v. FCC, 3 F.3d 1526, 1530 (D.C. Cir. 1993) (quotation marks and brackets omitted, citing Intercity Transportation Co. v. United States, 737 F.2d 103, 106 (D.C. Cir. 1984).

[21] LQP fails to bring "clean hands" to the Commission with regard to its procedural claim because its Opposition (concerning MCHI) exceeds ten pages. See 47 C.F.R. § 1.115(f)(1).

[22] See LQP Opposition (concerning MCHI) at 3-5.

[23] Id.

ing. In addition, MCHI notes that LQP itself and Motorola also submitted subsequent management letters to clarify the nature or extent of their management commitment. Accordingly, MCHI submits that LQP's procedural claim is without merit and must be rejected.

IV. Conclusion

For the aforementioned reasons, MCHI respectfully requests that the Commission reject the Opposing Parties contentions and find MCHI to be financially qualified, grant MCHI's Big LEO license application, and defer a decision on LQP's Big LEO license application until it establishes the requisite financial qualifications. In addition, MCHI seeks clarification that amended Big LEO applications will be processed as and when they are filed.

Respectfully submitted by:

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Dated: March 27, 1995

CERTIFICATE OF SERVICE

I, Michael Stone, do hereby certify that a true and correct copy of the foregoing "Consolidated Reply" was sent by first-class mail, postage prepaid, or hand-delivered, on this 27th day of March, 1995, to the following persons:

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