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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Received

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In re: Application of)	
)	Satellite Policy Branch
MOBILE COMMUNICATIONS)	International Bureau
HOLDINGS, INC.)	File Nos. 11-DSS-P-91;
)	18-DSS-P-91;
For Authority to Construct, Launch and)	11-SAT-LA-95;
Operate a Low-Earth Orbit Satellite System)	12-SAT-AMEND-95
In the 1610-1626.5/2483.5-2500 MHz Bands)	

**COMMENTS OF TRW INC.
CONCERNING MCHI'S "NOTICE OF SUPPLEMENTAL AUTHORITY"**

TRW Inc. ("TRW"), by its attorneys, hereby comments on the "Notice of Supplemental Authority in Support of Consolidated Application for Review and Request for Clarification" filed by Mobile Communications Holdings, Inc. ("MCHI") on February 15, 1995. In the Notice of Supplemental Authority, MCHI seizes upon broad language contained in the recently enacted Telecommunications Act of 1996, which it claims provides support for its pending Application for Review. Via its Application for Review, MCHI seeks reversal of the International Bureau's January 31, 1995 decision to defer final action on MCHI's application to construct, launch and operate a low-Earth orbit ("LEO") mobile-satellite service ("MSS") system in the 1610-1626.5 and 2483.5-2500 MHz frequency bands ("Big LEO Service") until MCHI is able to satisfy the Commission's financial qualification standard.

In fact, however, to the extent that the new statutory language is relevant to MCHI's situation at all, the action taken by the Bureau is fully consistent with the apparent Congressional goal of relieving entrepreneurs from unnecessary impediments to market entry. In deciding to defer final action upon MCHI's application, the Bureau accorded MCHI an extra opportunity to interest investors in its proposal and to demonstrate at a later date that it had assembled the financial resources necessary to construct, launch and operate its proposed Big LEO system. Certainly, in the context of a global LEO MSS system, an endeavor requiring very large amounts of capital, the Bureau's indulgence of MCHI in allowing it extra time to secure financing is the most that the new statutory language cited by MCHI could require.

DISCUSSION

In its January 1995 decision deferring final action on MCHI's application, the Bureau noted that the Commission, in establishing rules for the global Big LEO Service the preceding Fall, had cited "the enormous costs involved in constructing and launching a satellite system."^{1/} The Bureau also emphasized the Commission's observation that these substantial costs "historically made it particularly important that applicants for satellite licenses to use spectrum which is in high demand demonstrate, in

^{1/} See Mobile Communications Holdings, Inc., 10 FCC Red 2274 (Int'l Bur. 1995) ("MCHI Order") (citing 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 (1994)).

advance, the financial capability to proceed with construction of their systems.”^{2/} Based on these factors, the Commission adopted a strict financial qualification requirement for Big LEO systems,^{3/} which it applied to MCHI in the MCHI Order. The Bureau appropriately concluded, based on MCHI’s own limited assets, and the lack of firm commitments from potential external sources of financing, that MCHI had not met the burden of demonstrating that it is capable of implementing the Big LEO system it proposes.^{4/}

In the aftermath of that decision, MCHI has sought to evade the Commission’s financial qualification requirement by claiming that it is entitled to special treatment as a “small business.”^{5/} Initially, this claim was premised on statutory language relating to the FCC’s authority to conduct spectrum auctions, which instructs the Commission to promote economic opportunity, *inter alia*, “by disseminating licenses among a wide variety of applicants, including small businesses . . .” However, as this language applies squarely only to those situations where the Commission proposes to

^{2/} Id.

^{3/} See Big LEO Order, 9 FCC Rcd at 5948-54.

^{4/} See MCHI Order, 10 FCC Rcd at 2277 (¶ 23); TRW Opposition to MCHI Application for Review, File Nos. 11-DSS-P-91(6) *et al.*, filed March 17, 1995.

^{5/} As the Commission itself has pointed out, MCHI never claimed to be a small business during the course of the Big LEO Service NPRM, and did not contest TRW’s observation in its comments that no small businesses were part of the applicant group for this service. See “Opposition of the Federal Communications Commission to Petitioner’s Emergency Motion for a Stay Pending Review,” No. 94-1695 (D.C. Cir., filed November 14, 1994); TRW Comments, CC Docket No. 92-166, at 90-91 (filed May 5, 1994).

auction licenses, it does not in any way impact the Commission's application of threshold licensee qualifications under any circumstances.^{6/}

Now, MCHI is once again citing statutory language out of context for the purpose of avoiding the financial qualification standard for the Big LEO Service. Specifically, MCHI observes that Congress, in the recently enacted Telecommunications Act of 1996, has instructed the Commission to eliminate, in a future proceeding, "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services."^{7/}

This language, however, cannot be read as a mandate for the Commission to abandon its sound application of a strict financial standard to the Big LEO Service. A policy of providing opportunities for entrepreneurs to enter telecommunications businesses cannot require that any particular company be relieved of the obligation to demonstrate conclusively that it possesses the capability to construct the system it proposes, particularly in view of the enormous capital requirements entailed in constructing global LEO MSS systems, as detailed above. As Congress itself has recognized, some services are so

^{6/} See "Opposition of the Federal Communications Commission to Petitioner's Emergency Motion for Stay Pending Review," No. 94-1695, at 9-12 (D.C. Cir., filed November 14, 1994).

^{7/} See MCHI Notice at 3 (citing Telecommunications Act of 1996, Pub. L. No. 104-104, § 257, 110 Stat. 56 (1996)). Nowhere does the law indicate that those measures ultimately adopted by the Commission should be applied retroactively.

inherently capital intensive that they are ill-suited to entry by small businesses.^{8/} This Congressional assessment simply recognizes that it is not within the Commission's power to alter economic realities to make it feasible for all types of entities to participate in offering such services.^{9/}

Indeed, the Commission's forbearance in allowing MCHI additional time to seek out firm financial backing can fairly be characterized as exactly the sort of step that Congress intended in adopting Section 257 of the Act. Instead of denying MCHI's application for failing to satisfy the Commission's reasonable financial qualification requirements, the Bureau granted MCHI another year in which to seek out backers. Unfortunately, rather than taking advantage of this opportunity to firm up support from interested companies or to seek out new sources of capital, MCHI has squandered this deferment by continuing to importune the Commission to accept facially inadequate submissions as if they were *bona fide* financing commitments.^{10/}

^{8/} See H. REP. NO. 111, 103d Cong., 1st Sess. 254 (1993).

^{9/} What the statutory language does suggest is that the Commission, **where practicable**, should structure new services in ways that will permit smaller entities to participate to some extent in the opportunities offered, e.g., the PCS C Block auctions. See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 75 R.R.2d 859, 888-90 (1994).

^{10/} If Congress -- made readily aware of the Big LEO financial standard by MCHI -- desired for the FCC to abandon this standard, it could readily have done so with a specific statutory directive. It did not.

Moreover, under any construction of the law, it is irrelevant for MCHI to imply that adherence to the existing Big LEO Service financial standard will force MCHI to abandon negotiations with potential U.S. vendors (which it implies include other “small businesses”) and seek out “offshore vendors who are also in a position to participate in financing the project.” MCHI Notice at 5-6. The Commission cannot concern itself with the specific business decisions that MCHI will have to make to finance its proposed system, it can only evaluate the sufficiency of the resources upon which it proposes to rely. As the Commission properly found in 1995, an applicant intending to rely on outside sources for funding must demonstrate that these investors are legitimate and are committed to the project. If potential U.S. sources of funding do not have sufficient confidence in the viability of MCHI’s proposal to commit to participate in financing it, then it is inevitable that MCHI must look to other options. The absence of solid commitments from U.S. companies, however, provides no justification for the Commission to accept the “blue smoke and mirrors” approach that MCHI has offered thus far.

Finally, contrary to MCHI’s assertion that others “would hardly be harmed” by a relaxation of the Commission’s standards,^{11/} if the Commission were to grant a license to an applicant, such as MCHI, that has not satisfactorily demonstrated its financial qualifications, the impact on existing MSS licensees, and the industry in general, could be

^{11/} MCHI Notice at 7.

significant.^{12/} First, it is well documented that the Big LEO Service will require tremendous amounts of capital and technical expertise to become reality. Nonetheless, as a result of the efforts of the licensees, as well as the Commission's imposition of a strict financial standard, there is now a significant degree of confidence among potential investors that the licensed systems have the ability to bring their proposals to fruition. If the Commission were to suddenly change course, and begin handing out authorizations as if they were lottery tickets, it could spark a crisis of confidence in the development of the U.S. Big LEO industry. Such a development would harm those Big LEO licensees whose investors have come to rely on the fact that only financially viable systems will be licensed by the Commission.

Second, licensing systems that fail to demonstrate financial qualification would needlessly complicate intersystem coordination among CDMA licensees required by the Commission's Rules. Other system licensees could be required for no reason to alter the technical design or operations of their systems in order to accommodate a system that has no demonstrated viability, and is unlikely ever to be built. This harm could be both immediate and long-lasting, needlessly impinging on the operation of financially qualified licensees that do construct.


^{12/} To the extent that MCHI makes this claim in support of its notion that the general Congressional policy of promoting small business opportunities "would provide a principled basis" for waiving the financial standard, MCHI has not even attempted to show that good cause exists for such a departure based on its particular circumstances.

CONCLUSION

Based on the foregoing, and on the arguments previously raised before the Commission in connection with MCHI's initial Application for Review, TRW urges the Commission to reject MCHI's rhetorical efforts to secure itself an exemption from the financial qualification rules applicable to other applicants, and to uphold the Bureau's rejection of MCHI's inadequate financial showing.

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CERTIFICATE OF SERVICE

I, Kaigh K. Johnson, do hereby certify that true and correct copies of the foregoing "Comments of TRW Inc. Concerning MCHI's "Notice of Supplemental Authority"" were mailed, first-class postage prepaid, this 28th day of February, 1996 to the following:

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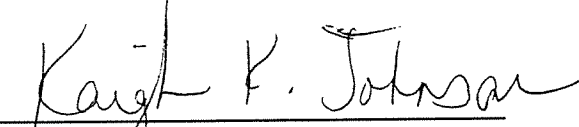
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