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DEC 2 2 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DEC 2 - 1994

In the Matter of the
Applications of:

CONSTELLATION
COMMUNICATIONS, INC.

File Nos. 17-DSS-P-91(48)
CSS-91-013
9-SAT-LA-95
10-SAT-AMEND-95

MOBILE COMMUNICATIONS
HOLDINGS, INC.

File Nos. 11-DSS-P-91(6)
18-DSS-P-91(18)
11-SAT-LA-95
12-SAT-AMEND-95

LORAL/QUALCOMM PARTNERSHIP, L.P.)

File Nos. 19-DSS-P-91(48)
CSS-91-014
13-SAT-LA-95
14-SAT-AMEND-95

For Authority to Construct,
Launch and Operate Mobile
Satellite Systems in the
1610-1626.5/2483.5-2500
MHz Frequency Bands.

CONSOLIDATED COMMENTS AND PETITION TO DEFER AND/OR DENY

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Date: December 22, 1994

Its Attorneys

Summary

Motorola Satellite Communications, Inc. ("Motorola") hereby submits its comments on the above-captioned amended applications, and petitions the Commission to defer and/or deny at least two of these applications.

First, the Commission must not allow any of the above-captioned applicants to amend their applications in ways which are not required to bring them into conformance with any new policies or requirements adopted in the Report and Order, and which would otherwise constitute a "major amendment" under the Commission's rules. LQP, MCHI and Constellation have, in at least one respect, submitted major amendments to their respective system designs which result in requests for far more feeder link bandwidth than was included in their original applications.

These major amendments clearly were not necessitated by any of the rules and policies adopted in the Report and Order, and if granted, would significantly increase the potential for interference and would create new or increased frequency conflicts without resolving any frequency conflicts with authorized stations or pending applications. Under such circumstances, the Commission must either render these applications, as amended, "newly filed" for consideration in a future processing group or require that the applicants withdraw the increased feeder link spectrum requests in their amendments before processing them any further. At the same time, the Commission should meet its January 31, 1995 target date for licensing Big LEO systems by immediately granting construction

permits to applicants, such as Motorola, who have complied with all of the Commission's rules and qualification requirements and who have not filed any "major" amendments to their applications.

Second, the amended applications of Constellation and MCHI do not establish that these applicants possess the requisite financial resources necessary to construct their proposed systems and operate them for one year, either in the form of internal financial capacity or external financing irrevocably committed to their respective projects. The management commitment letters submitted by both of these applicants clearly are inadequate to demonstrate their financial qualifications. Accordingly, the Commission must deny these applications or defer further consideration of them until January 31, 1996, the date by which the Commission has allowed the applicants for this service to make a complete financial showing.

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CONSOLIDATED COMMENTS AND PETITION TO DEFER AND/OR DENY

Motorola Satellite Communications, Inc. ("Motorola") hereby submits its comments on the above-captioned amended applications for authority to construct, launch and operate mobile satellite systems in the 1610-1626.5 MHz and 2483.5-2500 MHz bands, and petitions the Commission to defer and/or deny at least two of these applications.^{1/}

^{1/} By Public Notice, DA 94-1291, Report No. DS-1481 (released Nov. 21, 1994), the International Bureau accepted for filing the amended applications of Constellation Communications, Inc. ("Constellation"), Mobile Communications Holdings, Inc. ("MCHI"), Loral/QUALCOMM Partnership, L.P. ("LQP"), Motorola and TRW Inc.

(continued...)

The Commission must not allow any of the above-captioned applicants to amend their applications in ways which are not required to bring them into conformance with any new policies or requirements adopted in the Report and Order, and which would otherwise constitute a "major amendment" under the Commission's rules.^{2/} See 47 C.F.R. § 25.116(b) & (c) (1993). All of these applicants have, in at least one respect, submitted major amendments to their respective system designs which result in requests for far more feeder link bandwidth than was included in their original applications. These major amendments clearly were not necessitated by any of the rules and policies adopted in the Report and Order, and if granted, would significantly increase the potential for interference and would create new or increased frequency conflicts without resolving any frequency conflicts with authorized stations or pending applications. Id.

In addition, since the Commission has stated that the IRIDIUM® system feeder link authorization will be conditioned upon grant of the feeder link authorizations of the other applicants, any increased spectrum demanded by the other applicants will have a direct and material effect on Motorola's

^{1/} (...continued)
("TRW"), and requested comments and petitions on these applications by December 22, 1994. The Commission did not place the amended application of AMSC Subsidiary Corporation ("AMSC") on public notice and indicated that it would not accept comments or petitions on that application at this time. Id.

^{2/} See Report and Order, 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, CC Docket No. 92-166, 59 Fed. Reg. 53,294 at ¶¶ 58-59 (Oct. 21, 1994), petitions for reconsideration and clarification pending ("Report and Order").

license. Under such circumstances, the Commission must either render these applications, as amended, "newly filed" for consideration in a future processing group or require that the applicants withdraw the increased feeder link spectrum requests in their amendments before processing them any further. At the same time, the Commission should meet its January 31, 1995 target date for licensing Big LEO systems by immediately granting construction permits to applicants, such as Motorola, who have complied with all of the Commission's rules and qualification requirements and who have not filed any "major" amendments to their applications.^{3/}

The amended applications of Constellation and MCHI do not establish that these applicants possess the requisite financial resources necessary to construct their proposed systems and operate them for one year, either in the form of internal financial capacity or external financing irrevocably committed to their respective projects. The Commission must deny these applications or defer further consideration of them until January 31, 1996, the date by which the Commission has allowed the applicants for this service to make a complete financial showing.^{4/}

^{3/} See Report and Order, at ¶ 39.

^{4/} See Report and Order, at ¶ 40.

I. INTRODUCTION

There are six applications in the Big LEO satellite service processing group and the Commission is now considering five of these applications for conditional licensing. Pursuant to the Report and Order, the public interest requires that, to be eligible for licensing by January 31, 1995, each of the Big LEO applicants must meet all of the Commission's qualification requirements. These requirements have now been incorporated into the Commission's rules. See § 25.143(b)(1-3). Thus, each Big LEO applicant is required to demonstrate that it has the requisite technical and financial qualifications to be a licensee in this service. As the Commission explained, these threshold qualifications requirements "are designed to ensure that those awarded licenses can expeditiously implement state-of-the-art systems that further the public interest."^{5/} The Commission went on to note that "[i]f applicants are unable to meet the basic qualifying criteria, their applications [will be] dismissed without additional hearing."^{6/}

The Commission provided all of the applicants in the current processing group with an opportunity to amend their applications by November 16, 1994, to conform to the new rules and policies set forth in the Report and Order, and to demonstrate that they are fully qualified to hold a Commission license. The Commission also adopted a two-tiered financial

^{5/} Report and Order, at ¶ 11.

^{6/} Id.

eligibility rule for this service. Those applicants that submit a complete, amended application on or before November 16, 1994, and demonstrate their qualifications are to receive "priority in obtaining license grants" and will have their applications processed immediately.^{7/} As the Commission correctly noted:

Making these grants promptly will enable such fully qualified applicants to begin immediately the time-consuming process of satellite construction, thereby significantly assisting in the United States' efforts to complete the international coordination process and achieving our statutory and public interest objective of bringing new and innovative services to the public at the earliest possible time.^{8/}

Those applicants unable to meet the Commission's threshold financial requirements were afforded an additional opportunity for entry by giving them fourteen more months to establish their financial qualifications.

Consistent with its rules, however, the Commission cautioned that system design changes that are "not necessary to bring the application into conformance with our rules and which would increase frequency conflicts . . . would render the application a newly filed application to be considered in a future processing group."^{9/} In other words, "major amendments" would subject an application to potential dismissal from the current processing group.

^{7/} Id. at ¶ 39.

^{8/} Id.

^{9/} Id. at ¶ 59.

II. THE AMENDED APPLICATIONS OF MCHI, CONSTELLATION AND LQP CONTAIN MAJOR AMENDMENTS WHICH MAKE THEM INELIGIBLE FOR FURTHER PROCESSING ABSENT THE WITHDRAWAL OF THE OBJECTIONABLE MATERIALS

All of the above-captioned applicants have significantly increased their requests for feeder link spectrum for their respective satellite systems. These amendments were not necessitated by the new policies and rules established in the Report and Order. The proposed increases in feeder link spectrum substantially increase the likelihood that there may not be enough spectrum available for all of the applicants in their desired feeder link bands. As LQP aptly stated in its recently filed comments to the petitions for reconsideration of the Report and Order:

. . . limiting requests for C-band feeder links among the Big LEO applicants is important because of the potential issues which may arise in the international community as a result of increasing the number of U.S. LEO systems which would share C-band feeder links. As the Commission is aware, the recent ITU-R meetings in Geneva indicated that there would be a limited amount of C-band spectrum for MSS feeder links.^{10/}

This view is equally applicable to the requests of LQP, MCHI and Constellation for substantially more feeder link spectrum at C-band than what they all had previously applied for in their applications. Such requests for more feeder link spectrum also

^{10/} LQP's Consolidated Opposition to and Comments on Petitions for Reconsideration, CC Docket No. 92-166, at 15-16 (Dec. 20, 1994). LQP also correctly recognized that any amendment which increases the potential for interference, such as switching feeder link frequency bands, would be a "major amendment" under the Commission's rules. Id. at 17.

could lead to further delays in granting an unconditional license to Motorola, even though it is fully qualified, since the Commission has stated that "[u]ntil we are certain that the feeder link requirements of all qualified applicants will be met, we will not foreclose our options by assigning spectrum unconditionally."^{11/}

Since these additional feeder link requests were not necessitated by the Report and Order, and since they would increase the potential for interference without resolving any frequency conflicts, the Commission should deem them "major" amendments under its rules. As such, the Commission could either determine not to process these amended applications in the current processing group or require the applicants to withdraw portions of their amendments before further processing of the applications. In any event, the Commission should not license, conditional or otherwise, additional feeder link spectrum to any of these applicants in order to ensure that there will be sufficient spectrum identified for each qualified applicant's legitimate feeder link requests.

A. The Commission's Major Amendment Rules

The Commission indicated in its Report and Order that it would not tolerate changes to system designs which were not necessitated by any rule changes and which would otherwise constitute a "major amendment" under the Commission's rules.^{12/}

^{11/} Report and Order, at ¶ 166 (footnote omitted).

^{12/} See Report and Order, at ¶¶ 58-59.

Under Part 25 of the Commission's rules, an amendment to an application is "major" if, among other things, it increases the potential for interference. See 47 C.F.R. § 25.116(b)(1) (1993). A major amendment, in turn, makes the application newly filed and ineligible for consideration with its former processing group, unless, among other exceptions, such an amendment "resolves frequency conflicts with authorized stations or other pending applications but does not create new or increased frequency conflicts." 47 C.F.R. § 25.116(c)(1) (1993).

An increase in the amount of spectrum requested for an MSS system's feeder links fits squarely within the Commission's definition of a major amendment. The use of additional spectrum by a satellite system, whether it be at 5 GHz, 7 GHz, or 15 GHz, necessarily will increase "the potential for interference." 47 C.F.R. § 25.116(b)(1) (1993). Nor do any of the exceptions apply to the current situation since any increased use of the requested feeder link spectrum would "create new or increased frequency conflicts" with other authorized users of the bands. 47 C.F.R. § 25.116(c) (1993).

In view of the uncertainty over the availability of the feeder link frequencies requested by some applicants, the Commission indicated that it would allow licensees to modify their licenses after grant and request different feeder link frequencies when the uncertainty as to the availability of the bands is resolved.^{13/} Requesting other frequencies, however, is altogether different than a very large increase in the amount of

^{13/} See Report and Order, at ¶ 169.

spectrum requested for feeder links. While a licensee's request for other frequencies may at some future point be necessary to resolve frequency conflicts, an increase in the bandwidth requested by an applicant is obviously not necessary to resolve any such conflict. To the contrary, such increases in feeder link spectrum requirements will only exacerbate an already difficult problem and potentially delay the unconditional licensing of all Big LEO systems.

**B. All of the Above-Captioned Applicants
Have Substantially Increased
Their Feeder Link Requests**

As set forth in the following table, each of the above-captioned applicants has substantially increased its request for feeder link spectrum. Indeed, all of these applicants have made at least a threefold increase in their feeder link spectrum demands at the same time that the Commission has pared back their service link spectrum authorizations.^{14/}

^{14/} In this regard, Motorola notes that the Commission erred in its Report & Order when it implied that Motorola had originally requested approximately 100 MHz in each direction for its feeder link spectrum and is now requesting a significant increase in its feeder link requirements. Report and Order, at ¶ 164. Motorola's original application did, in fact, indicate that the occupied bandwidth for its feeder links was 100 MHz in each direction. See Application of Motorola for the IRIDIUM System, at 53 (Dec. 1990). Motorola has now refined its request to include authorization of specific feeder link channels in the 19.4-19.6 GHz and 29.1-29.3 GHz bands, but the total occupied feeder link bandwidth has not increased. See Motorola's Amendment, at Table R-8 (Nov. 15, 1994).

FEEDER LINK REQUESTS OF SEVERAL BIG LEO APPLICANTS

	Feeder Link Requests			
	Original Applications ^{15/} (MHz)		Amended Applications (MHz)	
Loral/QUALCOMM	57.5	5158.5-5216 MHz	200	5025-5225 MHz
	57.5	6484-6541.5 MHz	200	6875-7075 MHz
Constellation	4.5	5150-5151.5 MHz	200	5050-5250 MHz
	3.0	5163.5-5166.5 MHz 6538.5-6541.5 MHz	200	6875-7075 MHz
MCHI	16.5	1610-1626.5 MHz	300	6725-7025 MHz
	16.5	2483.5-2500 MHz	300	15.4-15.7 GHz

None of these amended requests for more feeder link spectrum is necessitated by any rule change or new policy contained in the Report and Order. Nor has any of the applicants justified the need for more feeder link spectrum for their proposed systems.^{16/} Rather, it appears that each of the applicants has decided that an authorization for more feeder link

^{15/} See Satellite System Application of Constellation, at 14-15 (June 3, 1991); Application for Authority to Construct ELLIPSO II, at 11 (June 3, 1991); Application of Ellipsat Corporation for Authority to Construct ELLIPSO I, at 8-11 (Nov. 2, 1990); Globalstar System Application, at 111-114 (June 3, 1991).

^{16/} It does not appear that additional feeder link spectrum is needed by any one applicant in order to accommodate co-frequency sharing of CDMA systems. In any event, as set forth above, LQP may be the only financially qualified applicant requesting use of the 5 GHz and 7 GHz bands, and TRW does not propose to share its Ka-band feeder link spectrum with any other satellite system. Accordingly, there is absolutely no justification for increasing the feeder link authorizations for any of these applicants.

spectrum is better than less.^{17/} Under these circumstances, the Commission must limit the feeder link authorizations of each of these applicants to the amount of spectrum they applied for at the time of the original cut-off date.^{18/} Alternatively, the Commission could give each applicant the option of prosecuting its application in a future processing group.

**III. CONSTELLATION AND MCHI HAVE NOT ESTABLISHED
THEIR THRESHOLD FINANCIAL QUALIFICATIONS**

A. The Commission's Financial Qualification Standard

The Communications Act of 1934, as amended, requires the Commission to make a public interest determination before granting any application for a construction permit or license for a radio station. See 47 U.S.C. §§ 308 & 309 (1988). In making this determination, the Commission must assess, among other things, the qualifications of each applicant, including its financial and technical qualifications to operate the proposed radio station. See id. §§ 308(b) & 319. At any time after the filing of an application, the Commission may also require that the applicant provide further written statements of fact to enable it to make this public interest determination. Id.

^{17/} The increased bandwidth for feeder links may partially be due to the changes made by these applicants in their service links, including increases in the number of beams and channel bandwidth employed in each beam. Neither of these types of changes, however, is necessitated by the rules or policies set forth in the Report and Order. Nor are these changes required to accommodate co-frequency sharing among the CDMA applicants.

^{18/} It is not clear that such a limitation would require any further redesign of the applicants' proposed systems.

As the Commission appropriately recognized in its

Report and Order:

In light of the enormous costs involved in constructing and launching a satellite system, we have always considered financial ability a significant factor in determining whether an applicant is qualified to hold a license.

Report and Order, at ¶ 26. This is especially true for the Big LEO satellite systems, where the projected costs for construction, launch and first year operation now range from \$564 million to several billions of dollars.^{19/} Accordingly, the Commission chose to adopt what it described as a "strict" financial requirement for the Big LEO service. Id. at ¶ 30.

The Commission has characterized this threshold financial qualification standard as "identical to the one used in the domestic fixed-satellite service. . . ." Id. Applicants must demonstrate, on the basis of the documentation contained in their applications, that they are financially qualified to construct and launch their entire satellite systems, as well as operate the systems for one year after the launch of the first satellite in the constellation.^{20/} Specifically, each applicant must show that it has on hand or has arranged either internal or external financing adequate to cover these costs.

^{19/} The amended cost estimates for many of the applicants have increased significantly from those figures included in their original applications.

^{20/} See Licensing Space Stations in the Domestic-Fixed Satellite Service, 101 F.C.C.2d 223, 231-34, 58 R.R.2d 1267, 1269-74 (1985) ("1985 Domsat Order") (codified at 47 C.F.R. § 25.140(c) and (d)).

Applicants relying on internal financing must provide:

(a) "a balance sheet demonstrating current assets or operating income sufficient to meet the space segment costs,"^{21/} together with (b) "evidence of a management commitment to the project." Id. at ¶¶ 31 & 35. The latter requirement was added at the request of MCHI (formerly Ellipsat Corporation), who argued that applicants relying on internal funds should be placed on an even footing with those parties who must rely upon "irrevocable" outside loan commitments to establish their financial qualifications. The Commission indicated that while an unalterable commitment, regardless of market conditions, is not required, the management of the corporation providing the funding must commit that it is prepared to expend the necessary funds "absent a material change in circumstances." Id. at ¶ 35. Similarly, applicants relying on internal financing from "parent corporations" must make the same showing -- i.e., submit a balance sheet and evidence of a management commitment from the parent corporation.

Alternatively, applicants can rely on external financing to demonstrate their financial qualifications so long as they show that the financing is "irrevocably committed," i.e. that it "has been approved and does not rest on contingencies which require action by either party to the loan or equity investment." Id. at ¶ 32; see also 47 C.F.R. § 25.140(d)(2)(iii) (1993). In order to be given credit for such financing

^{21/} Current assets were specifically defined to include cash, inventory and accounts receivable. They are not to be reduced by current liabilities.

arrangements, an applicant must submit an instrument of financing demonstrating: (1) that the lender or investor has already determined that the applicant is creditworthy, and (2) that the lender or investor is prepared to make the loan or investment immediately upon grant of a Commission authorization, absent a material change in circumstances. See Report and Order, at ¶ 32. In addition, the loan/investment documents must evidence "[t]he terms of any fully negotiated loan or other form of credit arrangement. . . ." See 47 C.F.R. § 25.140(d)(2)(i) (1993). While acknowledging that the applicant may eventually rely upon operating revenues to support its system once it is operational, the Commission explicitly required that a lender be prepared to "finance the entire cost of the system." Report and Order, at ¶ 32.

B. Constellation Has Not Adequately Demonstrated Its Financial Qualifications

Constellation has estimated its total initial system costs, including construction and launch services, to be \$1.695 billion, without any allowance for interest payments on debt financing.^{22/} In addition, it estimates operating expenses for one year after the launch of the first satellite at \$26.4

^{22/} See Constellation Amendment, at 33. This figure is slightly different than the total investment amount which appears in the supporting exhibit to the Amendment (\$1.657 billion). Compare id. at Exhibit 3 ("Cumulative Investment"). Constellation indicates that its cost estimates "conservatively" assume that its system will be funded entirely by equity. See id., at 27 n.38. In fact, by not including the cost of likely debt service for its proposed system, Constellation has grossly underestimated the total cost of its initial satellite system.

million.^{23/} In an attempt to establish its financial qualifications, Constellation apparently relies upon three sources of funding: (1) the balance sheet of Bell Atlantic Corporation; (2) the balance sheet of E-Systems, Inc.; and (3) an indication of interest by a Brazilian telecommunications company "to be a major shareholder in the venture."^{24/} None of these sources of funding, however, can be relied upon by the Commission for purposes of demonstrating Constellation's financial qualifications.

As previously indicated, a Big LEO applicant relying on internal financing must provide the Commission with a balance sheet from its parent corporation and evidence of a commitment from the management of the corporation that it is prepared to expend the necessary funds "absent a material change in circumstances." The letters submitted by Constellation from Bell Atlantic and E-Systems fall far short of the management commitment to the project required by the financial qualification rules.

Bell Atlantic's letter merely states that, on the basis of an "initial review" of Constellation's application and business plans, Bell Atlantic "inten[ds] to provide financial support for that satellite project subject to normal business

^{23/} See Constellation Amendment, at 33. It is not entirely clear from Constellation's Amendment exactly when it anticipates launching its first satellite. Id. at 28. If Constellation were to launch its first satellite sometime in 1997, its projected operating expenses through 1998 would exceed \$78 million. Id. at Ex. 3 ("Annual Operating Expenses").

^{24/} See Constellation Amendment, at 34.

reviews of market conditions and the project's progress to ensure acceptable levels of risk and return."^{25/} It goes on to further qualify Bell Atlantic's financial commitment to Constellation by subjecting it "to negotiation of satisfactory agreements; and our customary internal business approval procedures, including, if applicable, approval of the Board of Directors."^{26/} Clearly, an intent to provide "financial support" is not a commitment to expend all of the funds necessary to construct, launch and operate the proposed system. Bell Atlantic's Board of Directors remains free to decide not to expend any funds for the project even if there is no "material change" in circumstances.

E-Systems' management "commitment" letter is equally unacceptable.^{27/} It also indicates only an "intent to provide financial support" for the project "subject to normal business reviews of market conditions and the project's progress to assure acceptable levels of risk and return."^{28/} An expression of conditional intent to support an applicant's satellite project falls short of the requisite commitment to cover the entire cost of the project absent a material change in market conditions.

^{25/} Constellation Amendment, at Ex. 4 (emphasis added).

^{26/} Id.

^{27/} The financial statements of E-Systems alone are insufficient to establish that a parent corporation of Constellation has sufficient current assets and operating income to meet projected construction, launch and first year operating costs. E-Systems 1993 audited financial statements indicate total current assets of approximately \$750 million and after tax operating income of about \$122 million. See Constellation Amendment, at Ex. 7. This cumulative amount falls well below Constellation's projected costs for its proposed satellite system.

^{28/} Id.

Nor does Constellation's financial submission qualify as demonstrating adequate external financing, since neither E-Systems nor Bell Atlantic offers the irrevocably committed financing required by the Commission. Rather, both letters are qualified by the material contingencies described above, including review by management and/or agreement with Constellation, and neither offers to cover the entire cost of the system.

Also included in Constellation's financial submission is a letter from Telecomunicacoes Brasileiras S.A. - TELEBRAS ("Telebras"). Far from committing itself to anything (irrevocably or not), Telebras merely indicates that it has entered into a Memorandum of Understanding with Constellation and Bell Atlantic aimed at creating a joint venture, and that it intends to be a major shareholder in the venture.^{29/} Constellation has not submitted any financing instrument evidencing this investment, let alone one which demonstrates that Telebras is prepared to make an investment in Constellation immediately upon grant of a Commission authorization, unless there is a material change in circumstances. Absent such an "irrevocable" commitment, Telebras' letter is entitled to no weight.

^{29/} See Constellation Amendment, at Exs. 4 & 8. This Memorandum is not included in the materials supplied by Constellation.

C. MCHI Has Not Adequately Demonstrated Its Financial Qualifications

MCHI has projected its total initial system costs and first year operating expenses to be \$564 million, without any allowance for interest payments on debt financing.^{30/} In an attempt to establish its financial qualifications, MCHI indicates that it will be relying upon several sources of funding: (1) the balance sheets of several shareholders, including Westinghouse Electric Corporation, Harris Corporation, Israel Aircraft Industries ("IAI"), Barclays de Zoete Wedd ("Barclays") and Cable & Wireless Public Limited Company ("C&W")^{31/}; (2) a "commitment of \$100 million" from Spectrum Network Systems Limited ("Spectrum") for exclusive distribution rights in selected countries; (3) vendor financing from Arianespace (\$45 million), Able Engineering (\$93 million), and Satellite Transmission Systems ("STS") (\$10 million); and (4) a letter from Barclays providing its opinion that financing could be arranged for up to twenty percent of the total system costs subject to certain assumptions.^{32/} As is the case with Constellation, none of

^{30/} See MCHI Amendment, at Ex. 3. By not including the cost of likely debt service for its proposed system, MCHI has significantly underestimated the total cost for its satellite system. Indeed, MCHI indicates that it intends to rely upon substantial vendor financing to fund its satellite project.

^{31/} MCHI submits its own balance sheet which shows negligible current assets. See MCHI Amendment, at Ex. 3, Appendix B. MCHI also indicates that it will be relying upon Fairchild Space for internal financing; however, it has submitted neither a balance sheet nor management commitment letter from this company.

^{32/} See MCHI Amendment, at Ex. 3.

these sources of funding can be relied upon by the Commission for purposes of demonstrating MCHI's financial qualifications.

The primary deficiencies with MCHI's financial showing are the inadequacies of the management "commitment" letters accompanying the balance sheets of its shareholders and the lack of documentation setting forth the terms and conditions of any purported external financing arrangements. For example, the letter from Westinghouse to MCHI merely indicates general "support" for MCHI's application and only commits "to continue the support of the team's efforts to move forward to completion of an operating system."^{33/} There clearly is no commitment in this letter from the management of Westinghouse that it is prepared to expend all or any portion of the funding needed by MCHI to complete its satellite project absent a material change in circumstances. Similarly, the letter from Harris to MCHI does not contain any specific financing commitment, but instead indicates only that Harris is "committed to continuing [its] support [to the development project] under the terms of our present business agreement with MCHI."^{34/}

^{33/} Letter from M.F. Borkowski to Dr. David Castiel (Nov. 15, 1994).

^{34/} See Letter from Dr. Bill C. Tankersley to Dr. David Castiel (Nov. 16, 1994). The letters from Barclays are equally unavailing. See Letter from Trevor Nash to Dr. David Castiel (Nov. 16, 1994) ("we will continue to commit our worldwide professional resources to Ellipso. . . ."); Letter from Trevor Nash to Dr. David Castiel (Nov. 16, 1994) ("This letter represents only our advice as investment bankers and does not constitute a commitment by [Barclays] to provide any financing or a guarantee by [Barclays] that any financing in fact will be obtainable.").

The letters from C&W and IAI are even less availing to MCHI. The C&W letter only recites that it has acquired approximately 2% of the common stock of MCHI with an option to increase its participation in the company.^{35/} The letter from IAI merely indicates that this company is "prepared to support MCHI's efforts to raise the necessary funds."^{36/} Neither letter evidences any commitment to fund all or part of MCHI's satellite project.

Moreover, MCHI's stated outside financing sources cannot be relied upon by the Commission to demonstrate MCHI's financial qualifications. The letter from Spectrum merely announces that company's intention to form another entity that will "invest" \$100 million for use in the development of MCHI's system.^{37/} It does not indicate that this investment is irrevocably committed to MCHI once a license is awarded, or that it "does not rest on contingencies which require action by either party to the loan or equity investment." Report and Order, at ¶ 32; see also 47 C.F.R. § 25.140(d)(2)(iii) (1993). To the contrary, the letter states that Spectrum and MCHI have not entered into a "final agreement" with respect to this investment.

The vendor financing letters from Able Engineering and

^{35/} Letter from John K. Keitt, Jr. to Dr. David Castiel (Nov. 16, 1994).

^{36/} Letter from Shmuel Peretz to Dr. David Castiel (Nov. 8, 1994). In any event, since MCHI has not submitted to the Commission the balance sheet or other financial statements of IAI indicating current assets or operating income, this letter is irrelevant.

^{37/} Letter from David Archer to Dr. David Castiel (Nov. 16, 1994).

Arianespace also lack the requisite specificity and/or irrevocable commitments to be relied upon by the Commission.^{38/} Able Engineering's letter merely states that the company is in discussions to supply MCHI with certain services -- presumably a part of the cost of MCHI's system, and that it has agreed to arrange for the financing of the \$93 million cost of those services through unnamed lenders.^{39/} However, while Able Engineering believes that "our banks" will view favorably a credit arrangement which will facilitate the vendor financing, it makes clear that it may be unable to arrange this financing for several reasons, including unacceptable levels of risk or return due to market conditions or the project's progress. Able Engineering accordingly retains "the right to terminate its efforts" to arrange the financing.^{40/}

The letter from Arianespace references other agreements and understandings between the parties which have not been

^{38/} The letter from STS to Westinghouse refers only to a deferred payment of \$10 million apparently for subcontracted work to be performed by STS for Westinghouse. See Letter from Milton S. Goldstein to Jeff Amerine (Nov. 15, 1994). It also references the conditions set forth in another letter that has not been submitted to the Commission by MCHI. It is thus impossible for Motorola and for the Commission to assess whether this \$10 million deferred payment agreement with Westinghouse has any relevance to the financial qualifications of MCHI. In any case, the amount in question is a small portion of MCHI's total satellite system costs. Indeed, even if all of MCHI's vendor financing letters contained adequate evidence of irrevocable funding commitments, the total financing they could ensure would amount to just over a third of the total estimated cost for MCHI's system. Accordingly, in and of themselves, these letters would not establish MCHI's financial qualifications.

^{39/} Letter from Allister F. Fraser, Ph.D. to Dr. David Castiel (Nov. 16, 1994).

^{40/} Id.

supplied to the Commission, and does not contain any of the terms and conditions of the purported vendor financing agreements.^{41/} As previously indicated, in order to be given credit for such financing arrangements, an applicant must submit an instrument of financing demonstrating: (1) that the lender has already determined that the applicant is creditworthy, and (2) that the lender is prepared to make the loan or investment immediately upon grant of a Commission authorization, absent a material change in circumstances. See 47 C.F.R. § 25.140(d)(2) (1993).

Lastly, the letter from Barclays setting forth its opinion as to the likelihood of MCHI obtaining financing for up to 20 percent of its system costs is entitled to no weight. Barclays' expert advice is far removed from the irrevocably committed external financing required by the Commission for this service.^{42/}

In sum, as of this time, the Commission cannot find MCHI or Constellation financially qualified under its rules for the Big LEO service. Accordingly, the Commission must either deny these applications outright or defer their consideration until January 31, 1996, as contemplated by the Report and Order.

^{41/} Letter from Charles Bigot to Dr. Castiel (Nov. 16, 1994).

^{42/} See Letter from Trevor Nash to Dr. David Castiel (Nov. 16, 1994). Notably, Barclays' opinion is predicated on information provided by MCHI that it has received commitments to purchase equity securities and other financing commitments in the amount of \$600 million. Of course, whatever the information MCHI provided to Barclays, it provided no evidence of any such commitments to the Commission, at least of the type required by the Commission's rules.

IV. CONCLUSION

For the foregoing reasons, the Commission should deny or defer consideration of Constellation's and MCHI's applications on financial grounds, and should limit the authorizations for feeder link spectrum for Constellation, MCHI and LQP as indicated above.

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CERTIFICATE OF SERVICE

I, Marc A. Paul, hereby certify that a copy of the foregoing Consolidated Comments and Petition to Defer and/or Deny was served by first-class mail, postage prepaid, this 22nd day of December, 1994, on the following persons:

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