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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Mobile Communications Holdings, Inc.)
)
Application for Authority to Construct,)
Launch and Operate a Non-Geostationary)
Satellite System to Provide Mobile)
Satellite Service in the 1.6/2.4 GHz)
Bands)

File Nos. 11-SAT-LA-95
12-SAT-AMEND-95

PETITION TO DEFER PROCESSING

AMSC Subsidiary Corporation ("AMSC") urges the Commission to find that Mobile Communications Holdings, Inc. ("MCHI") is not financially qualified to construct, launch and operate its proposed Mobile Satellite Service ("MSS") system.^{1/} MCHI's application

^{1/} AMSC is licensed by the Commission to construct and operate the U.S. MSS system in the 1544-1599/1645.5-1660.5 MHz bands. See Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 (1989); Final Decision on Remand, 7 FCC Rcd 266 (1992), aff'd sub nom. Aeronautical Radio, Inc. v. FCC, 983 F.2d 275 (1993); Memorandum Opinion and Order, 8 FCC Rcd 4040 (1993). Development of the \$650 million domestic geostationary orbit ("GSO") system is well underway, with launch of the first satellite (AMSC-1) scheduled for March 1995. AMSC's MSS system should be fully operational by this summer, providing for the first time truly nationwide two-way mobile communications service to even the most rural and remote parts of the United States. Investment in AMSC's system has been largely in the form of equity from the principal shareholders, subsidiaries of GM Hughes Electronics Corp., AT&T Corp., Singapore Telecommunications, Ltd., Mobile Telecommunications Technologies Corp. and an Initial Public Offering completed in 1993 which raised \$178 million in public investment.

AMSC filed an application in 1991 to add the bands at issue in the Commission's Big LEO Report and Order (Report and Order, CC Docket No. 92-166; FCC No. 94-261, 59 Fed. Reg. 53,294 (October 21, 1994)) to AMSC-2 and AMSC-3, two other GSO satellites that are authorized as part of AMSC's domestic MSS system. Application of AMSC, FCC File Nos. 15/16-DSS-MP-91 (June 3, 1991). Pursuant to the procedures set forth in the Report and Order, on November 16, 1994 AMSC filed an amendment to its initial application to bring AMSC's proposed use of this spectrum

(continued...)

demonstrates that it has not obtained the commitment to the financing of this undertaking that is required by the Commission's new rules. In order to insure adherence to the Commission's rules and fairness to the other applicants, the Commission should defer considering the grant of a license to MCHI until such time as the applicant is able to demonstrate its full qualifications.

Background

Both AMSC and MCHI are applicants in the Commission's Big LEO proceeding to license non-GSO MSS systems in the 1.6/2.4 GHz bands, along with four other entities.^{2/} Pursuant to the Commission's new rules, applicants were required to file conforming legal and technical amendments to their applications by November 16, 1994 and were given the option of submitting evidence of their financial qualifications either by November 16, 1994 or, due to the substantial uncertainty that exists about such matters as feeder-link spectrum, by January 31, 1996. AMSC is the only applicant that declined to make any financial qualifications showing in its amendment. The Commission indicated that if all five of the other applicants (including MCHI) are found to be qualified, AMSC's application may be dismissed. Report and Order, at ¶¶ 41, 42.

In the Report and Order, the Commission adopts a financial qualifications standard that requires each applicant to show that immediately upon grant of its license it can pay for

^{1/}(...continued)

into conformity with the Commission's rules and policies regarding the non-geostationary orbit ("non-GSO") use of the band. Application of AMSC, FCC File Nos. 19-SAT-LA-95, 20-SAT-AMEND-95 (November 16, 1994).

^{2/} See Report and Order, at ¶ 2; Public Notice, Report No. DS-1481 (November 21, 1994); Public Notice, Report No. DS-1482 (November 30, 1994).

construction, launch and operation of an MSS system for one year after launch of the first satellite. Id., at ¶¶ 32, 38, 41.^{3/}

An applicant relying on external financing must have "irrevocably" committed financing. Report and Order, at ¶ 32. An irrevocable commitment requires "financing that has been approved and does not rest on contingencies which require action by either party to the loan or equity investment." Id. Absent a material change in circumstances, the lender must be willing to make the loan once the applicant receives Commission authorization. Id.

An applicant that relies on internal financing must demonstrate that it has current assets or operating income sufficient to cover its costs. Report and Order, at ¶ 31. In addition, the applicant must demonstrate a "management commitment" that, absent a material change in circumstances, management is prepared to spend the necessary funds immediately upon grant of a license. Report and Order, ¶ 35.^{4/} Applicants relying on financing from a parent corporation must make the identical showing with respect to the commitment by the parent corporation. Id.

According to the Commission, the tests for internal and external financing require equivalent levels of commitment. In its comments in the rule making, MCHI urged that there should be parity among the applicants regardless of what method of financing they use. Id. The Commission responded by adopting requirements for applicants relying on internal financing that, in the Commission's own words, are "consistent with [the] approach to credit arrangements provided by outside sources." Id. Moreover, in a recently filed federal court

^{3/} See also, 1985 Domestic Fixed-Satellite Order, 101 FCC 2d 223 (1985), at ¶ 11. The Report and Order incorporates the financial qualification standards as adopted in the 1985 Domestic Fixed-Satellite Order.

^{4/} See also, 47 C.F.R. § 25.140(c).

pleading, the Commission stated that the requisite management commitment for applicants relying on internal financing is "exactly equivalent to the irrevocable financing required for companies" relying on external financing.^{5/}

In its application, MCHI estimates that the cost of constructing and launching its proposed satellites and operating its satellite system for one year after the launch of the first satellite would be \$564 million.^{6/} MCHI claims that the funds will be provided by a combination of internal support from shareholders, vendor financing, equity investments and other committed funds. The evidence that MCHI submits to demonstrate its ability to finance this undertaking are several letters--three of which have been redacted--from shareholders and potential investors.

In its letter, Cable & Wireless, plc. states that it has acquired approximately two percent of the common stock of MCHI and an option to increase that percentage and participation in the operation of MCHI's satellite project. No commitment is made that Cable & Wireless is prepared to spend any of its money to fund the project, beyond the acquisition of the stock that it already has acquired.

An officer of a division of the Electronic Systems Group of Westinghouse Electric Corporation (which owns less than two percent of MCHI's voting stock) signed a letter on behalf of Westinghouse indicating that Westinghouse "continues to lend its full support to the

^{5/} Mobile Communications Holdings, Inc. v. FCC, No. 94-1695 (D.C. Cir. 1994), Opposition of the Federal Communications Commission to Petitioner's Emergency Motion for a Stay Pending Review (November 14, 1994), at 14. The FCC filed its Opposition in response to MCHI's emergency motion for a stay of the Commission's Report and Order.

^{6/} Letter to Scott Harris, Chief, International Communications Bureau, Federal Communications Commission, from MCHI (dated November 18, 1994). Cost estimates do not include ground segment.

Ellipso project," but making no specific commitment to provide any particular level of funding.

The Director of Space Systems for the Government Aerospace Systems Division of Harris Corporation (which owns less than one percent of MCHI's voting stock) signed a letter noting the financial and technical support that Harris has already provided to MCHI and committing to continue this support under the terms of an agreement, the terms of which are not disclosed. As with Westinghouse, the Harris letter does not appear to contain a specific commitment to provide any particular funding.

Barclays De Zoete Wedd Limited ("BZW"), a holder of 5.72% of MCHI's voting stock submitted a letter that states that it "does not constitute a commitment by BZW to provide any financing or a guarantee by BZW that any financing in fact will be obtainable."

A letter from Israel Aircraft Industries ("IAI") indicates only that IAI is "prepared to support MCHI's efforts to raise the necessary funds in the financial market," but makes no commitment to use IAI's own funds. IAI holds 3.81% of MCHI's voting shares.

The first redacted letter is from AEC-ABLE Engineering Company, Inc. ("AEC"), a company that owns less than one percent of MCHI's voting stock. In the letter, AEC agrees to try to arrange for \$93 million in vendor financing.

The second redacted letter is from Spectrum Network Systems Limited ("Spectrum"), which also owns less than one percent of MCHI's voting stock. Spectrum states that it intends to form a group which will invest \$100 million in MCHI's satellite project.

The final redacted letter submitted by MCHI is from Satellite Transmission Systems, Inc. ("STS"). In this redacted letter, STS apparently agrees to defer payments up to \$10

million owed by MCHI to STS. The agreement to defer the payments, however, is subject to the approval of STS's parent company, California Microwave.

Arianespace, a launch services provider, indicates that it has agreed to provide \$45 million in loans to MCHI to pay for fifteen percent of the launch services and will assist in negotiating a credit arrangement with European banks for the additional eighty-five percent.

Discussion

It is apparent on its face that MCHI has failed to show that it is financially qualified to receive a license from the Commission for its proposed satellite system. The letters submitted by MCHI -- taken separately and together -- do not constitute financial commitments as required by the Commission's rules. The only agreement that appears to meet the Commission's standards is the commitment of Arianespace to provide \$45 million in vendor financing, an amount which falls far short of the more than \$500 million that MCHI must demonstrate its ability to finance. The statements of the other entities all fail to meet the Commission's standards for a firm commitment.

The letters from the shareholders are non-committal at best. (Indeed, the letter from BZW flatly states that it is not committed either to fund any of MCHI's satellite project and it will not guarantee that financing can be obtained.) In all cases, there is no indication of the amount of funding that the companies might be willing to undertake. There is certainly no indication that the companies are prepared to invest any more than their current percentages, which together constitute less than twenty percent of MCHI's voting stock. In many cases, the letters come from lower-ranking officials of divisions of the corporate parent, individuals who do not have any apparent authority to make a meaningful commitment on behalf of the companies involved. The letters do not indicate that the

corporations' boards of directors have approved any support for MCHI. It is clear that any substantial commitment must be made by a corporation's board of directors.^{2/} If the decision has not been approved by the corporations' directors, the support does not meet the Commission's test that all commitments not be subject to additional approvals.

Conclusion

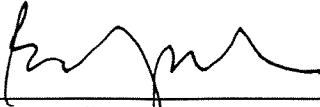
The Commission's rules in this proceeding make it imperative that it adhere strictly to its financial qualifications standard. To do otherwise would be unfair to AMSC, which took those rules at face value and accepted the Commission's invitation to defer a financial showing until more of the key spectrum issues have been resolved. AMSC's owners have extraordinary resources for the construction and operation of a global MSS system but, unless the Commission strictly enforces its rules, AMSC may be prevented from going forward with such a system.

^{2/} The board of directors of a corporation cannot delegate authority which is so broad that it enables an officer to bind the corporation to extraordinary commitments or to significantly encumber the principal assets of the corporation. Boston Athletic Ass'n v. International Marathons, Inc., 392 Mass. 356, 363, 467 N.E.2d 58, 62 (1984). See 2 Fletcher Cyclopedia of Private Corporations § 496 (1990). Certain transactions, such as the one involving a large financial commitment, require specific authorization by the board in order to be valid. Boston Athletic Ass'n, 392 Mass at 365, 467 N.E.2d at 63.

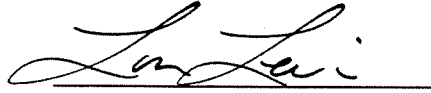
AMSC therefore respectfully urges the Commission to find that MCHI is not financially qualified and to defer the processing of its application until MCHI is able to demonstrate its qualifications.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Cynthia L. Smith, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P. do hereby certify that on this 22nd day of December 1994, a copy of the foregoing Petition to Defer Processing of AMSC Subsidiary Corporation" was sent by U.S. first class mail, postage prepaid to:

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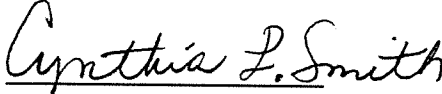
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