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May 23, 1997

Andrew S. Fishel
Managing Director
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Washington, D.C. 20554

William E. Kennard, Esq.
General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 614
Washington, D.C. 20554

**Re: Request for Investigation of Strike Pleadings
Filed by TRW, Motorola and L/Q Licensee
(FCC File No. 158-SAT-AMEND-96 et al.)**

Dear Messrs. Fishel and Kennard:

On May 14, 1997, TRW Inc. filed a letter in which it requested that the Managing Director and/or General Counsel conduct an investigation into "possible violations" by Mobile Communications Holdings, Inc. (MCHI) of the Commission's ex parte rules. MCHI filed a Consolidated Opposition on May 16, 1997 disproving TRW's unsubstantiated allegations, and the similarly unsubstantiated allegations made by Motorola in a separate pleading.^{1/} MCHI believes that its Consolidated Opposition more than adequately refutes the hollow arguments of its competitors, and conclusively demonstrates that the requested investigation would serve no purpose other than the competitive harm sought by MCHI's competitors. A copy of the Consolidated Opposition is attached for your convenience.

In MCHI's view, the Commission should properly be investigating the conduct of TRW, Motorola, and LQL and considering their qualifications to be Commission licensees in light of their clear-cut violations of well-established Commission policies condemning the

^{1/} L/Q Licensee, Inc. (LQL) filed comments supporting TRW's and Motorola's requests which were not received by MCHI until May 19, 1997, after it filed the Consolidated Opposition. However, LQL raises no new information or arguments, and MCHI's Consolidated Opposition is thus equally applicable to LQL's comments.

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filing of strike pleadings and abuse of the Commission's processes. See *Radio Carrollton, Inc.*, 69 FCC 2d 1139 (1978), clarified, 69 FCC 2d 424 (1978), recon. denied, 72 FCC 2d 264 (1979), aff'd mem. sub nom., *Faulkner Radio, Inc. v FCC*, No. 79-1749 (D.C. Cir. Oct. 15, 1980), cert. denied, 450 U.S. 1041 (1981)(hereinafter cited as "*Radio Carrollton*"). See also *State College Communications Corp.*, 58 FCC 2d 462 (1976).

The relevant facts, including the eleventh-hour timing of the filings, the lack of a reasonable basis for the allegations, and a transparent economic motivation, clearly establish that the TRW, Motorola and LQL filings were interposed for the "primary and substantial purpose of delay" in violation of long-established Commission policies. Applying the strike pleading criteria established in *Radio Carrollton*, the conclusion is inescapable that the three Big LEO licensees have abused the Commission processes solely for their own competitive advantage, raising a substantial and material question as to their qualifications to be Commission licensees.

I. The Absence Of Any Reasonable Basis For The Adverse Allegations In The TRW, Motorola, LQL Filings

One of the criteria of a strike pleading established by *Radio Carrollton* is the absence of any reasonable basis for the adverse allegations. As conclusively demonstrated in MCHI's May 16, 1997 Consolidated Opposition, there is no reasonable basis for the adverse allegations in the TRW, Motorola and LQL filings; indeed, there is no factual basis whatsoever for their allegations. TRW, Motorola and LQL merely provided a laundry list of filings over a more than 12-month period without taking the trouble to distinguish between the various submissions, which included letters submitted in the Commission's Section 257 proceeding and correspondence to non-Commission personnel.

In MCHI's Consolidated Opposition, attested by an affidavit of Gerald Helman, Vice President of MCHI, the following facts were established:

No party has alleged that MCHI itself engaged in ex parte presentations (and MCHI has not engaged in any such presentations). Nor has any party provided any evidence that MCHI solicited or encouraged third parties to engage in ex parte presentations. Moreover, promptly upon learning of any written communications by third parties to the Commission, MCHI promptly served other parties to the proceeding with a copy of the communication

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(even where the communication was not ex parte); thus, even if an ex parte presentation inadvertently occurred, no harm to other parties was caused and the purposes of the ex parte rules were served.²

Although MCHI participated actively in the Commission's non-restricted Section 257 proceeding (GN Docket 96-113), and encouraged certain Congressional offices, as permitted, to express their views in that proceeding with respect to Congressional interpretation of Section 257 and its applicability to the use of financial standards as a market entry barrier in the case of small businesses, this activity was clearly permitted under the Commission's rules and the U.S. Constitution. See *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 509 (1972).

In short, TRW, Motorola and LQL have not provided any basis for their allegations of misconduct, and have shown, if anything, that the Commission's Big LEO financial standard has attracted substantial concern, by Congress and the Small Business Administration among others, as a potential market entry barrier to small businesses. MCHI was and is a small business.

II. Economic Motivation Indicating A Delaying Purpose

A second factor under *Radio Carrollton* is economic motivation indicating a delaying purpose. TRW, Motorola and LQL clearly have an economic motivation to delay MCHI's licensing proceeding. Upon licensing, MCHI will be competing directly with the three licensed systems. In fact, the record of the Big LEO proceeding is replete with information demonstrating that MCHI's system will offer by far the lowest-priced services to consumers of all of the Big LEO systems. Thus, MCHI, once licensed, will provide a significant commercial and competitive threat to the licensed Big LEO systems.

On May 9, 1997 ---- the very day on which Motorola filed against MCHI --- Iridium World Communications Ltd. filed a preliminary prospectus with the SEC for an offering of common stock. Might it be possible that Motorola was concerned that near-term action on MCHI's application, particularly favorable action, could have an economic impact on the stock offering? Moreover, the prospectus concedes that Iridium's ability to compete successfully in the market for global personal communications "will depend primarily upon the timing of its

² The Commission's rules do not require service of written presentations within a specific period of time (contrary to LQL's suggestion in its filing). Rather, Commission Rule 1.1202 (b) defines an ex parte presentation as one which "if written, is not served on the parties to the proceeding." Thus, where the presentation is served, it is, by definition, not an ex parte presentation. See also *Brandywine-Main Line Radio, Inc.*, 8 FCC 2d 347, 348 (1967).

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entry into the market" and the ability to offer full global service capability before any of the other systems. See Iridium Prospectus-Competition at 65.

While the Iridium prospectus provides objective evidence of Motorola's economic motivation to delay the timing of the FCC's action, this economic motivation is equally applicable to TRW and LQL who are pursuing similar financing activities in the public markets and competing with MCHI for investors and, ultimately, customers. One is entitled to ask whether these three companies will obtain a significant economic benefit by preserving the competitive status quo as long as possible. As the Commission said in *Radio Carrollton*, "[s]uch conduct is basically anti-competitive and totally incompatible with the public interest in promoting unfettered competition." 69 FCC 2d 1139, 1151.

III. Other Conduct Of The Licensees

A. Timing of the Filings

The timing of the TRW, Motorola and LQL filings in itself demonstrates that the primary purpose of the filings was delay of MCHI's licensing proceeding. It is significant that the filings were directed towards MCHI's May 5, 1997 Request for Expedited Action, which, in itself, suggests that the parties' objective was to prevent expeditious action.

It is further revealing that, in opposing MCHI's request for expedited action, Motorola, TRW and LQL point to MCHI activities that date back more than one year. At no point during the prior year has any of these parties raised objections to the letters and communications which are now cited as grounds for Commission investigation. As MCHI has previously pointed out, none of these communications was "secret"; all were served on the parties or available in the record of the Section 257 proceeding. Yet, suddenly at the eleventh hour, Motorola, TRW and LQL express outrage.

The timing of the Motorola, TRW and LQL filings, in itself, raises a presumption that the primary and substantial purpose of the filings was delay.

B. Efforts to Interfere With Business Arrangements

MCHI has previously brought to the Commission's attention examples of MCHI business partners that were successfully solicited by the licensed Big LEO systems after deferral of MCHI's license application in January 1995, and, which, in some cases, entered into superseding business arrangements with the licensed systems. Rostelcom's agreement

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with Globalstar is a notable example. There been several others, including Cable & Wireless and Barclay's among others.

These incidents demonstrate not only the competition MCHI faces on a daily basis, but the continuing competitive harm to which MCHI is exposed as the result of licensing delay. Moreover, this conduct provides additional evidence tending to show that the licensees' primary purpose is delay (and/or obstruction) of MCHI's licensing efforts.

C. Lack of Mutual Exclusivity

MCHI has previously pointed out that MCHI's application is not mutually exclusive with the TRW, LQL and Motorola licenses. The Commission itself, in the 1995 Big LEO licensing decisions, explicitly insulated the three licensees from mutual exclusivity with the deferred applications. Moreover, the Commission stated in the 1994 Big LEO rulemaking decision that up to five systems can be accommodated in the available spectrum (and only two applications remain following AMSC's dismissal.)

Significantly, Iridium publicly conceded this point in its May 9, 1997 Prospectus. In this regard, it pointed out (at page 77 of the Prospectus) that grant of MCHI's application "would not have an immediate impact on the amount of spectrum assigned to the Iridium system."

The lack of mutual exclusivity is important for a number of reasons. First, it raises a question as to whether the parties even have standing in this proceeding. MCHI has previously challenged the lack of standing by Motorola, TRW and LQL to file petitions to deny in this proceeding. See Consolidated Opposition to Petitions to Dismiss or Deny at n. 1, January 23, 1997. Second, the absence of mutual exclusivity reduces, if not eliminates, the substantive arguments that may be legitimately raised by the parties and tends to further increase the likelihood that the primary purpose of the filings is delay.

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In conclusion, it is indisputable that the primary and substantial purpose of the TRW, Motorola and LQL filings was to delay Commission action on MCHI's Big LEO application. The timing of the filings (in response to MCHI's request for expedited action and/or a status conference), the parties' failure to raise their allegations at an earlier point in time, the economic motivation to delay the proceedings (from the standpoint of preserving the competitive status quo and, in Motorola's case, to avoid impact on a simultaneously-released public offering), and the absence of any reasonable basis for the allegations are factors which

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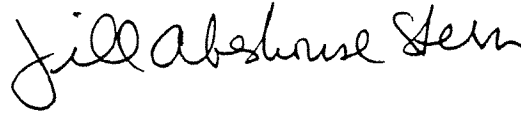
clearly point to one conclusion: the sole purpose of the filings was delay in violation of the Commission's long-standing policies against strike pleadings and abuse of Commission processes. Indeed, MCHI submits that TRW, Motorola and LQL have engaged in a prolonged anti-competitive campaign against MCHI, of which the latest round of pleadings is merely another example.

In light of this sustained and abusive conduct, MCHI calls upon the Managing Director and/or the General Counsel to initiate an investigation with respect to the qualifications of TRW, Motorola and LQL to be Commission licensees.

Sincerely,

MOBILE COMMUNICATIONS
HOLDINGS, INC.

By:



Jill Abeshouse Stern
Its Attorney

Enclosure

cc: See attached Service List

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