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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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-95 158-SAT-AMEND-96**
CONSTELLATION COMMUNICATIONS, INC.	**File Nos. 17-DSS-P-91(49) CSS-91-013 159-SAT-AMEND-96**
For Authority to Construct, Launch and Operate A Low-Earth Orbit Satellite System in the 1610-1626.5/2483.5-2500 MHz Bands.	

CONSOLIDATED REPLY

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Dated: February 11, 1997

SUMMARY

Motorola Satellite Communications, Inc. ("Motorola") hereby submits this Consolidated Reply to the Consolidated Oppositions of Mobile Communications Holdings, Inc. ("MCHI") and Constellation Communications, Inc. ("CCI") for authority to construct, launch and operate mobile satellite systems in the 1610-1626.5 MHz and 2483.5-2500 MHz bands ("Big LEO MSS"). Motorola opposes the amended financial showings submitted by MCHI and CCI because they do not satisfy the Big LEO MSS financial standard which requires an applicant to demonstrate that it has sufficient internal or external financing to cover the costs of construction and launch of its entire satellite system, as well as the costs of operating its system for one year.

The Commission's stringent financial standard for Big LEO MSS systems is necessary to ensure that scarce spectral resources are not wasted, and that Big LEO MSS service is promptly brought to the public. The grant of licenses to underfinanced applicants would have a significant detrimental impact upon those Big LEO MSS systems that have already been licensed. The licensing of systems to applicants that are unable to implement their proposed systems would tie up available capacity in the Big LEO MSS frequency bands for many years and deprive authorized licensees, like Motorola, from gaining access to more spectrum when it is needed.

Contrary to the claims of MCHI and CCI, the Big LEO MSS financial standard does not discriminate against small businesses in a manner contrary to the Telecommunications Act. Section 257 of the Telecommunications Act does not require the Commission to grant either MCHI or CCI a license if the Commission determines that it would not be in the public interest to do so.

MCHI and CCI have once again failed to satisfy the Commission's stringent financial standards, and accordingly, their applications should be denied. CCI's amendment fails to address the concerns raised by the Bureau and the

Commission which led them to defer CCI's application over two years ago. CCI's latest financial showings must also be rejected as insufficient under the Commission's Rules. The E-Systems financial showing does not satisfy the Commission's financial standard because it does not clearly state the amount of E-Systems' support of CCI, and contains an impermissible contingency. Specifically, the latest E-Systems' letter qualifies its support of CCI on the development of a comprehensive capital plan for the proposed system. Such a qualification is not acceptable under the Commission's Rules.

As for Bell Atlantic, CCI again fails to address the concerns raised by the Bureau as to the extent of Bell Atlantic's commitment to CCI, including the fact that Bell Atlantic qualified its support of CCI on the successful negotiation of agreements and the approval of its Board of Directors.

The letter from CTA is patently insufficient under the Commission's Rules for either external and internal financing because it offers no firm commitment to finance CCI's system. Instead, it merely indicates a willingness to contribute an undisclosed sum. Moreover, because CTA's current assets and operating income are a mere fraction of the total cost of CCI's system, CTA's support is patently insufficient to meet the costs of construction, launch and operation of CCI's system.

The remaining letters submitted by CCI of SpaceVest, CSM, and Bear, Stearns & Co. are similarly inadequate. None of these letters commit any resources to CCI, and each merely indicates that the entity is willing to work with CCI to develop and finance CCI's system. The Commission's Big LEO MSS rules require, however, a commitment of funds, and not simply a commitment to help an applicant find funds and develop the applicant's system. While Bear, Stearns & Co. may believe that CCI's system <u>may be</u> financeable, such an opinion is irrelevant to the Commission's determination of whether CCI currently has the necessary financing to proceed promptly with implementing its system.

Despite the barrage of new materials in its Opposition, MCHI's Amendment also fails to satisfy the Commission's financial qualification standards. **First**, MCHI has failed to demonstrate that Vula Communications Ltd. ("Vula") and Artoc Suez for Technical Services ("Artoc Suez") have the capability to meet their purported commitments to MCHI. While MCHI has submitted some third-party material, it has not provided any concrete evidence which demonstrates that the Vula shareholders are committed to MCHI. As for Artoc Suez, the material submitted only indicates that Artoc Suez, with the support of its consortional partners, may have the ability to meet a financial obligation to MCHI. The unnamed consortional partners, however, have not committed their resources to MCHI. The Bureau reasonably cannot rely upon the financial resources of such uncommitted entities, and accordingly, the Vula and Artoc Suez financial showings must be rejected.

Second, MCHI has failed to address the myriad of problems previously identified regarding its purported vendor financing. MCHI has failed to address several contingencies on the face of its letter from TMBK, and it has not shown that TMBK is capable of meeting any financial obligation to MCHI. The letter from TMBK (proposing to offer vendor financing in the form of launch services from Indonesia) readily concedes that there currently is no Indonesian launch facility. While TMBK indicates that it is willing to provide alternate launch services to the extent the Indonesian launch facility is not constructed, it is not clear that TMBK has the financial capability to do so.

MCHI has also failed to rebut Motorola's assertion that Spectrum Astro lacks the necessary financial resources to satisfy its purported financial obligation to MCHI. With revenues in 1996 of only $15.6 million, Spectrum Astro lacks the ability to meet an obligation (to the extent it even has one) to MCHI for $206 million. While

MCHI claims back-up financing from Interacoes Urantia-Cajai ("Urantia-Cajai"), it has not demonstrated that Urantia-Cajai has the ability to make such a "commitment."

Third, MCHI has failed to demonstrate that it has sufficient internal financing for its system. It has not adequately responded to the arguments of petitioners that MCHI has failed to clarify the amount of support (if any) that both Israeli Aircraft Industries ("IAI") and Spectrum Network Systems ("SNS") will provide to its project. In addition, by not responding to petitioners, MCHI apparently concedes that it is no longer relying upon Westinghouse Electric Corporation, Barclays de Zoete Wedd, Ltd., IBM, Northern Telecom or CSC to provide financing for its system. As for the Harris Corporation, MCHI now only indicates that their company will be manufacturing the satellite payload, and provides no indication that Harris is still an investor in MCHI.

MCHI and CCI have also failed to rebut petitioners' showing that a waiver of the Commission's financial standard for either applicant would not be in the public interest. The grant of a license to an underfinanced applicant could seriously impede the activities of financially sound licensees and potential new applicants by constraining use of Big LEO MSS spectrum. A waiver is unnecessary to ensure competition in Big LEO MSS since three companies are already licensed to provide service while AMSC is providing geostationary MSS service in North America. The Commission has a special obligation to ensure that Big LEO MSS systems have strong financial backing because attempting to coordinate an underfinanced Big LEO MSS system would hinder the ability of the U.S. to oppose other underfinanced satellite systems seeking coordination.

Due to their continued failure to satisfy the Commission's Big LEO MSS rules, the applications of MCHI and CCI should be denied.

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CONSOLIDATED REPLY OF MOTOROLA

Motorola Satellite Communications, Inc. ("Motorola") hereby submits this Consolidated Reply to the Consolidated Oppositions of Mobile Communications Holdings, Inc. ("MCHI") and Constellation Communications, Inc. ("CCI") in the above-captioned proceedings. Motorola continues to oppose granting these applications because of the failure of both applicants to demonstrate their financial qualifications.[1/]

[1/] Contrary to MCHI's assertion, Motorola clearly has a direct interest in the Bureau's evaluation of the above-captioned applications, and therefore has standing to file this Consolidated Reply. See MCHI Consolidated Opposition to Petitions to Dismiss or Deny at 1 n.1 (Jan. 23, 1997) ("MCHI Opposition"). Motorola's Big LEO MSS license

(continued ...)

I. INTRODUCTION

The above-captioned applications were amended in response to orders of the International Bureau (the "Bureau") which deferred a decision to grant or deny the Big LEO MSS applications of MCHI and CCI because of the failure of these applicants to meet the Commission's financial standards.[2/]

Motorola would like to set the record straight with regard to its motivation for petitioning to deny MCHI's and CCI's applications. Motorola's objections to these applications are based upon bona fide concerns and continuing questions as to the financial qualifications of the two applicants. Motorola's requests for additional information about purported external financing plans were not made, as MCHI alleges, for any commercial advantage, but in an effort to determine whether MCHI has met the Commission's stringent financial standards.[3/] By doing so, Motorola merely seeks to ensure that all licensees are able to implement their proposed systems promptly as

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1/ (... continued)

and spectrum assignment was issued with the understanding that other fully-qualified licensees would also utilize Big LEO MSS spectrum to provide competitive services. If undercapitalized applicants, such as CCI or MCHI, were granted licenses by the Bureau and later failed to implement their proposed systems, Motorola could be deprived of additional spectrum it might need for meeting the expected demand for IRIDIUM® System services.

2/ See In the Matter of the Application of Constellation Communications, Inc. (filed Sept. 16, 1996) ("CCI Amendment"); In re Application of Mobile Communications Holdings, Inc., Amendment to Ellipso™ Satellite System Application at 3 (filed Sept. 16, 1996) ("MCHI Amendment"). The MCHI Amendment was later supplemented on November 13, 1996. See In re Application of Mobile Communications Holdings, Inc., Supplement to Ellipso™ Satellite System Application (filed Nov. 13, 1996) ("MCHI Supplement").

3/ MCHI Opposition at 15-16.

required in the Big LEO Order.[4] Any contrary result would lead to the inefficient use of scarce public resources. True competition in the Big LEO MSS marketplace will only develop if licensees that are assigned spectrum have the financial ability to implement their proposed systems.

II. THE BIG LEO MSS FINANCIAL STANDARD IS NEITHER ANTICOMPETITIVE NOR DISCRIMINATORY

The Commission must continue to apply its strict financial standards to all Big LEO MSS applicants. A more lenient or flexible standard as proposed by MCHI and CCI would not serve the public interest because it would encourage the warehousing of scarce spectral resources and would contribute to the delay in the delivery of competitive MSS service to the public -- a result the Commission specifically sought to avoid in its Big LEO Order:

> We conclude that although more relaxed approaches may be used for some satellite services, a strict financial requirement is warranted for the Big LEO service. The proposed Big LEO systems will cost between $97 million and $2 billion to implement. These are, by far, the most expensive satellite systems to date. As we indicated in the Notice, our experience with the satellite industry has proven that arranging financing for any space station system, even one significantly less costly than a Big LEO system, is extremely difficult, even after a construction permit has been granted.[5]

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[4] 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, 5948-54 (1994) ("Big LEO 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, Memorandum Opinion and Order, 11 FCC Rcd. 12861 (1996).

[5] Big LEO Order, 9 FCC Rcd. at 5949-50.

Nothing has changed since these rules were adopted to justify a waiver of the rules or a more relaxed financial standard. MCHI and CCI make much of the fact that AMSC Subsidiary Corporation ("AMSC") has chosen not to make a financial showing and therefore, mutual exclusivity will be avoided even if both of the financially unqualified applicants receive a license.[6/] The fact remains that the grant of licenses to two applicants unlikely to go forward with their planned services could have a profound negative impact on those Big LEO MSS systems that are implemented. For example, the licensing of these two systems could effectively tie up available capacity in the Big LEO MSS frequency bands for many years and thereby prevent Motorola from gaining timely access to more spectrum in the 1.6 GHz band.[7/] In addition, TRW raises legitimate concerns regarding its ability to share the frequencies assigned to its system with two CDMA systems.[8/] Moreover, such a reversal of position would encourage other unqualified applicants to file for scarce MSS spectrum at 2 GHz and elsewhere, a result clearly contrary to the public interest.[9/]

Lastly, the Big LEO MSS financial standards do not discriminate against small businesses and are not contrary to Section 257 of the Telecommunications Act.[10/] The Commission has already considered and rejected this argument by MCHI.[11/] As

6/ CCI Consolidated Opposition at 11 n.19 (filed Jan. 23, 1997) ("CCI Opposition"); MCHI Opposition at 7 (filed Jan. 23, 1997).

7/ See Big LEO Order 9 FCC Rcd. at 5949 (indicating that the sharing plan "leaves little or no spectrum available for expansion of existing systems").

8/ See TRW Petition at 30-32.

9/ AMSC may also have reason to complain if the rules in place at the time it decided not to go forward were later changed.

10/ MCHI Opposition at 3.

11/ See In re Applications of Constellation Communications, Inc., Loral/Qualcomm Partnership, L.P., Mobile Communications Holdings, Inc., Motorola Satellite Communications, Inc., TRW Inc., FCC 96-279 at ¶ 21 (rel. June 27, 1996) ("Big LEO Memorandum Opinion and Order").

the Commission correctly noted, Section 257 of the Telecommunications Act does not require the Commission to grant MCHI or CCI a license if it determines that it would not be in the public interest to do so.[12] It is not in the public interest to allow an underfinanced applicant, whether a small or big business, to warehouse scarce spectral resources, and possibly deprive other fully-qualified licensees from effectively using the same spectrum. Indeed, the Big LEO Order recognized that a stringent financial standard for other satellite services "has not prevented smaller firms from participating in the satellite services market because ownership of a space station is not mandatory. Space station capacity can be leased or bought and earth stations can be acquired at relatively low costs."[13]

III. CCI HAS FAILED TO ESTABLISH ITS THRESHOLD FINANCIAL QUALIFICATIONS FOR BECOMING A BIG LEO MSS LICENSEE

As stated in the petitions, the recent CCI Amendment, which relies solely on the financial showing provided to the Bureau over two years ago, must be rejected. CCI has failed to address many of the concerns of the Bureau and the Commission which led to an adverse finding as to its financial qualifications.[14] In its opposition, CCI belatedly provides several letters from its investors, E-Systems, Inc. ("E-Systems"), Bell Atlantic Corporation ("Bell Atlantic"), and others, in an apparent attempt to bolster

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12/ Id. at ¶ 21. According to Section 257, the Commission must eliminate market entry barriers for small businesses while still promoting the policies and purposes of the Communications Act including the "promotion of the public interest, convenience, and necessity." Pub. L. No. 104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. § 257(b)).

13/ Big LEO Order, 9 FCC Rcd. at 5948 n.36.

14/ Motorola Petition at 3-4. See also In re Application of Constellation Communications, Inc., Loral Petition to Dismiss or Deny at 6 (Dec. 27, 1996); In re Application of Constellation Communications, Inc., TRW Petition to Deny at 5 (Dec. 27, 1996).

its financial qualifications.[15] This material, however, still fails to satisfy the Commission's Big LEO MSS rules.

A. E-Systems

Two years ago, the Bureau rejected the purported financial commitment of E-Systems to CCI because: (1) E-Systems' finances alone were insufficient to meet the entire costs of CCI's system; and (2) the extent of E-Systems' commitment to CCI was unclear.[16] Through the submission of a new letter from E-Systems, an updated balance sheet, and the reduction in estimated costs for CCI's system, CCI believes that the financial showing of E-Systems is now sufficient. CCI's latest submissions, however, reinforce the Bureau's earlier concerns that E-Systems did not, and has not, demonstrated a firm commitment to finance CCI's proposed system costs.

The E-Systems financial showing should be rejected for at least two reasons. **First,** the new letter from E-Systems discloses an impermissible contingency to provide the "necessary financial support for CCI's LEO satellite project."[17] In qualifying its support, E-Systems states that:

> Additionally, [E-Systems] and CCI's other partners are working closely with CCI's financial advisor, Bear. Stearns & Co., in developing a financial plan for CCI's system implementation. It is our expectation that like the other licensed Big LEO systems, CCI's funds for system implementation will be obtained from a combination of debt and equity provided from a variety of sources. **Inability to**

15/ It must be noted that this new material was filed several months late and in direct contravention of the Bureau's admonition to provide all relevant materials by September 16, 1996. See Letter from Thomas S. Tycz to Jill Abeshouse Stern (Aug. 15, 1996).

16/ In re Application of Constellation Communications, Inc. for Authority to Construct, Launch, and Operate a Low Earth Orbit Satellite System in the 1610-1626.5 MHz/2483.5-2500 MHz Band, 10 FCC Rcd. 2258, 2259-60 (1995) ("CCI Order").

17/ CCI Amendment at Exhibit 1.

implement the aforementioned capital plan for any reason, including financial institution demand for partner guarantee(s), shall be deemed to constitute a material change in circumstances.[18/]

The Big LEO Order unequivocally states that while an internal financing commitment does not require "an unalterable commitment that the funds will be expended regardless of market conditions. . . the management of the corporation providing the funding must commit that absent a material change in circumstances, it is prepared to expend the necessary funds."[19/]

E-Systems' qualified support of CCI, however, is based more than on a change in market conditions, but upon the successful development of a capital plan which will provide the required financing of CCI's system. Clearly, E-Systems' "commitment" to CCI is impermissibly contingent upon the actions of third parties -- i.e., the negotiation of further agreements. E-Systems would appear to have no intention to provide the "necessary funds" to CCI in the event a "capital plan" is not developed. This qualification alone makes E-Systems' "commitment" unacceptable under the Commission's rules.[20/]

Second. neither the original E-Systems letter dated November 11, 1994, nor the recently filed letter states that E-Systems is truly **committed** to expend the necessary funds for CCI's system. Instead, E-Systems is only on record as committed to being an investor in CCI, and it simply has indicated its "intent" to provide the necessary funds.[21/] Such a qualified "commitment" is insufficient under the

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18/ Id. (emphasis added).

19/ Big LEO Order, 9 FCC Rcd. at 5952 (footnote omitted).

20/ Id. at 5949 (stating that the rules seek to ensure that "applicants awarded Big LEO licenses have the financial ability to proceed"). In contrast, Motorola, as well as TRW and Loral, provided the Commission with letters which indicated an unequivocal commitment to finance their systems based upon internal assets.

21/ CCI Opposition at Exhibit 1.

Commission's rules which require an applicant to "commit" to "expend the necessary funds" absent a material change in circumstances.[22]

B. Bell Atlantic

Similarly, the problems identified by the Bureau and the Commission with respect to Bell Atlantic's commitment letter to CCI remain today. Although in its recent letter provided to CCI, Bell Atlantic states that its percentage interest in CCI will not limit its "commitment," this letter fails to address the Bureau's earlier concerns as to the fundamental nature of Bell Atlantic's commitment to CCI. The Bureau specifically noted that Bell Atlantic: (1) had indicated that it had only engaged in an "initial review" of CCI's business plan; (2) was qualifying its commitment to CCI based upon the negotiation of satisfactory agreements; and (3) would condition its commitment on the approval of its Board of Directors.[23] There is no indication in CCI's latest submissions that the necessary review of CCI's business plan has been made, that agreements have been negotiated, and that Bell Atlantic's Board of Directors has voted to commit resources to CCI. Absent such basic information, the Commission cannot rely upon Bell Atlantic to demonstrate CCI's financial qualifications.

C. CTA

Although CCI's Amendment states that it has already "demonstrated that it is financially qualified under the Commission's rules," it introduces a brand new commitment letter from CTA Incorporated ("CTA").[24] While it is unclear whether this

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22/ Big LEO Order, 9 FCC Rcd. at 5952. See also 47 C.F.R. § 25.143(b)(3) (1995) ("[A]pplicants relying on current assets or operating income must submit evidence of a management commitment to the proposed satellite system. Failure to make such a showing will result in the dismissal of the application.").

23/ CCI Order, 10 FCC Rcd. at 2259-60.

24/ CCI Opposition at Exhibit 2. See supra note 15.

letter is meant to constitute external or internal financing for CCI's system, it is irrelevant because CTA has not provided a commitment to CCI which satisfies either standard.

While the letter states that CTA has a "commitment" to the success of the CCI project, it does not state that it has a "commitment" to finance the project. The letter only indicates that it is "pleased" with the progress of CCI's system and that it is "prepared to contribute additional financial support to bring this system into operation."[25] The CTA letter is further qualified by CTA's "intent to the extent of its corporate capabilities to provide the necessary financial support for implementation and operation of the CCI project."[26] The amount and the extent of CTA's support to CCI is unclear. Indeed, CTA's current assets of just over $60 million do not even begin to approach the $1.155 billion cost of CCI's proposed system.[27]

D. Spacevest

The letter from SpaceVest is equally unavailing. While this letter indicates that SpaceVest is an investor in CCI, it does not provide any information as to the amount of its investment, or the percent ownership it maintains in the company as required under the Commission's rules. Instead, SpaceVest simply states that it is an "investor and financial advisor" to CCI and that SpaceVest intends to invest an unspecified amount of "additional funds from its venture capital facilities."[28] The

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25/ Id. (emphasis added).

26/ Id.

27/ Id. To the extent that CCI intends CTA's commitment letter to be a form of external financing, it still must be rejected because there is no indication that the alleged commitment to CCI (for whatever it is worth) is irrevocable and not subject to impermissible contingencies. Big LEO Order, 9 FCC Rcd. at 5950-51.

28/ CCI Opposition at Exhibit 2.

Commission's Big LEO Order requires a commitment of funds, and not merely a commitment to help an applicant find funds.

E. Bear, Stearns & Co.

Similarly, the letter from Bear, Stearns & Co. carries no weight in determining whether CCI has met the Commission's Big LEO MSS financial standard. Bear, Stearns & Co. asserts that the CCI system is "financeable."[29/] To satisfy the Commission's financial standard, however, it is not sufficient for an applicant to show that its system may be financeable, but the applicant must demonstrate that it currently has the necessary funds to proceed promptly with the system's construction, launch and operation for one year. This letter does nothing to satisfy this requirement. If anything, this letter indicates that CCI currently lacks the necessary financing.[30/]

F. CSM

The letter from PT. Citra Sari Makmur ("CSM") is also irrelevant for purposes of demonstrating CCI's qualifications. It is not a commitment letter, but just an indication that CSM is a participant in the process to "develop the technical and business plans required for provision of end user services in Indonesia."[31/] Without an irrevocable pledge of monetary support to CCI's project, this letter does nothing to assure the Bureau that CCI will have the required funds to implement its proposed system.

29/ Id. at Exhibit 3.

30/ Id. ("We need to have the license granted in order to overcome the negative perception that exists due to the recent actions by the FCC and to **accelerate the financing**.") (emphasis added).

31/ Id.

In sum. CCI's financial showing clearly is inadequate under the Commission's rules. CCI has been given an extra two years to cure the deficiencies in its financial showing, and it has been unable to do so. Accordingly, it is now time to deny CCI's application.[32/]

IV. MCHI HAS FAILED TO ESTABLISH ITS THRESHOLD FINANCIAL QUALIFICATIONS FOR BECOMING A BIG LEO MSS LICENSEE

As demonstrated by petitioners, MCHI's Amendment is clearly inadequate under the Commission's Big LEO MSS rules. MCHI's Opposition attempts to respond by presenting new exhibits from its external financiers. as well as a letter from a financier not previously disclosed in its Amendment and Supplement. Despite its most recent efforts to bolster its financial showing,[33/] MCHI's Amendment still fails to demonstrate MCHI's financial qualifications.

A. Vula

Petitioners have all expressed concerns about the financial capability of Vula Communications. Ltd. ("Vula") to meet its purported $350 million commitment to MCHI.[34/] In response to these concerns, MCHI has submitted new material including:

32/ CCI cites EchoStar Satellite Corporation, DA 96-1943 (rel. Nov. 21, 1996) ("EchoStar Order") to support its request that it be allowed to submit additional financial materials to the extent that the Commission "believes that the E-Systems and Bell Atlantic financial commitments remain insufficient." CCI Opposition at 10 n.14. EchoStar Order at ¶ 12. Unlike EchoStar, CCI has known about the deficiencies in the letters from Bell Atlantic and E-Systems for over two years. and has made no appreciable progress to cure these defects. CCI has already had its second chance to address the Commission's concerns. It should not be given yet another chance to meet the standards established by the Commission.

33/ See supra note 15.

34/ See Motorola Petition at 12; In re Application of Constellation Communications.
(continued ...)

(1) a letter signed by selected Vula shareholders; (2) a letter from Vula's auditor, Ian Pierce & Associates; and (3) a letter from Boland Bank.[35] This new material, however, does not clarify Vula's financial status, but only confirms the problems already noted by Motorola and the other petitioners.

The letter originally submitted by MCHI stated that **Vula** had a "commitment" to pay $350 million to MCHI in return for distribution rights and equity, and that **Vula** had the "capability" to perform its financial obligations.[36] Beyond Vula's own assurances, MCHI provided no evidence that Vula had the ability to meet its "commitment."

MCHI has now submitted a letter from Vula's auditor, Ian Pierce & Associates in an attempt to demonstrate that Vula has the necessary funds. This letter, however, does not establish that **Vula** has the necessary funds, but asserts only that "Vula **and its shareholders** . . . have the capability to perform their financial obligations to MCHI."[37] The letter further indicates that Vula's shareholders, and not Vula itself, "[t]o the best of our knowledge" have assets "in excess of US$350 million."[38]

This showing clearly is insufficient under the Commission's rules. MCHI has not supplied commitment letters from Vula's shareholders, and it is not clear that Vula has the power to bind its shareholders to such a commitment. MCHI has only

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34/ (... continued)

Inc., Loral Petition to Dismiss or Deny at 7-8 (Dec. 27, 1996) ("Loral Petition"); In re Application of Constellation Communications, Inc., TRW Petition to Deny at 12-14 (Dec. 27, 1996) ("TRW Petition").

35/ MCHI Opposition at Exhibit 1.

36/ Id. at Exhibit 1-A. See also id. at Exhibit 1-D (omitting any reference to Vula's shareholders in characterizing Vula's alleged commitment to MCHI).

37/ Id. at Exhibit 1-B (emphasis added).

38/ Id.

provided a letter signed by select shareholders indicating that they "stand behind VULA's commitment."[39] The financial capability of Vula's shareholders cannot be considered by the Bureau in evaluating the commitment that Vula has made. MCHI has not demonstrated that Vula -- the party making the commitment -- has the ability to make $350 million in payments to MCHI.[40]

Even if the Bureau were to consider the financial capability of Vula's shareholders, it is not clear that its shareholders have the necessary funds to meet the alleged commitment to MCHI. Ian Pierce & Associates has only indicated that it believes Vula's shareholders have "assets" in excess of $350 million.[41] An auditor's belief as to the financial capability of any entity cannot be relied upon to demonstrate an applicant's financial qualifications. If applicants utilizing internal financing must present a current balance sheet with sufficient current assets or operating revenue, external financing sources whose capability is questioned should be required to do the same.[42] In any event, a showing as to these shareholders' net liquidity is necessary to determine whether Vula has sufficient resources to make a transfer "immediately upon grant of a Commission authorization."[43] No such showing has been made by MCHI.

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[39] Id. at Exhibit 1-A.

[40] Questions as to Vula's "commitment" to MCHI are highlighted by the letter from some of its shareholders which states that "Vula is engaged in discussions with major South African financial institutions, including Boland Financial Services (Pty) Ltd and First National Bank (Pty) Ltd which have expressed strong interest in managing and co-ordinating a loan syndication for the project **should it be necessary**." Id. at Exhibit 1-A (emphasis added). See also id. at Exhibit 1-D. If Vula and its shareholders have the necessary "committed" funding as Vula and MCHI claim, it is unclear why this additional financing is needed, and what contingent circumstances would make this financing "necessary."

[41] Id.

[42] See 47 C.F.R. § 25.140(d)(1) (1995).

[43] Big LEO Order, 9 FCC Rcd. at 5951. Motorola acknowledges that the

(continued ...)

and accordingly, the purported commitment from Vula is not sufficient under the Commission's rules.

In addition, MCHI has not adequately addressed Motorola's concerns as to the precise schedule of payments by Vula to MCHI.[44/] As Motorola indicated,

> [w]ithout knowing the details of when payments are going to be made to MCHI and how much is going to be paid in each installment, it is not possible for the International Bureau to determine whether the Vula commitment satisfies the Commission's Rules.[45/]

Rather than providing the payment schedule and indicating to the Bureau that the payments from Vula will be made in time to meet the construction costs of its system, MCHI relies upon the vague assertions of Vula that the payments will be made over "a two year period commencing upon issuance of a FCC license."[46/] This showing is unsatisfactory under the Commission's rules.

B. Artoc Suez For Technical Services

In its Petition, Motorola demonstrated that the alleged commitment of Artoc Suez for Technical Services' ("Artoc Suez") to MCHI could not be relied upon given the statements of Artoc's auditors and the letter of the President of Artoc Suez.[47/]

43/ (... continued)

Commission has recognized that a lender's funding can be "staggered to reflect the system's implementation schedule or the applicant's need to access those funds." Id. at 5951 n.46. This qualification, however, does not go towards the capability of a lender to meet its commitments. A lender must have the funds it is committing to an applicant. Otherwise, it would not be possible for a licensee to proceed with the prompt implementation of its system as required under the Big LEO Order.

44/ Motorola Petition at 11.

45/ Id.

46/ MCHI Opposition at Exhibit 1-A.

47/ See Motorola Petition at 13-16.

In response, MCHI has provided an affidavit from the Chairman of Artoc Suez which, according to MCHI, "confirm[s] Artoc's irrevocable, non-contingent commitment and the material terms of the commitment."[48] Rather than solidifying MCHI's showing, however, this new material further demonstrates that the money pledged by Artoc Suez cannot be relied upon as irrevocably committed to MCHI.

The "commitment letter" originally submitted in MCHI's Supplement is from the President of Artoc Suez.[49] The new explanatory affidavit states that Artoc Suez is a "subsidiary of the ARTOC Group of companies" and that "ARTOC **with its consortional partners** has the capability to perform its financial obligations under the agreement."[50] The fact that Artoc **and** its consortional partners may have the "capability" to meet an obligation to MCHI is irrelevant. The letter to MCHI is not from the ARTOC Group of Companies, but from Artoc Suez. MCHI has not demonstrated that Artoc Suez has the ability to bind its "consortional partners,"[51] and the Bureau cannot rely upon the financial capability of uncommitted entities to bolster an applicant's financial showing.

48/ MCHI Opposition at 11.

49/ See also MCHI Supplement at Attachment 3 (the agreement indicates that the sale of service distribution rights from MCHI in exchange for $300 million is with Artoc Suez and not the Artoc "consortional partners").

50/ MCHI Opposition at Exhibit 2 (emphasis added).

51/ Indeed, MCHI has not adequately demonstrated that Artoc's consortional partners have the financial capability to meet a $300 million commitment. Instead, the Bureau is being asked to rely upon Artoc Suez's own assurances, and a letter from Artoc's auditors that "based upon latest available information," there are no "apparent" impediments to Artoc meeting its obligations. See MCHI Supplement at Attachment 3. See also TRW Petition at 15 ("It remains unclear how recent the "latest" information available to Shawki & Co. was; whether Shawki & Co. believes that any impediments exist to Artoc's financial "commitment" to MCHI that are not "apparent;" and, most importantly, the quantum of proof that Shawki & Co. will require MCHI to supply to demonstrate Shawki's satisfaction that MCHI's proposed satellite system is "viable."); Loral Petition at 13-14.

Further, MCHI has not adequately rebutted petitioners' observations that the financial arrangement with Artoc Suez is impermissibly contingent upon MCHI proving the viability of its system.[52] MCHI dismisses this contingency as an "inadvertent characterization" by its auditor.[53] The auditor's letter asserts (and MCHI does not deny) that the auditor is familiar with the Artoc agreement. Seeing as the petitioners do not have access to the agreement, and MCHI insists that this letter should be evaluated as an accurate characterization for "Artoc's" financial capability, the Bureau cannot dismiss the auditor's statements (provided presumably after careful review) as "inadvertent."

C. TMBK/Yuzhnoye

The petitioners have also shown that MCHI has failed to demonstrate the financial capability of TMBK to meet its purported commitment to MCHI.[54] TMBK's "commitment letter" stated that

> P.T. Tigamutiara Buanakhatulistiwa (TMBK) (a member of the Mertju Buana Group of Indonesia) and the State Design Office Yuzhnoye (Yuzhnoye) confirm their respective financing commitments relating to launch services. . . .[55]

In an effort to demonstrate that TMBK can meet its financial obligation of $300 million in vendor financing or in financing equivalent launch capability, MCHI has submitted a

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[52] See Motorola Petition at 15; Loral Petition at 14; TRW Petition at 22. Specifically, petitioners noted that the auditor's letter submitted by MCHI to demonstrate the financial capability of "Artoc" stated that it was "familiar with the agreement" between "Artoc" and MCHI, and that it did not see any impediments to "Artoc" meeting its "obligations" "once the project has been granted the necessary regulatory approvals **and is proven viable**." MCHI Supplement at Attachment 3 (emphasis added).

[53] MCHI Opposition at 10 n.13.

[54] See Motorola Petition at 17; Loral Petition at 11.

[55] MCHI Supplement at Attachment 2.

new letter from P.T. Bank Jakarta.[56] This letter, however, does not establish the ability of TMBK to offer $300 million in vendor financing or for equivalent launch capability, but only that "[t]o the best of [the bank's] knowledge . . . the assets and annual operating income of TMBK **and** Mertju Buana exceed US$300 million."[57]

MCHI has not provided a commitment letter from the Mertju Buana Group, and there is no indication that TMBK can irrevocably commit the entire "group" to MCHI's project.[58] Indeed, the letter does not indicate that TMBK has all of the resources of the Mertju Buana Group behind it, but only that it is "supported" by the resources of the Mertju Buana Group. The extent of this "support" is not known.[59] In addition, the bank letter does not demonstrate or indicate that TMBK and the Mertju Buana Group have sufficient net liquidity to meet any obligation they may have, but only total assets.

Further, MCHI has not adequately addressed petitioners' concern as to the contingency of the proposed Indonesian launch facility. As indicated in the letter supplied by TMBK, there currently is no Indonesian launch facility, only a proposal to the Indonesian government and an expectation that the launch facility will be "available on time."[60] This contingency combined with TMBK's apparent inability to finance alternative launch arrangements means that TMBK's financial showing is unsatisfactory under the Commission's Big LEO MSS rules.[61]

56/ MCHI Opposition at Exhibit 3-A.

57/ Id. (emphasis added).

58/ Id. See also TRW Petition at 16.

59/ See MCHI Supplement at Attachment 2.

60/ MCHI Supplement at Attachment 2. See TRW Petition at 16; Loral Petition at 11.

61/ Even if TMBK were able to finance alternative launch arrangements, it has not (continued . . .)

D. Spectrum Astro

MCHI has similarly failed to bolster its financial showing from Spectrum Astro, Inc. ("Spectrum Astro"). In its petition, Motorola noted that there were serious doubts as to the ability of Spectrum Astro to meet its $206 million agreement for vendor financing in light of the fact that Spectrum Astro had a net worth of just over $1 million.[62] In an attempt to respond to these concerns, MCHI has produced a declaration from the President of Spectrum Astro projecting revenues for 1997, and indicating that the company had 1996 revenues of $15.6 million.[63] MCHI has also introduced a new "commitment letter" and supporting materials from Interacoes Urantia-Cajai, Ltda. ("Urantia-Cajai"), signed by its President, which purportedly agrees "to provide any back-up financing to Spectrum Astro, up to $206 million, that may be required. . . ."[64]

Spectrum Astro's financial showing must be rejected for at least two reasons.[65] **First**, MCHI has failed to rebut Motorola's demonstration that Spectrum Astro lacks the necessary finances to provide $206 million in vendor financing. The fact

61/ (... continued)

provided the Bureau with the requisite details of such financing, including the schedule of payments. Accordingly, any alternative launch financing by TMBK or Yuzhnoye (of which no meaningful financial information has been provided) must be considered impermissibly contingent.

62/ Motorola Petition at 17 n.39.

63/ MCHI Opposition at Exhibit 4-A ¶ 2.

64/ MCHI Opposition at 12. See also id. at Exhibit 4-A-1.

65/ The materials relating to Urantia-Cajai should have been provided last November when MCHI was directed to disclose all relevant materials supporting its financial showing. See Letter from Donald H. Gips to Jill Abeshouse Stern (Oct. 29, 1996). Without petitioners' observations as to the inability of Spectrum Astro to meet its financial commitment, this material may never have been disclosed, and the Bureau might have been misled into believing that Spectrum Astro alone had the ability to meet its financial obligation to MCHI.

that Spectrum Astro had revenues of $15.6 million in 1996, and has projected revenues in 1997 of $25.2 million is irrelevant for purposes of demonstrating to the Commission that Spectrum Astro will have sufficient current assets and operating income to meet a $206 million vendor financing commitment "immediately upon grant of a Commission authorization."[66] Spectrum Astro concedes that it will not be able to meet its entire vendor financing commitment by stating that "Spectrum Astro expects to be able **to carry a portion** of [vendor financing] costs with internal funds. . . ."[67] Despite MCHI's previous indications, Spectrum Astro cannot meet its $206 million commitment alone.[68]

Second, the "back-up financing" commitment from Urantia-Cajai does not demonstrate the level of support for Spectrum Astro that MCHI claims. MCHI has failed to establish that Urantia-Cajai has the ability to provide $206 million in necessary funds to MCHI. While MCHI has submitted some information as to the personal assets of Urantia-Cajai's President -- including a valuation of diamond and gold mining areas, and a bank valuation of his personal assets -- these materials are irrelevant.[69] MCHI apparently has a purported agreement with Urantia-Cajai, and not the President of Urantia-Cajai, Israel Cajai. Accordingly, it is not clear that Urantia Cajai can meet any obligation it may have towards MCHI.[70] Even if the Bureau could rely upon Israel Cajai's personal assets, gold and diamond mines are not the type of current assets

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66/ Big LEO Order, 9 FCC Rcd. at 5951.

67/ CCI Opposition at Exhibit 4-A ¶ 7 (emphasis added).

68/ MCHI Supplement at 3 ("The letter summarizes the material terms of the vendor financing agreement and confirms Spectrum Astro's capability to meet its financial obligations under the agreement.").

69/ MCHI Opposition at Exhibit 4-A-2 & Exhibit 4-A-3.

70/ While the letter from Urantia-Cajai indicates that a "financial assest [sic] statement" is attached, the statement is curiously absent from MCHI's Opposition. See MCHI Opposition at Exhibit 4-A-1.

which will allow MCHI to receive financing from Urantia-Cajai "immediately" upon Commission authorization.

E. Arianespace

MCHI has also not adequately responded to petitioners' demonstration that MCHI's amended financial showing is inconsistent with its earlier estimated costs. In its petition, Motorola showed that MCHI had presented the Commission with purported commitments from Arianespace ($45 million) and TMBK ($300 million) which was in excess of MCHI's estimated costs for launch services (i.e., $300 million).[71/] Motorola indicated that MCHI was "apparently double counting its purported commitments from launch service providers in an effort to demonstrate that it has sufficient financial showing to meet its estimated costs."[72/]

MCHI admits that its "commitments" from TMBK and Arianespace are "duplicative," but nevertheless, it insists that both commitments should be recognized by the Bureau. It makes no sense, however, for the Bureau to recognize both "commitments." Since the agreement with TMBK is to launch sixteen of MCHI's satellites, either TMBK or Arianespace (not both) will provide launch services to MCHI. Accordingly, the Bureau must appropriately discount MCHI's showing.

In any event, as demonstrated by petitioners, the Arianespace letter should be rejected by the Bureau because it does not clearly indicate that it is free from any contingencies, and does not disclose the "detailed terms" of the agreement with MCHI as required under the Commission's rules.[73/]

71/ Motorola Petition at 7-9.

72/ Id. at 8.

73/ See id. at 19; TRW Petition at 24 (pointing out that the Arianespace letter lacks the requisite statement that the agreement complies with the provisions regarding chattel mortgages and secured interests in Section 25.140(e)). MCHI incorrectly states (continued ...)

F. AON Risk Services, Inc.

MCHI has also submitted a letter from AON Risk Services, Inc. ("ARS") which does not commit any money to MCHI but instead merely indicates that ARS is an equity investor in MCHI and provides its opinion that MCHI has sufficient financing to proceed with its project.[74] It is the Bureau, and not a third party affiliated with MCHI, which will decide, based upon the limited information provided by MCHI, whether MCHI has sufficient financing to satisfy the Commission's rules. The current assets and operating income of the AON Corporation (the parent company of ARS) is irrelevant to determining whether MCHI has met the Big LEO MSS financial standard.

G. Internal Financing

In its Petition, Motorola questioned the "commitments" of Israeli Aircraft Industries ("IAI") and Spectrum Network Systems ("SNS"), because MCHI had done nothing in the intervening two years since the MCHI Order to address the Bureau's stated concerns about their purported commitments.[75] While MCHI insists that IAI's "involvement and support" is entirely consistent with the participation of SNS, MCHI

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[73] (... continued)

that the Bureau "explicitly" found the Arianespace financial showing sufficient to meet the external financing standard in the MCHI Order. MCHI Opposition at 11 & n.16. The MCHI Order, however, does not clearly find that the Arianespace financial showing is sufficient. Instead, when generally referring to the vendor financing agreements for MCHI, the Commission states that "[w]ith the **possible** exception of Arianespace's agreement," the vendor financing agreements do not appear fully negotiated, and that "**[a]t best**, therefore MCHI can claim vendor financing of $45 million." In re Application of Mobile Communications Holdings, Inc. for Authority to Construct, Launch, and Operate a Low Earth Orbit Satellite System in the 1610-1626.5 MHz/2483.5-2500 MHz Band, 10 FCC Rcd. 2274, 2277 (1995) ("MCHI Order") (emphasis added). This is hardly an "explicit" decision that the Arianespace financial showing is sufficient under the Commission's rules.

[74] See MCHI Opposition at Exhibit 6.

[75] See Motorola Petition at 18-20.

makes no attempt to address the uncertainties as to how much money (if any) IAI is willing to commit to MCHI.[76]

As for SNS, MCHI has submitted a balance sheet and a new letter in its Opposition which "reconfirms the **intention** stated in [SNS's] December 20, 1994 letter. . . ," which was to "expend the necessary funds to construct, launch and operate the satellite system for one year after launch of the first satellite. . . ."[77] Both the old and new letters, however, are insufficient under the Commission's rules and must be rejected. An applicant must provide a balance sheet "together with an exhibit demonstrating that the applicant has current assets and operating income sufficient to" meet the costs of construction, launch and operation for one year after launch of the first satellite.[78] Neither letter certifies that SNS has sufficient current assets or operating income to meet MCHI's system costs or the portion of costs it is "committing" to MCHI. Indeed, an examination of the balance sheet of SNS reveals current assets in 1996 of only $24 million -- woefully short of the $564 million required for financing MCHI's system.

H. Original Financial Showing

Finally, MCHI apparently concedes that it no longer is relying on Westinghouse Electric Corporation, Barclays de Zoete Wedd, Ltd., IBM, Northern Telecom or CSC for demonstrating its financial qualifications.[79] These companies were

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76/ See MCHI Order, 10 FCC Rcd. at 2276. The Bureau concluded that the IAI commitment indicates no more than an interest in assisting the applicant in obtaining financing and that "[s]uch arrangements are inadequate to meet [the Big LEO MSS] financial standards." Id. The full Commission upheld the International Bureau's determination. See Big LEO Memorandum Opinion and Order at ¶ 20.

77/ MCHI Opposition at Exhibit 5 (emphasis added).

78/ 47 C.F.R. § 25.140(d)(1).

79/ Motorola Petition at 6.

not mentioned in MCHI's Amendment, Supplement or Consolidated Opposition, and no new information has been provided as to their status as shareholders or vendors of MCHI.

As for the Harris Corporation, MCHI now only indicates that Harris "will manufacture the satellite communications payload."[80/] MCHI does not indicate whether Harris is still an investor, and it does not address the Bureau's earlier concerns as to Harris' financial showing, i.e., "MCHI does not show that Harris is immediately prepared to contribute any portion" of the expenses needed for the MCHI project.[81/] Accordingly, it appears that MCHI is no longer relying upon Harris.

MCHI has failed to meet the Commission's financial standards for Big LEO MSS applicants. Despite the continuing barrage of materials from MCHI, it has not been able to prove to the Commission that it has sufficient resources to proceed expeditiously with implementing its proposed system. Big LEO MSS spectrum is simply too scarce a resource to assign it to an underfinanced applicant like MCHI.

V. BIG LEO MSS APPLICANTS ARE REQUIRED TO DEMONSTRATE THE FINANCIAL CAPABILITY OF EXTERNAL FINANCING SOURCES

The Bureau must confirm the ability of MCHI's external sources of funds to meet their purported commitments, despite MCHI's protestations to the contrary.[82/]

80/ See MCHI Opposition at ii.

81/ MCHI Order, 10 FCC Rcd. at 2276.

82/ While MCHI insists that it is not required to demonstrate the financial capability of its external financiers, its Amendment and Supplement contain material which selectively attempts to demonstrate the financial capability of its lenders. For example, MCHI submitted a letter from Shawki & Co. in order to demonstrate "Artoc's financial capability." MCHI Opposition at 10.

In creating the Big LEO MSS financial standard, the Commission relied upon the strict financial standard already established for domestic fixed satellite systems.[83] In adopting that standard, the Commission indicated that only the "strictest application of the Ultravision standard would allow [it] to fulfill [its] regulatory responsibilities. . . ."[84]

MCHI mistakenly believes that the Ultravision standard and its application in the broadcast context (i.e., the basis for the domestic satellite financial standard) place it under no obligation to provide evidence as to the financial capability of its financial backers.[85] Indeed, the courts have expressly determined that the FCC can require an applicant that relies upon a lender other than a known financial institution for its required funds to "'provide substantial and reliable evidence (such as a financial statement or balance sheet) that the lender . . . ha[s] sufficient net liquid assets on hand to meet its loan commitment to the applicant.'"[86]

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[83] Big LEO Order, 9 FCC Rcd. at 5949.

[84] Licensing Space Stations in the Domestic Fixed-Satellite Service, NPRM, 101 F.C.C.2d 223, ¶ 20 (1985).

[85] To support its claim, MCHI cites Northampton Media Associates, 4 FCC Rcd. 5517 (1989) ("Northampton") aff'd, 941 F.2d 1214 (D.C. Cir. 1991), where the Commission did not require written evidence of the ability of an applicant's friend to finance a proposed station. See MCHI Opposition at 20 n.22. The Commission went on to explain, however, that when an applicant's financial qualifications are called into question (as MCHI's are here) the applicant must produce "probative evidence" of the lender's financial qualifications. Northampton, 4 FCC Rcd. at 5519. The Commission stated "[w]here the lender is not a financial institution but a person, ... the applicant must show that the person proposing to lend the funds had the necessary financial resources at that time. In such a case, we believe that a balance sheet or other documentary evidence (such as a financial statement) demonstrating that, at the time of certification, that person has sufficient net liquid assets to meet his financial commitment to the applicant would be clear evidence to support the certification." Id. (emphasis added).

[86] CHM Broadcasting Ltd. Partnership v. FCC, 24 F.3d 1453, 1458 (D.C. Cir. 1994) (quoting Port Huron Family Radio, Inc., 5 FCC Rcd. 4562 (1990)).

In addition, a common sense reading of Section 25.140(d)(2)(i) strongly implies that the required disclosure of the "identity" of a lender, particularly that of a non-financial institution, include unequivocal evidence of a lender's ability to make the promised loan.[87/] As MCHI would have it, the Commission need only be apprised of the name of its external funding sources, with any evidence of their financial capability provided at MCHI's discretion. Indeed, in its Amendment and Supplement, MCHI selectively provides material in an attempt to support the capability of some of its financial backers while not providing any evidence to demonstrate the capability of others. At a minimum, MCHI should have included evidence which unequivocally demonstrates each external funding source's ability to follow through on its purported financial commitments. To do otherwise would render the external financial standard meaningless.[88/]

VI. A WAIVER OF THE BIG LEO MSS FINANCIAL STANDARD WOULD NOT SERVE THE PUBLIC INTEREST

MCHI and CCI continue to request a waiver of the Commission's Big LEO MSS financial standard. Motorola and the other petitioners have demonstrated why such a waiver would not be in the public interest.[89/]

87/ 47 C.F.R. § 25.140(d)(2)(i) (1995).

88/ Otherwise, the Commission would be left with the undocumented financial claims of unknown lenders substituting for the undocumented claim of the applicant. As the court in CHM Broadcasting noted, FCC precedent has clearly established that applicants cannot rely solely on undocumented assurances of a lender's capability as the basis for certifying to the applicant's capability. "To permit such principals to certify to their financial resources on nothing but the undocumented assurances of other [individuals] would be to negate entirely the efficacy of the sworn certification itself." CHM Broadcasting, 24 F.3d at 1457 (quoting Religious Broadcasting Network, 3 FCC Rcd. 4085 (Rev. Bd. 1988)).

89/ Motorola Petition at 21-22; Loral Petition at 23-24; TRW Petition at 32-34.

A waiver of the Commission's financial standards must be rejected for at least five reasons. **First**, a grant of a license to an under-financed applicant will impede the business plans of financially sound licensees, as well as potential new applicants.[90/] As the Commission stated, the spectrum sharing plan it adopted for Big LEOs

> does not accommodate all pending applicants and **leaves little or no spectrum for expansion of existing systems or the development of future MSS systems within the United States**. Consequently, consistent with our past practice, we seek to ensure that those applicants awarded Big LEO licenses have the financial ability to proceed."[91/]

The Commission expressly adopted a strict financial standard in an attempt to free up spectrum for financially qualified applicants.[92/] A blanket waiver of the rule would undermine the Commission's reasoning for a stringent financial standard.[93/]

Second, the Commission has a long history of negative experience with waivers to under-financed satellite applicants. Most recently, the Commission revoked the construction authority of Norris Satellite Communications four years after first granting it a waiver because Norris was not using the scarce public resources the Commission had assigned to it.[94/] In the Big LEO Order, the Commission reiterated its

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[90/] The Commission has indicated that it would not consider potential future applicants for Big LEO licenses until it has completed processing of the first six applicants. Big LEO Order, 9 FCC Rcd. at 5953.

[91/] Id. at 5949.

[92/] Id. at 5954.

[93/] MCHI's waiver request also raises a potentially troubling legal concern. If the Commission, by granting a waiver, were to reject the very means it had established for avoiding mutual exclusivity and freeing up spectrum for qualified licensees, it is likely to be faced with a claim from AMSC which decided not to proceed with its application on the basis of the rules in effect. See Letter from Donald H. Gips to Lon C. Levin (Jan. 31, 1997).

[94/] See Norris Satellite Communications, Inc., 11 FCC Rcd. 5402 (rel. Mar. 14,
(continued ...)

"repeated experience that licensees without sufficient available resources spend a significant amount of time attempting to raise the necessary financing and that those attempts often end unsuccessfully."[95/] Neither MCHI nor CCI provide any assurance that the result for their systems will be any different.[96/]

Third, a waiver is unnecessary to ensure competition in Big LEO MSS.[97/] Three U.S. companies are already licensed to provide Big LEO MSS, and AMSC is providing geostationary MSS service in the United States and elsewhere. While Motorola welcomes additional competition in the Big LEO MSS marketplace, true competition will only develop if proponents have the financial capability to construct their systems. MCHI and CCI have not demonstrated this ability, and accordingly, a waiver will do nothing to ensure that additional competition develops.

94/ (... continued)

1996). See also Advanced Business Communications, Inc., 100 F.C.C.2d 525 (1985) (revoking a domestic satellite authorization because the licensee was unable to demonstrate its financial qualifications despite its authorization); United States Satellite Systems, Inc., FCC 85-394 (1995) (upholding the revocation of a satellite authorization after the licensee continually failed to demonstrate adequate financial qualifications despite its authorization).

95/ Big LEO Report and Order, 9 FCC Rcd. at 5948 (footnote omitted).

96/ In the few instances where the Commission has granted a waiver of its satellite financial rules, it has done so to jump start new satellite services where no provider was offering the service to the public. See Norris Satellite Communications, 7 FCC Rcd. 4289, 4291 (1992) ("Here, the orbit-spectrum resource will continue to remain fallow if the [financial] standard is not waived."), aff'd 9 FCC Rcd. 7370 (1993). This is not the case with Big LEO MSS spectrum, where the Commission has found three licensees fully qualified. See In re Application of LEOSAT, 8 FCC Rcd 668 (1993) (Rejecting a claim of unique or innovative services as a justification for a rule waiver when other satellite providers exist. "Both ORBCOMM and STARSYS have proposed service options similar to those described by LEOSAT. Thus, dismissal of LEOSAT's application will not deny the public innovative service options.").

97/ MCHI Opposition at 26-27.

Fourth, a waiver is not mandated by Section 257 of the Communications Act in order to promote market entry by small businesses into the satellite industry.[98/] The Commission has correctly recognized that small businesses can play a role in the satellite industry, but not at the expense of warehousing precious spectrum while a licensee searches for necessary funding. Just last year the Commission focused on the issue of small companies in the satellite industry:

> We are sympathetic to small companies without large corporate parents or other access to the hundreds of millions of dollars needed to construct a satellite system. But our primary obligation is to ensure that the U.S. public has available to it the widest range of satellite service offerings from the greatest number of competitors possible. Our repeated experience is that applicants without ready access to the needed financing have difficulty obtaining that financing, and that their attempts are often unsuccessful. This has allowed applicants to hold orbital resources to the detriment of others willing and able to go forward immediately. This ultimately results in fewer choices to the public and less competition.[99/]

As demonstrated above, Section 257 does not require the Commission to ignore the public interest in developing its financial standards, and determining whether a waiver of its rules is appropriate.[100/]

98/ Not content with the Commission's previous rejection of its claim to special treatment under Section 257 of the Communications Act, MCHI presents the Commission with a letter of support from several Senators. Nevertheless, the Commission has correctly explained to MCHI that while not required to do so under Section 257 of the Telecommunications Act, it fashioned a procedure that allowed small businesses such as MCHI, two additional years to demonstrate their financial qualifications. Big LEO Memorandum Opinion and Order at ¶ 21. Despite this additional time, MCHI and CCI have failed to demonstrate their ability to promptly proceed with their proposed systems.

99/ Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, 11 FCC Rcd. 2429, 2435 (1996) ("DISCO I").

100/ See supra at pp. 3-4.

Despite the Commission's unwillingness to allow any company to warehouse spectrum while it searches for funding,[101] the Commission has recognized that a satellite system license is not necessary for a company to participate in the Big LEO MSS industry.[102] MCHI, it seems, is unwilling to consider these alternatives.[103]

Fifth, the Commission has a special obligation to ensure that Big LEO MSS systems meet its minimum financial standards because these global systems will constrain spectrum use in most if not all countries of the world. If the Commission were to attempt to coordinate an underfinanced Big LEO MSS system, it would hinder the ability of the United States to oppose the promotion of another country's "paper" system. This would not be in the public interest.

VII. CONCLUSION

CCI and MCHI have had numerous opportunities to demonstrate their financial ability to construct, launch and operate their proposed Big LEO MSS systems. The Bureau has been exceptionally accommodating with respect to the requests of both parties to permit additional time and opportunities to make their financial demonstrations. Despite these opportunities, both applicants have been unable to

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101/ The Commission has applied its strict financial rules in an even handed manner, denying established satellite carriers waivers or exemptions from the financial standard. See Application of Western Union Telegraph Company, 103 F.C.C.2d 892, 896 (1985) ("We [find] no basis for distinguishing between new entrants and established carriers in making demonstrations of financial qualifications. . . .").

102/ See Big LEO Report and Order, 9 FCC Rcd. at 5948 n.36.

103/ MCHI claims that the trickle down impact of its provision of satellite services is dependent on first receiving a license. MCHI Opposition at 28 n.35. In effect, MCHI believes that it needs to first hold a license before it can acquire the necessary financing for its system. This is the very type of "conditional licensing" that the Commission expressly rejected for Big LEO MSS systems. Big LEO Order, 9 FCC Rcd. at 5949, 5951. Nor has the Commission had any success in bringing "conditionally licensed" FSS systems to operational reality. See Application of National Exchange, Memorandum Opinion and Order, 1 FCC Rcd. 682, 684 (1986).

produce a financial showing which satisfies the Commission's Big LEO MSS rules. It is not in the public interest to grant either applicant any additional time to demonstrate their financial qualifications. The Commission and private industry have already expended valuable resources in processing their applications. These applications fail to meet the Commission's financial standard, and accordingly, they should be denied.

Dated: February 11, 1997

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sandra R. Hammond-Murdico, do hereby certify that a copy of the foregoing **Motorola's Consolidated Reply** has been sent, via first class mail, postage prepaid (or as otherwise indicated), on this 11th day of February, 1997 to the following:

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