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Federal Communications Commission

WASHINGTON, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of

Application of Mobile Communications
Holdings, Inc. for Authority to Construct, Launch
and Operate the Ellipso Elliptical Low Earth
Orbit Mobile Satellite System in the 1.6-2.4 GHz
Bands

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File Nos: 11-DSS-P-91(6)
18-DSS-P-91(18)
11-SAT-LA-95
12-SAT-AMEND-95
158-SAT-AMEND-96

REPLY TO CONSOLIDATED OPPOSITION

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REPLY TO CONSOLIDATED OPPOSITION

TRW Inc. ("TRW"), by its attorneys and pursuant to Section 25.154(d) of the Commission's rules, 47 C.F.R. § 25.154(d) (1995), hereby replies to the Consolidated Opposition to Petitions to Dismiss or Deny filed by Mobile Communications Holdings, Inc. ("MCHI") on January 23, 1997 (the "MCHI Opposition") in the above-captioned proceeding. It is clearly time for the Commission to deny MCHI's pending satellite system application without qualification.

I. Introduction and Summary

Despite its bulk, the MCHI Opposition fails to resolve — and indeed, seems designed to obfuscate — the critical issues regarding MCHI's financial qualifications to be a licensee in the Mobile Satellite Service Above 1 GHz (the "MSS Above 1 GHz"). Once MCHI's evasive statements, irrelevant and often impermissibly late information, hostile accusations and empty arguments are peeled away, however, it is clear that not one of MCHI's purported funders has committed to MCHI's MSS Above 1 GHz project the resources claimed by MCHI. Furthermore,

1 The Chief of the FCC's Satellite and Radiocommunication Division has granted TRW's request for an extension of time until February 11, 1997 to file the instant Reply. See Letter from Thomas S. Tycz to Norman P. Leventhal (February 3, 1997).

MCHI does not provide any reliable evidence demonstrating that any other parties can or will provide those funds in order to enable MCHI to satisfy the MSS Above 1 GHz financial qualifications standard. Among other things, MCHI's failure to demonstrate that it has secured the requisite access to funds represents a major contingency in every alleged funding commitment that MCHI has presented to the Commission.

It is therefore not surprising that MCHI has failed to file a verified balance sheet and other verified documentation of the current assets and operating income for any of its purported external sources of funds — in spite of the MSS Above 1 GHz standard's requirement to that effect. Given that the Commission required TRW and the other MSS Above 1 GHz licensees — parties that would be subject to FCC sanctions for misrepresentation — to submit this verified information with regard to the internal funds that they have committed to their respective satellite systems, it can reasonably require no less with regard to the assertions of parties that are unrelated to an FCC applicant and therefore not directly subject to the Commission's jurisdiction.

The evident lack of funds on the part of MCHI's purported financiers also helps to explain MCHI's continuing failure to supply the Commission with information sufficient to enable it to find that MCHI's alleged commitments from those financiers are "irrevocable" within the meaning of the MSS Above 1 GHz financial qualifications standard. Indeed, MCHI acknowledges this shortcoming when it asserts that it is willing to submit additional contract terms "if deemed relevant by the Commission," or to resubmit the contracts underlying its business agreements "under appropriate safeguards" to ensure confidentiality.² The Commission must reject this

² MCHI Opposition at 17. The International Bureau previously denied MCHI's confidentiality request with respect to those agreements, holding that MCHI could
(continued...)

incremental approach once and for all; MCHI must stand or fall on the strength of the showing that it made on September 16, 1996.³

The Commission must also reject, as utterly lacking in justification, MCHI's renewed request for a waiver of the Commission's MSS Above 1 GHz financial qualifications standard. The Commission's rationale for that standard was the prevention of warehousing of valuable spectrum, and that rationale is as valid today as it was at the time the standard was established. Neither MCHI's claim that it is a small business, nor the fact that waivers have occasionally been granted to applicants in other satellite services, warrant a waiver of the MSS Above 1 GHz financial standard for MCHI now. The Commission explicitly took the needs of small businesses into account in adopting its MSS Above 1GHz financial standard, and the circumstances under which it has permitted deviations from other financial standards for other services in the past differ dramatically from the circumstances of MCHI's request.

At this stage of the instant proceeding, and given the extensive guidance that MCHI has received to date on the parameters of the Commission's MSS Above 1 GHz financial standard, the Commission can only conclude that MCHI has not supplied adequate information to demonstrate

²(...continued)

either submit the agreements without confidentiality protections or file detailed terms of the agreements in another form. Letter from Donald H. Gips to Jill Abeshouse Stern (October 29, 1996) at 2-3 ("MCHI Confidentiality Order").

³ If MCHI finds it "insulting" that its arrangements with its alleged sources of funds are questioned, it has only itself to blame. MCHI Opposition at 16-17. Had MCHI submitted the required documentation regarding those arrangements in its initial or current financial showing, such questions would not be necessary. TRW takes particular exception to MCHI's suggestion that its competitors seek to review its business agreements for anti-competitive reasons. MCHI Opposition at 14. There is nothing anti-competitive in requesting that MCHI be required to comply with the Commission's well-established rules.

its compliance with that standard because it *cannot*. It is now time for the Commission to put a stop to the games that MCHI continues to play with the valuable resources of the Commission and the MSS Above 1 GHz licensees by denying, at long last, its patently insufficient MSS Above 1 GHz application.⁴

II. The MSS Above 1 GHz Financial Qualifications Standard Requires MCHI To Demonstrate That Its Financial Backers Have Made Irrevocable Commitments Of Funds To Its Satellite Project, And That They Have The Funds To Commit.

At the heart of the Commission's MSS Above 1 GHz financial standard is the requirement that each applicant demonstrate its financial ability to build and launch all satellites in its proposed

⁴ MCHI's claim that the MSS Above 1 GHz licensees lack standing to petition to deny its Big LEO application is ludicrous. MCHI Opposition at n.1. As MCHI readily concedes, parties alleging objectionable electrical interference or economic injury have standing to file petitions to deny an application pending before the Commission. *Id.* (citing National Broadcasting Co. v. FCC, 362 F.2d 946, 954 (D.C. Cir. 1966)). TRW alleged objectionable electrical interference in its Petition to Deny in this proceeding, in which it stated that the addition of an unqualified licensee to the scarce MSS Above 1 GHz bands allocated for use by Code Division Multiple Access ("CDMA") licensees would require the existing licensees to make accommodations for MCHI that would have the effect of reducing the capacity of the licensees' systems. *See* Petition to Deny (filed December 27, 1996) at 30-31 ("TRW Petition"). Contrary to MCHI's claims, the fact that several MSS Above 1 GHz systems can coexist within the 1.6/2.4 GHz bands does not mean that there is no electrical interference among them. MCHI Opposition at n.1. Indeed, the very reason that coordination among the MSS Above 1 GHz licensees is necessary is because such interference will necessarily occur. TRW has also alleged economic injury in the instant proceeding, stating that allowing MCHI to warehouse spectrum would impose expensive operational limitations on TRW's satellite system and limit its ability to compete in the international marketplace for communications services. TRW Petition at 31. TRW further observed that the award of a license to a financially unqualified applicant could spark a crisis of confidence among investors in the U.S. MSS Above 1 GHz industry, causing irreparable harm to present MSS Above 1 GHz licensees. *Id.* MCHI's assertion regarding TRW's standing is a prime example of the game-playing in which it now habitually engages, and which continues to sap the resources of the Commission and the MSS Above 1 GHz licensees.

satellite system, and to operate that system for one year after the launch of the first satellite in its constellation.⁵ Applicants may meet this standard either with internal funding, in the form of current assets and operating income, or with "irrevocably" committed debt or equity financing.⁶ MCHI's various showings regarding its financial qualifications on and after September 16, 1996 indicate that it intends to rely on a combination of internal and external sources of funds in order to demonstrate its compliance with the Commission's standard.⁷

MCHI does not dispute TRW's previous observation that each applicant is required to include in its application, supported by affidavit, a balance sheet for the latest fiscal year and documentation of any financial commitments reflected in that balance sheet, together with an exhibit showing that the applicant has current assets and operating income sufficient to meet the Commission's MSS Above 1 GHz standard.⁸ An applicant relying on internal assets must also provide evidence of an irrevocable management commitment to its MSS Above 1 GHz project.⁹

The Commission's rules specify that an applicant whose balance sheet and related documentation do not demonstrate sufficient current assets and operating income to meet the

⁵ See 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, 5952 (¶ 38) (1994) ("MSS Above 1 GHz R&O").

⁶ Id. at 5949 (¶ 28).

⁷ See Amendment to Ellipso Satellite System Application (filed September 16, 1996) ("MCHI Amendment"); Supplement to Ellipso Satellite System Application (filed November 13, 1996) ("MCHI Supplement"); MCHI Opposition (together, the "MCHI Second Financial Showing").

⁸ See TRW Petition at 6; 47 C.F.R. § 25.140(d)(1).

⁹ See MSS Above 1 GHz R&O, 9 FCC Rcd at 5952 (¶ 35).

Commission's financial qualifications standard must supply additional information, including the terms of any fully negotiated loan or form of credit, sale or other placement of any equity or other form of ownership interest, or grant or other external funding commitment to be used to finance the proposed system.¹⁰ A commitment made to an applicant by its external source of funds must be "irrevocable," i.e., the lender must have "already determined that the applicant is creditworthy" and, absent a material change in circumstances, must be "prepared to make the loan immediately upon grant of a Commission authorization."¹¹ The Commission's rules also state, in no uncertain terms, that "[a]ny financing arrangements contingent on further performance by either party, such as marketing of satellite capacity *or raising additional financing*, will not satisfy the requirements. . ." of the MSS Above 1 GHz financial qualifications standard.¹²

MCHI contends that the Commission's rules for the MSS Above 1 GHz do not require an applicant to provide documentary evidence with respect to the financial capability of parties providing external funding commitments, and questions the Commission's authority to impose what it calls an "ex post facto requirement."¹³ MCHI's views are contradicted by the case law

¹⁰ These terms must include such information as the identity of the creditor, equity holder or grantor; the amounts credited or committed; detailed terms of the credit arrangement, agreement or transaction including details of any contingencies; and, in the case of a loan or credit arrangement, a statement affirming compliance with the requirement in the Commission's rules regarding chattel mortgages and secured interests. See 47 C.F.R. § 25.140(d)(2).

¹¹ MSS Above 1 GHz R&O, 9 FCC Rcd at 5950-51 (¶ 32).

¹² 47 C.F.R. § 25.140(d)(2)(iv) (emphasis added).

¹³ MCHI Opposition at 20.

precedent underlying the FCC's long-standing domestic fixed-satellite financial qualifications standard, on which the MSS Above 1 GHz financial standard was explicitly premised.¹⁴

As TRW has previously noted, the Commission stated, in adopting the Domsat financial qualifications standard, that the standard was grounded in the long-standing Ultravision methodology.¹⁵ In cases arising from Ultravision,¹⁶ the Commission explained that any entity or person providing financing to a Commission applicant must clearly demonstrate through documentation that the financier has the ability to provide such funds in the amount, and when, promised.¹⁷ Although using a standard predating Ultravision for other purposes, the Commission held that persons "who will furnish funds are required to submit balance sheets or financial statements" in order to demonstrate that their current and liquid assets are sufficient for them to meet their own financial obligations as well as their commitments to the applicant.¹⁸

In keeping with this policy, the Commission stated, in adopting its domestic fixed-satellite financial qualifications standard, that "our intent in requiring noncontingent financing is to guarantee that the lender is *prepared to make the funds immediately available* upon grant of

¹⁴ See MSS Above 1 GHz R&O, 9 FCC Rcd at 5949-50.

¹⁵ See TRW Petition at 7 n.14; Domestic Fixed Satellite Service, 58 R.R.2d 1267, 1269 n.9, 1270 n.12 (1985) ("We have consistently required a demonstration that a potential satellite licensee have the requisite financial resources to proceed immediately with construction and launch . . . and have referred to Ultravision as offering a method by which such a demonstration would be made").

¹⁶ Ultravision Broadcasting, 1 F.C.C.2d 544, 5 R.R.2d 343 (1965) ("Ultravision").

¹⁷ Orange Nine, 7 F.C.C.2d 788, 9 R.R.2d 1157 (1967).

¹⁸ Id. at 789 n.4. See also Kansas State Network, 5 F.C.C.2d 572, 573 (1966); Florida-Georgia Television, 10 R.R.2d 846, 848-49 (1967).

Commission authorization."¹⁹ The Commission echoed this objective in adopting the financial standard for the MSS Above 1 GHz.²⁰ More recently, the International Bureau refused to accept, for purposes of demonstrating financial qualifications under Section 25.140(d), a financier's pledge to sell shares of stock from his personal holdings to help finance an applicant for a domestic fixed-satellite system until the applicant submitted an independent market valuation showing that the shares' value would cover the commitment.²¹ MCHI is thus incorrect in suggesting that the requirement that applicants demonstrate the financial ability of their financiers to provide allegedly committed funds is merely a "broadcast standard."²²

TRW urges the Commission to recognize that the MSS Above 1 GHz financial qualifications standard would be meaningless if the Commission were not able to ascertain with

¹⁹ Domestic Fixed-Satellite Service, 58 R.R.2d at 1274 (¶ 15) (emphasis added).

²⁰ See MSS Above 1 GHz R&O, 9 FCC Rcd at 5950-51 (¶ 32).

²¹ See EchoStar Satellite Corp., DA 96-1943 (Int'l. Bur., released November 21, 1996) slip op. at 5 ("Echostar"). MCHI's attempt to rely on Echostar as support for the grant to MCHI of a conditional license subject to MCHI's submission of additional financial information must fail. See MCHI Opposition at 3 n. 3. In Echostar, the International Bureau explained its decision to grant a conditional license to Echostar by noting that Echostar had provided substantial information suggesting that it might already have access to sufficient funds to satisfy the applicable financial qualifications standard. Echostar, DA 96-1943, slip op. at 3, 5 (¶¶ 7, 11). The Bureau consequently ordered Echostar to submit additional documentation proving its access to sufficient funds or to justify a waiver of the applicable standard within 60 days or face automatic cancellation of its conditional authorization. Id. at 5 (¶ 12). In stark contrast, the Bureau has given MCHI an additional two years to comply with the MSS Above 1 GHz financial qualifications standard. MCHI has yet to give the Commission any reason to find that MCHI may be anywhere near to satisfying that standard, and, as discussed further in Section VI below, also failed to present any legitimate justification for a waiver of the standard.

²² MCHI Opposition at 20-21 n.22.

certainty whether parties claiming to commit funds to an applicant's proposed satellite system actually have sufficient funds to meet their commitments. It is for this very reason that the Commission required TRW and the other MSS Above 1 GHz licensees — each of which could be sanctioned by the Commission in any event, were it found to have knowingly misrepresented facts — to file a verified balance sheet and verified documentation of sufficient current assets and operating income to satisfy the MSS Above 1 GHz financial qualifications standard. It would be irrational for the Commission now to credit an applicant's assertions regarding purported commitments of funds from third parties — parties not directly subject to the Commission's jurisdiction — without requiring the applicant to provide the same type of supporting evidence that is required of applicants relying on internal financing.²³

In any case, the failure of an applicant's alleged external source of funds to have secured access to the funds that it claims to have committed to the applicant can only be considered a significant contingency that renders such a commitment anything but "irrevocable." This principle, acknowledged in Section 25.140(d)(2)(iv) of the Commission's rules, requires the Commission to scrutinize the financial resources of every external source of funds identified by an MSS Above 1 GHz applicant.

²³ To be sure, the showing of ability to provide funds is justifiably different for third-party sources that are "traditional" lenders (e.g., banks and other commercial lending institutions) from the showing required for the nontraditional sources of funding upon which MCHI seeks to rely.

III. MCHI Has Failed To Show That It Has Secured Sufficient Internal Funds To Meet The MSS Above 1 GHz Financial Qualifications Standard.

A. Financial Resources of MCHI

Although TRW previously observed that MCHI had failed to provide the Commission with a verified MCHI balance sheet current for the latest fiscal year — a requirement indisputably imposed on all MSS Above 1 GHz applicants by Section 25.140(d)(1) of the Commission's rules — MCHI still has not filed this document.²⁴ MCHI has also not responded to the serious questions raised by TRW about MCHI's undated, unaudited and cryptic "statement of current financial condition."²⁵ Thus, the Commission has no choice but to conclude that MCHI itself has no current assets or operating income available to it for purposes of meeting the MSS Above 1 GHz financial qualifications standard.

B. Israeli Aircraft Industries

MCHI also still has not provided evidence that Israeli Aircraft Industries ("IAI"), now allegedly a 13 percent shareholder in MCHI, has strengthened its purported financial commitment to MCHI in any way since the International Bureau rejected that arrangement as insufficient to meet the MSS Above 1 GHz financial standard.²⁶ Furthermore, MCHI has failed to clarify the financial arrangement between IAI (which will allegedly provide certain satellite construction services for MCHI's proposed system) and Spectrum Astro, Inc. ("Spectrum Astro"), apparently

²⁴ TRW Petition at 8-9.

²⁵ See *id.* at 9; MCHI Amendment, Exhibit A, Attachment 3 at 2 ("MCHI Financial Statement").

²⁶ See Mobile Communications Holdings, Inc., 10 FCC Rcd 2274, 2276 (¶¶ 13, 14) (Int'l Bur. 1995) ("MCHI Order").

MCHI's prime contractor for the provision of those services. MCHI's statement that "IAI's continued involvement in and support for the ELLIPSO project is entirely consistent with the Spectrum Astro commitment" does not explain why MCHI counts its arrangements with IAI and Spectrum Astro as separate sources of funding.²⁷ In fact, the Declaration provided by MCHI from W. David Thompson, President of Spectrum Astro, suggests that any commitment from IAI should *not* be counted as additional to the funds allegedly provided by Spectrum Astro because IAI will receive its workshare through subcontracts with Spectrum Astro.²⁸

MCHI's response also conflicts with its previous allegations that a new space company would be formed within four months of issuance of a license to MCHI to serve as "the prime contractor for the ELLIPSO satellites and launch services," and that IAI will hold equity in that company and receive a percentage of the company's satellite construction and launch contracts.²⁹ MCHI fails to explain how IAI's role in this new company would affect the funding commitments that MCHI claims to have obtained from Spectrum Astro and the various companies that it states will provide launch services for its proposed satellite system.

C. Spectrum Network Systems, Ltd.

For the first time since the International Bureau rejected its alleged financial commitment from Spectrum Network Services, Ltd. ("SNS") as insufficient to meet the MSS Above 1 GHz

²⁷ MCHI Opposition at n.18.

²⁸ Id., Exhibit 4-A, Declaration of W. David Thompson at 4 ("Thompson Declaration").

²⁹ MCHI Amendment at n.8.

financial standard,³⁰ MCHI now submits a letter from David S. Archer, Director and Executive Chairman of SNS, asserting that this commitment remains valid.³¹ In his letter, however, Mr. Archer merely states that SNS "is prepared to expend the necessary funds" to enable MCHI to meet the MSS Above 1 GHz financial standard, subject to grant of an FCC license to MCHI and absent any material change in business conditions.³²

Unfortunately for MCHI, Mr. Archer's statement gives the Commission no indication whatsoever as to how much money SNS currently intends to provide to MCHI. Given that SNS states that it holds only one percent of MCHI's common stock and 11.49 percent of MCHI's subsidiary, Ellipsat International, it would be illogical to assume that SNS would be willing to expend any amount necessary to fund MCHI's proposed system.³³ In this regard, it is illuminating to note that while MCHI represented in 1994 that SNS had committed to provide it with \$100 million for its proposed system, the SNS Letter makes no mention of such a commitment. In addition, the SNS balance sheet that accompanies the SNS Letter states that SNS had total current assets of only \$24.7 million as of June 30, 1996. MCHI provides no information on SNS' operating income. Thus, SNS' putative commitment of funds to MCHI plainly cannot be credited.

³⁰ MCHI Order, 10 FCC Rcd at 2277 (¶ 22).

³¹ MCHI Opposition, Exhibit 5, Letter from David S. Archer to David Castiel, President and CEO of Mobile Communications Holdings, Inc. (January 22, 1997) ("SNS Letter").

³² SNS Letter at 1.

³³ Id.

D. Aon Risk Services, Inc.

The MCHI Opposition also contains MCHI's first mention of Aon Risk Services, Inc. ("ARS"), a company that purports to be an investor in MCHI and to be willing to "assist the company with implementation of the ELLIPSO system worldwide."³⁴ The ARS Letter, however, contains no statement whatsoever committing funds to MCHI's proposed satellite system, nor does it contain a commitment from Aon Corporation, whose financial resources are discussed in the letter, to ARS. In any case, MCHI provides no balance sheets or information on the current assets or operating income of either ARS or Aon Corporation. Thus, the ARS Letter contributes nothing to MCHI's attempted financial showing.³⁵

In sum, MCHI offers no credible evidence that it has secured any funds from internal sources for its proposed satellite system.

³⁴ MCHI Opposition, Exhibit 6, Letter from Alan R. Diamond, Chairman and CEO, Aon Risk Services, Inc., to Mr. William F. Caton (January 7, 1996) ("Aon Letter"). TRW notes that MCHI's most recent FCC Form 430, submitted as Exhibit B to the MCHI Amendment, contains no mention of any investment by ARS in MCHI.

³⁵ Any financial commitment that might be read into the Aon Letter cannot be considered as part of MCHI's second financial showing. The International Bureau previously informed MCHI that it may not submit information concerning commitments that MCHI has obtained since September 16, 1996, the deadline for its second financial showing. See MCHI Confidentiality Order at 3. Although the Aon Letter is dated January 7, 1996, its references to the December 27, 1996 petitions to deny MCHI's application suggest that the letter should actually be dated January 7, 1997.

IV. MCHI Has Failed To Show That It Has Secured Irrevocable Commitments Of Funds From Its Alleged External Financial Backers, Or That Those Parties Have The Funds That MCHI Claims They Have Committed.

A. Exclusive Distributor Arrangements

1. Vula Communications (Pty) Limited

In the TRW Petition, TRW observed that MCHI had provided no reliable information on the financial resources available to Vula Communications (Pty) Limited ("Vula"), a party purporting to have made a commitment of \$350 million to MCHI's satellite project. TRW also noted that the Vula commitment letter proffered by MCHI contained insufficient information on the terms of MCHI's alleged September 12, 1996 business agreement with Vula.³⁶ In particular, TRW observed that the First Vula Letter stated that Vula would make payments to MCHI over a two year period commencing with the issuance of an FCC license to MCHI, but failed to indicate how much money Vula would provide to MCHI at what time. These questions are not answered by the MCHI Opposition.

In the MCHI Opposition, MCHI provides a new letter, signed by various parties that claim to be the current stockholders of Vula and by Vula's Chief Executive Officer, Mark Headbush, asserting that "[t]he undersigned parties are fully aware of and support VULA's agreement with Mobile Communications Holdings, Inc. . . ."³⁷ The letter also states that "[t]he undersigned parties stand behind VULA's commitment and have the capability to ensure that VULA performs

³⁶ See TRW Petition at 12-14, 19-21; MCHI Supplement, Attachment 1, Letter from Mark Headbush, Chief Executive Officer of Vula, to David Castiel (November 13, 1996) ("First Vula Letter").

³⁷ MCHI Opposition, Exhibit 1-A, Letter from Vula Shareholders and Mark Headbush to MCHI (January 6, 1997) at 1 ("Second Vula Letter").

its financial obligations under the MCHI agreement."³⁸ In spite of these generalized expressions of support, the Second Vula Letter is devoid of any assertion that the Vula shareholders are willing to commit their own financial resources to MCHI's project or that they even have the necessary funds to meet Vula's commitment to MCHI. Furthermore, the letter is signed by parties representing only three of the six alleged Vula investors, and states, by way of explanation, that the Chief Executive Officers of the other three investors — representing 42 percent of the shares of Vula — "were unavailable for signature due to . . . being on annual vacation."³⁹ No explanation is offered as to why other executives of these entities could not have verified their respective entities' participation in any existing arrangement between Vula and MCHI.

The Second Vula Letter is accompanied by a letter from Ian Pierce Associates, an accounting firm that claims to be Vula's financial advisor.⁴⁰ The Ian Pierce letter states that, "[t]o the best of our knowledge, as of the date of this letter, the assets of the Vula shareholders combined are in excess of US \$350 million."⁴¹ As it is Vula, however, and not Vula's shareholders, that have entered into an agreement with MCHI — and as it is Vula's shareholders who are being relied upon by MCHI — the Ian Pierce Letter has no probative value whatsoever on the question of whether Vula can meet its alleged financial commitment to MCHI. Indeed, in offering a letter attesting to the financial resources of Vula's investors rather than to the resources

³⁸ Id. at 2.

³⁹ Id.

⁴⁰ MCHI Opposition, Exhibit 1-B, Letter from Ian Pierce & Associates to David Castiel (January 6, 1997) ("Ian Pierce Letter").

⁴¹ Ian Pierce Letter at 1.

of Vula itself, MCHI appears to concede that Vula does *not* have the funds to meet that commitment.⁴²

Even if Vula had sufficient funds to commit to MCHI, the MCHI Opposition contains no additional information on precisely how much money would be paid to MCHI and when. Contrary to MCHI's protestations,⁴³ this information is critical to the Commission's evaluation of MCHI's financial qualifications. As MSS Above 1 GHz licensees are required to commence construction of their satellites within one year of issuance of an unconditional license, it is vital that the Commission know just how much of the money allegedly committed by Vula to MCHI will be available to MCHI by the time the deadline for commencement of satellite construction arrives — a point at which MCHI would plainly need access to funds.

In the absence of this information, and in the face of evidence that Vula lacks the funds to make its promised payments to MCHI, the Commission cannot credit Vula's "commitment."

2. Artoc Suez for Technical Services

In the TRW Petition, TRW stated that MCHI had offered no convincing evidence that Artoc Suez for Technical Services ("Artoc Suez") has the \$300 million that it has allegedly committed to MCHI's proposed MSS Above 1 GHz satellite system. TRW noted, *inter alia*, that a letter submitted by MCHI from Artoc Suez's accountants, Shawki & Co., was so vague in its

⁴² According to the Second Vula Letter, Vula has obtained a 12 percent interest in MCHI through its alleged commitment with that company. As in the case of ARS, MCHI has failed to amend its FCC Form 430 to indicate Vula's interest. In addition, if MCHI hopes to rely on the financial resources of Vula's shareholders in making its MSS Above 1 GHz financial showing, each of those shareholders should have filed a verified balance sheet and documentation of current assets and operating income sufficient to satisfy its financial commitments.

⁴³ MCHI Opposition at n.21.

claims regarding Artoc Suez's financial resources as to be entirely unreliable.⁴⁴ TRW also observed that the materials presented by MCHI regarding its alleged agreement with Artoc Suez omitted a variety of terms that are essential to the FCC's evaluation of the agreement's credibility — among them, any schedule of the dates and sizes of payments.⁴⁵ Once again, the MCHI Opposition fails to provide meaningful answers to these criticisms.

The MCHI Opposition now includes a Declaration of Abd El Hamid Helmy, who indicates that he is the Chairman for Artoc Suez, "a subsidiary of the Artoc Group of companies"⁴⁶ — presumably, the Artoc Group for Investment and Development, the entity for which MCHI submitted a 1995 Prospectus with the MCHI Amendment.⁴⁷ In the Artoc Declaration, Mr. Helmy makes various assertions regarding "Artoc" and its alleged agreement with MCHI, in some places apparently using the term "Artoc" to refer to Artoc Suez and, in others, to the Artoc Group for Investment and Development. In closing, Mr. Helmy states that "ARTOC *with its consortional partners* has the capability to perform its financial obligations under the agreement,"

⁴⁴ TRW Petition at 15-16.

⁴⁵ Id. at 21-23.

⁴⁶ MCHI Opposition, Exhibit 2 at 1 ("Artoc Declaration").

⁴⁷ See MCHI Amendment, Exhibit A, Attachment 1-B ("Artoc Prospectus"). According to the Artoc Prospectus, Artoc Suez is one of four entities in the "Special Projects Division" of the Artoc Group for Investment and Development. The Artoc Group for Investment and Development reportedly has six divisions. See Artoc Prospectus at 3.

and adds that "ARTOC is a privately held company and as such its financial statements are not publicly disclosed."⁴⁸

It is not clear whether Mr. Helmy's reference to "ARTOC with its consortial partners" is intended to indicate Artoc Suez in combination with the other affiliates and subsidiaries of the Artoc Group for Investment and Development; to Artoc Suez in combination with the other alleged funders of MCHI's proposed satellite system; or to the Artoc Group for Investment and Development, in combination with other unspecified entities. In any of these cases, however, it is evident from Mr. Helmy's statement that Artoc Suez, the party that is alleged to have made a financial commitment to MCHI, does not by itself have sufficient funds to meet that commitment. MCHI offers no evidence that any other party has committed itself to assist Artoc Suez in meeting its financial obligations to MCHI.⁴⁹

In this regard, it is revealing that MCHI has not responded to TRW's observations as to the deficiencies in the letter from Shawki & Co. with more credible information assessing the resources of Artoc Suez.⁵⁰ It is also revealing that, according to the Shawki & Co. letter and the

⁴⁸ Artoc Declaration at 2 (emphasis added).

⁴⁹ TRW notes that, if MCHI desires to demonstrate to the Commission that it has the resources of the entire Artoc Group for Investment and Development at its disposal, it cannot do so by means of a letter of commitment from the Chairman of a subsidiary of that entity. Indeed, Mr. Helmy can at most commit the resources of two subsidiaries or affiliates of that entity: Artoc Suez, of which he states that he is the Chairman, and Artoc Auto, of which he claims to be the General Manager. In any event, MCHI has presented no coherent evidence of the financial resources available to the Artoc Group for Investment and Development, nor has it filed balance sheets or documentation of current assets or operating income for either Artoc Suez or the Artoc Group for Investment and Development.

⁵⁰ See TRW Petition at 15 & n.37, 22. Like the Artoc Declaration, the letter from
(continued...)

Artoc Declaration, "Artoc" — whichever "Artoc" that may be — is unwilling to disclose its financial statements to the Commission. While a privately held company may be entitled not to disclose this information, it must be deemed to understand that its recalcitrance may result in an applicant's failure to satisfy the MSS Above 1 GHz financial qualifications standard.

Even if the Commission could find that Artoc Suez has the ability to provide \$300 million for MCHI's satellite project — and MCHI does not now claim that such is the case — MCHI refuses to provide sufficiently detailed terms of the alleged Artoc Suez/MCHI arrangement. In the Artoc Declaration, Mr. Helmy claims that "Artoc" has agreed to pay MCHI \$300 million in four installments over a two-year period, and gives dates on which the installments are due.⁵¹ Mr. Helmy fails, however, to state how much MCHI would be paid on each date under this arrangement. As a result, the Commission cannot determine whether MCHI would have sufficient funds on hand to commence construction of its satellite system one year after receiving a conditional license. For this reason, and, more fundamentally, because Artoc Suez has revealed the existence of no funds to meet its alleged commitment to MCHI, the Commission cannot credit the alleged Artoc Suez/MCHI arrangement in evaluating MCHI's Second Financial Showing.

⁵⁰(...continued)

Shawki & Co. makes allegations as to the resources of "Artoc" without differentiating among the Artoc Group for Investment and Development, Artoc Suez or any of the many other subsidiaries and affiliates of the Artoc Group for Investment and Development.

⁵¹ Artoc Declaration at 1.

B. Vendor Financing Arrangements for Launch Services

1. P.T. Tigamutiara Buanakhatulistiwa/State Design Office Yuzhnoye

TRW observed in the TRW Petition that MCHI had provided no evidence that either P. T. Tigamutiara Buanakhatulistiwa ("TMBK") or the State Design Office Yuzhnoye of the Ministry of Defence of Ukraine ("Yuzhnoye") have the ability to provide launch services or the \$300 million in vendor financing that MCHI claims they have committed to its satellite project.⁵² In addition, TRW noted that MCHI had offered no information on the details of TMBK's financing vehicle, and had omitted, among other things, to demonstrate that it will have authority to issue shares of Ellipsat International to TMBK as allegedly required, given that other parties also have equity or other rights in Ellipsat International.⁵³ The MCHI Opposition again provides no effective response on any of these points.

MCHI now attempts to bolster its claims regarding TMBK's financial wherewithal by submitting a letter from PT. Bank Jakarta, which identifies itself as financial advisor to TMBK and the Mertju Buana Group⁵⁴ — an Indonesian entity of which MCHI has previously stated that TMBK is a member.⁵⁵ The Bank Jakarta letter states that "we are familiar with the financial resources available to TMBK *and Mertju Buana* and confirm that *they* have the capability to

⁵² TRW Petition at 16, 24-27.

⁵³ As indicated above, SNS has asserted that it currently holds 11.49 percent of the common stock of Ellipsat International. See supra Section III.C.

⁵⁴ MCHI Opposition, Exhibit 3-A at 1, Letter from Drs. Waldjimin, President Director, PT. Bank Jakarta, to David Castiel (January 2, 1997) ("Bank Jakarta Letter").

⁵⁵ MCHI Supplement at 2.

perform *their* financial obligation to MCHI."⁵⁶ Evidently, then, TMBK — the entity that has allegedly entered into an agreement with MCHI to provide it with \$300 million — does not, by itself, have the capability to abide by such an agreement.⁵⁷

This conclusion is of vital importance to the Commission's analysis of TMBK's alleged commitment to MCHI, because MCHI has presented no evidence whatsoever that TMBK has the resources of the Mertju Buana Group at its disposal for purposes of meeting its alleged commitment to MCHI. Rather, MCHI has only presented a letter, signed by representatives of TMBK and Yuzhnoye — and not by any party representing the Mertju Buana Group itself — stating that, "in its efforts to establish a Commercial Satellite Launching Centre in Indonesia, TMBK is supported by the full financial, managerial and political resources of the Mercu [sic] Buana Group."⁵⁸ This assertion does not indicate that the Mertju Buana Group intends to provide funds for MCHI's use, nor can it be relied upon as it is not made by an official of the Mertju Buana Group with the requisite authority to make such a commitment of funds.

The MCHI Opposition contains no additional information on TMBK's financing vehicle, or MCHI's authority to issue shares of Ellipsat International to TMBK. Thus, the Commission can have no confidence that TMBK can or will meet its \$300 million commitment to MCHI, or its

⁵⁶ Bank Jakarta Letter at 1 (emphasis added).

⁵⁷ MCHI fails to provide documentation of current assets or operating income that would verify Bank Jakarta's allegations with respect to either TMBK or the Mertju Buana Group.

⁵⁸ MCHI Supplement, Attachment 2 at 2 ("TMBK/Yuzhnoye Letter").

promise to provide financing to MCHI for equivalent launch capability in the event that TMBK's proposed commercial satellite launching centre is unsuccessful.⁵⁹

MCHI also fails to provide any additional information demonstrating that Yuzhnoye is capable of meeting its alleged and entirely undocumented commitment to "provide alternative sourcing on the same terms if TMBK is unable to provide the required launch capability within the time period required to meet implementation milestones."⁶⁰ The MCHI Opposition contains nothing regarding Yuzhnoye but a one-page advertisement for launch services.⁶¹

C. Vendor Financing Arrangements for Satellite Construction

1. Spectrum Astro, Inc.

TRW previously noted that MCHI had not presented credible evidence of the ability of Spectrum Astro, Inc. ("Spectrum Astro") to meet its purported commitment of \$206 million to MCHI to provide vendor financing for satellite construction.⁶² Given that Spectrum Astro itself appeared to be relying on funding arrangements with its suppliers, TRW also observed that MCHI had failed to submit the detailed terms of Spectrum Astro's transactions or those of MCHI with

⁵⁹ See TMBK/Yuzhnoye Letter at 2. For the record, MCHI also offers no explanation in the MCHI Opposition for its failure to identify TMBK as a source of funds for its satellite project until well after the September 16, 1996 deadline for its latest financial showing.

⁶⁰ MCHI Supplement at 2.

⁶¹ MCHI Opposition, Exhibit 3-C.

⁶² TRW Petition at 16-17, 28.

such suppliers.⁶³ The Declaration that MCHI now submits from Spectrum Astro's President, W. David Thompson, only raises more doubts about these alleged commitments and transactions.

In the Thompson Declaration, Mr. Thompson asserts that MCHI has agreed to purchase 16 satellites from Spectrum Astro, that the purchase price for the satellites will be \$256 million, and that Spectrum Astro has "agreed to provide vendor financing to MCHI for an amount up to \$206 million."⁶⁴ Of that sum, Mr. Thompson claims that Spectrum Astro need only amass \$134.5 million, because (a) it plans to defer profits of \$43.5 million until the beginning of "commercial operations" of MCHI's proposed satellite system, and (b) MCHI has entered agreements with hardware component vendors that will reduce its cash requirements by \$28 million.

⁶³ Id. at 28-29.

⁶⁴ Id. at 2.

Even if these confusing and dubious claims could be taken at face value,⁶⁵ it is apparent that Spectrum Astro does not have \$134.5 million with which to fund MCHI's satellite construction program. Mr. Thompson estimates that the financing for MCHI's system will need to be provided over a 36-month period, thus requiring sums of \$45 million per year.⁶⁶ Although he states that "Spectrum Astro expects to be able to carry *a portion* of these costs with internal funds . . .," he fails to specify just how much Spectrum Astro can actually provide by this means

⁶⁵ MCHI has provided no information to suggest that its proposed satellite system will not commence "commercial operation" during its first year of operation, and thus it is doubtful that Spectrum Astro's deferral of profits justifies the subtraction of \$43.5 million from the sum that Spectrum Astro must provide to MCHI to enable its alleged financial commitment to be counted towards MCHI's MSS Above 1 GHz financial qualifications showing. Furthermore, if MCHI plans to repay Spectrum Astro with debentures, as it may under the alleged Spectrum Astro/MCHI agreement, see Thompson Declaration at 2, the principal and interest payments on the debentures must be included in MCHI's satellite system construction costs to the extent that they must be paid before the end of the first year of the system's operation. As to the \$28 million worth of agreements into which MCHI is alleged to have entered with hardware component vendors, MCHI has provided none of those agreements for the Commission's review. Although MCHI previously asserted that AEC-Able Engineering Company, Inc. ("AEC-Able") has committed to provide it with \$28 million in vendor financing for the construction of solar arrays, MCHI Amendment, Exhibit A at 3, the letter from AEC-Able included with the MCHI Opposition merely states that AEC-Able "has agreed to accept an amount not to exceed \$50.5 million in cash and an equity position in MCHI for the solar arrays," adding that "[t]his agreement reduces the cash requirement for purchase of the solar arrays by a substantial amount." MCHI Opposition, Exhibit 4-B at 1. Far from helping to demonstrate MCHI's financial qualifications to be an MSS Above 1 GHz licensee, this letter requires the Commission to ask where MCHI will obtain the \$50.5 million that it has evidently promised to AEC-Able.

⁶⁶ Thompson Declaration at 3.

and includes no balance sheet or other information on current assets or operating income for the company.⁶⁷

Mr. Thompson claims that Spectrum Astro plans to obtain these additional funds from two sources: (1) ordinary short-term revolving credit from its bank, Bank of America; and (2) a Brazilian company, Interacoes Urantia-Cajai Ltda. ("Interacoes"). MCHI presents no letter of commitment, however, indicating that Bank of America has found Spectrum Astro creditworthy and is willing to provide it with additional funds, nor does it offer any information on the sum of money available to Spectrum Astro from that bank.

As to Interacoes, MCHI offers a letter from its President, Israel Marques Cajai, stating that Interacoes has entered into an agreement to "join with Spectrum Astro, Inc. to provide the financing of up to \$206 million in support of Spectrum Astro, Inc. [sic] previous vendor financing commitment to Mobile Communications Holdings, Inc. . . . according to the terms of our profit sharing agreement on this program."⁶⁸ This letter fails to indicate what level of funds Interacoes intends to provide to MCHI, and what amount will be left to Spectrum Astro to raise from other sources. Furthermore, no information on the profit sharing agreement between Spectrum Astro and Interacoes is provided, other than Mr. Thompson's statement that the agreement is "secured by a back-to-back pass-through of Spectrum Astro's equity and debenture positions in MCHI for

⁶⁷ Id. (emphasis added). According to Mr. Thompson, Spectrum Astro's *revenues* for the year ended September 30, 1996 were only \$15.6 million. Id. at 1. If Spectrum Astro could make this entire sum available for MCHI's purposes every year for three years — a risky assumption, at best — Spectrum Astro would *still* need an additional \$88.2 million to meet its alleged commitment to MCHI.

⁶⁸ MCHI Opposition, Exhibit 4-A-1 at 1 ("Interacoes Letter").

the vendor financing."⁶⁹ Perhaps for this reason, the Interacoets Letter omits any statement that Interacoets' alleged commitment to MCHI is non-contingent.

Most significantly, although the Interacoets letter states that it is accompanied by the company's financial statement,⁷⁰ MCHI does not include that statement with the MCHI Opposition or provide any other information on Interacoets' financial resources. Instead, it provides information — much of it in Portuguese — that appears to describe the personal assets of Mr. Cajai.⁷¹ As MCHI offers nothing to suggest that Mr. Cajai has committed his personal assets to its satellite project, the Interacoets Letter and the materials on Mr. Cajai's own resources do not demonstrate the existence of an irrevocable commitment of any funds to MCHI.

Even if the Commission could credit the alleged "commitments" made to MCHI for the provision of satellite construction services by Spectrum Astro, Spectrum Astro's suppliers, Interacoets and IAI, the maximum value of those commitments appears to be \$206 million — far short of the \$256 million that MCHI claims it needs for purposes of satellite construction. Given, however, that *none* of these "commitments" can withstand scrutiny, it is unclear where MCHI will obtain *any* of its satellite construction funds.

V. MCHI Continues To Underestimate Its Satellite System Costs

MCHI's most recent filing does nothing to dispel the legitimate concerns of TRW that MCHI's estimated system costs appear to be too low, based on the mass of the satellites that it

⁶⁹ Thompson Declaration at 3.

⁷⁰ Interacoets Letter at 1.

⁷¹ MCHI Opposition, Exhibits 4-A-2, 4-A-3.

plans to employ.⁷² MCHI's attempts to lecture TRW on the proper means by which to calculate satellite system costs ring hollow, particularly as TRW has decades of experience in the satellite field and MCHI has none at all.⁷³

MCHI argues that the approach followed by TRW in assessing the reasonableness of MCHI's reported payload mass for its proposed satellite system is overly simplified, on the grounds that TRW fails to take into account certain allegedly unique features of MCHI's satellite design.⁷⁴ This criticism, however, is without merit. In fact, the standard metric used by TRW as the basis of its assessment of MCHI's proposed payload (i.e., transponding payload mass should exceed 100 grams per watt of peak DC power) holds true for all three licensed MSS Above 1 GHz systems. As indicated in the following table, an analysis of the public filings regarding TRW's system, Odyssey,^{TM75} the Iridium system of Motorola Satellite Communications, Inc. ("Motorola") and the Globalstar system of L/Q Licensee, Inc. ("LQL") indicates that each company's system has a ratio in excess of 120 grams per watt.⁷⁶

⁷² TRW Petition at 34-36 & Attachment.

⁷³ See MCHI Opposition at 22-23 & n.23.

⁷⁴ See id. at 22-23.

⁷⁵ Odyssey is a trademark of TRW Inc. Odyssey is a satellite telecommunications system which is to be comprised of a constellation of 12 satellites in medium Earth orbit.

⁷⁶ The information in this table regarding OdysseyTM is based on information in the Application for Modification of License of TRW Inc. in the Mobile Satellite Service Above 1 GHz, File Nos. 155-SAT-ML-95, 33-SAT-AMEND-96, 20-DSS-P-91(12), CSS-91-015 (filed September 29, 1995). The information on Iridium in the table is based on the "MMA" part of the Iridium Satellite (which most closely represents the transponding portion of the Iridium payload) in the

(continued...)

Payload to Peak DC Power Ratios For MSS Above 1 GHz Licensees

System	Transponding Payload Mass (kg)	Peak DC Power (Watts)	Payload to Peak DC Power Ratio
Odyssey	599	4891	122
Iridium	103	<780	>132
Globalstar	158	1000	158

Although the satellite systems of TRW, Motorola and LQL represent a variety of orbit designs, satellite design life objectives and proprietary design approaches, all conform to the standard metric used by TRW in assessing the reasonableness of MCHI's projected payload mass and system costs. In light of this fact, MCHI's unsupported claim that its proposed system's corresponding payload ratio is 53 grams per watt suggests that there are serious deficiencies in its engineering design. TRW stands by its analysis of MCHI's estimated system costs in the TRW Petition, and its assertion that MCHI's estimate appears to be substantially in error.

⁷⁶(...continued)

Application of Motorola Satellite Communications, Inc. for Authority to Construct, Launch and Operate a Low Earth Orbit Satellite System in the 1610-1626.5 MHz Band, File Nos. 9-DSS-P-91 (87); CSS-91-010 (filed November 15, 1994). The peak MMA power must be less than the sum of the orbit average MMA power (250 watts) and the difference between the peak solar array power (1200 watts) and the total space vehicle orbit average power (670 watts). The information regarding Globalstar in the table is based in part on information in L/Q Licensee, Inc.'s Application for Modification of License, File Nos. 90-SAT-ML-96, 19-DSS-P-91(48), CSS-91-014 (payload mass).

VI. MCHI's System Application Is And Ought To Remain Subject To The Commission's Strict MSS Above 1 GHz Financial Qualifications Standard.

Presumably aware that its financial showing falls well short of the MSS Above 1 GHz financial qualifications standard, MCHI continues to suggest that its satellite system application should not be subject to that standard.⁷⁷ To the extent that MCHI is proposing that the Commission alter the standard, it has chosen an improper forum. MCHI must either file a Petition for Rule Making to alter the MSS Above 1 GHz service rules, or appeal those rules in court — a course of action which it is, in fact, already pursuing.⁷⁸

MCHI's request that the Commission grant it a waiver of the MSS Above 1 GHz financial standard must be rejected outright. At the outset, its claim that there is no longer any justification for application of a strict financial qualifications standard to the MSS Above 1 GHz in the wake of the decision of American Mobile Satellite Corporation ("AMSC") not to pursue a license in the service is both incorrect and misleading. The Commission's rationale for the MSS Above 1 GHz financial standard was *not* merely the existence of mutual exclusivity among the applicants. Rather, and more fundamentally, the standard was based on the need to deter warehousing and the inefficient use of valuable orbit spectrum resources — the same rationale for the Commission's domestic fixed-satellite financial qualifications standard.⁷⁹ As the Commission reasoned in the MSS Above 1 GHz R&O:

⁷⁷ See MCHI Opposition at 2-4, 7-8, 24-29.

⁷⁸ See Mobile Communications Holdings, Inc. v. FCC, No. 94-1695 (D.C. Cir. filed November 8, 1994).

⁷⁹ See MSS Above 1 GHz R&O, 9 FCC Rcd at 5949 (¶ 28).

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. Consequently, adopting a lesser financial standard than the domestic fixed-satellite standard . . . could tie up spectrum for years . . . contrary to the public interest.⁸⁰

The withdrawal of AMSC from contention for an MSS Above 1 GHz license does nothing to alleviate these valid concerns.⁸¹

MCHI would have the Commission believe that the occupation of CDMA MSS Above 1 GHz spectrum by a financially unqualified entity will not prevent the MSS Above 1 GHz licensees from going forward with their satellite systems.⁸² It goes so far as to state that "the argument by MCHI's competitors that they will be burdened by the necessity of coordinating with additional systems is wholly irrelevant to the issue of financial qualifications"⁸³ As noted above, quite the contrary is true. The need to anticipate and accommodate the technical requirements of a

⁸⁰ Id. at 5949-50 (¶ 30).

⁸¹ Contrary to MCHI's claim, the Commission's Notice of Proposed Rule Making in its Little LEO proceeding does not suggest that the sole rationale for a strict financial standard is the existence of mutual exclusivity among the applicants. See MCHI Opposition at 7 (citing Amendment of Part 25 of the Commission's Rules to Establish Rules and Policies Pertaining to the Second Processing Round of the Non-Voice, Non-Geostationary Mobile Satellite Service, IB Docket No. 96-220 (FCC 96-426) (released October 29, 1996) ("Little LEO NPRM"). Rather, in the Little LEO NPRM, the Commission stated that it has sought to create a regulatory environment facilitating the provision of efficient, innovative and cost-effective satellite communications in the United States "by promoting fair and vigorous competition in the satellite communications market *and by inhibiting "warehousing" of spectrum by those who will not use it at the expense of those who will.*" Id., slip op. at 5 (¶ 10) (emphasis added).

⁸² MCHI Opposition at n.27.

⁸³ Id.

satellite system that will, in all probability, never be built would pointlessly complicate the already difficult process of apportioning interference in the scarce CDMA bands, and could result in substantial delays in the provision of service to the user public. Of equal concern, requiring the MSS Above 1 GHz licensees to adjust their systems' operational parameters to make room for a non-existent system would limit their respective systems' capacities and prevent them from realizing those systems' full technical and economic potential. The result is likely to be less than optimal service, higher system costs and higher service charges for consumers — all of which are, of course, results inimical to the public interest.⁸⁴

⁸⁴ Although MCHI would have the Commission believe otherwise, the unnecessary complications that would be caused by the addition of a financially unqualified system to the already congested MSS Above 1 GHz bands plainly distinguish MCHI's situation from that discussed in Orion Network Systems, Inc. (DA 96-1938) (Int'l Bur., released November 21, 1996) ("Orion"). In that decision, the International Bureau granted Orion a conditional license for a new domestic fixed satellite subject to its provision of evidence of its financial qualifications or document justifying a waiver of the financial requirements within 120 days. See id. at 4, 6 (¶¶ 11, 17). The Bureau observed that the Commission had recently permitted applicants who apply for orbital locations in uncongested portions of the orbital arc to make a two-step financial showing upon appropriate request, rather than the traditional one-step showing required by the domestic fixed-satellite financial qualifications standard. Id. at 3-4 (¶ 9) (citing Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, 11 FCC Rcd 2429 (1996)). Because, inter alia, Orion had sought authority to construct, launch and operate a satellite in an uncongested portion of the orbital arc, the Bureau found that a brief "additional period of time in which to demonstrate its financial qualifications would not prejudice any other applicant." Orion, DA 96-1938, slip op. at 4 (¶ 10). As MCHI's proposed system would operate in congested bands where its presence would have an immediate impact on existing licensees' plans and operations, and as the grant to MCHI of yet another opportunity to make a financial showing would force the MSS Above 1 GHz licensees to continue to expend substantial resources in responding to MCHI's unfailingly inadequate showings, the grant of a conditional license to Orion in no way justifies the grant of a waiver to MCHI.

MCHI also urges the Commission yet again to grant it a waiver of the MSS Above 1 GHz financial standard on the grounds that it is a small business — a status that it has repeatedly ascribed to itself, but for which it has never demonstrated its qualifications. As TRW observed in the TRW Petition, the Commission deliberately designed its MSS Above 1 GHz financial qualifications rules in order to take the needs of small businesses into account.⁸⁵ In denying MCHI's Petition for Reconsideration of the International Bureau's previous decision finding it financially unqualified to receive an MSS Above 1 GHz license, the Commission held:

Our financial rules for the Big LEO service were crafted with the fact firmly in mind that some entities, *including small businesses*, might require additional time to develop financing. We specifically provided additional time for those entities to develop their financial plans. Neither Congress nor the Commission can alter the marketplace realities that Big LEO systems are highly capital intensive and that companies without adequate financing are unlikely to complete the steps necessary to provide Big LEO mobile satellite service to the public.⁸⁶

The Commission also observed, in adopting the MSS Above 1 GHz financial qualification standard, that a strict financial qualifications standard for the MSS does not preclude small businesses from competing in the market for satellite services. It stated:

This approach 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.⁸⁷

⁸⁵ TRW Petition at 33-34.

⁸⁶ Constellation Communications, Inc., FCC 96-279 (released June 27, 1996), slip op. at 9 (¶ 21) (emphasis added) (addressing various petitions for reconsideration and applications for review regarding the decisions of the International Bureau on the various MSS Above 1 GHz system applications, including that of MCHI).

⁸⁷ MSS Above 1 GHz R&O, 9 FCC Rcd at n.36.

Thus, even if MCHI were to merit a small business designation, such status would not warrant the grant to it of a waiver of the MSS Above 1 GHz financial qualifications standard.⁸⁸

Contrary to MCHI's claims, TRW endorses no "double standard" in the application of the Commission's financial qualifications standard to MCHI vis-a-vis TRW or the other MSS Above 1 GHz licensees.⁸⁹ Each of the MSS Above 1 GHz licensees was required to demonstrate that it had adequate funds available to satisfy the standard, and that irrevocable commitments had been made to expend those funds on its satellite system. In the interests of ensuring efficient use of the valuable spectrum resource, and in the interests of equity, MCHI should be required to do the same.⁹⁰

There is no basis for MCHI's claim that denial of its system application would "deny the ability of other countries, and their telecommunications sectors, to evaluate and decide for themselves which satellite system best meets their national needs."⁹¹ Without a sufficient financial showing from MCHI, the Commission can have no legitimate hope that MCHI's proposed satellite

⁸⁸ While it may be true that "encouragement of small businesses stimulates wider commercial opportunities," MCHI Opposition at 27, there is a point beyond which such encouragement must be deemed futile. The two years that MCHI has had to bring its system application into compliance with the MSS Above 1 GHz financial qualifications standard are all the encouragement that it can reasonably expect.

⁸⁹ Id. at 16-17.

⁹⁰ As TRW previously observed, MCHI's claim that its application is also entitled to special treatment because it was filed within a separate cut-off window in 1991 has already been considered and rejected by the Commission. See id. at n.2; TRW Petition at n.73. In any case, MCHI does not suggest in the MCHI Opposition that the date on which its application was filed entitles it to a waiver of the MSS Above 1 GHz financial qualifications rules.

⁹¹ MCHI Opposition at 25-26.

system will ever be built at all. Obviously, the economic advantages that MCHI attributes to its system will be of no use to the world if it cannot get its satellites off the ground.⁹² In any case, the imminent establishment of four global MSS Above 1 GHz systems and the likelihood of market entry by other systems in the future ensures that the nations of the world will have more than enough competitive options in selecting a satellite system.⁹³

Finally, TRW urges the Commission not to be swayed by MCHI's plaintive description of the time and resources that it has expended in pursuing an MSS Above 1 GHz license.⁹⁴ While MCHI has been nothing if not persistent in badgering the Commission for a license since 1991, the Commission's rules require more. Among other things, those rules require a demonstration that an applicant is financially qualified to hold a license to construct, launch and operate its proposed satellite system for one year, and thereby to make efficient and timely use of precious spectrum. MCHI has failed, after numerous opportunities, to make this demonstration. Moreover, its delaying tactics, its refusal to provide required information, and the complexity of its voluminous but inadequate filings continue to cost the Commission and the MSS Above 1 GHz licensees precious time and resources of their own. The Commission therefore should not grant MCHI additional time in which to meet the Commission's financial qualifications standard; should

⁹² See id. at 26.

⁹³ MCHI attempts to evoke the Commission's sympathies by suggesting that its system will help South Africa's Black majority to "enter into the economic mainstream," Id. at iv, 25-26; by claiming that the same system will promote harmony in the Middle East by bringing an Egyptian company and an Israeli concern together in a mutual business enterprise, Id. at n.5; and by insinuating that its project has some special legitimacy because the Chairman of one of its alleged financial backers is co-chairman with Vice President Gore of the U.S.-Egyptian Trade Council. Id. These transparent efforts to curry favor provide no support whatsoever for the proposition that MCHI is financially qualified to be an MSS Above 1 GHz licensee — which is the only point at issue.

⁹⁴ See id. at 28.

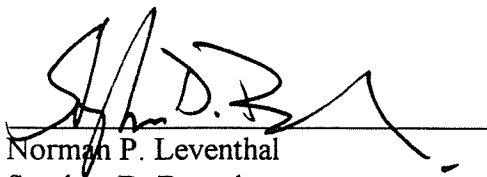
deny its request for a waiver of the MSS Above 1 GHz financial qualifications standard; and should deny MCHI's MSS Above 1 GHz system application with prejudice.

VII. Conclusion

For the foregoing reasons, TRW urges the Commission to deny MCHI's MSS Above 1 GHz application with prejudice.

Respectfully submitted,

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February 11, 1997

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CERTIFICATE OF SERVICE

I, Bernice Duckett certify that a copy of the foregoing "Reply to Consolidated Opposition" was mailed, first-class postage prepaid, this 11th day of February, 1997 to each of the following:

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