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AUG 15 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| In re Application of |) | |
| |) | |
| MOBILE COMMUNICATIONS |) | File Nos. |
| HOLDINGS, INC. |) | 158-SAT-AMEND-96 |
| |) | 12-SAT-AMEND-95 |
| |) | 11-SAT-LA-95 |
| For Authority to Construct, Launch and |) | 18-DSS-P-91(18) |
| Operate an Elliptical Low Earth Orbit |) | 11-DSS-P-91(6) |
| Mobile Satellite System in the |) | |
| 1610-1626.5/2483.5-2500 MHz Bands |) | |

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CONSOLIDATED OPPOSITION TO Satellite Policy Branch
APPLICATIONS FOR REVIEW International Bureau

Submitted by:

Jill Abeshouse Stern
John M. Bryson, II
Edward J. Reed
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, DC 20037
(202) 663-8000

Attorneys for Mobile
Communications Holdings, Inc.

August 15, 1997

SUMMARY

The July 1, 1997 decision of the International Bureau and the Office of Engineering and Technology (the "Bureau") to grant MCHI a license to construct, launch and operate the EL-LIPSO low-Earth orbit ("LEO") mobile satellite service ("MSS") system using the Above 1 GHz MSS ("Big LEO") spectrum was consistent with the Commission's rules and precedent and its well-established policies on satellite applications and waivers.

In reviewing MCHI's license application and waiver request, the Bureau duly examined the two principal considerations underlying the 1994 adoption of the Big LEO financial standard -- inability to accommodate all then-current applicants and no apparent prospect of additional spectrum -- and reasonably concluded that "[n]either of the key circumstances on which the Commission predicated" the necessity for a financial standard applied to MCHI's license application. The Bureau's determination is consistent with FCC precedent: the Commission has repeatedly adopted less strict financial standards or granted waivers when all applicants could be granted licenses and the opportunity would remain for future entry into the marketplace. Additionally, the Bureau's waiver here serves the public interest in at least five ways. It fosters:

- Competition among the Big LEO service providers.
- Development of a competing system offering service to customers at lower cost.
- Development of a unique technology.
- Market entry by small businesses.
- Development of global telecommunications infrastructure (and U.S. high technology and telecommunications services).

Indeed, in the unique circumstances of MCHI's license application, denial of MCHI's request for waiver would needlessly deprive the public of the recognized benefits of competition and the ability to choose among diverse services and service providers.

In the month since the Bureau awarded MCHI its license, MCHI has made substantial progress towards implementing its system. Among other developments, it has:

- Engaged Orbital Sciences Corporation to design, develop and build the first-generation ELLIPSO satellites and potentially to participate in terminal manufacturing and procurement of launch services for the system. (Orbital has also increased its equity interest in MCHI, and the total value of Orbital's investment is expected to exceed \$50 million.)
- Engaged L-3 Communications Corporation ("L-3 Com") to design the wideband CDMA technology interfaces for the ELLIPSO space and ground segment, and to participate in design, development and initial manufacturing of the baseline mobile and fixed-site end-user terminals. (L-3 Com has made an equity investment in MCHI, and has the option to make further investments.)
- Received from Lockheed Martin specifications for the ground segment of the ELLIPSO gateway earth stations and network control centers. (Lockheed Martin has also previously purchased air time on the ELLIPSO system.)

Although MCHI believes that the Bureau could have reasonably found MCHI's financial showing to have met the requirements, the Bureau's decision to grant MCHI's application through waiver of the financial standard was a reasonable and lawful exercise of discretion that promotes the public interest. TRW's, LQL's and Motorola's Consolidated Applications for Review should be denied or dismissed.

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**CONSOLIDATED OPPOSITION TO
APPLICATIONS FOR REVIEW**

Mobile Communications Holdings, Inc. ("MCHI"), by its attorneys, hereby submits its Consolidated Opposition to the July 31, 1997 Applications for Review filed by TRW Inc. ("TRW"), L/Q Licensee, Inc. ("LQL") and Motorola Satellite Communications, Inc. ("Motorola") which seek Commission review of the July 1, 1997 Order and Authorization, DA 97-1367 ("MCHI Order"), in which the International Bureau and the Office of Engineering and Technology (the "Bureau") granted MCHI's above-captioned application for authority to construct, launch and operate the ELLIPSO low-Earth orbit ("LEO") mobile satellite service ("MSS") system. Specifically, TRW, LQL and Motorola challenge the Bureau's decision to grant MCHI a waiver of the strict financial standard for Above 1 GHz MSS ("Big LEO" service) applicants.

Considering the changes in factual circumstances upon which the Commission's strict financial standard for Big LEO applicants was predicated, rigid adherence to the standard would

not have served the principal purposes for which the standard was promulgated, but rather would have frustrated the public interest in competition and in ensuring expeditious development of diverse Big LEO systems. Accordingly, the Bureau's decision to grant MCHI's application through a waiver of the financial standard was a reasonable and lawful exercise of discretion that promotes the public interest. The Applications for Review should be promptly dismissed or denied.

I. THE BUREAU'S WAIVER OF THE STRICT FINANCIAL STANDARD WAS IN ACCORDANCE WITH THE LAW

A. The Bureau Applied the Appropriate Legal Standard

The Commission may waive any provision of its rules if good cause is shown. 47 C.F.R. § 1.3. See also 47 C.F.R. § 25.112 (b)(2). Good cause exists where particular facts would make strict application of the rule inconsistent with the public interest.^{1/} It is well-settled law that the agency has discretion to grant a waiver where it finds that the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest.^{2/}

In the MCHI Order, the Bureau adhered to these well-established principles.^{3/} In so doing, the Bureau recognized that a federal agency's power to grant waivers of its rules plays an essential role in the agency's discharge of its assigned responsibilities.^{4/} As the D.C. Circuit has explained:

^{1/} Omnipoint Corp. v. FCC, 78 F.3d 620, 631 (D.C. Cir. 1996).

^{2/} WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

^{3/} MCHI Order, ¶ 23 at 10 (expressly recognizing that "waivers are appropriately granted when such relief would not undermine the policy objective of the rule in question and would otherwise serve the public interest" (quoting Norris Satellite Communications, Inc., 7 FCC Rcd 4289 (1992))).

^{4/} WAIT, 418 F.2d at 1157-58 (D.C. Cir. 1969) ("provision for waiver may have a pivotal importance in *sustaining* the system of administration by general rule" (emphasis added)).

The agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances. . . . That an agency may discharge its responsibilities by promulgating rules of general application which, in the overall perspective, establish the 'public interest' for a broad range of situations, does not relieve it of an obligation to seek out the 'public interest' in particular, individualized cases. . . . [A] *general rule*, deemed valid because its overall objectives are in the public interest, *may not be in the 'public interest' if extended to an applicant who proposes a new service that will not undermine the public policy, served by the rule, that has been adjudged in the public interest.*⁵¹

In granting MCHI's waiver, the Bureau identified the key considerations underlying adoption of the Commission's strict financial standard, found that in the special circumstances of MCHI's waiver request these considerations did not apply, and concluded that other public interests would be fostered by granting the waiver.⁶¹ Thus, the Bureau's waiver comports with the well-established standards set forth by Commission case law and regulation.

B. The Bureau Correctly Evaluated the Special Circumstances and Public Interest Factors in This Case

1. The Special Circumstances Underlying MCHI's Application Rendered Waiver Appropriate

One need only review the history leading to the Bureau's decision to grant MCHI a waiver of the strict financial standard to understand the wisdom and propriety of that decision. MCHI was the first telecommunications company to apply for authority to construct a Big LEO system. Shortly thereafter, however, five additional companies applied for licenses, including TRW, LQL and Motorola. In October 1994, the Commission concluded that only five Big LEO systems --

⁵¹ *Id.* at 1157 (citations omitted, emphasis added).

⁶¹ *MCHI Order*, ¶¶ 23-28 at 10-14.

one fewer than the number of applicants -- could be accommodated in the available MSS frequency bands.^{7/}

As a result of its conclusion that the applications were mutually exclusive, the Commission then promulgated the strict financial standard *to provide a basis to distinguish between these license applicants*. The Commission stated in the Notice of Proposed Rulemaking:

In situations where all applicants' proposed systems cannot be accommodated, . . . we must devise a method consistent with the public interest for choosing among them. In such circumstances, we have, as an initial matter, imposed rigorous financial and technical requirements as a means of ensuring that those granted licenses are, in fact, capable of expeditiously implementing state-of-the-art systems that will serve the public interest, convenience, and necessity. If it is not possible to accommodate all applicants meeting the adopted qualification criteria, a further processing approach must be selected.^{8/}

In its Report and Order establishing the strict financial standard,^{9/} the Commission adopted the discussion in the paragraph from the Notice of Proposed Rulemaking quoted above.^{10/} The Commission further provided:

Consequently, where a grant to an under-financed applicant may preclude a fully capitalized applicant from implementing its plans, and service to the public may be consequently delayed, we have required a stringent financial showing to ensure that the public interest would be served. *We have required a less stringent financial*

^{7/} 9 FCC Rcd 5936, ¶¶ 43, 45 and 48.

^{8/} 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, Notice of Proposed Rulemaking, 9 F.C.C.R. 1094, 1100-1101 (1994) (hereinafter "Notice of Proposed Rulemaking").

^{9/} 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, Report and Order, 9 F.C.C.R. 5936 (1994) (hereinafter "Big LEO Report and Order").

^{10/} Id., ¶ 11 at 5944.

showing where grant to an under-financed applicant will not prevent another from going forward. For example, we required only a detailed business plan in the radio determination satellite service, where all applicants could be accommodated and future entry was possible.^{11/}

Finally, the Commission explained:

Because all pending Big LEO applicants cannot be accommodated and because there appears to be no room for future entry, granting an under-financed space station applicant a license may preclude an applicant that possesses the necessary financial resources from implementing its plans, and consequently service to the public may be delayed.^{12/}

In its petition for review of the Commission's adoption of this strict financial standard, MCHI has argued that the Commission erroneously concluded that there was mutual exclusivity. MCHI demonstrated the complete dearth of evidence in the record that would support a conclusion that only five licensees could be accommodated. Moreover, since the Commission established its strict financial standard and granted licenses to three of the six license applicants, two events occurred that further altered the landscape in which the Bureau's grant of MCHI's waiver must be examined. First, one of the unlicensed applicants, AMSC, dropped out of the license application process in 1996. Hence, even assuming that the Commission correctly concluded that only five licensees could be accommodated, awarding a license to MCHI could not "preclude an applicant that possesses the necessary financial resources from implementing its plans," or delay service to the public. In short, mutual exclusivity cannot be a barrier. Second, in March 1997 the

^{11/} Id., ¶ 26 at 5948 (italics added) (quoting Amendment of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to, a Radiodetermination Satellite Service, 104 FCC 2d 650 (1986)).

^{12/} Id., ¶ 30 at 5949. Notably, nowhere does the Commission state that a policy to prevent under-financed applicants from obtaining licenses to construct and operate a Big LEO MSS system alone justifies the financial qualification standard.

Commission allocated additional spectrum to MSS at 1990-2025 MHz and 2165-2200 MHz, and has now opened an application filing window for new Big LEO systems or expansion of licensed systems.^{13/}

These two events are special circumstances to which the Bureau gave appropriate consideration in granting MCHI's waiver.^{14/} As the Bureau explained, "[i]n light of these developments, MCHI's waiver request can be granted without prejudice to the objectives that the Commission sought to promote by adopting the Big LEO financial standard."^{15/}

2. The Public Interest Favors the Bureau's Waiver

The Bureau's conclusion that a waiver here serves the public interest is likewise unassailable. First and foremost, MCHI's license fosters competition among the Big LEO service providers. The public interest in competition, which has always been a lodestar for the FCC,^{16/} alone justifies affirming the Bureau's waiver. Excluding the only remaining contender here, where the available spectrum can accommodate its proposed system, could only be characterized as anti-competitive. TRW, LQL and Motorola try to escape this unavoidable conclusion by speculating that MCHI will be unable to implement the ELLIPSO system. Not only is this mere conjecture,

^{13/} Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, First Report and Order, FCC 97-93 (released March 14, 1997).

^{14/} MCHI Order, ¶ 24 at 11.

^{15/} Id.

^{16/} See, e.g., FCC Chairman Reed E. Hundt, The Hard Road Ahead - An Agenda for the FCC in 1997, at 7 (December 25, 1996) (hereinafter "FCC Agenda") ("government should always be on the good side: the side of competition").

but it underscores the disingenuous nature of the arguments made by TRW, LQL and Motorola.^{17/}

Ultimately, the marketplace will decide which system or systems will prevail, and MCHI has always welcomed the chance to compete on a level playing field. Indeed, it is the serious threat of competition from MCHI that has induced TRW, LQL and Motorola to bring their attack upon MCHI through the regulatory process rather than facing MCHI in the open marketplace.

Second, MCHI's system will provide consumers with a communications alternative to those offered by the other license holders *at lower cost*.^{18/} Neither MCHI's technology nor its cost estimates have ever been seriously challenged. Of all the Big LEO systems, ELLIPSO is the only system with projected service costs comparable to terrestrial cellular costs.

Third, as the Bureau appropriately emphasized, the technology and marketing strategy of MCHI's ELLIPSO system is substantially different from the designs of the other proposed Big LEO systems.^{19/} Waiver thus promotes the Commission's goal of fostering developments affording consumers the widest feasible range of choices.^{20/}

^{17/} MCHI's commitment to implementing the ELLIPSO system is undeniable. Its progress since the license was granted a month ago is discussed in Section III, below.

^{18/} MCHI is able to reduce overall system costs and, thereby, costs to the consumer through ELLIPSO's innovative design. A copy of U.S. Patent 5,582,367 for "Elliptical Orbit Satellite, System, and Deployment with Controllable Coverage Characteristics" was previously submitted in this proceeding. It is MCHI's favorable pricing structure that has attracted substantial interest in developing nations, as noted by Vula, MCHI's South African partner.

^{19/} MCHI Order, ¶ 25 at 11-12. Notably, although TRW questions the Bureau's ability to reach this factual finding on the record, TRW brief at 14-15, TRW does *not* say -- and cannot say -- that the Bureau's finding is factually inaccurate.

^{20/} See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1625.5/ 2483.5-2500 MHz Frequency Bands, Reconsideration Order, FCC 96-54 at ¶ 29 (1996).

Fourth, MCHI is an innovative small business competing with telecommunications giants. Our nation's policy interest in fostering competition by the promotion of small businesses is well-established.²¹ Chairman Hundt's 1997 FCC Agenda emphasizes that:

Small and entrepreneurial businesses deserve special attention as we examine ways to remove barriers to their entry into communications markets. . . . The procompetitive role of small and entrepreneurial new entrants will be an important factor in realizing Congress' goal of fostering a diversity of media voices, promoting vigorous economic competition and serving the public interest.²²

Encouragement of small businesses stimulates wider commercial opportunities. Where, as here, a small business is otherwise a qualified candidate, public policy favors removing financial barriers, particularly those erected simply to differentiate among multiple applicants for scarce licenses.

Fifth, the Bureau's grant of MCHI's license fosters development of telecommunications participation and competence overseas. MCHI's investors include international entities, such as Vula Communications of South Africa, who have undertaken major commitments to use the EL-LIPSO system to provide telecommunications infrastructure in their geographic regions. Denial of MCHI's license would deprive these foreign nations and their telecommunication sectors of the ability to evaluate and select which satellite system best meets their needs.

^{21/} See, e.g., Section 257 of the Telecommunications Act of 1996, as clarified by Senate colloquy: "Section 257 directs the Commission to develop meaningful opportunities for small businesses to participate in the ownership and provision of telecommunications services. This language applies to all Commission activities in the area of telecommunications. *It does not make exception for activities such as the application of financial qualification standard.*" 142 Cong. Rec. S11931 (daily ed. Sept. 30, 1996) (statement of Chairman of Commerce Committee Pressler, emphasis added).

^{22/} FCC Agenda, *supra*.

II. THE BUREAU'S ISSUANCE OF MCHI'S LICENSE WAS WELL WITHIN ITS DISCRETION

Contrary to the contentions of TRW, LQL and Motorola, there is nothing arbitrary or capricious about the Bureau's decision to grant MCHI a waiver. The Bureau duly examined the two principal circumstances underlying adoption of the Big LEO financial standard in 1994 -- inability to accommodate all then-current applicants and no apparent prospect of additional spectrum -- and reasonably concluded that "[n]either of the key circumstances on which the Commission predicated [the necessity for a strict financial qualification standard] still holds true."^{23/}

First, having previously concluded in 1994 that five Big LEO systems could be accommodated in the 1.6/2.4 GHz bands, the voluntary withdrawal of AMSC's application in September 1996 meant that all pending applications could be granted. In other words, awarding a license to MCHI would not "preclude an applicant that possesses the necessary financial resources from implementing its plans" or delay service to the public. Second, the Commission's allocation in March 1997 of additional spectrum to MSS at 1990-2025 MHz and 2165-2200 MHz made available unassigned spectrum with equivalent propagation characteristics. As the Bureau acknowledged -- with ample citations to Commission precedent -- the Commission has repeatedly adopted less strict financial standards or granted waivers where all applicants could be granted licenses and the opportunity would remain for future entry into the marketplace.^{24/}

^{23/} MCHI Order, ¶ 24 at 11.

^{24/} *Id.*, ¶ 23 at 10 & n.23. Motorola's efforts to distinguish Lockheed Martin Corp., DA 97-973 at ¶¶ 12-13 (released May 9, 1997); and Teledesic Corp., DA 97-527 at ¶¶ 11-13 (released March 14, 1997), *pet. for recon. pending*, and Norris Satellite Communications, Inc., 7 FCC Rcd 4289 (1992), *see* Motorola Brief at 14-16, are unpersuasive. First, the fact that the service rules for the particular frequency band at issue in each case had not yet been formally adopted is of no consequence. In each case the Bureau or the Commission deemed the finan-

Footnote continued on next page

What is more, it is well recognized that a rule, whose overall objective serves the public interest, may *not* be in the public interest if extended to an applicant whose proposed services do not undermine the public interest served by the rule.^{25/} This case presents just such an instance. In the circumstances facing the Bureau, rejecting MCHI's waiver request because it found that MCHI had not demonstrated compliance with the strict financial standard would not only have failed to address the two principal circumstances articulated by the Commission as underlying the rule. It would also have needlessly deprived the public of the recognized benefits of competition and the ability to choose among diverse services and service providers.

TRW, LQL and Motorola disagree with the Bureau's conclusion that the two key policies underlying the financial standard were inability to accommodate all then-current applicants and no apparent prospect of additional spectrum. They contend that three additional policies must be added: (1) fear of undercapitalized applicants not implementing their systems; (2) desire to avoid inefficient use of the spectrum resources; and (3) fear that the high cost of Big LEO MSS systems

Footnote continued from previous page

cial standards in Part 25 of the Commissions rules applicable, and required the applicants to justify and obtain waiver of those standards prior to granting licenses. Second, contrary to Motorola's assertion, the Bureau in the present case never "made an affirmative finding that [MCHI] did not have the financial ability to implement its system." Motorola Brief at 14. Rather, the Bureau merely found that MCHI had not adequately demonstrated its ability to meet the financial standard requirement. It nevertheless plainly recognized MCHI's potential to construct, launch and operate its system and provide beneficial competition to TRW, LQL and Motorola. Finally, while spectrum was available for expansion or future entry in the bands at issue in the three cited cases rather than other bands with equivalent propagation characteristics, that distinction is meaningless where, as here, spectrum for expansion and future entry exists. While the Commission has not yet established rules for access to the 2 GHz spectrum, the Bureau is the appropriate entity to balance any impact of that fact against the benefits of competition fostered by waiver.

^{25/} WAIT, 418 F.2d at 1157.

makes financing difficult.^{26/} Even if one accepts that these proffered policies were underpinnings of the standard (contrary to the record and to the Bureau's own conclusions), none of them justifies withholding a license in a situation where to do so would reduce the number and variety of competing systems under development.

In their misdirected efforts to challenge the Bureau's waiver decision, TRW, LQL and Motorola argue that availability of spectrum is irrelevant to the imposition of the strict financial standard, and that the standard is intended to deter "warehousing" of valuable orbit spectrum resources regardless of the number of applicants.^{27/} This argument is patently inconsistent with the Commission's policy, most recently stated in the Little LEO and Ka-Band proceedings, not to impose strict financial standards when all applicants can be accommodated.^{28/} In fact, the Commission's fundamental policies favor open entry and competition in the satellite field, except in those cases where there are too many applicants to be accommodated in the available spectrum or orbital resources. Only in such cases may an exception to the Commission's pro-competitive policies be warranted in order to expedite service to the public.

^{26/} TRW Brief at 7; LQL Brief at 12; Motorola Brief at 9-13.

^{27/} Motorola Brief at 10-13; TRW's Brief at 6-9. LQL's reliance upon Columbia Communications Corp. v. FCC, 832 F.2d 189 (D.C. Cir. 1987), for the proposition that waiver in MCHI's case is unlawful is meritless. In Columbia, unlike here, the number of satellite applications exceeded available orbital spaces. Id. at 191. Thus, granting Columbia a waiver of the applicable financial standard requirements in that case would have undermined the policy justifying the rules by "prevent[ing] *currently qualified* applicants from promptly constructing proposed systems and [thereby] . . . impair[ing] the provision of services to the public." Id. at 192 (emphasis added). Such a policy has no bearing on MCHI's application.

^{28/} "Where grant to an under-financed applicant will not prevent grant of other applications, the required demonstration has been less stringent." 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, Notice of Proposed Rulemaking, FCC 96-426 (released October 29, 1996) at ¶ 39.

What waiver ensures here is an opportunity for competition that would otherwise not exist. Moreover, because there are no other applicants for a Big LEO license, denying MCHI's license could not somehow facilitate swifter implementation or prevent inefficient use of the scarce orbital spectrum.^{29/} On the contrary, the one certain consequence of denying MCHI's license is that there would be fewer Big LEO systems. Since the available frequency band allows all existing competitors to share the spectrum, the best way to ensure swift implementation of a full range of Big LEO MSS services is to afford *all* of the existing competitors the chance to build, launch and operate their systems. This was the conclusion reached by the Bureau. Increased competition will encourage the licensees to launch their systems expeditiously in order to secure a more competitive market share.

The Bureau's finding that the 2 GHz band affords sufficient spectrum to accommodate the expansion of existing licensees' systems and future systems further supports its waiver decision. While the filing window for 2 GHz applications has not yet closed, and the parameters for use of the newly allocated spectrum have not yet been set by the Commission, the Commission has specifically authorized use of the band by Big LEO systems. Moreover, TRW, LQL and Motorola all actively participated in the 2 GHz rulemaking proceedings and argued the suitability of the band

^{29/} Indeed, one must question whether strict adherence to the financial qualification standard actually promotes these ends. TRW met the financial qualifications on the strength of its balance sheet -- and yet has failed to construct a single satellite, or even announced any material funding, for over two-and-a-half years. TRW's continued lack of commercial progress, while it strenuously opposes entry by a competitor, looks suspiciously like the warehousing it so vigorously denounces.

for expansion purposes. The Bureau would have been remiss *not* to consider the availability of additional spectrum in the 2 GHz band which the Big LEO licensees themselves actively sought.^{30/}

Contrary to the contentions of TRW, LQL and Motorola, the Bureau did not "fundamentally change" or "abrogate" existing FCC rules or policy by granting MCHI its waiver.^{31/} The waiver simply recognizes that purported principal circumstances underlying adoption of the strict financial standard are inapplicable to the present factual circumstances of MCHI's license application. TRW's absurd suggestion that the only legal method to accomplish the results of the Bureau's MCHI Order would be for the Commission to engage in the full-blown rulemaking process set forth in the Administrative Procedure Act to change the Big LEO rules^{32/} is a transparent effort to prevent MCHI from swiftly developing a Big LEO MSS system to compete with TRW's proposed system. The delay caused by such rulemaking (where grant of a waiver is all that is necessary to accommodate the unique circumstances of MCHI's case) would frustrate the policy of securing the earliest possible use of the Big LEO frequency band -- a policy that TRW says justifies the financial qualification standard.^{33/}

^{30/} At the same time, however, it should be noted that neither TRW, LQL nor Motorola has yet provided a single minute's service or received a single penny in revenue from their proposed Big LEO systems. Consequently, their complaints that granting MCHI a waiver will imprudently occupy spectrum that they require for expansion is speculation that cannot be based on anything more than theoretical market projections.

^{31/} See TRW Brief at 12; LQL Brief at 10.

^{32/} TRW Brief at 12-13.

^{33/} TRW also raises again its so-called "character qualification" allegations, contending without supporting authority that these allegations must somehow preclude the Bureau's waiver. TRW Brief at 19-20. The Bureau appropriately dismissed the allegations, noting that the Office of the General Counsel reviewed them and determined that no sanction was warranted. MCHI has fully addressed these issues in its August 12, 1997 Consolidated Opposition to the Applications for Review filed by TRW and LQL with respect to the General Counsel's decision.

Unaccountably, TRW, LQL and Motorola complain that the Bureau's waiver does not set forth a rule by which future applicants may judge "to what financial standards their system applications will be held."^{34/} But that is just the point of a waiver. The rule is still in place, and any future applicant is free to demonstrate compliance with the rule and, if it chooses, to seek a waiver.^{35/}

III. MCHI'S RECENT COMMERCIAL ACTIVITIES DEMONSTRATE ITS CORPORATE COMMITMENT TO THE ELLIPSO PROJECT

The fundamental factual premise underlying all of the arguments made by TRW, LQL and Motorola is that MCHI will be financially unable to build, launch and operate its proposed system. They point to the Bureau's conclusion that at the time of its application MCHI did not meet the financial standard requirements. While MCHI does not agree with the Bureau's evaluation of its financial commitments, that evaluation is ultimately irrelevant to the waiver decision and to MCHI's success in the marketplace. MCHI's position has always been that receipt of a satellite license, in parity with its competitors, would allow MCHI to move forward with financing and

^{34/} LQL Brief at 17; TRW Brief at 14; Motorola Brief at 17.

^{35/} LQL suggests that the GLONASS situation "may raise a substantial question" whether the Commission's 1994 finding that up to five Big LEO systems can be accommodated in the 1.6/2.4 GHz bands remains valid. LQL Brief at 18-19. Motorola, on the other hand, interprets the Bureau's actions in granting licenses to MCHI and Constellation as effectively reinstating the Interim Band Plan which was eliminated in the Commission's 1996 Big LEO Reconsideration Order, 11 FCC Rcd 12861 (1996). Motorola Brief at 22-22. Both of these arguments are inappropriate here. The GLONASS situation, as everyone knows, is an evolving one. It is not possible to predict what impact, if any, GLONASS will have on the Big LEO licensees at this point in time. Given that uncertainty, there is clearly no basis for reversing MCHI's license merely to protect against an eventuality that may never materialize. MCHI has previously said that it would comply with whatever receiver standards are adopted to protect GLONASS. MCHI has addressed this issue in its July 31, 1997 Petition for Partial Reconsideration and Request for Clarification.

implementation of its system. Developments since the Bureau's July 1, 1997 decision have confirmed this financial reality and MCHI's commitment to the rapid implementation of the ELLIPSO system.

These developments include a multifaceted business arrangement with Orbital Sciences Corporation, concluded on August 4, 1997, to design, develop and build the first-generation ELLIPSO satellites, in conjunction with Harris Corporation, Spectrum Astro and Israel Aircraft Industries, and potentially to participate in terminal manufacturing and procurement of launch services for the system. Orbital has increased its equity interest in MCHI, and the total value of Orbital's investment is expected to exceed \$50 million.

MCHI has also announced the addition of L-3 Communications Corporation ("L-3 Com") to its team as an equity investor and technology partner. L-3 Com is a multi-billion dollar technology company that supplies secure communications systems, communications products and support services to aerospace prime contractors and other commercial customers as well as the U.S. military and federal agencies. It includes Loral divisions that were "spun off" in recent mergers. Under a multifaceted business and technology agreement, L-3 Com will design the wideband code division multiple access (CDMA) technology interfaces for the ELLIPSO space and ground segment, and will have responsibility for the design, development and initial manufacturing of the baseline mobile and fixed-site end-user terminals. Additionally L-3 Com has made an equity investment in MCHI, and has an option to make further investments.

MCHI is also moving forward with ELLIPSO ground segment development. As announced earlier this year, Lockheed Martin is developing the ELLIPSO gateway earth stations

and network control centers, and has purchased air time on the ELLIPSO system. The specifications for the ground segment were delivered by Lockheed Martin to MCHI at the end of July, setting the technology development pace that MCHI plans to maintain in order to reduce, if not eliminate, the lead given its competitors by their earlier license grants.

In short, in the month since award of MCHI's license significant progress towards ELLIPSO system implementation has already been made. MCHI is committed to introducing service by the year 2000.^{36/}

CONCLUSION

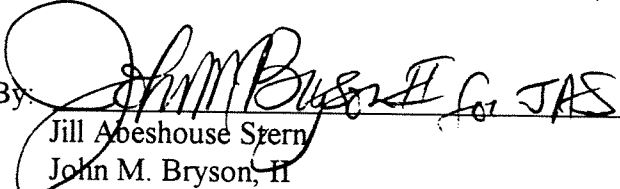
TRW, LQL and Motorola have failed to offer any valid reason for reversing the Bureau's decision to grant a license to MCHI. The Bureau correctly concluded that new factual developments, including the dismissal of AMSC's application in 1996 and the opening of the 2 GHz band to MSS, rendered inapplicable to MCHI the premise underlying the financial standard -- namely, that there were more applicants than could be accommodated and no room for extension of service or future entry. In this case, a waiver clearly serves the public interest by increasing competition in the Big LEO field and providing the public with a choice among diverse services and

^{36/} MCHI's demonstrated corporate commitment, combined with its rapid and substantial progress towards implementation since obtaining its license, reaffirms that the Bureau's construction-progress "milestone" schedules will be more than adequate to ensure timely system implementation. *See, e.g., Teledesic Corp.*, 12 FCC Rcd 3154 (1997) (specified implementation milestones sufficient to ensure timely implementation where financial standards waived); *Norris Satellite Communications, Inc.*, 7 FCC Rcd 4289, 4291 at ¶ 11 (released July 7, 1992) (financial requirements waivable because milestones were sufficient to ensure expeditious construction and launch and to deter filing of speculative or otherwise premature applications). Hence, there can be no genuine concern that waiving the financial standard for MCHI will impair the U.S. government's ability to discourage the filing of "paper" systems with the International Telecommunication Union.

service providers. Accordingly, the Applications for Review should be promptly dismissed or denied.

Respectfully submitted,

MOBILE COMMUNICATIONS HOLDINGS, INC.

By:  JAS

Jill Abeshouse Stern

John M. Bryson, II

Edward J. Reed

SHAW, PITTMAN, POTTS & TROWBRIDGE

2300 N Street, N.W.

Washington, DC 20037

(202) 663-8000

Its Attorneys

Date: August 15, 1997

CERTIFICATE OF SERVICE

I, John Bryson, hereby certify that I have on this 15th day of August, 1997, caused copies of the foregoing Consolidated Opposition to Applications for Review to be delivered by hand (indicated with *) or by U.S. Mail, postage prepaid, to the following:

- * Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

- * Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

- * Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

- * Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

- * William E. Kennard, Esq.
General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

- * Thomas S. Tycz
Chief, Satellite &
Radiocommunication Division, FCC
2000 M Street, N.W.
Washington, D.C. 20554

- * Peter Cowhey
Chief, International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 800
Washington, DC 20554

- * Cassandra Thomas
Legal Assistant
Satellite & Radiocommunication Division
Federal Communications Commission
2000 M Street, N.W., Room 800
Washington, D.C. 20554

- * Fern J. Jarmulnek
Chief, Satellite Policy Branch
Satellite & Radiocommunications Division
Federal Communications Commission
2000 M Street, N.W.
Washington, DC 20554

- * Karl A. Kensinger
Federal Communications Commission
2000 M Street, N.W., Room 514
Washington, D.C. 20554

- * William Bell
Federal Communications Commission
2000 M Street, N.W., Room 508
Washington, D.C. 20554

Norman P. Leventhal, Esquire
Stephen D. Baruch, Esquire
Walter P. Jacob, Esquire
Leventhal, Senter & Lerman, P.L.L.C.
2000 K Street, N.W., Suite 600
Washington, D.C. 20006-1809

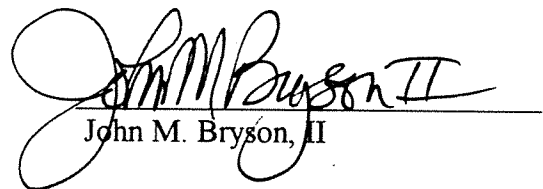
William D. Wallace, Esquire
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

- Leslie A. Taylor, Esquire
Leslie Taylor Associates
6800 Carlynn Court
- Bethesda, MD 20817-4302

William F. Adler
Globalstar
3200 Zanker Road
San Jose, CA 95134

Philip L. Malet, Esquire
Charles G. Cole, Esquire
Brent H. Weingardt, Esquire
Marc A. Paul, Esquire
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Michael D. Kennedy
Barry Lambergman
Motorola, Inc.
1350 I Street, N.W.
Washington, DC 20005


John M. Bryson, II