

AUG 13 1997

Federal Communications Commission

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY

In the Matter of)
Application of Mobile Communications Holdings, Inc. for Authority to Construct, Launch and Operate an Elliptical Low Earth Orbit Mobile Satellite System)

File Nos. 11-DSS-P-91(6) 8/15/1997
18-DSS-P-91(18)
11-SAT-LA-95 Satellite Policy Branch
12-SAT-AMEND-95 International Bureau
158-SAT-AMEND-96

Received

To: The International Bureau

OPPOSITION

TRW Inc. ("TRW"),¹ by its attorneys and pursuant to Section 1.106(g) of the Commission's rules, 47 C.F.R. § 1.106(g) (1996), hereby opposes the Petition for Partial Reconsideration and Request for Clarification² filed by Mobile Communications Holdings, Inc. ("MCHI") regarding certain aspects of the decision of the International Bureau to grant MCHI a license in the above-captioned proceeding.³ MCHI's claim to have satisfied the MSS Above 1 GHz financial standard cannot be taken seriously, and its attempt to shed its status as a second-tier licensee with respect to the protection of GLONASS operations must be summarily rejected.

1 TRW is authorized to operate a satellite system in the Mobile Satellite Service Above 1 GHz (the "MSS Above 1 GHz") in the same bands that MCHI would use for its system. See TRW Inc., 10 FCC Rcd 2263, erratum, 10 FCC Rcd 3924 (1995), recon./review denied sub nom. Constellation Communications, Inc., FCC 96-279, slip op. (released June 27, 1996). See also TRW Inc., DA 96-1923 (Int'l Bur., released November 19, 1996).

2 Petition for Partial Reconsideration and Request for Clarification (filed July 31, 1997) ("MCHI Petition").

3 See Mobile Communications Holdings, Inc. (DA 97-1367) (released July 1, 1997) ("MCHI Order").

In spite of the Bureau's resounding conclusion to the contrary — supported by ample record evidence — MCHI asserts that it would have met the strict financial standard that the Commission established for the MSS Above 1 GHz in 1994 even if the Bureau had not waived that standard in granting MCHI a license for its satellite system.⁴ MCHI, however, has already demonstrated its inability to meet the standard many times over. As the Bureau observed, MCHI failed in its second financial showing even to submit a current balance sheet showing its current assets and operating income.⁵ MCHI also failed — after being permitted to revise that second financial showing on three separate occasions — to demonstrate "with requisite certainty that it has access to more than \$69.6 million . . . to meet estimated costs of \$564 million" for its satellite system.⁶ Thus, MCHI is nowhere near to satisfying the MSS Above 1 GHz financial standard.⁷

⁴ MCHI Request at 2. MCHI also argues, as it has argued before the United States Court of Appeals for the District of Columbia Circuit, that the MSS Above 1 GHz financial standard embodied in the Commission's rules "should be set aside in this case." MCHI Request at 2 (citing Mobile Communications Holdings, Inc. v. FCC, Case No. 94-1695). The Bureau, however, has already granted MCHI a waiver of that standard — a decision that TRW has opposed (see Application for Review of TRW Inc. (filed July 31, 1997)) — and the standard itself cannot be altered in the absence of a rulemaking proceeding. See id. at 11-13. Thus, MCHI's request is inappropriate in the context of the MCHI Petition.

⁵ MCHI Order, DA 97-1367, slip op. at 5 (¶ 12).

⁶ Id. at 9 (¶ 20).

⁷ In this same regard, TRW notes a recent news report that the total cost to construct the space and ground segments for MCHI's system is estimated to be \$1 billion. Communications Daily, August 6, 1997, at 3. To the extent that this figure represents an upward revision in MCHI's estimated system costs, it only compounds the difficulty that MCHI faces in demonstrating that it is financially qualified to hold a license.

MCHI distorts the Bureau's findings in claiming that the MCHI Order "accepts MCHI's characterization of [its alleged] financial commitments as non-contingent and appears only to question the financial capability of the financing sources to meet their commitments."⁸ In fact, the Bureau correctly found lacking the financial resources of MCHI's alleged backers *and* their alleged commitments of funds to MCHI's project. For example, the Bureau properly gave MCHI no credit for the letter that it submitted from a chartered accountant claiming that the shareholders of Vula Communications (Pty) Limited ("Vula") had combined assets exceeding the sum that Vula has allegedly committed to MCHI's project. The Bureau found that the letter "is immaterial, as there is no evidence that the shareholders could be held liable for Vula's debts or that they have firmly committed to contribute any definite and substantial amount to its corporate treasury."⁹

Similarly, the Bureau rightly declined to accept MCHI's claim that it has secured funds for its satellite venture from the Indonesian company P.T. Tigamutiara Buanakhatulistiwa ("TMBK"). MCHI provided no information on the resources of TMBK alone, and although it asserted that TMBK is supported by the resources of an Indonesian conglomerate called the Mertju Buana Group, MCHI also failed to demonstrate that the Mertju Buana Group had committed any funds to TMBK or to MCHI's project.¹⁰ Thus, contrary to MCHI's claims, the documentation that it submitted regarding the resources of its alleged backers does *not* satisfy the MSS Above 1 GHz financial standard, and also is not "consistent with the showings found acceptable in other radio

⁸ MCHI Petition at 2 n.1.

⁹ MCHI Order, DA 97-1367, slip op. at 5-6 (¶ 13).

¹⁰ Id. at 6-7 (¶ 15).

services."¹¹

There is no merit to MCHI's unwarranted assumption that it can or should be accorded "equal processing group status" to first tier MSS Above 1 GHz licensees with respect to efforts to protect the operations of GLONASS below 1610 MHz.¹² As MCHI is well aware, the Commission held, in establishing its rules for the MSS Above 1 GHz, that applicants who were unable to satisfy the service financial standard by November 16, 1994 took the risk that they might later find their applications in a mutually exclusive situation.¹³ The Bureau has now found that such a mutually exclusive situation may be created if out-of-band emissions limits are required to protect GLONASS operations below 1610 MHz. Indeed, the Bureau stated in the MCHI Order that the reduction in MSS Above 1 GHz system capacity that would result from the

¹¹ MCHI Petition at 2 n.1 (citing CHM Broadcasting Ltd. Partnership v. FCC, 24 F.3d 1453, 1458 n.3 (D.C. Cir. 1994) ("CHM"). In the footnote cited by MCHI, the court in CHM discussed the Commission's decision in Port Huron Family Radio Inc., 5 FCC Rcd 4562 (1990) ("Huron"). The court explained that, in Huron, the Commission found that an applicant was financially qualified even though a signatory attesting to the finances of the individual who had promised to fund the start-up expenses for the applicant's station lacked personal knowledge of those finances. The court noted that the Commission reasonably reached this conclusion because the signatory had discussed the funder's assets and liabilities with the funder's previous accountant, and because the accountant was in a position to vouch for the funder's financial status. In the instant case, however, MCHI has presented no objective supporting data or certifications of disinterested third parties demonstrating that the parties upon whose funds it seeks to rely actually have those funds or have committed them to MCHI's satellite project.

¹² MCHI Petition at 2-3.

¹³ 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, 5953 (¶ 41) (1994) ("MSS Above 1 GHz R&O").

imposition of such emissions limits "might call into question the premises for the Commission's determination that five systems can be accommodated" in the 1.6/2.4 GHz bands.¹⁴

Because the Bureau's decision to waive the MSS Above 1 GHz financial qualifications standard for MCHI and Constellation Communications, Inc. ("Constellation") was explicitly predicated on the availability of sufficient spectrum for five systems,¹⁵ a finding that sufficient spectrum is *not* available would require the immediate cancellation of the licenses of both MCHI and Constellation based on their inability to satisfy the MSS Above 1 GHz financial standard.¹⁶ Should the Bureau opt, however improperly, not to cancel the licenses of MCHI and Constellation under such circumstances, it must certainly place on them the burden of any operating constraints that may result from protection of GLONASS operations. To impose such operating constraints on fully qualified MSS Above 1 GHz licensees for the sake of accommodating unqualified parties in the absence of sufficient spectrum would run counter to the most basic tenets of satellite system licensing.¹⁷

¹⁴ MCHI Order at 13 (¶ 28).

¹⁵ Id. at 14 (¶ 28).

¹⁶ If MCHI and Constellation should both somehow prove themselves financially qualified at that juncture, the Commission would be required to choose, by auction or some other means, which of the two should be awarded a license to operate in the 1.6/2.4 GHz bands. See MSS Above 1 GHz R&O, 9 FCC Rcd at 5954 (¶ 42).

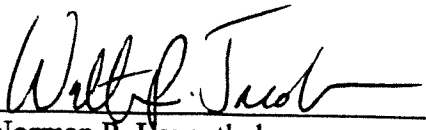
¹⁷ See id. at 5948-49 (¶¶ 26-28).

CONCLUSION

For the foregoing reasons, TRW urges the Bureau to deny the MCHI Petition.

Respectfully submitted,

TRW Inc.

By: 

Norman P. Leventhal
Stephen D. Baruch
Walter P. Jacob

Leventhal, Senter & Lerman P.L.L.C.
2000 K Street N.W., Suite 600
Washington, DC 20006-1809
(202) 429-8970

August 13, 1997

Its Attorneys

CERTIFICATE OF SERVICE

I, Sharon Krantzman, do hereby certify that true and correct copies of the foregoing Opposition were mailed, first-class postage prepaid, this 13th day of August, 1997 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
- * Mr. Peter Cowhey
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 827
Washington, D.C. 20554
- * Thomas S. Tycz
Chief, Satellite and Radiocommunications Division
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 811
Washington, D.C. 20554

* Fern J. Jarmulnek
Chief, Satellite Policy Branch
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 520
Washington, D.C. 20554

Jill A. Stern, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037-1128

Philip L. Malet, Esq.
Alfred M. Mamlet, Esq.
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Robert A. Mazer, Esq.
Vinson & Elkins
1455 Pennsylvania Avenue, N.W., Suite 700
Washington, D.C. 20004-1008

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

Bruce D. Jacobs, Esq.
Fisher, Wayland, Cooper, Leader & Zaragoza, LLP
Suite 400
2001 Pennsylvania Avenue, NW
Washington, DC 20006-1851


Sharon Krantzman