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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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Satellite Policy Branch  
International Bureau

In re Application of

MOBILE COMMUNICATIONS  
HOLDINGS, INC.

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

For Authority to Construct,  
Launch and Operate A Low-Earth  
Orbit Mobile Satellite System in the  
1610-1626.5/2483.5-2500 MHz Bands.

To: The International Bureau

OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION AND  
CLARIFICATION

Motorola Satellite Communications, Inc. ("Motorola") hereby submits this Opposition to the Petition for Partial Reconsideration and Request for Clarification<sup>1/</sup> filed by Mobile Communications Holdings, Inc. ("MCHI") in the above-captioned proceeding.<sup>2/</sup> MCHI seeks reconsideration and/or clarification of two points: (1) the conclusion by the International Bureau ("Bureau") that MCHI was financially unqualified; and (2) the determination by the Bureau that MCHI, along with Constellation Communications, Inc. ("CCI"), should bear the burden of any operational constraints which may be needed to protect the future operation of the Global Navigation Satellite

<sup>1/</sup> MCHI Petition for Partial Reconsideration and Request for Clarification (July 31, 1997)("MCHI Petition").

<sup>2/</sup> Mobile Communications Holdings, Inc., Order and Authorization, DA 97-1367 (rel. July 1, 1997)("MCHI Waiver Order").

System ("GNSS"). For the reasons discussed below, the International Bureau should deny the MCHI Petition in its entirety.

I. **MCHI DID NOT SATISFY THE COMMISSION'S BIG LEO MSS FINANCIAL STANDARD**

The Bureau correctly applied the Big LEO MSS financial standard to MCHI's application.<sup>3/</sup> MCHI is clearly wrong when it claims that its financial showing somehow satisfied the Commission's financial standard.<sup>4/</sup> **First**, the Bureau properly noted that MCHI failed to produce a current balance sheet -- a requirement of the Commission's rules.<sup>5/</sup> MCHI does not dispute this deficiency, and this alone justifies rejection of its application.

**Second**, the Bureau correctly found MCHI's financial showing to be deficient because of its failure to demonstrate that its lenders/investors were capable of meeting their purported financial commitments.<sup>6/</sup> Long-established Commission precedent requires applicants to show that financing entities have the ability to meet their financial commitments before such commitments can be relied upon to demonstrate financial qualifications.<sup>7/</sup>

The fact that there is no explicit reference to this requirement in the rules is not dispositive. A common sense reading of Section 25.140(d)(2)(i) strongly implies that the required disclosure of the "identity" of a lender, particularly that of a non-financial institution, includes evidence of its ability to make the promised loan.<sup>8/</sup>

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<sup>3/</sup> MCHI Waiver Order at ¶ 12.

<sup>4/</sup> MCHI Petition at 2.

<sup>5/</sup> MCHI Waiver Order at ¶ 12.

<sup>6/</sup> Id.

<sup>7/</sup> Id. at ¶ 18.

<sup>8/</sup> 47 C.F.R. § 25.140(d)(2)(i).

The Commission specifically adopted a financial standard to ensure that these Big LEO MSS systems would be implemented promptly.<sup>9/</sup> If MCHI's proposed funding sources do not have the ability to satisfy their purported commitments, the commitments cannot be relied upon to provide the necessary financing for MCHI's proposed system. To accept such commitments would render the Big LEO MSS financial standard meaningless. Clearly, the rules must be read in such a manner as to give them meaning.<sup>10/</sup>

Third, MCHI is wrong in concluding that the Bureau's order somehow "accepts MCHI's characterization of the financial commitments as non-contingent."<sup>11/</sup> The MCHI Waiver Order cannot reasonably be read in such a manner. Indeed, as to the financial showings of TMBK and IAI, the Bureau specifically concluded that the absence of an adequate commitment rendered those financial showings insufficient.<sup>12/</sup> The absence of any discussion as to the sufficiency of MCHI's other purported commitments does not mean that the Bureau somehow accepted them for purposes of demonstrating MCHI's qualifications. Instead, the Bureau made the reasonable conclusion, that if these financing entities did not have the capability to make a loan commitment, an analysis of the contingent nature of such a commitment itself was

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<sup>9/</sup> 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, Report and Order, 9 FCC Rcd. 5936, 5950-51 (1994) ("Big LEO Order") ("[T]he instrument of financing must demonstrate that the lender has already determined that the applicant is creditworthy and, absent a material change in circumstances, is prepared to make the loan immediately upon grant of a Commission authorization.").

<sup>10/</sup> See Guard v. U.S. Nuclear Regulatory Commission, 753 F.2d 1144, 1148 (D.C. Cir. 1985) ("An agency's interpretation of its own regulation generally warrants a high degree of respect."); McElroy Electronics Corp. v. FCC, 86 F.3d 248, 254 (D.C. Cir. 1996) ("We will defer to the Commission's interpretation of its own regulations unless it is plainly erroneous or inconsistent with the regulations.").

<sup>11/</sup> MCHI Petition at 2 n.1.

<sup>12/</sup> MCHI Waiver Order at ¶ 6, 20.

moot. As Motorola and others demonstrated in their Petitions to Deny and Replies concerning MCHI's amended financial showing, the absence of the detailed terms of MCHI's financial agreements, combined with the failure to demonstrate the ability of the financing entities to meet any commitment, established that MCHI's financial showing was contingent and unacceptable under the Commission's rules.<sup>13/</sup>

**II. MCHI AND CCI MUST BEAR THE ENTIRE BURDEN OF ANY FUTURE GNSS PROTECTION ADOPTED BY THE COMMISSION**

The waiver granted to MCHI (and CCI) was granted on the premise that adequate spectrum was available.<sup>14/</sup> Accordingly, the Bureau correctly concluded that MCHI (and CCI), as a financially unqualified licensee, must bear the burden of any spectrum shortfall which results from any GNSS protection adopted by the Commission.<sup>15/</sup> MCHI claims, however, that it should have the authority to operate in the IRIDIUM® System's authorized bands in the event that the Commission implements an Interim Band Plan to protect GNSS.<sup>16/</sup> It asks the Bureau to clarify that it has the same rights as TRW and Loral/Qualcomm to operate above its currently authorized band.<sup>17/</sup> MCHI also questions the validity of the Bureau's statement that MCHI and CCI

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<sup>13/</sup> See Motorola Consolidated Petition to Deny (Dec. 24, 1996); Motorola Consolidated Reply (Feb. 11, 1997). Motorola clearly demonstrated that much of MCHI's financial showing was contingent upon certain entities' willingness to finance other entities. MCHI's failure to obtain these necessary commitments rendered its financial showing impermissibly contingent and unsatisfactory under the Commission's rules.

<sup>14/</sup> MCHI Waiver Order at ¶ 24.

<sup>15/</sup> Id. at ¶ 28.

<sup>16/</sup> MCHI Petition at 2-3.

<sup>17/</sup> Id.

must bear the brunt of any "operating constraints" which develop as a result of the adoption of an Interim Band Plan.<sup>18/</sup> MCHI's claims should be rejected by the Bureau.

By seeking equivalency with Motorola, TRW and Loral/Qualcomm, MCHI claims that it is entitled to spectrum parity with the other Big LEO MSS licensees in the event the Interim Band Plan is reinstated.<sup>19/</sup> The Big LEO Reconsideration Order, however, leaves no doubt that the Commission meant to eliminate the Interim Band Plan.<sup>20/</sup> With the elimination of the Interim Band Plan, the specific licensing contingencies based upon it are no longer applicable. The Bureau should clarify that MCHI has no authority, contingent or otherwise, to operate above 1621.35 MHz.

Contrary to MCHI's assertions, the Bureau correctly concluded that if the Commission adopts a plan to protect GNSS operations, MCHI and CCI, by virtue of their waiver status, must bear the brunt of any spectrum shortfall.<sup>21/</sup> In response to the Bureau, MCHI suggests that the Commission's Big LEO Order requires that "second tier" applicants (i.e., applicants deferring their financial qualifications until after November 16, 1994) must not be treated differently from applicants in the first tier (i.e., Motorola, TRW and Loral/Qualcomm).<sup>22/</sup> MCHI has misread the Big LEO Order and the subsequent decisions on reconsideration.

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<sup>18/</sup> Id. at 3.

<sup>19/</sup> See Application of TRW Inc., 10 FCC Rcd 2263, 2266-67 (1995); Application of Loral/Qualcomm Partnership, L.P., 10 FCC Rcd. 2333, 2336-37 (1995).

<sup>20/</sup> 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 Band, Memorandum Opinion and Order, 11 FCC Rcd. 12861, 12865 (1996)(further reconsideration pending)("Big LEO Reconsideration Order") ("[T]he interim sharing plan is unnecessary to protect GLONASS operations in the United States at this time.").

<sup>21/</sup> MCHI Waiver Order at ¶ 28.

<sup>22/</sup> MCHI Petition at 3.

In the Big LEO Order, the Commission stated that second tier applicants would "not be accorded the same processing priority as those applicants who are willing and able to demonstrate their financial qualifications far sooner. . . ." <sup>23/</sup> Further, on reconsideration, the Commission explained that it intended for first tier applicants to be insulated from mutual exclusivity:

To make this abundantly clear, however, we hereby explicitly state that "first-tier" applicants will not find themselves in a mutually exclusive situation due to "second-tier" applicants who establish their financial qualifications. First-tier applicants are insulated from any mutual exclusivity that may arise as any "second-tier" applicants...establish their financial qualifications. <sup>24/</sup>

Similarly, in the MCHI Waiver Order, the Bureau properly noted that a future GNSS protection requirement would require the Commission to rethink its earlier finding that five Big LEO systems could be accommodated in the 1610-1626.5 MHz band and possibly result in MCHI (and CCI), as a financially unqualified licensee, bearing the principal burden of any spectrum losses that might be required. <sup>25/</sup>

Notwithstanding the plain language of the Big LEO Order, the Big LEO Reconsideration Order and the MCHI Waiver Order, MCHI claims that it should have "equal processing status" if a GNSS protection plan is put in place -- i.e., suggesting that it would not have the burden of accepting a disproportionate spectrum reduction to its system. The Bureau, however, correctly recognized that a license granted to a financially unqualified applicant cannot act to prejudice financially qualified licensees. <sup>26/</sup> Indeed, MCHI's waiver was predicated on there being sufficient spectrum to

<sup>23/</sup> Big LEO Order, 9 FCC Rcd. at 5953.

<sup>24/</sup> Big LEO Reconsideration Order, 11 FCC Rcd. at 12874.

<sup>25/</sup> MCHI Waiver Order at ¶ 28.

<sup>26/</sup> Id. at ¶¶ 23, 28. See also Motorola Application for Review at 14-16.

accommodate five licensees. A reimposition of the Interim Band Plan would call this finding into question. Under these circumstances, MCHI and CCI, as "second-tier," financially-unqualified licensees, simply cannot be afforded equal status with fully-qualified licensees.<sup>27/</sup>

### III. CONCLUSION

For the reasons set forth above, Motorola requests that the Bureau deny MCHI's Petition. The Bureau correctly applied the Big LEO MSS financial standard to MCHI's application, and correctly concluded that MCHI's application did not satisfy the relevant financial standard. In addition, the Bureau correctly concluded that MCHI and CCI, as the recipients of financial waivers based upon adequate available spectrum, must bear the burden of any future GNSS protection adopted by the Commission.

Respectfully submitted,

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Dated: August 13, 1997

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<sup>27/</sup> See Pan American Satellite Corporation, 60 R.R. 2d. (Pike and Fischer) 398, 412 (1986).

## CERTIFICATE OF SERVICE

I, Marc A. Paul, do hereby certify that a copy of the foregoing **Motorola's Opposition to Petition for Partial Reconsideration and Clarification** has been sent, via first class mail, postage prepaid (or as otherwise indicated), on this 13th day of August 1997 to the following:

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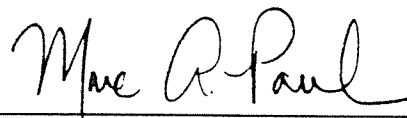
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