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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Application of

MOBILE COMMUNICATIONS
HOLDINGS, INC.

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

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

To: The Commission

COMMENTS

Motorola Satellite Communications, Inc. ("Motorola") hereby submits these Comments in support of the Applications for Review filed by TRW Inc. ("TRW") and L/Q Licensee, Inc. ("LQL")^{1/}, which seek review of the June 27, 1997 order of the Assistant General Counsel in the above-captioned matter. That order concluded that, while Mobile Communications Holdings, Inc. ("MCHI") should have known that it may have been soliciting impermissible ex parte communications from Congressional and Administration officials, it did not intentionally violate the Commission's ex parte rules.^{2/}

^{1/} L/Q Licensee, Inc. Application for Review (July 28, 1997)("LQL Application for Review"); TRW Inc. Application for Review (July 28, 1997)("TRW Application for Review").

^{2/} See Letter from John I. Riffer (FCC - Assistant General Counsel) to Jill Abeshouse Stern et al. (June 27, 1997)("Ex Parte Order"). Motorola has standing to file these Comments since it initially requested that the Managing Director examine the

(continued ...)

The Assistant General Counsel has correctly concluded that MCHI's application proceeding is a restricted proceeding for which "no ex parte presentations could permissibly be made to Commission decision-making personnel."^{3/} With the exception of one letter, he further determined that each of the ex parte communications "addressed the merits or outcome of the MCHI proceeding," and accordingly, were prohibited presentations.^{4/} These conclusions should have prompted the issuance of sanctions upon MCHI, or at a minimum, caused the initiation of a full-scale investigation as to MCHI's role in soliciting such communications. The General Counsel's office pursued neither course of action.

Instead, it was concluded that no violation of the ex parte rules occurred because in soliciting third party contacts MCHI only intended to initiate permissible presentations concerning issues in the on-going Section 257 proceeding and "other dockets concerning the financial qualifications standard applicable to satellite applications."^{5/} An examination of the communications, however, shows that they served another purpose -- to pressure the Commission to grant MCHI's application.^{6/}

For example, the August 21, 1996 letter from Representative Conyers to Chairman Hundt not only discusses the supposed "barriers" that small businesses face in attempting to enter the satellite market, but in addition, it states that the

^{2/} (... continued)

various ex parte communications affecting MCHI's application. See Motorola's Response and Request for Supplemental Briefing (May 9, 1997). The decision of Motorola not to file an Application for Review of the Assistant General Counsel's order should not be construed as an indication that it somehow supports the Ex Parte Order. Motorola supports the Applications for Review filed by TRW and LQL.

^{3/} Ex Parte Order at 4.

^{4/} Id.

^{5/} Id.

^{6/} See TRW Application for Review at 4-7; LQL Application for Review at 13-17.

[FCC's] concerns about "warehousing" are misplaced because there is evidence that adequate spectrum exists to accommodate all of the applicants in the Big LEO proceeding and no new companies have filed applications or otherwise expressed interest in the relevant frequency bands. In addition, the FCC has established construction and implementation milestones for the Big LEO systems which I understand are intended to deal with the warehousing problem.^{7/}

Significantly, the International Bureau relied on similar logic in granting MCHI and Constellation Communications, Inc. ("CCI") a Big LEO MSS license and waiver of the Big LEO MSS financial standard.^{8/} Similarly, while the October 3, 1996 letter from Senators Shelby, Craig, Bond, Heflin, Burns, Inouye and Mack addresses the Section 257 rulemaking, it also requests "that the FCC review and reconsider the decision to apply the 'stringent financial showing' test in the Big LEO proceedings."^{9/}

In light of the fact that licenses had already been issued to Motorola, TRW and LQL by the time these letters were written, the clear intent of these communications was to directly benefit MCHI.^{10/} Indeed, a letter only recently disclosed from Congressmen Davis, Moran and Goodlatte to Chairman Hundt clearly addresses MCHI's license by stating unequivocally that "grant of the two remaining applications

^{7/} Letter from Representative John Conyers, Jr. to Chairman Reed E. Hundt (Aug. 21, 1996).

^{8/} See Mobile Communications Holdings, Inc., Order and Authorization, DA 97-1367 at ¶ 24 (rel. July 1, 1997) ("MCHI Waiver Order"). See also ATX, Inc. v. U.S. Dept. of Transportation, 41 F.3d 1522, 1527 (D.C. Cir. 1994) ("Congressional interference so tainting the administrative process violates the right of a party to due process of law.") (citation omitted).

^{9/} Letter from Senator Richard C. Shelby et al. to Chairman Reed E. Hundt at 2 (Oct. 3, 1996).

^{10/} As LQL and TRW have demonstrated, the other ex parte communications are not substantially different. See TRW Application for Review at 4-7; LQL Application for Review at 13-17.

will allow for a more competitive market," and that there is no reason to "delay the processing of the pending applications" because "mutual exclusivity does not exist."^{11/}

The Assistant General Counsel concludes that the impermissible ex parte contacts are not problematic because they have caused no prejudice.^{12/} An examination of the MCHI waiver decision, however, reveals that the potential prejudice that may have resulted from the ex parte communications is real. Despite finding twice that MCHI was not financially qualified, a waiver of the Big LEO MSS financial standard was granted to MCHI -- a result, as TRW has demonstrated, advocated in several of the ex parte letters.^{13/} If the potential prejudice was not apparent at the time the Letter Order was drafted, it should now be apparent. The Commission must recognize that the issue concerning these ex parte communications is not only MCHI's intent, but whether the communications made on behalf of MCHI so "tainted" MCHI's application proceeding

as to make the ultimate judgment of the agency unfair, either to an innocent party or the public interest that the agency was obliged to protect.^{14/}

^{11/} Letter from Congressmen Davis, Moran and Goodlatte to Chairman Reed E. Hundt (June 6, 1997). This letter was disclosed to interested parties in a letter from the FCC a month after the decision on MCHI's application and a month after the Ex Parte Order.

^{12/} Ex Parte Order at 7.

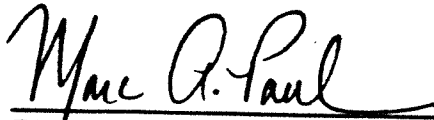
^{13/} TRW Application for Review at 6. See ATX, Inc., 41 F.3d at 1529 ("[i]f the decisionmaker were suddenly to reverse course or reach a weakly-supported determination. . .we might infer that pressure did influence the final decision.").

^{14/} Press Broadcasting Co., Inc. v. FCC, 59 F.3d 1365, 1369 (D.C. Cir. 1995)(quoting PATCO v. Federal Labor Relations Auth., 685 F.2d 547, 564 (D.C. Cir. 1982).

Motorola supports the Applications for Review filed by TRW and LQL which seek to vacate the Letter Order, to return MCHI's application to pending status and to initiate a proper investigation into the conduct of MCHI in this proceeding.

Respectfully submitted,

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Dated: August 12, 1997

CERTIFICATE OF SERVICE

I, Marc A. Paul, do hereby certify that a copy of the foregoing **Motorola's Comments** has been sent, via first class mail, postage prepaid (or as otherwise indicated), on this 12th day of August, 1997 to the following:

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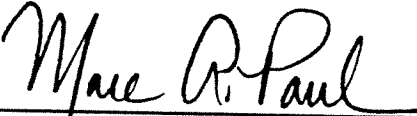
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