

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Application of)
)
Mobile Communications Holdings, Inc.)
)
)
For Authority to construct, launch and)
operate a mobile satellite system in)
the 1610-1626.5 MHz and 2483.5-2500 MHz bands)

Files Nos. 11-SAT-LA-94 → 95
12-SAT-AMEND-94

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To: The Commission

REPLY OF CONSTELLATION COMMUNICATIONS, INC.

Constellation Communications, Inc. ("Constellation"), by counsel, hereby replies to the January 3, 1995 Consolidated Opposition ("Opposition") filed by Mobile Communications Holdings, Inc. ("MCHI") in response to Constellation's December 22, 1994 "Consolidated Comments" ("Comments").

I. BACKGROUND

As shown in Constellation's Comments (at 5-9), MCHI's November 16, 1994 Amendment failed to demonstrate its financial qualifications under §25.140(d)(1) or §25.140(d)(2) of the Commission's Rules.¹ With regard to §25.140(d)(1), it is absolutely clear that MCHI itself does not have current assets or operating income to demonstrate its financial qualifications. Moreover, none of its equity partners with the necessary current assets and operating income has provided the management commitment required under the Rules. In this regard, Constellation does concede that there is no precise

¹ Opposition of Constellation filed January 3, 1995.

definition of management commitment.² Nevertheless, there are several criteria under §25.140(d)(1) of the Commission's Rules that are thresholds for demonstrating a management commitment. First, the applicant's parent must have current assets and operating income in excess of the cost to construct, launch and operate for one year the proposed satellite system. Second, the commitment must come from someone in the organization capable of committing the corporation (e.g., corporate officer). Finally, the business entity making the commitment must show the required intent to provide the necessary financial support of the construction, launch and operation for one year for the proposed system as required under the Rules. None of MCHI's letters supplied in its November 16, 1994 and January 3, 1995 filings meet these three criteria.

With regard to §25.140(d)(2), none of MCHI's letters demonstrate firm credit or loan commitments for the estimated approximately \$564 million necessary to finance the Ellipso system.

II. The MCHI Opposition Fails To Demonstrate Its Financial Qualifications.

At the outset, it should be noted that the Commission required applicants to demonstrate financial qualifications by November 16, 1994 to ensure immediate consideration. The MCHI Consolidated Opposition contains eleven new letters all dated after November 16, 1994. Six of these letters are from parties not mentioned in the November 16, 1994 amendment. Neither the letters submitted with MCHI's November 16, 1994 amendment, nor the "new and improved" letters submitted with its January 3,

² This is amply shown by the additional letters and declarations supplied by Loral and Motorola in their January 3, 1995 filings in response to Petitions filed against these applications.

1995 Consolidated Opposition meet the requirements for demonstrating financial qualifications specified at §25.140(d) of the Commission's Rules. For instance, the first new letter provided by MCHI is a January 3, 1995 letter from Israel Aircraft Industries, Ltd. ("IAI"). This letter does not meet the requirements of §25.140(d)(1) because IAI fails to provide a balance sheet and there is no way to tell whether IAI has current assets and operating income sufficient to meet the costs to construct, launch and operate for one year the Ellipso system. In conjunction with the IAI letter, there is a letter from CLAL Industries, Inc. However, MCHI does not rely on CLAL Industries for demonstrating its financial qualifications and therefore the CLAL Industries' letter has no probative value with regard to MCHI's financial qualifications under §25.140(d)(2).

Even though the December 16, 1994 letter from Harris Corporation ("Harris") is signed by a corporate officer, it still has the same infirmities as the original Harris letter and therefore does not meet the requirements of §25.140(d)(1). The Barclays letter opines on the financial viability of the MCHI financial plan vis-a-vis the other pending applicants. Of course, this is a self-serving letter by MCHI's financial advisor and is of no value in demonstrating MCHI's financial qualifications.

The BNP letter fails to demonstrate MCHI's financial qualifications since BNP merely confirms its interest in principle in assisting MCHI as a financial advisor. The ESKOS letter also provides no assistance in demonstrating MCHI's financial qualifications. ESKOS professes to be the agent of the Russian Space Agency and the Ukrainian Space Agency and states an intention to launch eight Ellipso satellites. Given the vagueness of the ESKOS letter and the failure of the Russian Space Agency, the

Ukrainian Space Agency or a rocket manufacturer to confirm the proposed arrangement, it is impossible to conclude that the ESKOS/MCHI arrangement has any validity whatsoever or complies with §25.140(d)(2) of the Rules.

The December 30, 1994 letter from Spectrum Network Systems ("Spectrum") is equally unavailing under §25.140(d)(1) or §25.140(d)(2) since Spectrum does not have the current assets and operating income in excess of the cost to construct, launch and operate for one year the MCHI system and has not entered into an agreement to supply MCHI with the \$100 million in proposed vendor financing.

The letter from Spectrum Astro, Inc. ("Spectrum Astro") states that it is willing to expend the necessary funds to construct, launch and operate the Ellipso satellite system for one year. However, Spectrum Astro nowhere indicates what, if any, assets it holds or its ability to provide the proposed \$206 million in funding.³ This letter is therefore not in conformance with §25.140(d)(1) or §25.140(d)(2).

The final three letters are from IBM, CSC and NTFC Capital Corporation. All these potential vendors describe customer vendor financing arrangements. However, organizations such as NTFC Capital Corporation⁴ and IBM Credit Corporation are pure financing organizations who operate to provide financial services to equipment manufacturers. They sell financial instruments for profit and their letters to Westinghouse regarding Ellipso are nothing more or less than solicitation letters which

³ A Dunn & Bradstreet review of Spectrum Astro indicates that as of February 28, 1994, Spectrum Astro had \$1,726,723 in current assets.

⁴ NTFC was previously known as Northern Telecomm Finance Corporation. Earlier this year, NTFC was sold to GE Credit Corporation.

cannot be deemed as commitments for vendor financing under §25.140(d)(2).

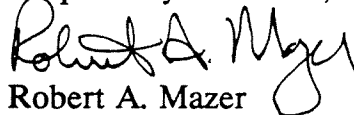
A review of all the assorted letters reveals that MCHI has failed to demonstrate its financial qualifications as required by §25.140(d) of the Commission's Rules. This situation is vastly different from the financial support offered by Constellation's parents, Bell Atlantic and E-Systems, and by the other pending applicants. Specifically, the Bell Atlantic and E-Systems' letters, like those from Loral, Motorola and TRW, demonstrate the required intent and capability to provide the necessary financial support for the Constellation LEO system under §25.140(d)(1) of the Commission's Rules. No parent of MCHI with sufficient assets or operating income has expressed this required intent. Westinghouse only agrees to "support the project", the Harris arrangement is not revealed, and IAI cannot demonstrate sufficient current assets or operating income.

Likewise, MCHI has failed to demonstrate its financial qualifications under §25.140(d)(2). There are no contracts, no credit arrangements, no loan agreements. The only thing that MCHI has are solicitation or sales letters. These letters cannot possibly meet the financial qualifications standards under §25.140(d)(2) of the Rules.

III. CONCLUSION

In light of the foregoing, Constellation reiterates its view that MCHII has failed to demonstrate that it is financially qualified. Hence, its application should not be granted at this time.

Respectfully submitted,



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Dated: January 13, 1995

CERTIFICATE OF SERVICE

I, Robert A. Mazer, hereby certify that the foregoing "Reply of Constellation Communications, Inc." was served by hand or first-class mail, postage prepaid, this 13th day of January 1995, on the following persons:

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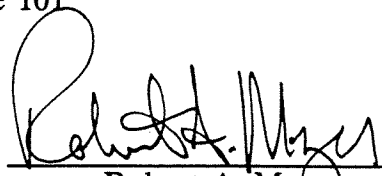
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