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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Satellite and Radiocommunication Division  
Office of the Chief

In re Application of:

MOBILE COMMUNICATIONS  
HOLDINGS, INC.

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

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

To: The Commission

OPPOSITION TO APPLICATION FOR REVIEW

TRW Inc. ("TRW"), by its attorneys, hereby opposes the Consolidated Application for Review and Request for Clarification ("Application for Review") filed in the above captioned proceeding by Mobile Communications Holdings, Inc. ("MCHI") on March 2, 1995. On January 31, 1995, the International Bureau ("Bureau") deferred MCHI's application for authority to construct, launch, and operate a satellite system in the new mobile satellite service at 1.6 and 2.4 GHz (the "Big LEO" service) because MCHI failed to meet the Commission's strict financial qualification standards. Mobile Communications

Holdings, Inc., DA 95-132, slip op. at ¶¶ 23, 29, 30 (released January 31, 1995) ("MCHI Order").<sup>1/</sup> MCHI argues that it should have been found financially qualified by the Bureau.<sup>2/</sup>

In its Application for Review, MCHI disputes the Bureau's determination that none of MCHI's shareholders or other identified sources of financing satisfied the relevant requirements of Sections 25.140(d)(1) and (d)(2) of the Commission's rules. In particular, MCHI protests the Bureau's determination that two of its "equity partners," Westinghouse Electric Corporation ("Westinghouse") and Israeli Aircraft Industries ("IAI"), had failed to make the management commitments required of corporate parents of Big LEO applicants by the Big LEO Order and Section 25.143(b)(3) of the Commission's rules.<sup>3/</sup>

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<sup>1/</sup> MCHI claims that its amended application filed on November 16, 1994, complies with the rules and policies, including financial requirements, that the Commission adopted in its Order in 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 (1994) ("Big LEO Order").

<sup>2/</sup> MCHI also challenges the Bureau's grant of a conditional authorization to Big LEO applicant Loral/Qualcomm Partnership, L.P. TRW does not address this aspect of MCHI's Application for Review.

<sup>3/</sup> See Big LEO Order, 9 FCC Rcd at 5952; 47 C.F.R. § 25.143(b)(3). In its decision, the Bureau stated that:

(continued...)

Westinghouse and IAI together held less than six percent of the equity in MCHI as of the November 16, 1994 Big LEO amendment deadline;<sup>4/</sup> by focusing its review efforts only on the Bureau's refusal to credit the claims of internal financing by entities holding only six percent of its equity, and not claiming any additional internal or any external sources, MCHI has effectively conceded its lack of current qualifications.<sup>5/</sup>

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<sup>3/</sup> (...continued)

the sources of funding that MCHI characterizes as "internal" are not sufficiently definite to meet Commission requirements. Specifically, while the letters and other documentation submitted from Westinghouse, [and] IAI . . . include general statements of support for MCHI's application, they do not establish management commitments to expend the funds necessary to construct, launch, and operate the space segment of MCHI's proposed system.

MCHI Order, DA 95-132, slip op. at ¶ 11 (emphasis added).

<sup>4/</sup> Id. at ¶¶ 12, 14.

<sup>5/</sup> Applicants relying on external financing must make a more detailed and comprehensive showing than applicants relying solely on the availability and commitment of internal sources of funds. Externally-financing applicants must submit the terms of any negotiated loans, sale or placement of equity, or other form of credit intended to be used to finance the proposed system, including the identity of the creditors, the amount credited, and detailed terms of the credit arrangement including any contingencies. 47 C.F.R. § 25.140(d)(2)(i)(ii); 47 C.F.R. § 25.143(b)(3). The Commission will not accept any financing arrangements contingent upon further performance by either party, such as marketing of satellite capacity or agreements to raise additional financing. 47 C.F.R. § 25.140(d)(2)(iii). Moreover, financing must be "irrevocably" committed. Big LEO Order, 9 FCC Rcd at 5950-51. In other words, the  
(continued...)

Even without regard to the fact that the parties holding two and four percent respectively of an entity's stock do not qualify as "corporate parents" for purposes of Section 24.140(d)(1),<sup>6/</sup> the Bureau nevertheless correctly ruled that MCHI failed to make the financial showing required by the Commission under Section 25.140(d)(1). Simply stated, the "commitments" of Westinghouse and IAI fell far short of the standard established in the Big LEO Order. See TRW's Petition to Deny MCHI's Amended Application at 12-13 (filed December 22, 1994); TRW's Consolidated Reply to Oppositions at 13-19 (filed January 13, 1995). ("Consolidated Reply")<sup>7/</sup>

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<sup>5/</sup> (...continued)

financing instrument must demonstrate that the lender has already determined that the applicant is creditworthy and that it is prepared to make the loan immediately upon grant of a license. Id.

<sup>6/</sup> In its order deferring the application of Constellation Communications, Inc. ("Constellation") on financial grounds, the Bureau found the tentativeness of one Big LEO applicant's management commitment from a putative "corporate parent" (in that case also a minority shareholder) "significant." Where a corporate parent is the majority equity holder, there is a "commonality of interest" with the applicant that is sorely lacking in cases such as this one. See Constellation Communications, Inc., DA 95-129, slip op. at ¶ 15 (released January 31, 1995) ("Constellation Order"). Though not decisionally significant here, the IAI and Westinghouse "investments" in MCHI should have been evaluated under Section 25.140(d)(2) and not under Section 25.140(d)(1).

<sup>7/</sup> For the Big LEO service, the Commission adopted an explicit, strict standard for the management commitment that is required from a corporation providing evidence of its financial capabilities under Section 25.140(d)(1). Big LEO  
(continued...)

At the outset, TRW notes that MCHI is improperly relying on a statement made by the Commission's General Counsel in another proceeding when it contends that the financial showing required for externally financed applicants is the same as the standard for applicants relying on internal finances. See Application for Review at 4 and n.8. This is patently incorrect. While the Commission has noted that the management commitment requirement in its Big LEO Order is "consistent with [its] approach to credit arrangements provided by outside sources," 9 FCC Rcd at 5952, it is beyond question that the financial showing that applicants relying on external funds must make is significantly more stringent than that required for applicants who are demonstrating their financial qualifications based on internal financing.<sup>8/</sup>

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<sup>7/</sup> (...continued)

Order, 9 FCC Rcd at 5952. Specifically, the Commission ruled that:

management of the corporation providing the funding must commit that absent a material change in circumstances it is prepared to expend the necessary funds. Those applicants relying on financing from parent corporations must make the same showing with respect to the parent corporation's commitment.

Id.

<sup>8/</sup> See supra at n.5. The basis for the distinction is articulated in the Big LEO Order. See Big LEO Order, 9 FCC (continued...)

In the MCHI Order, the Bureau address in detail each of the elements of MCHI's financing plan. See MCHI Order, DA 95-132, slip op. at ¶¶ 5-23. Because, as noted above, MCHI appears only to be contesting the Bureau's determinations as to MCHI's ability to rely on Westinghouse and IAI as "corporate parents," TRW will limit its remarks to the alleged new evidence that MCHI has proffered in its attempt to demonstrate that its reliance on these two "equity partners" alone satisfies the Commission's financial requirements. Again, MCHI's efforts must fail.

In its Application for Review, MCHI continues its incremental effort to bolster its financial showing by submitting two additional letters, which allegedly "clarify" Westinghouse's and IAI's support of MCHI's proposed satellite system. Application for Review at 11, Exhibits A and B. Ironically, MCHI now asks the Commission to consider these late-filed letters on one hand, while, on the other hand, it continues to support the Bureau's decision to ignore a similar letter submitted by Loral

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8/ (...continued)

Rcd at 5950-51. Again, by making this argument, MCHI tacitly admits that it did not meet the Commission's external financing standards. In any event, the argument is a red herring, as MCHI has not met even the Commission's internal financing standards.

Corporation, dated December 29, 1994, expanding on Loral's prior statements. See Application for Review at 8, n.16.<sup>9/</sup>

The Westinghouse Letter,<sup>10/</sup> like all of MCHI's previously proffered management commitment letters, fails to meet the Commission's standards. In fact, the letter serves to illustrate that MCHI and Westinghouse still have not reached an agreement regarding either the level of Westinghouse's investment or the financing of MCHI's proposed system.

For example, Westinghouse refers to its "future" equity relationship with MCHI and notes that "upon completion of final negotiations of mutually acceptable terms and conditions, Westinghouse would expect to hold a 30 percent (or greater) equity interest in MCHI." Westinghouse Letter (emphasis added). This letter reveals that, as of March 1, 1995, Westinghouse's relationship with MCHI was still undefined -- even after MCHI's

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<sup>9/</sup> While asking the Commission to consider these late-filed clarification letters, MCHI correctly notes that the Bureau allowed Motorola to submit a declaration of Mr. Konenman, Executive Vice President and Chief Financial Officer of Motorola, Inc., regarding Motorola's inadvertent omission of the word "launch" in its management commitment letter. Obviously, if Motorola intends to build and operate its Big LEO system, it must be prepared to launch the satellites. However, MCHI's attempt to bolster its financial showings through the submission of new "management commitment" letters cannot be compared to Motorola's clarification of a typographical error.

<sup>10/</sup> Letter from Milton F. Borkowski, Vice President and General Manager, Electronic Systems Group, Westinghouse Electric Corporation, to William F. Caton, Acting Secretary, FCC, dated March 1, 1995 ("Westinghouse Letter").

third substantive (and second post-November 16) submission to the Commission. In addition, Westinghouse states that it is "prepared to have its equity investment expended to fund a portion of the launch, construction and first year operational costs" of the MCHI system. Id. (emphasis added). However, the extent of Westinghouse's equity investment remains unspecified, and Westinghouse does not state what "portion" of the MCHI system it is allegedly prepared to finance. Plainly, the Westinghouse Letter does nothing to support MCHI's financial showing.

MCHI's letter from IAI<sup>11/</sup> is also woefully inadequate. IAI states only that it has the "intent of providing support for the successful achievement of [MCHI's] [p]roject, not a limited portion of [sic] same." IAI Letter. Importantly, the letter does not define the kind of "support" that IAI is prepared to give and, if financial in nature, in what amounts. Moreover, IAI still has not provided the Commission with a statement of its current assets and operating income, and IAI's letter does nothing to cure this malady.<sup>12/</sup> Accordingly, the IAI Letter is fatally flawed.

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<sup>11/</sup> Letter from Jacob S. Weiss, Deputy General Counsel, Israeli Aircraft Industries, L.P.D., to FCC, dated March 1, 1995 ("IAI Letter").

<sup>12/</sup> MCHI alleges that IAI had current assets and operating income in 1994 that exceeded \$600,000,000, but does not provide the Commission with any means of verifying this assertion. See MCHI Application for Review at 11.



Finally, on November 16, 1994, the role of Westinghouse in the MCHI project was not established, and as evidenced by Westinghouse's March 1, 1995 letter, still is not established. See Westinghouse Letter. IAI, which apparently has recently boosted its interest from a minor 3.81 percent, now holds a still-minor 10 percent interest in MCHI. See IAI Letter. Even if these entities had made a satisfactory commitment to MCHI, the absence of commitments from the substantial majority of MCHI's equity partners (to date MCHI's majority equity partner has not made any financial showing whatsoever) and the complete absence of creditable external sources, require the conclusion that MCHI is not financially qualified.<sup>13/</sup>

#### CONCLUSION

In the end, MCHI's Application for Review is nothing more than a belated and wholly unsuccessful attempt to satisfy the Commission's financial qualifications for Big LEO service in

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<sup>13/</sup> See TRW Petition to Deny at 20 (TRW observes that MCHI cannot rely on contributions from equity partners in amounts greater than the partners' proportionate equity stakes); Constellation Order, DA 95-129, slip op. at ¶ 10. (Bureau cites TRW's similar observation with respect to Constellation.)

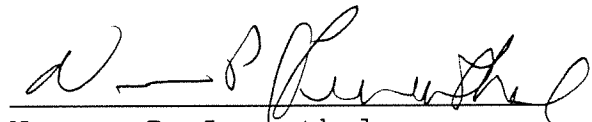
an incremental and wholly improper manner.<sup>14/</sup> As such, it should be rejected by the Commission, and a determination that no further submissions will be considered until after January 31, 1996 should be issued.

The Bureau's treatment of the financial qualifications aspects of MCHI's Big LEO application was both procedurally and substantively correct. For this reason and all other reasons expressed herein, the Commission should deny MCHI's Application for Review.

Respectfully submitted,

TRW Inc.

By:



Norman P. Leventhal  
Raul R. Rodriguez  
Stephen D. Baruch  
J. Breck Blalock

Leventhal, Senter & Lerman  
2000 K Street, Suite 600  
Washington, D.C. 20006  
(202) 429-8970

March 17, 1995

Its Attorneys

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<sup>14/</sup> If MCHI desires to demonstrate its financial qualifications, its should do so as part of an amendment to its application -- not as add-ons to post deferment pleadings.

CERTIFICATE OF SERVICE

I, Cristina M. Lirag, hereby certify that a true and correct copy of the foregoing "Opposition to Application for Review" was mailed, first-class postage prepaid, this 17th day of March, 1995 to the following:

\*Chairman Reed 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 Andrew C. Barrett  
Federal Communications Commission  
1919 M Street, N.W.  
Room 826  
Washington, D.C. 20554

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

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

\*William E. Kennard, Esq.  
General Counsel  
Federal Communications Commission  
1919 M Street, N.W.  
Room 614  
Washington, D.C. 20554

\*Scott B. Harris, Esq.  
Chief, International Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 658  
Washington, D.C. 20554

\*James L. Ball  
Associate Bureau Chief for Policy  
International Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 658  
Washington, D.C. 20554

\*Thomas S. Tycz  
Chief, Satellite & Radiocommunication Division  
International Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room 6010  
Washington, D.C. 20554

\*Cecily C. Holiday, Esq.  
Deputy Chief, Satellite &  
Radiocommunication Division  
International Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room 6324  
Washington, D.C. 20554

\*Fern J. Jarmulnek, Esq.  
Chief, Satellite Policy Branch  
International Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room 6324  
Washington, D.C. 20554

John S. Hannon, Jr., Esq.  
Vice President, Legal Affairs  
Comsat Mobile Communications  
22300 Comsat Drive, 4th Wing  
Clarksburg, MD 20871

Michael Nelson, Ph.D.  
Special Assistant --  
Information Technology  
Office of Science and Technology  
Policy  
Old Executive Office Building  
Room 423  
17th and Pennsylvania, N.W.  
Washington, D.C. 20500

Richard DalBello  
Assistant Director for Aeronautics  
and Space  
Office of Science and Technology  
Policy  
Old Executive Office Building  
Room 423  
17th and Pennsylvania, N.W.  
Washington, D.C. 20500

Vonya McCann  
U.S. Coordinator  
International Communications and  
Information Policy  
Economic and Business Bureau  
Room 4826  
U.S. Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520

Michael Fitch  
Deputy Coordinator  
Communications and Information Policy  
Room 4826  
U.S. Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520

Robin J. Frank, Esq.  
L/EBC  
Room 6420  
U.S. Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520

The Honorable Lawrence Irving  
Assistant Secretary for  
Communications and Information  
NTIA/OIA  
U.S. Department of Commerce  
14th & Constitution Avenue, N.W.  
Room 4898  
Washington, D.C. 20230

Mr. Jack A. Gleason  
Division Director  
NTIA/OIA  
U.S. Department of Commerce  
14th & Constitution Avenue, N.W.  
Room 4720  
Washington, D.C. 20230

Nancy Eskenazi  
Telecommunications Policy Specialist  
NTIA/OIA  
U.S. Department of Commerce  
14th & Constitution Avenue, N.W.  
Room 4701  
Washington, D.C. 20230

Lisa Sockett  
Attorney Advisor  
NTIA/OCC  
U.S. Department of Commerce  
14th & Constitution Avenue, N.W.  
Room 4713  
Washington, D.C. 20230

Philip L. Malet, Esq.  
Alfred M. Mamlet, Esq.  
Steptoe & Johnson  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036-1795  
Counsel for Motorola Satellite  
Communications, Inc.

Barry Lambergman, Esq.  
Manager, Satellite Regulatory Affairs  
Motorola Inc.  
1350 I Street, N.W., Suite 400  
Washington, D.C. 20005

Robert A. Mazer, Esq.  
Rosenman & Colin  
1300 - 19th Street, NW  
Suite 200  
Washington, DC 20036  
Counsel for Constellation  
Communications

Jill Abeshouse Stern, Esq.  
Jane M. Sullivan, Esq.  
Shaw, Pittman, Potts & Trowbridge  
2300 N Street, N.W.  
Washington, D.C. 20037  
Counsel for Mobile Communications  
Holdings, Inc.

Robert Halperin, Esq.  
William Wallace, Esq.  
Crowell & Moring  
1001 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-2505  
Counsel for Loral/Qualcomm Partnership, L.P.


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

Bruce D. Jacobs, Esq.  
Glenn S. Richards, Esq.  
Fisher, Wayland, Cooper, Leader & Zaragoza  
2001 Pennsylvania Avenue, N.W.  
Suite 400  
Washington, D.C. 20006-1851  
Counsel for AMSC

Lon C. Levin, Esq.  
Vice President and Regulatory Counsel  
AMSC Subsidiary Corporation  
10802 Parkridge Boulevard  
Reston, VA 22091

Dale Gallimore, Esq.  
Counsel  
Loral Qualcomm  
7375 Executive Place, Suite 101  
Seabrook, MD 20706

Gerald Hellman  
Vice President  
Policy and International Programs  
Mobile Communications Holdings, Inc.  
1120 - 19th Street, N.W.  
Washington, D.C. 20036

  
Cristina M. Lira