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BEFORE THE

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Federal Communications Commission MAY - 8 1996

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Received

MAY 17 1996

In re: Application of )  
)  
MOBILE COMMUNICATIONS )  
HOLDINGS, INC. )  
)  
For Authority to Construct, Launch and )  
Operate a Low-Earth Orbit Satellite System )  
In the 1610-1626.5/2483.5-2500 MHz Bands )

File Nos. 11-DSS-P-91;  
18-DSS-P-91 Satellite Policy Branch  
11-SAT-LA-95 International Bureau  
12-SAT-AMEND-95

**MOTION TO STRIKE UNAUTHORIZED PLEADING**

TRW Inc. ("TRW"), by its attorneys, hereby moves to strike from the record in the above-captioned proceeding the letter relating to this proceeding from Jere W. Glover, Chief Counsel of the U.S. Small Business Administration Office of Advocacy ("SBA"), to the Hon. Reed E. Hundt, Chairman of the FCC, dated April 24, 1996 ("Glover Letter"). The Glover Letter, a copy of which is attached hereto, is an untimely pleading in support of the application for review filed over a year ago by Mobile Communications Holdings, Inc. ("MCHI") with respect to the International Bureau's decision to defer the above-captioned application.

On January 31, 1995, the International Bureau deferred MCHI's application to construct, launch, and operate a low Earth orbit satellite system in the 1610-1626.5/2483.5-2500 MHz bands (a "Big LEO" system) on the ground that MCHI had "not demonstrated that it is

financially qualified at this time under the Commission's rules and policies."<sup>1</sup> On March 2, 1995, MCHI filed an application for review of the International Bureau's decision.<sup>2</sup> The pleading cycle established by the Commission for applications for review requires that oppositions be filed within fifteen days after the application for review is filed and that replies to the oppositions be filed within ten days after the oppositions are filed. *See* 47 C.F.R. § 1.115(d). In accordance with this rule, oppositions to MCHI's application for review were filed on March 17, 1995 by TRW, Motorola Satellite Communications, Inc., AMSC Subsidiary Corporation, and Loral/Qualcomm Partnership, L.P. MCHI filed a reply to the oppositions on March 27, 1995.

Notwithstanding the completion of this pleading cycle over one year ago, Mr. Glover wrote to Chairman Hundt on April 24, 1996, arguing — without factual or legal support — that the Commission should relax the Big LEO financial qualifications rules that apply to MCHI, and “urg[ing] the Commission to grant MCHI's appeal of the [International] Bureau Order . . . .”<sup>3</sup> Although the Commission's Rules provide that “[a]dditional pleadings may be filed only if specifically requested or authorized by the Commission,”<sup>4</sup> there is no indication that the Glover Letter was specifically requested or authorized by the Commission.

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<sup>1</sup>Mobile Communications Holdings, Inc., 10 FCC Rcd 2274 (¶ 2) (Int'l Bur. 1995).

<sup>2</sup>*See* Consolidated Application for Review and Request for Clarification, File Nos. 11-DSS-P-91(6), 18-DSS-P-91(18), 11-SAT-LA-95, & 12-SAT-AMEND-95 (dated March 2, 1995).

<sup>3</sup>*See* Glover Letter at 4.

<sup>4</sup>47 C.F.R. § 1.45(c).

The Glover Letter — unaccompanied by any motion to accept a late-filed pleading — contends that it is submitted under the authority of Section 1.1204(b)(5) of the Commission's Rules.<sup>5</sup> Section 1.1204(b)(5) exempts from the Commission's ex parte rules a communication to the Commission from another government agency or branch only when the communication “involves a matter over which that agency or branch and the Commission share jurisdiction.”<sup>6</sup> The Glover Letter, however, narrowly focuses upon the licensing of MCHI's Big LEO system rather than upon a matter in which the FCC and SBA “share jurisdiction.” Thus, Section 1.1204(b)(5) is wholly inapplicable.

Since the pleading cycle for MCHI's application for review expired over one year ago pursuant to Section 1.115(d), the Glover Letter should be stricken from the record. Its disruptive tardiness and substantively questionable arguments unfairly prejudice the parties opposing MCHI's application for review, and the SBA has not received — nor even requested — permission from the Commission to submit the filing.<sup>7</sup> Acceptance of the Glover Letter in support of MCHI would not only unfairly prejudice opposing parties, but will — as it attempts here — generally undermine the pleading cycle process by establishing a loophole for parties to submit untimely arguments via third party government entities at the expense of those who diligently comply with the Commission's deadlines.

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<sup>5</sup>See Glover Letter at n.3.

<sup>6</sup>47 C.F.R. § 1.1204(b)(5).

<sup>7</sup>Moreover, MCHI has already filed a *third* pleading in its own name without any authority to do so. See Notice of Supplemental Authority in Support of Consolidated Application for Review and Request for Clarification, filed February 15, 1996.

For all of the foregoing reasons, TRW requests that the Commission strike the Glover Letter from the record in the above-captioned proceeding.

Respectfully submitted,

TRW INC.

By:  \_\_\_\_\_

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May 8, 1996

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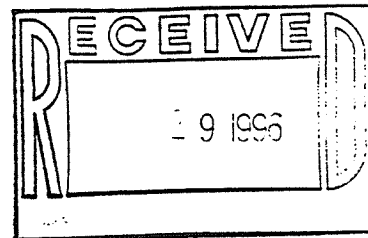
**ATTACHMENT**

Letter from Jere W. Glover, Chief Counsel  
of the U.S. Small Business Administration  
Office of Advocacy, to the Hon. Reed E. Hundt,  
Chairman of the FCC, dated April 24, 1996.



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY



April 24, 1996

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Re: In re Application of Mobile Communications Holdings, Inc. for Authority to Construct, Launch, and Operate a Low Earth Orbit Satellite System in the 1610-1626.5 MHz/2483.5-2500 MHz Band, File Nos. 11-DSS-P-91(6), 18-DSS-P-91(18), 11-SAT-LA-95, 12-SAT-AMEND-95, DA 95-132

Ex Parte Presentation

Dear Sirs:

The Office of Advocacy is enclosing a copy of correspondence that was sent to the Chairman and Commissioners in connection with the above-referenced proceeding. Copies of the attached are being submitted to the Commission and the relevant parties.

Very Truly Yours,

Jere W. Glover  
Chief Counsel





U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

April 24, 1996

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, NW Suite 814  
Washington, D.C. 20554

Dear Chairman Hundt:

I am contacting you regarding a matter currently pending before the Commission pursuant to my responsibilities under the Regulatory Flexibility Act<sup>1</sup> and the Small Business Act.<sup>2</sup> I am concerned that, due to unequal and unduly burdensome financial qualification standards for smaller satellite operators, the Commission is on the verge of eliminating a potentially viable smaller competitor, Mobile Communications Holdings, Inc. ("MCHI"), from the low-earth orbit mobile satellite services ("Big LEO") market.<sup>3</sup>

The Office of Advocacy has had a long history of concern with unequal and burdensome financial qualification standards for small businesses set by the Commission in the satellite industry. The Office filed comments addressing this same issue with the Commission as early as the domestic fixed-satellite proceeding in 1985.<sup>4</sup> The Commission responded to these concerns by establishing a two-stage financial qualification standard for

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<sup>1</sup>The Regulatory Flexibility Act of 1980, as amended, Pub. L. No. 96-354, 94 Stat. 1164 (1980), codified at 5 U.S.C. sec. 601 et seq.

<sup>2</sup>The Small Business Act, as amended, Pub. L. No. 85-536, 72 Stat. 384 (1958), codified at 15 U.S.C. sec. 631 et seq.

<sup>3</sup>The Office of Advocacy submits this correspondence pursuant to Part 1 section 1204(b)(5) of the Commission's rules. 47 C.F.R. 1.1204(b)(5)

<sup>4</sup>Letter from Frank S. Swain, Chief Counsel for Advocacy, Small Business Administration, to the Federal Communications Commission, dated June 27, 1985.



The Honorable Reed E. Hundt  
April 22, 1996  
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smaller companies for separate international satellite systems.<sup>5</sup>

The Commission currently has before it an appeal of an order by the International Bureau deferring MCHI's application for a license to construct and operate a Big LEO satellite system on the basis of inadequate financial qualifications.<sup>6</sup> It is not generally the practice of the Office of Advocacy to comment on individual applications for licenses at the Commission. Moreover, the Office of Advocacy expresses no opinion as to the adequacy of MCHI's financial showing in the instant application. The Office of Advocacy is deeply concerned, however, that this order represents a case in point of the Commission's *de facto* unequal financial qualification standards for smaller companies. The Bureau Order could effectively eliminate a potential competitor and one of the few small businesses that has had measurable success in entering this new market. To uphold the Bureau Order would establish further precedent for the Commission's overly stringent financial qualification standards and erect an artificial market entry barrier to virtually all small competitors.

It is worth giving the Bureau Order closer scrutiny, not so much to judge the adequacy of MCHI's financial showing but to highlight the burden it places on smaller applicants like MCHI. The order sets an extraordinarily high evidentiary threshold in judging each financial source cited by MCHI. It is certainly necessary and appropriate for the Bureau to proceed with caution in this area. It is, however, significant that the Bureau rejects or dramatically diminishes the value of every single financing source cited by MCHI. Their judgment may be correct in all instances but it is difficult to believe that none of these sources is deserving of the credibility vested in it by MCHI. Given the nature of financing such a large project, could any company meet such a burden? Could MCHI's larger competitors meet such a burden even at this point in time? There is surely something inequitable in such an unevenly applied standard, particularly given that it is a smaller business that is in

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<sup>5</sup>Establishment of Satellite Systems Providing International Communications, 101 F.C.C. 2nd 1046, 1164 (1985).

<sup>6</sup>In re Application of Mobile Communications Holdings, Inc. for Authority to Construct, Launch, and Operate a Low Earth Orbit Satellite System in the 1610-1626.5 MHz/2483.5-2500 MHz Band, File Nos. 11-DSS-P-91(6), 18-DSS-P-91(18), 11-SAT-LA-95, 12-SAT-AMEND-95, DA 95-132 (rel. January 31, 1995) ("Bureau Order").



question here.<sup>7</sup>

The contrast with the Commission's treatment of larger applicants could not be more striking. The Commission's 1994 order concerning the Big LEO industry states "[a]pplicants relying on internal financing need not set aside specific funds for their systems."<sup>8</sup> The Big LEO Order continues, "we require only a demonstration of current assets or operating income sufficient to cover system costs."<sup>9</sup> There is no requirement that funds be "fully negotiated" or irrevocably "committed" as with smaller companies.

Moreover, the Big LEO order openly presumes that in order to build and operate their systems, larger companies will not rely solely on the assets that form the basis of their financial showing to the Commission. The Big LEO Order acknowledges even the largest corporations' need to raise external financing: "Highly capitalized companies possess more collateral and, thus, are in a better position to borrow money than thinly capitalized companies"<sup>10</sup> This is, of course, a realistic presumption that is born out in practice.<sup>11</sup> Thus, the order implicitly sanctions applications from larger corporations who have not finalized their borrowing at the time of application, let alone successfully secured irrevocable commitments of the kind required of MCHI by the Bureau Order.

In sum, there is a de facto two-tier financial qualification system, favoring larger companies and handicapping smaller ones. Whatever the merits are of MCHI's financing efforts to date, they

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<sup>7</sup>The high burden of proof the Bureau applies to MCHI would be appropriate if the Commission demanded there be no risk associated with awarding a license to any applicant -- a standard foreign to the Commission's mission and the overall nature of telecommunications enterprises, in general.

<sup>8</sup>In re 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 F.C.C. Rcd. 4936 (1994) ("Big LEO Order") at para. 31.

<sup>9</sup>Id.

<sup>10</sup>Id.

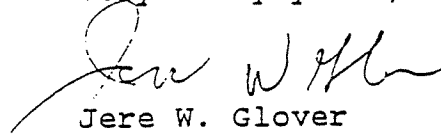
<sup>11</sup>MCHI's larger competitors have already been awarded licenses and are pursuing a wide range of external financing options -- few, if any, of which were "fully negotiated" or "committed" prior to their securing licenses from the Commission.

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deserve to be judged in the same light as their competitors'. Both the Regulatory Flexibility Act and competitive telecommunications policy would support leveling this unequal burden that falls so disproportionately on smaller competitors.

For these reasons, the Office of Advocacy urges the Commission to grant MCHI's appeal of the Bureau Order and require the Bureau to reexamine its overly stringent financial qualification standards for smaller companies, in general.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jere W. Glover".

Jere W. Glover  
Chief Counsel

**CERTIFICATE OF SERVICE**

I, Cristina M. Lirag, hereby certify that a true and correct copy of the foregoing "Motion to Strike Unauthorized Pleading" was mailed, first-class postage prepaid, this 8th day of May, 1996 to the following:

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