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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
Received

MAY 06 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)

Satellite Policy Branch
International Bureau

File Nos. 11-DSS-P-91;
18-DSS-P-91;
11-SAT-LA-95;
12-SAT-AMEND-95

**REPLY BY TRW INC. TO OPPOSITIONS TO ITS
MOTION TO STRIKE UNAUTHORIZED PLEADING**

TRW Inc. ("TRW"), by its attorneys, hereby replies to the oppositions of the Office of Advocacy of the U.S. Small Business Administration (the "SBA") and Mobile Communications Holding, Inc. ("MCHI") to TRW's motion to strike from the record in the above-captioned proceeding the April 24, 1996 letter from the SBA's Chief Counsel to Chairman Hundt (the "Glover Letter"). The SBA and MCHI fail to demonstrate that the Commission's Rules authorize acceptance of the untimely Glover Letter, and their misguided efforts to circumvent the Commission's Rules should be rejected outright. In addition, the Commission should clearly indicate that further attempts to circumvent its pleading rules in this proceeding will not be tolerated.

DISCUSSION

The SBA and MCHI contend that Section 1.1204(b)(5) of the Commission's *ex parte* rules authorize the Commission's acceptance of the Glover Letter over one year after the applicable pleading cycle had closed.¹ However, Section 1.1204(b)(5) exempts 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."² Incredibly, the SBA seems to question whether shared jurisdiction is required under Section 1.1204(b)(5) even though this precise language appears in the rule itself.³ Despite efforts by the SBA and MCHI to characterize the Glover Letter as a presentation of broad policy concerns over which the SBA and Commission share jurisdiction,⁴ the Glover Letter indisputably specifically advocates and is intended to effect a particular outcome to MCHI's appeal — a decision that is within the Commission's jurisdiction and not the SBA's. Moreover, TRW and others have previously demonstrated that MCHI's purported status as a "small business" is simply not a valid basis for finding the Commission's Big LEO financial qualifications standard unsound as applied

¹Opposition of the Office of Advocacy to TRW's Motion to Strike Unauthorized Pleading at 2-3 (filed May 22, 1996) ("SBA Opposition"); Opposition of MCHI to TRW's Motion to Strike Unauthorized Pleading at 3 (filed May 20, 1996) ("MCHI Opposition").

²47 C.F.R. § 1.204(b)(5).

³See SBA Opposition at 3-4; 47 C.F.R. § 1.204(b)(5).

⁴See SBA Opposition at 4-6; MCHI Opposition at 2-3.

to MCHI.⁵ Accordingly, the SBA's general "policy" concerns allegedly shared by the Commission have no appropriate bearing on MCHI's application for review.

MCHI further attempts to circumvent the Commission's pleading cycle rules by noting that 47 C.F.R. § 1.65(a) requires applicants to inform the Commission of any "substantial changes as to any matter which may be of decisional significance," pointing to provisions of the Telecommunications Act of 1996 and the Regulatory Flexibility Act of 1980 that direct the Commission to take into account certain small business concerns, and reminding the Commission that its actions must be "substantially justified" and not "arbitrary, capricious, [or] an abuse of discretion."⁶ This argument is meritless. The Glover Letter notes no change in circumstances whatsoever and does not make even a superficial attempt to be a report to the Commission under Section 1.65(a). Likewise, the standards of review and general statutory provisions concerning small business cited by MCHI are not open invitations for the submission of pleadings that are not specifically requested by the Commission or authorized by the Commission's Rules.

Accordingly, TRW respectfully requests that the Commission strike the Glover Letter from the record in the above-captioned proceeding. Furthermore, given MCHI's continual filing of supplemental materials in this proceeding under questionable authority,⁷ TRW requests

⁵*See, e.g.*, Comments of TRW Inc. Concerning MCHI's "Notice of Supplemental Authority" (filed Feb. 28, 1996); Comments of Motorola Satellite Communications, Inc. (filed Feb. 29, 1996). *See also* Letter from Philip L. Malet, Counsel for Motorola Satellite Communications, Inc., to William F. Caton, Acting Secretary of the FCC, dated May 8, 1996.

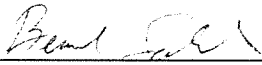
⁶MCHI Opposition at 4-5.

⁷Since February, MCHI has made at least five supplemental filings besides the Glover
(continued...)

that the Commission instruct MCHI not to file further unauthorized submissions. This action is necessary to protect the integrity of the Commission's pleading cycle rules and protect the Commission, TRW, and other interested parties from being further burdened with the unfair and unnecessary task of reviewing and responding to untimely, unauthorized filings.

Respectfully submitted,

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⁷(...continued)

Letter filings. *See* Letters from Jill Abeshouse Stern, Counsel to MCHI, to William F. Caton, Acting Secretary of the FCC, dated February 23, April 19, April 26, and May 10, 1996; Notice of Supplemental Authority in Support of Consolidated Application for Review and Request for Clarification (dated February 15, 1996). None of these filings cite authority in the Commission's Rules for their acceptance by the Commission. MCHI only now purports to rely on 47 C.F.R. § 1.65(a) to defend one of these submissions. *See* MCHI Opposition at n 2.

CERTIFICATE OF SERVICE

I, Cristina M. Lirag, hereby certify that a true and correct copy of the foregoing "Reply by TRW Inc. to Oppositions to its Motion to Strike Unauthorized Pleading," was mailed, first-class postage prepaid, this 3rd day of June, 1996 to the following:

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