

9/10/96

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

In re Application of	)	
	)	
MOBILE COMMUNICATIONS	)	File No. 11-DSS-P-91(6);
HOLDINGS, INC.	)	18-DSS-P-91 (18);
	)	11-SAT-LA-95;
	)	12-SAT-AMEND-95
	)	
For Authority to Construct, Launch and Operate	)	
ELLIPSO™, An Elliptical Low Earth Orbit Mobile	)	
Satellite System in the 1610-1626.5 MHz and	)	
2483.5-2500 MHz Bands	)	

**AMENDMENT TO ELLIPSO™ SATELLITE SYSTEM APPLICATION**

MOBILE COMMUNICATIONS HOLDINGS, INC. ("MCHI"), developer of the ELLIPSO™ low Earth orbit mobile satellite system, hereby amends its pending applications for authority to construct, launch and operate a new satellite system in the 1.6/2.4 GHz Mobile Satellite Service ("Big LEO").<sup>1/</sup> In this amendment, MCHI demonstrates conclusively that it is qualified legally, technically and financially to be a Commission licensee. Expeditious grant of the ELLIPSO™ application is therefore requested.<sup>2/</sup>

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<sup>1/</sup> The Commission authorized a deferred showing of financial qualifications by Big LEO applicants in the Commission's initial processing group who were not found financially qualified by the Commission in January 1995. In the Matter of 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 Band, Report and Order, 9 FCC Rcd 5936 (1994) (the "Big LEO Order").

<sup>2/</sup> MCHI urges the Commission to use the expedited briefing schedule and procedures available to its Big LEO competitors, which resulted in action on their applications within two and one-half months after amendments were filed.

## I. BACKGROUND AND SUMMARY OF AMENDMENT

MCHI filed its initial application for licensing of the ELLIPSO™ satellite system in November 1990 --- the first Big LEO application filed with the Commission. A second application was submitted by MCHI in June 1991 and, on November 16, 1994, MCHI provided updated information about its system to demonstrate compliance with the technical, licensing and operational rules adopted in the 1994 Big LEO Order. On January 31, 1995, the International Bureau released an Order finding that MCHI had not yet demonstrated its financial qualifications and deferring consideration of MCHI's application pending submission of a supplemental financial showing.<sup>3/</sup>

The Bureau's decision was affirmed by the full Commission on June 27, 1996, triggering a deadline of August 26, 1996 for submission of a supplemental financial showing by MCHI and other deferred Big LEO applicants.<sup>4/</sup> The filing deadline was subsequently extended until September 16, 1996. MCHI has appealed the Commission's licensing decision, and the underlying Big LEO rulemaking decision, to the United States Court of Appeals for the District of Columbia Circuit.<sup>5/</sup>

In this amendment, MCHI supplements the application materials previously submitted and now on file with the Commission, including financial materials, and provides updated feeder link and ownership information.

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<sup>3/</sup> Mobile Communications Holdings, Inc., Order, 10 FCC Rcd 2274 (Int'l Bur. 1995).

<sup>4/</sup> In re Applications of Constellation Communications, Inc.; Loral/Qualcomm Partnership, L.P.; Mobile Communications Holdings, Inc.; Motorola Satellite Communications, Inc.; TRW Inc., Memorandum Opinion and Order, FCC 96-279, released June 27, 1996.

<sup>5/</sup> Mobile Communications Holdings, Inc. v. Federal Communications Commission, Case No. 94-1695 (D.C. Cir.); Mobile Communications Holdings, Inc. v. Federal Communications Commission, Case No. 96-1239 (D.C. Cir.)

With respect to financial qualifications, MCHI submits as Exhibit A an affidavit from Dr. David Castiel, Chairman and Chief Executive Officer of MCHI, verifying the material terms of the external funding commitments it has received and which it intends to use for construction, launch and first-year operation of the ELLIPSO™ system. These commitments, which total well in excess of the estimated system cost of \$564 million, comply with all pertinent Commission rules and policies; they are "fully negotiated" and are not contingent on further performance by either party.

Because of the highly confidential nature of the commercial and financial information contained in the underlying business agreements (e.g., the specific distribution regions for which rights are being awarded) and the lack of clear guidance as to whether submission to the Commission is mandatory, the agreements are being submitted separately and concurrently herewith with pursuant to a "Request for Confidential Treatment of Sensitive Commercial Information; Request for Issuance of a Protective Order."<sup>6/</sup>

## II. FINANCIAL QUALIFICATIONS

Supplementing the various financial materials previously submitted in connection with its November 1994 amendment, MCHI provides detailed information in this amendment demonstrating the availability of fully negotiated, non-contingent external funding commitments well in excess of the estimated \$564 million construction, launch and first year operation costs of the ELLIPSO™ system. These commitments are set forth in binding legal agreements between the parties.

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<sup>6/</sup> MCHI has proceeded in this manner pending the Commission's determination whether submission of actual business agreements is required. If the Commission determines that submission is not necessary to comply with the Big LEO rules, MCHI has asked for return of the business agreements. If actual business agreements must be submitted, MCHI asks that these highly confidential agreements be withheld from public inspection to prevent competitive harm to MCHI.

In this supplemental filing, MCHI verifies the terms of fully negotiated, non-contingent business agreements involving the sale of distribution rights for the ELLIPSO™ services in specific regions in return for irrevocable commitments of funds totaling more than \$650 million to be used for construction, launch and first-year operation of the ELLIPSO™ system.<sup>7/</sup> These commitments fully satisfy the requirements of Commission Rules 25.143(b)(3) and 25.140(d)(2)(iii) as "external funding commitment[s] intended to be used to finance the proposed construction, acquisition or operation of the requested facilities." By their terms, the commitments of funds do "not rest on contingencies which require action by any party."

Further information about the terms of these external funding commitments are provided in the affidavit of Dr. Castiel attached hereto as Exhibit A. The underlying business agreements are being provided separately to the Commission under request for confidentiality.

This amendment supplements prior evidence of financial qualifications submitted by MCHI. Among this evidence were letters of commitment from Israel Aircraft Industry (IAI) including a January 3, 1995 letter signed by the Chief Financial Officer of IAI which clearly states that IAI is "prepared to expend the necessary funds to support the Ellipso™ Project, subject to normal business reviews of market and business conditions and progress to assure acceptable levels of risk and return."<sup>8/</sup> In addition to the IAI letter, other previously submitted financial materials include a

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<sup>7/</sup> In the context of a Big LEO system, regional distribution rights are valuable because the distributor is entitled to revenues from the retail sale (i.e., resale) of Big LEO services, which it buys at wholesale cost from MCHI, the system operator.

<sup>8/</sup> IAI's January 3, 1995 letter is being resubmitted herewith in Exhibit A, Attachment 2. In the letter, IAI's Chief Financial Officer attests that "the revenues of IAI for 1994 exceeded US\$1.4 Billion and the assets of IAI for 1994 were more than US\$1.6 Billion." IAI's stake in the ELLIPSO™ project is significant. In addition to holding approximately 13% of MCHI's stock, IAI stands to benefit substantially, by virtue of underlying business agreements

Footnote continued on next page

management commitment letter from minority shareholder Spectrum Network Services, a publicly traded company in Australia, and vendor financing agreements with Arianespace, Spectrum Astro, and AEC-Able. These prior commitments are hereby reiterated and confirmed in this filing.

Based on these and other financial materials previously submitted by MCHI, international investment bank Barclays de Zoete Wedd, a division of Barclays Bank PLC (now a participant in a syndication of banks lending money to the Iridium system), provided its expert opinion, in a January 2, 1995 letter to the Commission, that "the commitments that MCHI has secured from the Ellipso partners and shareholders represent strong commercial and financial support for Ellipso and provide MCHI with the current financial ability to proceed with deployment of the Ellipso system."

### **III. TECHNICAL INFORMATION**

There have been no material changes in the technical information submitted in MCHI's November 16, 1994 amendment. However, in order to conform to Big LEO feeder link allocations adopted at the 1995 World Radiocommunication Conference (WRC-95), MCHI reconfirms the preferred feeder link frequencies for its system. In MCHI's November 1994 filing, it specified the use of frequency bands 6725-7025 MHz (space to Earth) and 15.4-15.7 GHz (Earth to space) for its feeder links. Based on the WRC-95 allocations, MCHI now modifies its feeder link proposal to

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Footnote continued from previous page

between the parties, if the ELLIPSO™ project is licensed. In January 1992, MCHI and IAI entered into a business agreement which provided, among other things, for the formation of a Space Company within four months of issuance of a license to MCHI which would be controlled by MCHI, with a substantial equity ownership by IAI. The agreement provides, among other things, that the Space Company will be the prime contractor for the ELLIPSO™ satellites and launch services. The business agreement also provides that a specified percentage of the satellite construction and launch services will be awarded to IAI in addition to certain worldwide marketing rights. Reflecting this substantial involvement in and commitment to the project, IAI holds a seat on MCHI's Board of Directors.

reduce the feeder link bandwidth and to specify assignment of a minimum of 200 MHz (in each direction) for feeder links in the 6875-7075 MHz (downlink) and 15.45-15.65 GHz (uplink) bands.

#### **IV. LEGAL QUALIFICATIONS**

With respect to MCHI's legal qualifications, an updated licensee qualification report on FCC Form 430 is attached as Exhibit B which reflects certain minor changes in stock ownership and directors.

#### **V. OPPORTUNITY TO FILE SUPPLEMENTAL INFORMATION**

This amendment represents a good faith effort to comply with all pertinent Commission rules and policies. MCHI believes that it has supplied all information required for licensing in the 1.6/2.4 GHz Mobile Satellite Service. However, MCHI recognizes that the Commission determines financial qualifications on an ad hoc basis. In addition, very few companies have ever qualified under Rule 25.140(d)(2) and, therefore, limited Commission precedent exists as to the showing required to meet this prong of the Big LEO financial standard. This uncertainty has a disproportionate impact on smaller businesses that must turn to external funding. *See* MCHI's August 16, 1996 Request for Small Entity Guidance Pursuant to Section 213 of the Small Business Regulatory Enforcement Fairness Act of 1996.

In light of these unique circumstances, if the Commission should determine, following review of MCHI's financial showing, that additional information is necessary or helpful in evaluating MCHI's financial qualifications, MCHI asks that the Commission (1) specifically request the desired information and (2) provide MCHI with an opportunity to submit this supplemental information.<sup>9/</sup>

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<sup>9/</sup> Alternatively, it is requested that the Commission grant a waiver if and as necessary to grant a license to MCHI.

## VI. PUBLIC INTEREST CONSIDERATIONS

Grant of a license to MCHI would serve the public interest and further important national policies including those designed to promote (1) small business and entrepreneurial ownership of telecommunications facilities which, in turn, promotes U.S. high technology leadership and employment<sup>10/</sup>; (2) technological innovation and competition in the global marketplace<sup>11/</sup>; and (3) telecommunication infrastructure development worldwide (as evidenced by the agreement with South Africa and the Reverend Stofile's letter (see Exhibit A, Attachment 1-A), MCHI has found broad acceptance for the ELLIPSO™ system in the developing world in large part due to its lower consumer cost.<sup>12/</sup>)

In addition, MCHI's case involves unique considerations based on, among other things, the fact that MCHI was the only applicant to file a timely application within a separate cut-off window apart from and in advance of the other Big LEO applicants.) *See* McElroy Electronics Corporation v. FCC, 86 F.3d 248 (1996) (copy attached as Exhibit E).

## VII. CONCLUSION

For reasons stated, MCHI is fully qualified, financially, technically, and legally to be a Commission licensee. Accordingly, MCHI requests that the Commission grant authority to

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<sup>10/</sup> *See, e.g.*, Telecommunications Act of 1996, Pub. L. No. 104-104, § 257, 110 Stat. 56 (signed Feb. 8, 1996). *See also* Small Business Credit and Business Opportunity Act of 1992, Pub.L.No. 102-366, §331(a)(3), 106 Stat. 1007 (1992).

<sup>11/</sup> Objective analysts, including the MITRE Corporation, have recognized the efficiency, innovativeness and uniqueness of the ELLIPSO™ system. *See* Exhibit C. *See also* Report of the National Performance Review, Recommendation SMC08 ("expand the use of waivers to encourage innovation.")

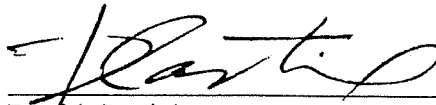
<sup>12/</sup> *See* Exhibit D.

construct, launch and operate the ELLIPSO™ system, and authorize the publicly beneficial communications services that it will provide, as expeditiously as possible.

Respectfully submitted,

MOBILE COMMUNICATIONS  
HOLDINGS, INC.

By:



David Castiel  
Chairman and Chief Executive Officer

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September 16, 1996



**EXHIBIT A**

DISTRICT OF COLUMBIA

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ss:

AFFIDAVIT OF DAVID CASTIEL

I, David Castiel, being duly sworn hereby depose and state as follows:

1. I am the Chairman and Chief Executive Officer of Mobile Communications Holdings, Inc. (MCHI), developer of the ELLIPSO™ satellite system.
2. This affidavit is being provided pursuant to Commission Rule 25.140(d) for the purpose of verifying that the financial information submitted with MCHI's September 16, 1996 amendment to its application for licensing of the ELLIPSO™ system, including the terms of external funding agreements, is true and accurate to the best of my knowledge and belief.
3. MCHI has the current financial ability to meet the estimated costs of \$564 million for construction, launch and first-year operation of the ELLIPSO™ satellite system.
4. To the extent required, MCHI intends to use external funding commitments to finance the construction, launch and first-year operation of the ELLIPSO™ facilities. MCHI has received fully negotiated irrevocable commitments in excess of US\$564 million for the ELLIPSO™ system costs. These commitments, which are memorialized in executed business agreements, do not rest on contingencies that require further performance by

either party. None of the agreements involves a chattel mortgage or secured interest in any proposed facility.

5. The material terms of two of these funding agreements are accurately set forth in Attachment 1 to this affidavit. Copies of the underlying agreements are being submitted separately and concurrently herewith under a request for confidentiality. These two agreements, committing funds of \$650 million to the project, are in addition to other funding commitments to the ELLIPSO™ project in the form of vendor financing arrangements, internal shareholder commitments and other business arrangements.
6. MCHI previously submitted to the Commission on January 3, 1995, evidence of a commitment from Israel Aircraft Industries "to expend the necessary funds to support" the ELLIPSO™ project in the form of a January 3, 1995 letter from the Chief Financial Officer of Israel Aircraft Industries. A copy of this letter is attached as Attachment 2. IAI holds approximately 13% of MCHI's voting stock. On January 26, 1992, MCHI and IAI entered into an agreement with MCHI which provided, among other things, that if an FCC license is awarded (a) a space company will be formed, controlled by MCHI with substantial equity ownership by IAI, which will serve as prime contractor for the system; and (b) a specified percentage of the satellite construction and launch services for the ELLIPSO™ project will be awarded to IAI.
7. MCHI has received additional external funding commitments, in excess of \$300 million for the sale of international distribution rights and other rights in the ELLIPSO™ system including equity in Ellipsat International, Inc., the international marketing subsidiary of

**ATTACHMENT 1-A**

certain countries in the Middle East for US\$300 million. ARTOC has broadbased business activities in, among others, project investment, engineering, utility equipment, automotive, consumer products and electronics. The ARTOC agreement supersedes an earlier agreement between MCHI and the Universal Group (Universal Co. for Import & Export Electronics & Telecommunications & Universal for Heavy Transport Company also known as T.E.N.), an ARTOC affiliate.

The ARTOC agreement states that the funding commitment "is subject only to the issuance of an FCC license." The parties represent and warrant that "the commitment does not rest on contingencies which require action by any party." The agreement provides that the payment of \$300 million shall be made in specified installments over a two year period commencing 30 days after issuance of an FCC license to MCHI.

MCHI has received assurances from the National Bank for Development and the Arab International Bank with respect to the financial capability of the ARTOC Group, ARTOC Suez and TEN.

**Terms of Selected External Funding Commitments**

1. Vula Communications (Pty) Limited ("Vula"), a consortium of South African companies, entered into an agreement dated September 12, 1996 with Mobile Communications Holdings, Inc., which supersedes a January 22, 1996 agreement between MCHI and ATEO Africa Holdings (Pty) Ltd., a South African telecommunications company. The MCHI/ATEO Agreement provided for an investment of US\$350 million in exchange of 12% equity in MCHI and the sale of distribution rights for the ELLIPSO system in sub-Saharan Africa. The agreement between MCHI and Vula reiterates and reaffirms the ATEO agreement while expanding the investor base. In this agreement, Vula irrevocably commits US\$350 million to purchase exclusive distribution rights for ELLIPSO™ services in certain regions in Africa.

Although Vula is a newly-formed, registered South African corporation, it is comprised of established entities with access to substantial financial resources. Specifically, the Vula consortium includes:

- Vula Investments (ATEO);
- Communications Workers Investment Company (the investment arm of the Communications Workers Union);
- National Union of Metalworkers of South Africa (NUMSA) and the Metal Industries Provident (Retirement) Fund, the largest industrial council provident fund in South Africa;
- Izwelitsha Investment Holding Co. (the investment arm of the African National Congress);

- Sanco Investment Holding (Pty) Ltd, the business arm of the South African National Civics Organization (SANCO), South Africa's largest community based organization; and
- National African Federated Chamber of Commerce (NAFCOC), South Africa's oldest black business representative organization, and its investment company, Nafcoc Investment Holding Company.

The parties represent and warrant that "VULA is prepared to undertake and perform under this commitment upon grant of authorisation by the FCC." The agreement sets forth a payment schedule pursuant to which the \$350 million will be payable in specified installments over a two year period commencing 30 days after issuance of the FCC license. The commitment is subject only to the issuance of an FCC license, and the parties represent and warrant that "the commitment does not rest on contingencies which require action by any party."

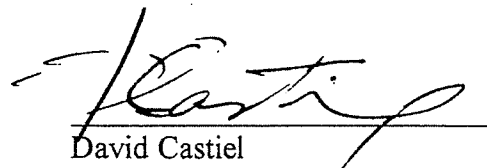
The ELLIPSO™ project is viewed as an important element of South Africa's wireless infrastructure development strategy and has received high-level political support within South Africa, as evidenced by the attached letters (Attachment 1-A) from the Reverend M.A. Stofile, Treasurer General of the ANC, and the Honorable Franklin A. Sonn, the South African Ambassador to the United States.

Boland Financial Services (Pty) Ltd, a subsidiary of Boland Bank Holdings Limited, a substantial player in the South African banking sector, is assisting with the structuring and management of this investment.


2. ARTOC Group, an Egyptian multi-disciplinary, multi-national holding company headquartered in Cairo with twenty one subsidiaries and affiliates operating under six divisions, has entered into an agreement with MCHI, dated September 15, 1996, through its ARTOC Suez division, which "irrevocably commits" to purchase exclusive ELLIPSO™ distribution rights in

MCHI. Further information about these commitments will be submitted to the Commission if necessary and upon request.

8. MCHI has also received vendor financing commitments for the ELLIPSO™ system, including up to \$45 million from Arianspace and full financing of the total launch costs for seventeen (17) first-generation ELLIPSO™ satellites (US\$300 million) from a consortium including the Yuzhnoye Design Office in Ukraine and financial backers which agreements contemplate the issuance of convertible debentures by MCHI.
9. MCHI also has vendor financing commitments of \$206 million from satellite manufacturer Spectrum Astro and their suppliers (including \$28 million from AEC-Able for solar arrays to be paid in the form of MCHI equity) to be used to cover satellite construction costs. Information about these vendor financing commitments was previously provided in MCHI's November 1994 amendment and related filings. To address Commission concerns that the vendor financing agreements were not "fully negotiated," MCHI is submitting, under request for confidentiality, the actual business agreements between the parties.

  
David Castiel

Subscribed and sworn to before me this 16<sup>th</sup> day of September, 1996.

  
Notary Public  
my commission expires 9/30/96