



Federal Communications Commission
Washington, D.C. 20554

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INTL. REFERENCE CENTER

October 29, 1996

Ms. Jill Abeshouse Stern
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037

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

Dear Ms. Stern:

This letter is in response to Mobile Communications Holdings, Inc.'s ("MCHI's") recently filed Request for Confidential Treatment of Sensitive Commercial Information and Request for Issuance of a Protective Order ("confidentiality request") filed on September 16, 1996 in connection with MCHI's amendment to its pending applications for 1.6/2.4 GHz mobile satellite service ("Big LEO") licenses. In the confidentiality request, MCHI asserts that Commission rules 25.140 and 25.143, 47 C.F.R. §§ 25.140 and 24.143, do not require submission of applicant's actual business agreements. We agree. Consequently, pursuant to MCHI's request, we are returning its business agreements. In doing so, we emphasize that we must base our determination of MCHI's financial qualifications to hold a Big LEO license on the information contained in its amendment. Although we have made no determination in this regard, certain information contained in its business agreements may be relevant to MCHI's financial qualifications. However, we will not be able to consider this information unless it is part of the record.

On September 16, 1996, MCHI filed an amendment to its Ellipso Big LEO satellite system application to demonstrate its compliance with the financial requirements as set forth in the Commission's Big LEO proceeding. In re Amendment of 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" proceeding). MCHI asserts that the information provided in its amendment is sufficient for the Commission to determine that MCHI is technically, legally, and financially qualified as a Big LEO licensee. As part of its amendment, MCHI submitted, under a request for confidentiality, actual business agreements MCHI has reached with various investors and financiers. MCHI requests that the Commission determine that submission of the business agreements is not required under Commission rules. If they are not, MCHI requests that the documents be returned. If the agreements are mandatory, MCHI requests that (a) it be permitted to redact information that is not relevant to the licensing issues in this proceeding; and (b) we issue a protective order limiting inspection of the materials to the Big LEO parties for use in the context of the Big LEO proceedings.

L/Q Licensee, Inc. ("LQL") Motorola Satellite Communications, and TRW, Inc. filed oppositions to MCHI's confidentiality request, arguing that only by review of MCHI's entire business agreements can the Commission determine whether the agreements satisfy the Commission's financial qualification standards. Opponents also argue that MCHI should not be permitted to redact portions

of its agreements since the agreements are relevant to a material question of fact in this proceeding. Moreover, they contend that since MCHI has not limited its request to the commercially sensitive information contained in the agreements, MCHI's request should be denied and the information be made available to the public, or at least to interested parties. TRW requests that we do not accept MCHI's amendment for filing until we act on its confidentiality request. Spectrum Astro, one of MCHI's equipment vendors, filed a letter stating that its vendor financing agreement with MCHI contains sensitive information and should be kept confidential.

We first address MCHI's assertion that Commission rules do not require applicants to submit actual business agreements in order to demonstrate compliance with the Commission's financial requirements. Section 25.143 (b)(3) requires each applicant for a Big LEO space station authorization to demonstrate, on the basis of the documentation contained in its application, that it is financially qualified to meet the estimated costs of the construction and launch of all proposed space stations in the system and the estimated operating expenses for one year after launch of the initial space station. Section 25.140 outlines various mechanisms that may be used to make this demonstration. An applicant may submit its balance sheet demonstrating that it has current assets and operating income sufficient to satisfy its financial requirements. In the alternative, applicants may submit the terms of any fully negotiated loan, credit arrangement, sale, equity placement, grant, or other external funding arrangement intended to be used to finance the proposed system, along with the identity of the creditor, the amount committed, letters of commitment, and detailed terms of the transaction, including the details of any contingencies.

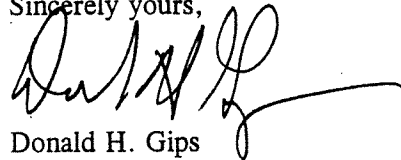
Nothing in the Commission's rules requires that an applicant submit its actual business agreements in order to demonstrate that it has met the Commission's financial requirements. Consequently, we are returning MCHI's business agreements, as requested. We note, however, that the agreements may contain information relevant to our determination of whether MCHI meets the Commission's financial standards. For example, to the extent MCHI considers these documents "letters of commitment" from creditors or is relying on the contracts to demonstrate the detailed terms of the transactions (such as payment schedules, liens, options, limitations, or understandings as to further agreements) and to the extent this information is not separately and fully reflected in MCHI's filing, their withdrawal may adversely impact the adequacy of MCHI's showing. Should MCHI decide that some of the information in its agreements are necessary to its financial showings, we will allow it to refile this information. MCHI may choose to resubmit the agreements either in full or in redacted form or to provide the information in another form, such as letters of commitment from its partners to the business agreements.

If MCHI decides to resubmit the business agreements, we will not accord these documents confidential treatment in their entirety under Section 0.459 of the Commission's rules, 47 C.F.R. § 0.459. MCHI asserts that public disclosure of the agreements could result in substantial competitive harm and thus the agreements are entitled to confidentiality under Exemption 4 of the Freedom of Information Act ("FOIA"), citing National Parks & Conservation Ass'n v. Morton, 498 F.2d 756 (D.C. Cir. 1974). Under the test set forth in that case, confidential treatment of commercial information may be warranted if disclosure of the information is likely to either (1) impair the Government's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. MCHI correctly notes that the Bureau has already determined that certain price and cost information related to

distribution rights for international markets, if publicly disclosed, could result in competitive harm to MCHI and its distributors. In re Application of Mobile Communications Holdings, Inc., Order on Reconsideration, 10 FCC Rcd 1547 (Int'l Bur. 1994) ("Reconsideration Order"). In that case, we permitted MCHI to redact this sensitive information from several of its business agreements. However, MCHI now seeks to withhold the entire business agreements from public disclosure. It has not demonstrated, however, that all of the language contained in these agreements is entitled to confidential treatment. Under these circumstances, we would not grant a request to withhold an entire document. In addition, we do not believe that the public interest would be served by limiting disclosure of the agreements to interested parties under a protective order. Limiting disclosure in this manner would limit inspection to MCHI's competitors and unnecessarily decrease the amount of information available for public participation in the regulatory process. We seek to balance the FOIA goal of public disclosure and Commission policy to render decisions based on information in the record with an applicant's need for confidential treatment of sensitive information. For this reason, we would permit MCHI to submit a redacted version of documents, requesting confidentiality only for that material which would cause it substantial competitive harm if publicly disclosed, consistent with our decision in the Reconsideration Order.

Accordingly, we grant MCHI 15 days in which to supplement its financial showing in a format suitable for public disclosure. At that time, we will place on public notice MCHI's amendment, along with any additional submission it may elect to make consistent with this letter. We emphasize MCHI's submission may not be used to submit information concerning commitments MCHI has obtained since the deadline for submission of its financial showing. Nothing in this letter is to be construed as predetermining our decision on whether MCHI is financially qualified.

Sincerely yours,



Donald H. Gips
Chief, International Bureau