

LATHAM & WATKINS

ATTORNEYS AT LAW

1001 PENNSYLVANIA AVE., N.W.

SUITE 1300

WASHINGTON, D.C. 20004-2505

TELEPHONE (202) 637-2200

FAX (202) 637-2201

PAUL H. WATKINS (1899 - 1973)
DANA LATHAM (1898 - 1974)

CHICAGO OFFICE

SEARS TOWER, SUITE 5800
CHICAGO, ILLINOIS 60606
PHONE (312) 876-7700, FAX 993-9767

HONG KONG OFFICE

SUITE 2205A, 22ND FLOOR
NO. 9 QUEEN'S ROAD CENTRAL
HONG KONG
PHONE + 852-2522-7886, FAX 2522-7006

LONDON OFFICE

ONE ANGEL COURT
LONDON EC2R 7HJ ENGLAND
PHONE + 44-171-374 4444, FAX 374 4460

LOS ANGELES OFFICE

633 WEST FIFTH STREET, SUITE 4000
LOS ANGELES, CALIFORNIA 90071-2007
PHONE (213) 485-1234, FAX 691-6763

MOSCOW OFFICE

ULITSA GASHEKA, 7, 9TH FLOOR
MOSCOW 123056, RUSSIA
PHONE + 7-095 785-1234, FAX 785-1235

NEW JERSEY OFFICE

ONE NEWARK CENTER, 18TH FLOOR
NEWARK, NEW JERSEY 07101-3174
PHONE (973) 639-1234, FAX 639-7296

BY HAND DELIVERY

John I. Riffer
Assistant General Counsel
Administrative Law Division
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20005-2505

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; 158-SAT-AMEND-96)

Dear Mr. Riffer:

On behalf of Mobile Communications Holdings, Inc. ("MCHI"), this letter responds to your August 19, 1998 request for additional information regarding allegations made by certain of MCHI's competitors that MCHI caused third parties to make impermissible presentations to the FCC in violation of the FCC's *ex parte* rules. As discussed below, the information provided by MCHI in this submission confirms that the Office of General Counsel's ("OGC's") June 27, 1997 finding that MCHI had not violated the FCC's *ex parte* rules (the "OGC Ruling") was proper. MCHI therefore urges the Commission to affirm the OGC's prior ruling and to resolve this matter expeditiously.

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NEW YORK OFFICE

895 7th Avenue, Suite 2000
NEW YORK, NEW YORK 10108-4801
PHONE (212) 206-2000 FAX 75 4894

ORANGE COUNTY OFFICE

650 TOWN CENTER DRIVE, SUITE 2000
CORONA, CALIFORNIA 92709-3226
PHONE (714) 840-2334 FAX 755-8292

SAN DIEGO OFFICE

70 'B' STREET, SUITE 1000
SAN DIEGO, CALIFORNIA 92101-3597
PHONE (619) 236-2334 FAX 595-7499

SAN FRANCISCO OFFICE

505 MONTGOMERY STREET, SUITE 2000
SAN FRANCISCO, CALIFORNIA 94111-2562
PHONE (415) 391-0600 FAX 393-6095

SILICON VALLEY OFFICE

75 WILLOW ROAD
MENLO PARK, CALIFORNIA 94025-3656
PHONE (650) 326-4600 FAX 493-2600

SINGAPORE OFFICE

20 CEDIL STREET, #25-01-02-04
THE EXCHANGE, SINGAPORE 049708
PHONE + 65-536-1188 FAX 536-1177

TOKYO OFFICE

INFINI AKASAKA, 6-7-15 AKASAKA, MINATO-KU,
TOKYO 107-0052 JAPAN
PHONE +81-3-3423-3970 FAX 3423-3971

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INTRODUCTION AND SUMMARY

1. Factual Background

MCHI is an entrepreneurial small business that in November 1990 filed the first application with the FCC for a license to construct, launch and operate a low-Earth orbit mobile satellite system. Through its application, MCHI sought authority to utilize an innovative satellite system design, using patented elliptical orbits, to provide high-quality affordable global voice and data services via mobile telephones. Because MCHI's system, ELLIPSO™, would efficiently deliver low-cost telephone services to consumers around the world, MCHI over time won the support of major corporations, including Westinghouse Electric Corporation, Harris Corporation, Israel Aircraft Industries, Lockheed Martin, Cable & Wireless and The Boeing Company. In addition, MCHI has attracted partners in the developing world, particularly in sub-Saharan Africa, who view ELLIPSO™ as a potentially affordable solution for telecommunications infrastructure development. See Castiel Dec. at ¶ 2. Following the filing of MCHI's application, five other companies -- Motorola Satellite Communications, Inc. ("Motorola"), TRW Inc. ("TRW"), Loral/Qualcomm Partnership, L.P. ("Loral"), AMSC Subsidiary Corporation ("AMSC") and Constellation Communications, Inc. ("Constellation") also applied to the Commission for licenses or modifications of existing satellite licenses to operate in the same frequency bands as ELLIPSO™. *Id.* at ¶ 3.

In October 1994, the FCC released its *Big LEO Order*, FCC 96-54 (11 FCC Rcd 12861), adopting rules for licensing satellite systems in the Above 1 GHz Mobile Satellite Service (also referred to as "Big LEO" service). Among other things, despite the comments of MCHI and others urging that a more equitable financial qualifications standard should apply to Big LEO applicants, the FCC concluded that a "strict" two-tier standard instead should apply. Under this standard, larger companies such as Motorola, TRW and Loral could satisfy the FCC's financial qualifications requirement merely by showing that their assets exceeded the proposed space system construction, launch and first year operating costs, and by submitting a letter indicating that they are "prepared to expend the necessary funds absent a material change in circumstances." Smaller companies, such as MCHI, that could not show that their assets exceeded proposed space system costs were required to submit evidence of "irrevocable commitments" for external funding. Applying this two-tier financial standard, the FCC awarded licenses to Motorola, Loral and TRW in January 1995, but deferred the grant of licenses to MCHI and the remaining applicants. *Id.* at ¶ 4-5.

MCHI recognized that the issue of financial qualifications for small entrepreneurial businesses was a broad policy question affecting many applicants in different telecommunications services. In addition to filing comments in the FCC's *Big LEO* and Section 257 proceedings (identified below) urging the FCC to adopt a more equitable financial standard, MCHI therefore continued its involvement in a variety of policymaking activities to encourage

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the adoption of rules and policies that were favorable to small businesses. In addition to U.S. legislative activities, MCHI participated extensively in official U.S. delegations and telecommunications industry efforts to develop rules and conditions for gaining market access worldwide for Big LEO systems and to obtain the feeder link spectrum necessary to operate them. *Id.* at ¶ 6; Helman Dec. at ¶ 3.

Together with other entrepreneurial satellite companies, such as Constellation, Columbia Communications Corp., Orion Network Systems, and PanAmSat Corporation, MCHI joined in forming an *ad hoc* coalition to address the policy impact of an increased use of the strict financial standard as a threshold criteria for satellite services. Working alone and through the *ad hoc* coalition, MCHI sought to bring to Congress' attention the adverse effect that the FCC's regulations, particularly the strict financial standard, had on entrepreneurial satellite companies. This activity should be considered against the back-drop of a Congressional legislative agenda increasingly focused on preserving opportunities for entrepreneurial telecommunications companies, including small businesses, and ensuring that the government does not create artificial market entry barriers for such companies. These national policies were reflected in the Telecommunications Act of 1996 (the "Act") and the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"). *See* Helman Dec. at ¶ 3.

Section 257 of the Act specifically directed the FCC to identify and remove market entry barriers for small businesses.¹ In articles, conferences, industry meetings and

¹ Section 257(a) provides:

ELIMINATION OF BARRIERS — Within 15 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete a proceeding for the purpose of identifying and eliminating, by regulations pursuant to its authority under this Act (other than this section), market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services.

47 U.S.C. § 257(a).

Section 257(b) provides:

NATIONAL POLICY— In carrying out subsection (a), the Commission shall seek to promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience and necessity.

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discussions with members of Congress and their staff, MCHI expressed its support for the small business provisions of the Act and urged Congress to underscore to the FCC and others the need to ensure fair market access for small businesses. MCHI's representatives pointed approvingly to the ongoing FCC proceedings on small business being conducted pursuant to Section 257 of the Act (the "Section 257 Proceeding")² and urged legislators to make their views clear on the issue. To that end, MCHI (1) proposed language for inclusion in the bill that was passed as the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (the "1996 Commerce, Justice and State Appropriations Bill") that would have directed the FCC to waive the strict financial standard to further small business opportunities; (2) encouraged Congress to elaborate on the legislative intent behind Section 257, specifically to clarify that the elimination of market entry barriers included the strict financial standard; and (3) encouraged various Congressional offices to file comments in the FCC's Section 257 Proceeding. *See* Helman Dec. at ¶ 6; Moore Dec. at ¶ 3.

On a separate front, MCHI appealed the FCC's Big LEO rulemaking decision to the United States Court of Appeals for the D.C. Circuit, arguing that the FCC's adoption of a strict financial standard was arbitrary and capricious. *See* Helman Dec. at ¶ 5.

Internationally, MCHI also remained active. MCHI representatives were private sector members of the U.S. delegation to the World Radio Conferences in 1995 and 1997 ("WRC-95" and "WRC-97"), and the company played an important role in connection with the allocation of feeder link spectrum for Big LEOs at WRC-95. MCHI also was a member of the U.S. delegation to the International Telecommunication Union's ("ITU") first Policy Forum on Global Mobile Personal Communications by Satellite ("GMPCS") in 1996, and a senior MCHI official participated in proceedings relating to the adoption and implementation of the GMPCS Memorandum of Understanding by national regulatory authorities around the world and MSS operators. In addition, MCHI was a member of the industry group that supported U.S. government efforts in negotiating the recent World Trade Organization's Agreement on Trade in Basic Telecommunications Services. In light of MCHI's connections with Vula Communications Holdings (Pty.) Ltd. ("Vula Communications"), a major Black empowerment South African communications consortium, MCHI has been a member of the U.S.-South Africa Business Council since 1994 and had participated in the Council's activities in the U.S. and South Africa. These activities have included helping to sponsor events in connection with semi-annual meetings between Vice President Gore and Deputy President Thabo Mbeki of South Africa. *Id.* at ¶ 3.

² Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, Notice of Inquiry, G.N. Docket No. 96-113, FCC No. 96-216, released May 21, 1996.

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2. The June 27, 1997 OGC Ruling

In May 1997, in response to a Motion to Expedite processing of MCHI's application filed by MCHI, and in an apparent effort to preclude or delay MCHI from receiving its license, certain of MCHI's competitors alleged that MCHI had solicited or encouraged third parties to make impermissible *ex parte* contacts with the FCC about the merits or outcome of its Big LEO licensing proceeding. None of these allegations had been raised previously, even though the parties making the allegations had been served with the communications that formed the basis of their pleadings many months (or, in some cases, years) before the complaints were raised.

The *ex parte* rules in effect during the 1995 to 1997 period at issue (47 C.F.R. § 1.1200 et seq. (Oct. 1996)) (and which have since been revised) prohibited parties to a "restricted" proceeding from having written communications directed to the merits or outcome of such proceeding with decisionmaking personnel at the FCC unless they also served all other parties to the proceeding with that communication.³ Under those rules, if the communication is oral, notice must be given to the other parties so that they have an opportunity to be present. *Id.* The rules also make clear that a party may not "solicit or encourage others to make any presentation that [it] is prohibited from making." Status inquiries are permitted, however, and different rules apply to proceedings that are not "restricted." *Id.* at § 1.1202(a). The rules provide that a "Congressional . . . communication expressing concern with administrative delay in a particular proceeding or expressing concern that a particular proceeding be resolved expeditiously" is considered a permissible "status inquiry." *Id.*

After receiving extensive comments on the allegations from the parties, the OGC determined that MCHI had not "solicited or encouraged the making of any prohibited presentations" to the FCC and that MCHI's efforts were "intended only to induce presentations from outside sources concerning issues in a pending rulemaking and other dockets concerning the financial qualifications standard applicable to satellite applications," which were "exempt" or "permit but disclose" proceedings that were subject to different *ex parte* rules. OGC Ruling at 4-5. Although the OGC found that MCHI should have provided guidance and information to the third parties to ensure that prohibited presentations would not be made by them, the OGC found that a sanction was not appropriate because (1) MCHI took immediate steps to serve the parties once it became clear to MCHI that the third party presentations were made; and (2) none of the parties had been prejudiced. *Id.* at 7.

TRW and Loral each filed an application for review of the OGC Ruling on July 28, 1997. TRW withdrew its application for review on May 22, 1998. Motorola filed comments

³ The *ex parte* rules at issue did not specifically address when a presentation had to be served in order to be timely, however.

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in support of the applications for review on August 12, 1997, which MCHI moved to strike on August 25, 1997.

3. MCHI's Response to OGC's August 19, 1998 Request for Information

On August 19, 1998, the OGC requested that MCHI submit further information relating to the communications that were the subject of the OGC Ruling. In response to the OGC's letter, MCHI has reviewed its files and authorized its outside counsel to undertake interviews with these employees, directors, officers and consultants with potential involvement in MCHI's government relations activities during the relevant period of time. *See* Stern Dec. at ¶ 2; Castiel Dec. at ¶ 7. As a general matter, however, MCHI has always been very active in its governmental relations efforts, and had many communications with Congress and the Administration on a variety of matters between 1991 through 1997. Thus, it is difficult for many of the individuals to recall every communication that has taken place. That being said, these individuals could not recall any communications concerning MCHI's license before 1995 with the third parties identified in the OGC Ruling. *See* Castiel Dec. at ¶ 7. Thus, this response focuses on the 1995 to 1997 period. In addition, some individuals were not available to MCHI's representatives in preparing this response.⁴ Within these limitations, we have provided specific details with respect to each communication to supplement the more general information provided last year.

In the course of MCHI's preparation of this response, MCHI learned for the first time of certain communications between MCHI's outside legislative consultant, Frank Moore, and certain Congressional offices that were not the subject of the OGC's prior ruling. In the interest of full disclosure, however, MCHI has provided information concerning these communications and believes that they fall within the OGC's prior determination. The detailed information provided in the attached declarations of David Castiel (MCHI's President and Chief Executive Officer), Gerald Helman (MCHI's Vice President responsible for governmental relations), Jill Abeshouse Stern (formerly MCHI's outside regulatory counsel at Shaw, Pittman, Potts & Trowbridge and since February, 1998, MCHI's Senior Vice President and General Counsel), Frank Moore of Smith, Bucklin & Associates (MCHI's outside government relations consultant), and Thomas Quinn of O'Connor & Hannan, L.L.P. (who provided assistance with MCHI's financing efforts), fully support the OGC's Ruling.

In discussions with Congressional members and their staffs, MCHI and others working on its behalf frequently referred to MCHI's difficulties in obtaining a license as a concrete example of how the FCC's stringent two-tier financial standard posed a market entry barrier to small businesses. MCHI also regularly referred to the resultant delays it had

⁴ MCHI was unable to secure an interview with Weldon Latham of Shaw, Pittman, Potts & Trowbridge in preparing this response despite efforts to do so.

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encountered in the processing of its application. However, it was MCHI's intent to seek support for a change in the FCC's policy, *not* to solicit *ex parte* communications about the merits of its licensing proceeding. Even on the few occasions when MCHI's outside legislative consultant sought assistance from Congressional offices to facilitate the prompt grant of MCHI's license and communicated with Congressional offices, he did so after having informed them of the restricted nature of the proceeding, and in a fashion and in the belief that his actions did not violate the FCC's *ex parte* rules and, to the best of his knowledge, no *ex parte* presentations resulted from his actions. The specific evidence outlined below and in the attached declarations also establishes that, despite the OGC's conclusions to the contrary last year, in virtually every instance, MCHI had apprised the third parties of the restricted nature of MCHI's Big LEO licensing proceeding. The evidence further shows that, in every instance where the communication was not strictly about policy issues and had not already been served on the parties, MCHI immediately served the parties with each arguably *ex parte* communication as soon as it learned of those communications.

SPECIFIC RESPONSES

1. Describe in detail any written or oral communications made by MCHI, its officers, directors, employees, or agents on its behalf, to any of the persons or offices identified in notes 1-3 of the OGC June 27, 1997 ruling, and that addressed or concerned MCHI's application proceeding, including but not limited to, the merits or outcome of the proceeding.

(a) Communications with Senators Richard C. Shelby, Trent Lott, Larry E. Craig, Thad Cochran, Connie Mack, Conrad Burns, Kit Bond, Howell Heflin, and Daniel Inouye.

(1) July 19, 1995 Letter

MCHI's first contact with Senator Shelby occurred at a Washington Opera event in early 1995 which Dr. Castiel attended. Dr. Castiel recalls that, after he was introduced to Senator Shelby, the Senator inquired about the nature of MCHI's business, to which Dr. Castiel responded that MCHI was an entrepreneurial satellite company and that he also mentioned that one of MCHI's potential technology vendors, SCI Systems, Inc., was from Senator Shelby's home state of Alabama. Dr. Castiel also mentioned that MCHI's application had been deferred as a result of the FCC's stringent financial qualifications standard. In response to the Senator's question whether there was anything he could do, Dr. Castiel recalls specifically informing the Senator that he was not requesting any action from him. Senator Shelby nevertheless expressed interest in the fact that the FCC's financial qualifications standard had had an adverse effect on

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small businesses and urged Dr. Castiel to contact his assistant, David Hall, to discuss the matter further. *See* Castiel Dec. at ¶ 9.

Mr. Hall contacted Dr. Castiel several days later and arranged for a meeting. After several staff level discussions among MCHI, SCI, and Senator Shelby's office, Senator Shelby issued a letter to be signed jointly by other Senators on the financial qualifications standard issue. MCHI believes that the other signatories to the letter were also contacted by Mr. Hall, in cooperation with an MCHI and/or SCI representative, in connection with this letter. *Id.* at ¶ 10.

Although the letter that was coming from Senator Shelby's office addressed general policy issues rather than the merits of MCHI's license application, MCHI nevertheless had intended, out of an abundance of caution, to serve all the parties to the licensing proceeding in a timely fashion. As far as can be determined, however, MCHI did not directly receive a copy of the signed letter from Senator Shelby's office. MCHI is thus unclear as to precisely when the letter was actually sent to the FCC. MCHI did receive a copy of the letter from the FCC on or about August 25, 1995 when the FCC had served all the parties. *Id.* at ¶ 11. Although the letter was dated July 19, 1995, it is likely that it was not finalized or mailed on that date in light of the logistics of securing various Senators' signatures on the letter. Based on MCHI's experience, this process could have taken as long as two weeks. *See* Moore Dec. at ¶ 7. No parties to the licensing proceeding raised any objection to the letter at that time.

(2) October 3, 1996 Letter

Following the enactment of the Act, and in light of the mandate to the FCC in Section 257 of the Act to identify and eliminate market entry barriers for entrepreneurial businesses, MCHI and other *ad hoc* coalition members urged Congress to take legislative action sending a clear direction to the FCC that the FCC's strict financial qualifications standard constituted an impermissible marketing entry barrier. In connection with this coalition effort, MCHI retained Frank Moore of Smith, Bucklin & Associates to assist the company with obtaining Congressional support for the elimination of the strict financial qualifications standard in connection with the Section 257 Proceedings. *See* Moore Dec. at ¶ 3. This effort consisted of (1) obtaining support for a bi-partisan Senatorial letter (ultimately signed by Senators Shelby, Heflin, Craig, Mack, Inouye, Burns, and Bond) concerning the FCC's strict financial qualifications standard that would be sent to the FCC in connection with the Section 257 and DISCO I Proceeding; (2) obtaining the inclusion of language in the 1996 Commerce, Justice, and State Appropriations Bill that would encourage the FCC to eliminate market entry barriers for small telecommunications businesses and direct the FCC to waive or modify financial standards to accomplish the foregoing national policy objective; and (3) urging a colloquy on the Senate floor that would elaborate upon Congressional intent underlying Section 257, specifically to

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make clear that the market entry barriers referenced in Section 257 included the FCC's strict financial standard. *See* Moore Dec. at ¶ 3; Helman Dec. at ¶ 6.

The efforts described above involved a number of contacts between Mr. Moore and his associate and the relevant Congressional offices to discuss the FCC's stringent financial qualifications standard and how it constituted a market entry barrier for small businesses. In addition, Ms. Stern, Mr. Helman, and coalition members, met on various occasions with Congressional staff on the telecommunications and small business subcommittees to discuss the proposed amendment to the 1996 Commerce, Justice, and State Appropriations Bill. *See* Stern Dec. at ¶ 5. Although Mr. Moore does not recall the specific details of every conversation that he had with the offices of Senators Shelby, Heflin, Craig, Mack, Inouye, Burns, and Bond, he states in his declaration that the status of MCHI's license application arose in the context of discussing how the strict financial qualifications standard created an entry barrier for small businesses. MCHI's particular situation was provided as an example of a larger policy problem potentially affecting MCHI and others in the *ad hoc* coalition that the coalition sought to redress through legislative intervention. *See* Moore Dec. at ¶ 5.

The October 3, 1996 letter was spearheaded by Senator Shelby's office. Mr. Moore recalls that he informed Senator Shelby's office at some point prior to the submission of the letter about the restricted nature of MCHI's license proceeding and that the Senator's office should not have *ex parte* communications with the FCC on the MCHI licensing proceeding. Mr. Moore also coordinated with Senator Shelby's office and MCHI's counsel, Ms. Stern, to ensure that all parties would be served with the letter, even though the letter concerned the Section 257 Proceeding and therefore was not, in MCHI's view, subject to the *ex parte* rules. *Id.* at ¶ 6; Stern Dec. at ¶ 4.

Mr. Moore states in his declaration that the letter, although dated October 3, 1996, was not mailed by Senator Shelby's office until the close of business on October 17, 1996, and that Mr. Moore had coordinated with Ms. Stern to have her serve the letter on the other parties the following day. This letter was in fact filed with the FCC and served on all of the parties on October 18, 1996. *Id.*; at ¶ 7; Stern Dec. at ¶ 4.

After the October 3, 1996 letter was sent, Mr. Moore communicated with the offices of some of the signatories to the letter in March and May 1997 in which he discussed the status and merits of MCHI's application and sought their assistance in obtaining prompt action on the license application. Because Mr. Moore does not have actual signed copies of the letters, only copies from electronic files, he is not certain whether they were all sent. Mr. Moore did not believe that his conduct violated the *ex parte* rules that were applicable at the time since the letters were intended to maintain Congressional awareness of MCHI's circumstances, invite further communication with him, or to urge Congressional status inquiries, not discussions about the merits of MCHI's application. Mr. Moore does not believe that any contacts with the FCC

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resulted from these communications and he does not believe that MCHI was aware of his communications prior to its preparation of this response. *See* Moore Dec. at ¶ 9.

In addition, in July 1996, Mr. Moore had communications with Senator Lott's office in which a legislative aide to the Senator offered to speak with Senator Chong's office about the Commission's failure to give deference to the Senator's views on Section 257, as evidenced by the Commission's denial of MCHI's Application for Review of the order deferring its license application. In response, MCHI asked the Senator's office to make its views known to the Commissioner's office. Mr. Moore also believes that the merits of MCHI's license application were discussed in his communications with the Senator's office. Senator Lott's Office had been apprised of the restricted nature of MCHI's licensing proceeding, however, and Mr. Moore states that the communications were not intended to violate the *ex parte* rules. Mr. Moore believes that a call may have taken place between Senator Lott's office and Ms. Mago, but does not know what was discussed. *Id.* at ¶ 8. MCHI was not aware of this call or of Mr. Moore's communications prior to its preparation of this response. *See* Helman Dec. at ¶ 9.

(b) Communications with Congressman John Conyers, Jr.

MCHI believes that the first contact with Congressman Conyers on its behalf was made in May 1996 by Weldon Latham of the law firm of Shaw, Pittman, Potts & Trowbridge, whom MCHI had hired to assist it in its government relations effort. MCHI believes that Mr. Latham requested a meeting with Congressman Conyers to discuss MCHI's South African alliance, and the FCC's disparate treatment of small minority businesses and how it had adversely affected MCHI. *See* Stern Dec. at ¶ 6. However, MCHI does not know whether this meeting took place. Congressman Conyers sent a letter to the FCC dated May 16, 1996 that addressed his concern that the FCC was stifling small business through market entry barriers. This letter specifically stated that Congressman Conyers did "not seek to comment on any specific matter before the FCC with regard to MCHI," and limited its discussion to general policy issues. Ms. Stern saw a draft of the letter but cannot recall who drafted it. *See* Stern Dec. at ¶ 6.

The FCC responded to Congressman Conyers' May 16, 1996 letter on July 15, 1996. It is clear from that letter that the FCC understood Congressman Conyers' letter to address policy issues, because that is the basis on which the FCC responded. Ms. Stern believes that, at Mr. Latham's suggestion, she had a telephone conversation with Congressman Conyers' office in July or August 1996 about a response to the FCC's letter, but she does not recall suggesting or initiating the Congressman's response. She did not ask the Congressman's office to contact the FCC about the licensing proceeding. Although Ms. Stern does not recall who drafted Congressman Conyers' August 21, 1996 letter to the FCC, she recalls that Congressman Conyers wanted to respond to Chairman Hundt's letter because the Congressman believed that his views

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expressed in the first letter had not been given appropriate deference. Ms. Stern did see a draft of the letter before it was sent. *See* Stern Dec. at ¶ 7. As the OGC observed in its ruling, however, this letter “was primarily directed at the Commission’s implementation of Section 257 of the Telecommunications Act of 1996 to eliminate small business entry barriers, a matter in which, as noted above, *ex parte* presentations are permissible.” OGC Ruling at 6. MCHI did not serve this letter or the earlier letter on the other parties because it did not believe that the letters were subject to the *ex parte* rules. Because these letters concerned the Section 257 issue, however, MCHI later filed both letters with its September 10, 1996 comments in the Section 257 Proceeding. *See* Stern Dec. at ¶ 7.

(c) Communications with Congressman Edolphus Towns

MCHI’s first contact with Congressman Towns occurred in late 1996, when David Castiel and Gerald Helman had lunch with the Congressman and Thomas H. Quinn, a partner at the law firm of O’Connor & Hannan, L.L.P. who was assisting MCHI in its financing activities. *See* Castiel Dec. at ¶ 12; Helman Dec. at ¶ 11; Quinn Dec. at ¶ 4. The purpose of the meeting was to discuss MCHI’s business connections with South Africa, the benefits of ELLIPSOTM’s low cost services for the people of Africa, MCHI’s concerns with the financial qualifications standard, and the standard’s effect on small businesses, such as MCHI. *See* Helman Dec. at ¶ 11. As a member of the Congressional Black Caucus and the Subcommittee on Telecommunications and Finance of the Committee on Commerce, Congressman Towns had a strong interest in the development of telecommunications in Africa. *Id.* As the attached declarations show, it is likely that the parties discussed the inequity of the FCC’s financial qualifications standard for small businesses during the lunch, as MCHI had hoped, together with the coalition, to garner support in the House of Representatives for a letter, similar to the Senate letters, to be filed in the Section 257 Proceeding. *See* Helman Dec. at ¶ 11. Mr. Helman and Dr. Castiel did not ask for Congressman Town’s assistance during the lunch, and they did not ask for a letter or any other action that specifically addressed MCHI’s licensing proceeding. *Id.*; Castiel Dec. at ¶ 12.

While there may have been subsequent communications between MCHI and Congressman Towns’ office, Mr. Helman recalls knowing that Congressman Towns’ Legislative Assistant was working on a letter, but that he was not aware of the letter’s specific contents. He believes that Congressman Towns’ office had been apprised that the MCHI licensing proceeding was restricted. *See* Helman Dec. at ¶ 11.

After receiving a copy of the January 13, 1997 letter on Friday, January 17, 1997, Mr. Helman promptly forwarded it to Ms. Stern who immediately served all the parties to the licensing proceeding on the following business day, January 21, 1997 (January 20 was Martin Luther King Day). *Id.* at ¶ 12; Stern Dec. at ¶ 8. MCHI believes that the letter was not mailed by Congressman Towns’ office until January 17, 1997, because as Mr. Moore explains, letters

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that are prepared by Congressional staff often take several days before they are reviewed and signed by a Member of Congress. *See Moore Dec. at ¶ 12.*

After the January 13, 1997 letter was sent, Mr. Moore and Mr. Helman had a number of communications with Congressman Towns' office in connection with the March 1997 U.S. visit of officials of Vula Communications, a South African telecommunications and information technology consortium consisting of major Black labor unions and Black business and civic associations in South Africa. *See Helman Dec. at ¶ 13; Moore Dec. at ¶ 10.* The purpose of the meeting was to introduce Congressman Towns to Vula and its mission, in light of the Congressman's interest in encouraging economic development in South Africa. The meeting at Congressman Towns' office was attended by representatives of Vula, Mr. Moore, and Mr. Helman. Because Vula was one of MCHI's partners in its proposed satellite system, and thus was affected by the FCC's decision to defer grant of the license, it is likely that the status of MCHI's license was discussed during the meeting. *See Helman Dec. at ¶ 13.*

Both Messrs. Helman and Moore recall, however, that they did not ask or encourage anyone from Congressman Towns' office to contact the FCC about its license application. Rather, the focus of the discussion was on Vula's business endeavors and the implementation of Section 257's direction to remove market entry barriers for small businesses. At some point, there was discussion about the possibility of a House letter on the latter issue much like the October 3, 1998 Senatorial letter. *Id. at ¶ 13; Moore Dec. at ¶ 10.* The Congressman's Legislative Assistant expressed enthusiasm about Vula's endeavors and the Section 257 issue, and he drafted the March 14, 1997 letter that was signed by Congressman Towns. *See Moore Dec. at ¶ 10.*

Mr. Moore does not recall the details of the communications that he had with Congressman Towns' office prior to the sending of the March 14, 1997 letter, except that he recalls that he did advise the Congressman's office that the MCHI license proceeding was restricted, and that communications to the FCC about the license were required to be served on the parties to the proceeding. *Id. at 11.* Mr. Moore saw a draft of the March 14, 1997 letter before it was finalized, and made comments on the letter. Aware that Congressional offices do not always follow administrative rules of procedure, Mr. Moore asked Congressman Towns' legislative assistant to include in the closing paragraph of the March 14, 1997 letter a request that the FCC make copies of the letter available to the other parties, and to provide him (Mr. Moore) with a copy of the letter so that he could arrange for prompt service on the parties himself. Although Mr. Moore is not certain when the letter was mailed by Congressman Towns' office, he did not receive a copy until March 25, 1997 by telecopy. *Id. at ¶ 11.* Ms. Stern promptly filed a copy of the letter with the FCC and on all the other parties on the following day, March 26, 1997. *See Stern Dec. at ¶ 9.* Based on his prior Congressional experience, Mr. Moore does not believe that the letter from Congressman Towns was actually mailed on March 14, 1997, because

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it is common for a letter to be left for a Congressman's review and signature for several days. *See Moore Dec. at ¶ 12.*

After this letter was sent, Mr. Moore had some communications with Congressman Towns' office in April and May 1997 in which the status and merits of MCHI's license application were discussed. Because Mr. Moore had been informed that Congressman Town's office and spoke frequently with then General Counsel William E. Kennard about telecommunications issues, Mr. Moore asked the Congressman's office to keep him apprised of any discussions that involved MCHI. Mr. Moore's comment was merely a part of MCHI's effort to stay informed. Mr. Moore had not asked Congressman Towns' office to raise the issue of MCHI's licensing proceeding with Mr. Kennard, nor did Mr. Moore ever discuss with the Congressman's office the OGC's inquiry into Loral and TRW's allegations of *ex parte* communications solicited by MCHI. Thus, Mr. Moore did not believe that his communications violated the FCC's *ex parte* rules. Mr. Moore does not have any reason to believe that Congressman Towns' office had any discussions with Mr. Kennard about MCHI. *Id.* at ¶ 13

(d) Communications with Congressmen Tom Davis, Jim Moran, and Bob Goodlatte dated June 6, 1997

MCHI recalls no contacts, either by itself or by others on its behalf, with the offices of Congressmen Tom Davis, Jim Moran, or Bob Goodlatte regarding its pending license application, the Section 257 Proceeding, or any other matter. MCHI believes that the June 6, 1997 letter was likely to have been submitted by these Congressmen in response to communications from another Big LEO applicant. *See Helman Dec. at ¶ 15.*

(e) Communications with the Office of Vice President Al Gore, including Sheryll Cashin (Staff Director, Community Improvement Board, Office of the Vice President)

As part of MCHI's effort to encourage Congress and the Administration to remove the market entry barrier posed by the FCC's financial qualifications standard for entrepreneurial satellite companies, Weldon Latham wrote an April 30, 1996 letter to Vice President Al Gore (and attached an April 24, 1996 letter from the Small Business Administration) to request a meeting to discuss the adverse impact of the standard on small, entrepreneurial companies, such as MCHI. *See Stern Dec. at ¶ 10.* This letter did not request or suggest any *ex parte* contacts by Vice President Gore's office with the FCC. On or about May 20, 1996, Ms. Stern, Mr. Helman, and Mr. Latham met with Greg C. Simon, former Chief Domestic Policy Advisor to Vice President Gore, to discuss the inequity of the FCC's financial qualifications standard and the requirements of Section 257. At no time did any MCHI representative ask Mr. Simon to contact the FCC, and Mr. Simon gave no indication that he

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would forward the April 30, 1996 letter to anyone at the FCC. Both Ms. Stern and Mr. Helman had the impression that the meeting would not result in any action. *See* Stern Dec. at ¶ 10; Helman Dec. at ¶ 16. MCHI later learned (at the same time as did all the other parties) that Vice President Gore's office had forwarded the letter to Catherine Sandoval, who was the head of the FCC's Office of Communications Business Opportunities. Ms. Sandoval had no role in connection with MCHI's licensing proceeding, however. *See* Stern Dec. at ¶ 10.

Neither Ms. Stern nor Mr. Helman recalls whether she or he specifically advised Mr. Simon of the fact that the MCHI licensing proceeding was restricted; however, Ms. Stern does recall Mr. Simon expressing an awareness sua sponte of the fact that, because there was an ongoing FCC proceeding, the Administration could not become involved. *See* Helman Dec. at ¶ 16; Stern Dec. at ¶ 11. Thus, MCHI had no reason to believe that Mr. Simon would have taken any *ex parte* actions or that any warnings were necessary.

MCHI is not aware of any communications between Sheryll Cashin and any MCHI employee, officer, director or agent about MCHI's license application. *See* Helman Dec. at ¶ 17; Stern Dec. at ¶ 12.

(f) Communications with Kate Carr (Special Assistant to the President) and W. David Thompson (President, Spectrum Astro)

MCHI is unaware of any contacts between its employees, officers, directors and agents and Kate Carr. Similarly, MCHI has never had any communications with Mr. Thompson in which it encouraged or solicited Mr. Thompson to send his May 8, 1996 letter to Ms. Carr that is identified in the request for information. *See* Castiel Dec. at ¶ 13; Helman Dec. at ¶ 19; Stern Dec. at ¶ 16. In fact, MCHI had no knowledge that Mr. Thompson had written a letter until MCHI was served with a copy by the FCC at the same time that all the other parties were served. Spectrum Astro was a satellite manufacturer that hoped to do business with MCHI. *See* Helman Dec. at ¶ 19; Stern Dec. at ¶ 13. After receiving the letter from Mr. Thompson, Ms. Stern contacted Spectrum's attorney to make sure that no such letters would be sent in the future. *See* Stern Dec. at ¶ 13.

(g) Communications with Gere W. Glover or the Small Business Administration

In March or April 1996, Mr. Helman contacted David Zesiger, Assistant Chief Counsel, Office of Advocacy, of the Small Business Administration ("SBA") to schedule a meeting with himself and Ms. Stern, and subsequently met with him on or about April 15, 1996. MCHI generally saw the SBA as an advocate of small business and sought its advice as to ways in which MCHI could further raise the policy issues relating to market entry barriers for small telecommunications businesses. It was MCHI's understanding that the SBA was considering

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taking a position in the *DISCO I* proceeding on the issue of strict financial standards for satellite systems. MCHI sought to advise the SBA that MCHI's situation was an example of the inequity of the strict financial standard that could be cited in the SBA's position on the January 22, 1996 *DISCO I* order. In addition, MCHI hoped that the SBA might be interested in filing an amicus brief in a pending appeal before the D.C. Circuit pertaining to the rules adopted in the FCC's *Big LEO Order*, in which the FCC had concluded that a strict financial test was appropriate. *See Stern Dec. at ¶ 17; Helman Dec. at ¶ 20.*

Mr. Zesiger expressed interest in the policy implications of the strict financial standard, and indicated that he had closely followed the *DISCO I* proceeding and was considering participation in that proceeding. He decided (either at the meeting or later) to write a letter to the FCC concerning its financial qualifications standard for satellite operators. *See Helman Dec. at ¶ 21.* Mr. Helman was generally aware that Mr. Zesiger was working on a letter, and it was in that context that Mr. Helman informed Mr. Zesiger that the letter should be served on all parties. *See Helman Dec. at ¶ 21.* Mr. Zesiger, however, told Mr. Helman that the SBA's communications would not address a specific licensing proceeding and, in any event, even in a restricted proceeding, SBA communications with the FCC were exempt under the FCC's *ex parte* rules. *Id.* The SBA subsequently reiterated its position that the SBA presentation was exempt from the *ex parte* rules under 47 C.F.R. § 1.1204(b)(5) in its Opposition to TRW's Motion to Strike the SBA letter. In this submission, the SBA also made clear that its presentation concerned policy issues, and "specifically distances itself from the outcome of MCHI's license application." Opposition of the Office of Advocacy to TRW's Motion to Strike Unauthorized Pleading at 4, 6 (May 22, 1996).

MCHI received a copy of the SBA letter on April 23, 1996. *Id.* In a conversation with Mr. Zesiger on or about April 23, 1996, Ms. Stern learned that the FCC had contacted the SBA to inform it that the letter should be served on the other parties. Mr. Zesiger expressed his belief that the letter did not have to be served, but said that he would serve the letter on all parties to avoid an argument with the FCC. The SBA subsequently refiled the letter on April 24, 1996 and served it on all the parties. *See Stern Dec. at ¶ 19.*

2. Describe in detail any written or oral communications between MCHI, its officers, directors, employees or agents on its behalf, and Mr. W. David Thompson, President, Spectrum Astro, Inc., relating to the letter from Mr. Thompson to Ms. Kate Carr, Special Assistant to the President (identified in note 2 of the OGC June 27, 1997 ruling), and that addressed or concerned MCHI's application proceeding, including but not limited to, the merits or outcome of the proceeding.

See discussion at section 1(f) supra.

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3. Describe in detail any written or oral communications between MCHI, its officers, directors, employees, or agents on its behalf, and David M. Geary, Director, Vula Communications, relating to the March 7, 1997 meeting (referenced in note 4 of the OGC June 27, 1997 ruling) with Julius Genachowski, Esq., then counsel to the FCC Chairman, or relating to the April 30, 1997 letter (identified in note 4 of the OGC June 27, 1997 ruling) from Mr. Geary to Mr. Genachowski, and that addressed or concerned MCHI's application proceeding, including but not limited to, the merits or outcome of the proceeding.

(a) Meeting between David Geary (Vula Communications) and Julius Genachowski (FCC) on March 7, 1997

The principals of Vula Communications were in Washington, D.C. in March 1997 to attend a series of events sponsored by the Department of Commerce to foster U.S.-South African business relations. In light of the Commission's interest in the state of telecommunications in South Africa, Mr. Helman sought to introduce the principals of Vula to several of the Commissioners. *See* Helman Dec. at ¶ 22. Meetings were held with Commissioner Chong's legal advisor, Jane Mago, as well as with Julius Genachowski (counsel to Chairman Hundt). David Geary of Vula, Ms. Stern and Mr. Helman attended the meeting with Mr. Genachowski and Ms. Mago. Mark Headbush of Vula was also present at the meeting with Ms. Mago. *See* Stern Dec. at ¶ 20; Helman Dec. at ¶ 22.

Ms. Stern recalls specifically advising the Vula representatives prior to the meetings that they could not discuss the licensing proceeding and that any remarks on this topic had to be limited to a status inquiry. *See* Stern Dec. at ¶ 21. In addition, both Mr. Helman and Ms. Stern recall that at the beginning of the meetings they attended, MCHI made it known to all the participants that the licensing proceeding could not be discussed. During the meetings, the parties spoke about telecommunications issues and challenges that are unique to South Africa. Vula apprised the two FCC staff members of the range of telecommunications business activities in which Vula is involved (data and broadcast services), and Vula limited its remarks relating to MCHI's license application to a status inquiry. *See* Helman Dec. at ¶ 73; Stern Dec. at ¶ 21.

Mr. Helman also recalls that there was a meeting with Donald Gips, then Chief of the International Bureau, at around the same time that involved the same individuals from Vula and the same subject matter. There was no discussion on the merits or outcome of MCHI's licensing proceeding during this meeting, and Mr. Helman recalls cautioning the participants to refrain from discussing the MCHI licensing proceeding. *See* Helman Dec. at ¶ 24.

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(b) Letter from David Geary (Vula Communications) to Julius Genachowski dated April 30, 1997

After the meeting with Mr. Genachowski on March 7, 1997, Mr. Geary of Vula Communications decided, without MCHI's knowledge, to send a letter to Mr. Genachowski dated April 30, 1997 to inquire about MCHI's license application. No one at MCHI solicited or encouraged Mr. Geary to send this letter, as evidenced by Mr. Geary's affidavit dated June 24, 1997, which has been submitted to the FCC and served on all the parties. *See* Helman Dec. at ¶ 25; Stern Dec. at ¶ 22-23. In addition, no one at MCHI knew that Mr. Geary had intended to send a letter. As previously discussed, Mr. Geary had been advised of the *ex parte* rules by Ms. Stern prior to his meeting with Mr. Genachowski. *See* Stern Dec. at ¶ 21.

Mr. Geary sent a copy of the letter to MCHI via facsimile on or about April 30, 1997 and MCHI promptly served a copy of the letter on all of the parties the following day. *See* Stern Dec. at ¶ 23.

4. Describe in detail whether any of the persons or offices identified in notes 1-4 of the OGC June 27, 1997 ruling were informed that the MCHI application proceeding was restricted and informed about the procedures that apply to a restricted proceeding under the *ex parte* rules, and, if not, why such persons or offices were not so informed.

The discussion in sections 1-3 above makes clear that MCHI made virtually all of the parties identified in footnotes 1-3 of the OGC's Ruling aware of the restricted nature of its licensing proceeding.

(a) Communications with Senators Richard C. Shelby, Trent Lott, Larry E. Craig, Thad Cochran, Connie Mack, Conrad Burns, Kit Bond, Howell Heflin, and Daniel Inouye. Mr. Moore apprised Senator Shelby's office (the office that sponsored the July 19, 1995 and October 3, 1996 Senatorial letters) of the restricted nature of the MCHI licensing proceeding, even though the letters addressed general policy issues concerning the Section 257 Proceeding. *See* Moore Dec. at ¶ 6.

(b) Communications with Congressman John Conyers, Jr. MCHI is not certain whether Congressman Conyers' office was apprised of the restricted nature of the MCHI licensing proceeding, in part because MCHI was unable to speak to Mr. Latham. Ms. Stern advised Mr. Latham of the *ex parte* rules, and the need to ensure that he did not solicit or encourage any presentations to the FCC relating to the licensing proceeding. *See* Stern Dec. at ¶ 6. However, both letters from Congressman Conyers addressed issues relating to the Section 257 Proceeding.

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(c) **Communications with Congressman Edolphus Towns.** MCHI informed Congressman Towns' office of the *ex parte* rules on two separate occasions. *See* Moore Dec. at ¶ 11; Helman Dec. at ¶ 11.

(d) **Communications with Congressmen Tom Davis, Jim Moran, and Bob Goodlatte dated June 6, 1997.** As noted above, MCHI had no communications with Congressmen Davis, Moran, or Goodlatte and no involvement with the letter sent by them. Thus, there was no basis on which to inform them of the restricted nature of MCHI's license proceeding. *See* Helman Dec. at ¶ 15.

(e) **Communications with the Office of Vice President Al Gore, including Sheryll Cashin (Staff Director, Community Improvement Board, Office of the Vice President).** MCHI did not separately apprise Vice President Gore's office of the restricted nature of the MCHI licensing proceeding, because Mr. Simon already had noted his awareness that he could not take any action with respect to an ongoing FCC proceeding and gave no indication that he would make any contact with the FCC. *See* Stern Dec. at ¶ 11; Helman Dec. at ¶ 16.

(f) **Communications with Kate Carr (Special Assistant to the President) and W. David Thompson (President, Spectrum Astro).** MCHI had no reason to believe that Mr. Thompson would take any action at the FCC or ask others to do so on behalf of MCHI, because it had not requested that he do so and he had given no indication that he would take such action. *See* Helman Dec. at ¶ 19; Stern Dec. at ¶¶ 13-14.

(g) **Communications with Gere W. Glover or the Small Business Administration.** MCHI informed Mr. Zesiger that all parties to the licensing proceeding were required to be served with any communication to the FCC about the MCHI licensing matter, but, as noted above, Mr. Zesiger did not intend to comment on the licensing proceeding and expressed the view that the SBA's communications were exempt, in any event, under section 1.1204(b)(5) of the FCC's then applicable *ex parte* rules. *See* Helman Dec. at ¶ 21; *see also* Opposition of the Office of Advocacy to TRW's Motion to Strike Unauthorized Pleading at 3 (May 22, 1996).

(h) **Meeting between David Geary (Vula Communications) and Julius Genachowski (FCC) on March 7, 1997; Letter from David Geary (Vula Communications Holdings, Inc.) to Julius Genachowski dated April 30, 1997.** Prior to the April 30, 1997 letter and the March 7, 1997 meeting, MCHI had informed Vula on at least two separate occasions of the *ex parte* rules that governed the licensing proceeding. *See* Stern Dec. at ¶ 21.

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5. Describe in detail whether MCHI through any of its officers, directors, employees or agents on its behalf, solicited or encouraged the making of *ex parte* presentations in the MCHI application proceeding from persons or offices identified in notes 1-4 of the OGC June 27, 1997 ruling.

As discussed in sections 1-3 above, MCHI encouraged certain Congressional offices and the SBA to make known to the FCC, in the context of the Section 257 Proceeding and the *DISCO I* proceeding, their views on the financial qualifications standard. MCHI did not request or encourage these individuals or offices to comment on the merits or outcome of MCHI's licensing proceeding. As noted above, however, MCHI's outside legislative consultant, Frank Moore, had some communications with Congressional offices about the merits of MCHI's licensing proceeding in which possible contacts with the FCC were discussed. In virtually all instances, however, MCHI took steps to apprise the offices of the restricted nature of MCHI's licensing proceeding. MCHI did not solicit any communications to the FCC concerning its license application from Vice President Gore's office, Kate Carr, Spectrum Astro, or Vula Communications, and did not know about any communications between these entities and the FCC until it received copies of their communications.

6. Describe in detail what actions, if any, MCHI, its officers, directors, employees, or agents on its behalf, initiated with respect to each impermissible *ex parte* presentation identified in notes 1-4 of the OGC June 27, 1997 ruling in order to comply with the *ex parte* rules and to prevent similar violations in the future.⁵

(a) Communications with Senators Richard C. Shelby, Trent Lott, Larry E. Craig, Thad Cochran, Connie Mack, Conrad Burns, Kit Bond, Howell Heflin, and Daniel Inouye. It was, and continues to be, MCHI's belief that neither of the letters from Senator Shelby and others is subject to the *ex parte* rules because they concern general policy issues. Senator Shelby's and Senator Lott's offices nevertheless were informed of the restricted nature of the MCHI licensing proceeding after it sent the July 19, 1995 letter. *See* Moore Dec. at ¶¶ 6, 8. Moreover, MCHI later served all parties with that letter on October 18, 1996 along with a copy of the October 3, 1996 letter from Senator Shelby. The October 3, 1996 letter was filed and served by MCHI the day after the Senator's office mailed it to the FCC. *See* Moore Dec. at ¶ 7.

⁵ It should be noted, at the outset, that MCHI disagrees with the FCC's characterization of the presentations as "impermissible *ex parte*." Nonetheless, in response to this request, MCHI has provided detailed information about its efforts to apprise Congressional and Administrative offices of the restricted nature of the licensing proceeding to ensure that any resulting communications to the FCC were carefully tailored to the policy issues presented by the use of a strict financial standard to create a market entry barrier for entrepreneurial companies.

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(b) Communications with Congressman John Conyers, Jr. The letters from Congressman Conyers are not subject to the *ex parte* rules because they concern general policy issues. MCHI does not know what steps were taken to advise Mr. Conyers' office of the *ex parte* rules because it was unable to speak to Mr. Latham. As noted above, Mr. Latham was advised of the *ex parte* rules.

(c) Communications with Congressman Edolphus Towns. MCHI had advised Congressman Towns' office of the *ex parte* rules on two prior occasions. See Moore Dec. at ¶ 11; Helman Dec. at ¶ 11. MCHI filed and served both of the letters from Congressman Towns on the next business day after receiving a copy. See Stern Dec. at ¶¶ 8-9.

(d) Communications with Congressmen Tom Davis, Jim Moran, and Bob Goodlatte dated June 6, 1997. MCHI had no communications with Congressmen Davis, Moran, or Goodlatte and no involvement with the letter sent by them. See Helman Dec. at ¶ 15.

(e) Communications with the Office of Vice President Al Gore, including Sheryll Cashin (Staff Director, Community Improvement Board, Office of the Vice President). MCHI did not serve copies of the April 30, 1996 letter from Weldon Latham to Vice President Gore's Office because it was not an *ex parte* communication. After Vice President Gore's office had forwarded Mr. Latham's letter to the FCC, MCHI did not serve the letter because the FCC already had served all the parties by the time MCHI learned that it had been forwarded. Because the only action taken by Vice President Gore's office was the forwarding of that letter to Catherine Sandoval, Director of the FCC's Office of Communications Business Opportunities (which had jurisdiction over the Section 257 Proceeding), MCHI believed that it was unlikely that any other communications would take place and thus reasonably determined that no additional precautions would be necessary. See Stern Dec. at ¶ 11.

(f) Communications with Kate Carr (Special Assistant to the President) and W. David Thompson (President, Spectrum Astro). As discussed, MCHI had no advance knowledge that David Thompson would send the May 8, 1996 letter to Kate Carr. See Helman Dec. at 19. However, after receiving the letter from the FCC at the same time that all the other parties received a copy, Ms. Stern promptly contacted Mr. Thompson's attorney, advised her of the restricted nature of the proceedings, and asked her to advise her client not to take any actions relating to the restricted FCC licensing proceeding. See Stern Dec. at ¶15.

(g) Communications with Gere W. Glover or the Small Business Administration. As discussed, MCHI had already apprised the SBA of the FCC's *ex parte* rules. See Helman Dec. at ¶ 21. As Ms. Stern states in her declaration, it is her understanding that the FCC also advised the SBA of the *ex parte* rules, and that the SBA subsequently refiled

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its April 22, 1996 letter on or about April 24, 1996 and served all of the parties, despite its official position that the letter did not address a specific licensing proceeding and, in any event, SBA communications were exempt presentations even in restricted proceedings. *See Stern Dec. at ¶ 19.*

(h) Meeting between David Geary (Vula Communications) and Julius Genachowski (FCC) on March 7, 1997; Letter from David Geary (Vula Communications Holdings, Inc.) to Julius Genachowski dated April 30, 1997. After receiving the letter from David Geary of Vula Communications to Mr. Genachowski dated April 30, 1997, Ms. Stern served all the parties to the proceeding the following day, and submitted an affidavit from Mr. Geary regarding the letter. *See Stern Dec. at ¶ 23.*

* * *

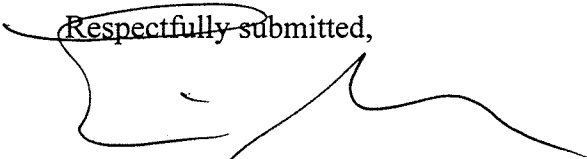
From the foregoing amplification on MCHI's earlier submissions, it should be clear that MCHI undertook a vigorous campaign to inform and educate public officials about the adverse impact which the Commission's stringent financial qualifications standards was having on new market entrants, particularly entrepreneurial companies, in the field of satellite communications services. This was a policy question under active consideration at the Commission and before Congress. By providing its own situation as an example of the need to revise FCC rules and policies, however, MCHI did not transform these communications into solicitations of *ex parte* presentations on the merits of MCHI's license proceeding. In virtually every instance, MCHI affirmatively alerted those public officials whom it could reasonably anticipate might actually contact the FCC that MCHI's own licensing proceeding was restricted. Finally, wherever MCHI learned of such a contact, it promptly effected service on the other parties to the application proceeding, even where such service may not have been technically required. Thus, no parties to the MCHI licensing proceeding were prejudiced.

As noted above, MCHI learned in the course of preparing this response that there were a few instances in which MCHI's legislative consultant may have discussed the merits of MCHI's licensing proceeding and requested assistance from several Congressional offices in obtaining prompt and favorable action on its license application. To the extent that these contacts may not have fully comported with the FCC's then applicable rules, however, they were infrequent, unintentional, and made by an outside consultant who believed that his actions complied with the FCC's rules. In addition, there is no indication that these contacts resulted in *ex parte* communications, oral or written, to the Commission about MCHI's license application.

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Thus, the evidence fully supports the OGC's prior ruling that no sanctions were warranted against MCHI, and there is no basis for a different result now. MCHI requests that the Commission affirm the OGC's ruling and resolve this matter expeditiously.

~~Respectfully submitted,~~



Eric L. Bernthal
Teresa D. Baer
Minh N. Vu
of LATHAM & WATKINS

Counsel to Mobile Communications
Holdings, Inc.

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cc: Philip A. Malet, Esq.
Marc A. Paul, Esq.
Steptoe & Johnson
1330 Connecticut Ave., N.W.
Washington, D.C. 20036-1795

William D. Wallace, Esq.
Crowell & Moring
1001 Pennsylvania Ave., N.W.
Washington, DC 20004

Norman P. Leventhal, Esq.
Walter P. Jacob, Esq.
Leventhal, Senter & Lerman
2000 K Street, N.W., Suite 600
Washington, D.C. 20006

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

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

Robert A. Mazer, Esq.
Vinson & Elkins
1455 Pennsylvania Ave., N.W.
Suite 700
Washington, D.C. 20006