



INTERNATIONAL BUREAU

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

DA 96-1532

Tel: 202-418-0437
Fax: 202-418-2818

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Jill Abeshouse Stern, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037-1128

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

Re: MCHI's "Request for Small Entity Guidance"

Dear Ms. Stern:

I write in response to the "Request For Small Entity Guidance Pursuant To Section 213 of The Small Business Regulatory Enforcement Fairness Act of 1996," ("Request") filed on August 16, 1996 on behalf of your client, Mobile Communications Holdings, Inc. ("MCHI"). The Request seeks "written guidance" in the form of "an interpretive ruling" on potential applications of Commission rules regarding financial qualifications required to operate low-Earth orbit mobile satellite systems in the 1610-1626.5 MHz and 2483.5-2500 MHz bands ("Big LEOs"). MCHI has a pending application for a Big LEO license and has been granted extensions of the time -- most recently, until September 16, 1996 -- by which it must submit documentation to demonstrate financial qualification for a Big LEO license.

Specifically, the Request seeks answers to the following questions: (1) whether a commitment letter from a minority shareholder in the form of the model letter submitted as Exhibit B would suffice as a demonstration of financial qualification if accompanied by evidence of the requisite current assets; (2) whether a distribution agreement in the form of the model attached as Exhibit C would suffice to demonstrate financial qualification based on outside financing; (3) whether the requirements for demonstrating financial qualification based on outside financing could be met by submitting verified summaries of the relevant terms of business agreements in lieu of the agreements; and (4) whether the Commission would issue a protective order in the form of Exhibit D to avert potentially prejudicial disclosure of and use of proprietary information that may be contained in MCHI's forthcoming financial qualification showing. Constellation Communications, Inc. ("Constellation"), another Big LEO applicant, submitted comments supporting the Request. The three Big LEO licensees, Motorola Satellite Communications, Inc. ("Motorola"), L/Q Licensee, Inc. ("LQL") and TRW, Inc. ("TRW") submitted comments opposing the request.

Section 213(a) of the Small Business Regulatory Enforcement Fairness Act states (emphasis added):

Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency which regulates small entities, it shall be the practice of the agency to answer inquiries by small entities concerning information on, and advice about, compliance with such statutes and regulations, interpreting and applying the law to facts provided by the small entity.

I conclude that this is not an appropriate case for responding to your inquiry.¹ The language of section 213(a) as well as the legislative history indicate that the Small Business Regulatory Enforcement Fairness Act is directed in large part at easing the burden on small entities of responding to potential federal enforcement activities.² MCHI's request is not made in the context of a concern about potential enforcement action, but rather in the midst of a contested license application proceeding in which MCHI has already filed two legal challenges to Commission orders. We do not believe that section 213 of the Act contemplates the Commission's providing guidance in this context.

Moreover, it would not be appropriate in this case to provide guidance on how the Bureau might apply its financial qualification rules based only on two incomplete draft documents. The Bureau will determine whether MCHI is financially qualified under the relevant rules based on all of the information and actual documents that MCHI provides by September 16, 1996 to demonstrate its financial qualifications.

The timing of MCHI's Request and the procedural posture of its contested application also counsel against granting the Request. In its January 31, 1995, orders finding that MCHI and Constellation had failed to meet the financial qualification standards, the International Bureau deferred further consideration of their applications until January 31, 1996, to permit

¹ Agencies are given discretion to establish procedures and conditions under which they provide advice to small entities. *See* 142 Cong. Rec. S2148 (Mar. 15, 1996) (remarks of Senator Bond); 142 Cong. Rec. S3242 (Mar. 29, 1996) (same); 142 Cong. Rec. E571 (Mar. 28, 1996) (remarks of Rep. Hyde).

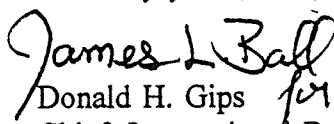
² For example, section 213(a) states in part: "In any civil or administrative action against a small entity, guidance given by an agency applying the law to facts provided by the small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity." *See* 142 Cong. Rec. S2148 (Mar. 15, 1996) (remarks of Senator Bond) (guidance provided under Section 213 is "relevant evidence of the reasonableness of any subsequently proposed fine on the small entity"); 142 Cong. Rec. S3242 (Mar. 29, 1996) (same); 142 Cong. Rec. E571 (Mar. 28, 1996) (remarks of Rep. Hyde) (same).

each applicant an additional year in which to make a further financial showing.³ That deadline was later extended until sixty days following the issuance of the Commission's order addressing petitions for reconsideration and review of the January 31, 1995, orders.⁴ The Commission affirmed these orders on June 27, 1996.⁵ Accordingly, MCHI and Constellation's financial qualification showings were due August 26, 1996. By letter dated August 15, 1996, the International Bureau granted MCHI's unopposed request for an additional three week extension of time to submit its financial qualifications. MCHI's extension request was based on the difficulty in obtaining corporate signatures and approvals during the peak August vacation period. On the day after the Bureau granted MCHI's extension request, just ten days before MCHI's financial showing would have been due and more than six weeks after a meeting at which MCHI suggested to Bureau staff and the other Big LEO licensees and applicants that it might soon submit some sort of guidance request,⁶ MCHI submitted its Request.

In sum, in this case granting MCHI's eleventh-hour Request for interpretive rulings on hypothetical submissions would not be an appropriate use of administrative resources.

Finally, MCHI's request for a protective order in the form it attached to its Request as Exhibit D is premature. MCHI may submit a request for confidential treatment of some or all financial documents, pursuant to 47 C.F.R. § 0.459, when it submits actual documents as part of its financial showing. The Bureau already granted a request by MCHI for confidential treatment of some, but not all, documents submitted as part of MCHI's prior financial showing.⁷

Sincerely yours,


Donald H. Gips for
Chief, International Bureau

³ *Mobile Communications Holdings, Inc.*, 10 FCC Rcd 2258 (Int'l Bureau 1995); *Constellation Communications, Inc.*, 10 FCC Rcd 2274 (Int'l Bureau 1995).

⁴ *Constellation Communications, Inc.*, 11 FCC Rcd 1892 (Int'l Bureau 1996).

⁵ *Constellation Communications, Inc.*, FCC 96-279 (released June 27, 1996)

⁶ The Request inaccurately states that, during that July 3, 1996 meeting with Commission staff and other Big LEO applicants and licensees, MCHI "indicated its intention to seek guidance with respect to the Big LEO financial standards prior to the filing deadline and it understood that best efforts would be made by the Staff to provide such guidance in a timely fashion." Request at 4 n.8. In fact, MCHI indicated that it was considering making some sort of filing prior to the then August 26 deadline and Commission staff responded by stating that they would attempt to *address* any such filing expeditiously; the Bureau staff did not commit to provide the guidance sought in any such request.

⁷ *Mobile Communications Holdings, Inc.*, 10 FCC Rcd 1547, 1548 (Int'l Bureau 1994).

cc: Norman P. Leventhal
Raul R. Rodriguez
Stephen D. Baruch
2000 K St., N.W.
Washington, D.C. 20006-1809

Robert A. Mazer
Vincent & Elkins
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

William D. Wallace
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

Bruce D. Jacobs
Glenn S. Richards
Fisher Wayland Cooper Leader & Zaragoza, L.L.P.
2001 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20006-1851

Lon C. Levin
Vice President and Regulatory Counsel
AMSC Subsidiary Corporation
10802 Parkridge Boulevard
Reston, VA 22091

Philip L. Malet
Alfred Mamlet
Stephoe & Johnson
1330 Connecticut Avenue, N.W. 20036