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AUG 29 1996

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

1330 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036-1795

(202) 429-3000
FACSIMILE: (202) 429-3902
TELEX: 89-2503

Federal Communications Commission
Office of Secretary

STEPTOE & JOHNSON INTERNATIONAL
AFFILIATE IN MOSCOW, RUSSIA

TELEPHONE: (011-7-501) 258-5250
FACSIMILE: (011-7-501) 258-5251

PHOENIX, ARIZONA
TWO RENAISSANCE SQUARE

TELEPHONE: (602) 257-5200
FACSIMILE: (602) 257-5299

Philip L. Malet
(202) 429-6239

Received

SEP 03 1996 August 29, 1996

DELIVERY BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Satellite Policy Branch
International Bureau

149-SAT-MISC-96

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)

Dear Mr. Caton:

Motorola Satellite Communications, Inc. ("Motorola"), through its attorneys, hereby submits this brief response to the latest in a series of extraneous pleadings submitted by Mobile Communications Holdings, Inc. ("MCHI") in a patently obvious attempt, once again, to delay having to satisfy the financial qualifications rules established by the Commission for "Big LEO" systems.

As the Commission is well aware, more than one and one-half years ago MCHI was found by the International Bureau to be financially unqualified to hold a license for its proposed Big LEO satellite system. See Mobile Communications Holdings, Inc., 10 FCC Rcd 227 (Int'l Bur. 1995). This decision was made after a failed attempt by MCHI to obtain an order from the United States Court of Appeals for the District of Columbia to stay the effectiveness of the Commission's Big LEO rules, and in particular, the financial qualification rules. See MCHI v. FCC, Per Curiam Order, Case No. 94-1695 (filed Nov. 15, 1994). MCHI then proceeded to appeal the Bureau's decision within the Commission and to request that the Court of Appeals delay issuance of a briefing schedule on its pending Court challenge until the Commission acted on its appeal. This latter request, which was granted by the Court, has effectively delayed any decision on MCHI's court challenge.

Despite having been found financially unqualified to be a Big LEO licensee, the Commission gave MCHI one additional year -- until January 1996 -- to meet the Commission's financial

qualification rules. Just prior to that time, MCHI requested and received from the International Bureau an extension of time to update its financial showing. Specifically, MCHI was given 60 days after release of an order by the Commission disposing of its then pending application for review to meet the Commission's rules. See Constellation Communications, Inc., 11 FCC Rcd 1892 (Int'l Bur. 1996). In June 1996, the Commission denied MCHI's appeal and thereby established August 26, 1996 as the filing deadline for meeting the Commission's financial qualification standards. See Constellation Communications, Inc., FCC 96-279 (released June 27, 1996).

Not satisfied with this deadline, MCHI asked for and was granted an additional three weeks to demonstrate its financial qualifications based upon MCHI's representation that it would have difficulty obtaining corporate approvals and signatures during the "peak summer vacation period." See Letter from Thomas S. Tycz to Jill Abeshouse Stern, counsel for MCHI (August 15, 1996). It now appears that MCHI's real motivation for this extension request was to have time to prepare and file its latest "Request for Small Entity Guidance Pursuant to Section 213 of the Small Business Regulatory Enforcement Fairness Act of 1996."

Motorola submits that MCHI's request for guidance is hopelessly late and not entitled to any substantive consideration by the Commission.¹⁴ This eleventh hour attempt essentially to obtain a pre-ruling on a hypothetical MCHI financial showing is inconsistent with the Big LEO rules -- which provide for only two bites at the apple -- and will waste valuable Commission resources. Motorola has no doubt that if the Commission fails to act on MCHI's request by September 16, 1996, MCHI will ask for yet another indefinite extension of the deadline for making its definitive financial showing. This pattern of delay and abuse of the Commission's processes must be put to a stop.

Rather than address the substance of MCHI's request, the Bureau should simply issue an order confirming that MCHI must submit its "best case" to the Commission on its financial qualifications by September 16th. MCHI would then be in a

¹⁴ In this regard, it is worth noting that MCHI filed its request for guidance almost one and one-half months after the Bureau convened an extraordinary meeting of the parties, at MCHI's request, to discuss some of the issues it now raises in its pleading. At the time of the Bureau meeting, MCHI indicated that it might file a request for declaratory ruling and asked whether the staff would be able to act on such a request in time to meet the August 26, 1996 deadline. No promises were made by the staff then, and it would be ill advised to now grant MCHI similar relief based upon a filing made some six weeks later.

position to address any arguments opposing its financial showing during the normal pleading cycle.^{2/}

Lastly, Motorola does not believe that there is any need to develop special procedures for the handling of any documents as to which MCHI may claim confidentiality. There are already rules in place for the confidential treatment of proprietary documents and the entry of protective orders, if necessary. See 47 CFR §§ 0.457(d), 0.459 & 5.204. Indeed, the Bureau has previously granted a narrowly tailored request for confidential treatment by MCHI the last time it submitted its financial showing. See MCHI, Order on Reconsideration, 10 FCC Rcd 1547, 1548 (Int'l Bur. 1994).

Respectfully submitted,



Philip L. Malet

Counsel for Motorola Satellite
Communications, Inc.

cc: William E. Kennard, Esq.
Donald Gips
John Stern
Thomas Tycz
Fern Jarmulnek
Bruce Jacobs, Esq.
Robert A. Mazer, Esq.
Norman P. Leventhal, Esq.
Leslie Taylor, Esq.
William Wallace, Esq.
Jill Abeshouse Stern, Esq.

^{2/} In the unlikely event that the Commission were to determine that MCHI's latest request warrants a decision on the merits, it should issue a Public Notice establishing an expedited pleading cycle.