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August 29, 1996

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AUG 29 1996

Federal Communications Commission
Office of Secretary

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

149-SAT-MISC-96

**RE: Mobile Communications Holdings, Inc.
"Request for Small Entity Guidance"**

Dear Mr. Caton:

TRW Inc. ("TRW"),^{1/} by counsel, hereby responds to the August 16, 1996 filing of Mobile Communications Holdings, Inc. ("MCHI") captioned "Request for Small Entity Guidance Pursuant to Section 213 of the Small Business Regulatory Enforcement Fairness Act of 1996." Despite the lengthy title, MCHI's current pleading is simply its most recent attempt to secure a declaratory ruling from the Commission concerning the financial showing that MCHI is now required to file on or before September 16, 1996.^{2/} While such a request is not inappropriate in

^{1/} TRW is the holder of a conditional license to operate the OdysseySM mobile-satellite service ("MSS") system in the same bands sought by MCHI for its proposed system. See TRW Inc., 10 FCC Rcd 2263, erratum, 10 FCC Rcd 3924 (1995), review denied, FCC 96-279, slip. op. (released June 27, 1996).

^{2/} MCHI was originally instructed to file its amended financial showing within sixty days of the Commission's denial of its Application for Review of the International Bureau's decision deferring action on MCHI's application for an authorization to construct a

(continued...)

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itself, it is unreasonable for MCHI to expect that it might receive such guidance at this late date — filing only ten days before its financial showing was originally due. Because MCHI has waited until almost the eve of its required filing to seek a declaratory ruling, it would be most appropriate at this point for the Commission simply to provide the requested “guidance” in ruling on the financial showing that MCHI must now file no later than September 16, 1996. Alternatively, should the Commission determine not to make this determination in the context of the application proceeding itself, it should seek public comment on MCHI’s proposal before rendering any decision interpreting its satellite application rules.

As MCHI states in its Request, members of the FCC’s International Bureau staff held an informal meeting on July 3, 1996 at MCHI’s insistence to discuss the very issues now raised in the Request.^{3/} This meeting came just one week after the Commission denied MCHI’s Application for Review. The substance of the current Request is premised on preliminary answers MCHI believes it received during that meeting, and MCHI notes that it indicated its intention at the time of the July meeting “to seek guidance with respect to the Big LEO financial standards prior to the filing deadline.”^{4/}

Had a request seeking guidance been forthcoming in the days following the July 3 meeting, it might very well have been possible for the Commission to provide a ruling in advance of the sixty-day deadline for submission of MCHI’s additional financial showing. Instead, MCHI ***delayed more than six weeks*** before submitting its written request for a ruling. Under these circumstances, it is exceedingly presumptuous for MCHI to claim an understanding that “best efforts would be made by the Staff to provide . . . guidance in ***a timely fashion.***”^{5/}

^{2/}(...continued)

mobile-satellite service system. See In re: Applications of Constellation Communications, Inc. et al., FCC 96-279, slip op. (released June 27, 1996). The deadline would have been August 26, 1996, but was extended by the Commission with the consent of other parties until September 16, 1996.

^{3/} See MCHI Request at 4.

^{4/} See MCHI Request at 4 n.6.

^{5/} *Id.* (emphasis added).

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At this point, MCHI's filing is, in some respects, nothing more than a late-filed request for reconsideration of the Commission's June 27 ruling — a ruling from which MCHI has already taken an appeal to the U.S. Court of Appeals for the D.C. Circuit.^{6/} To the extent that the Commission considers this untimely request separately from MCHI's filing of the revised financial showing due on September 16, 1996, it should solicit public comment upon the request before issuing a decision. Because MCHI is seeking interpretations of existing Commission rules that would modify their applicability to certain applicants, the Commission should not issue a ruling without offering an opportunity for other interested parties to make their views known.^{7/}

Alternatively, and more appropriately, the Commission could simply require MCHI to file its revised financial showing on September 16, 1996 and subsume the issues raised here into its consideration of the amended MCHI application. Under no circumstances, however, should the Commission allow MCHI's belated request for interpretation of the Commission's rules to extend beyond September 16, 1996 the applicant's obligation to make a full financial showing under Sections 25.140(d) and 25.143(b)(3) of those rules. The Commission has already indulged MCHI by deferring action on its application to permit it to bring its proposal into compliance with FCC rules. MCHI should not be permitted indefinite extensions of time within which to submit a complete application.

Respectfully submitted,



Norman P. Leventhal
Counsel for TRW Inc.

cc: Attached Service List

^{6/} See Mobile Communications Holdings, Inc. v. FCC, Case No. 96-1239 (D.C. Cir.).

^{7/} See 5 U.S.C. § 553(c).

CERTIFICATE OF SERVICE

I, Vera L. Pulley, do hereby certify that true and correct copies of the foregoing letter were mailed, first-class postage prepaid, this 29th day of August, 1996 to the following:

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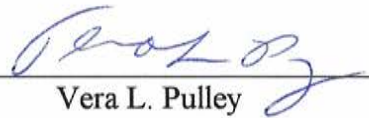
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