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August 16, 1996

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

**Re: Mobile Communications Holdings, Inc.
File Nos. 11-DSS-P-91(6); 18 DSS-P-91(18);
11-SAT-LA-95; 12-SAT-AMEND-95**

149-SAT MISC-96

Dear Mr. Caton:

On behalf of Mobile Communications Holdings, Inc. ("MCHI"), I am transmitting herewith an original and four copies of a "Request for Small Entity Guidance Pursuant to Section 213 of the Small Business Regulatory Enforcement Fairness Act of 1996" relating to the above-referenced Big LEO application.

Should there be any questions concerning this matter, kindly communicate with the undersigned.

Sincerely,


Jill Abeshouse Stern

Enclosures

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AUG 16 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

900 Third Avenue
New York, New York 10022-4728

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Satellite Policy Branch
International Bureau

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
Satellite Policy Branch
International Bureau

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Application of)	
)	
MOBILE COMMUNICATIONS)	File Nos. 11-DSS-P-91 (6);
HOLDINGS, INC.)	18-DSS-P-91 (18);
)	11-SAT-LA-95;
)	12-SAT-AMEND-95
For Authority to Construct, Launch, and)	
Operate a Low Earth Orbit Satellite System to)	
Provide Mobile Satellite Services in the)	
1610-1626 MHz/2483.5-2500 MHz Band)	

**REQUEST FOR SMALL ENTITY GUIDANCE
PURSUANT TO SECTION 213 OF THE
SMALL BUSINESS REGULATORY ENFORCEMENT
FAIRNESS ACT OF 1996**

Submitted by,

MOBILE COMMUNICATIONS
HOLDINGS, INC.

Jill Abeshouse Stern
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2300 N Street, N.W.
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(202) 663-8000

Its Attorneys

August 16, 1996

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EXHIBITS

- Exhibit A: Declaration of Davinder Sethi, Senior Advisor to Barclays de Zoete Wedd Limited (BZW); Letter from Trevor Nash, Director, BZW, to William F. Caton
- Exhibit B: Form Management Commitment Letter (Minority Shareholder)
- Exhibit C: Form Distribution Agreement
- Exhibit D: Model Protective Order
- Exhibit E: April 26, 1996 Letter from Jill Abeshouse Stern to William Caton Re:
Globalstar-Rostelcom Agreement

SUMMARY

This request for small entity guidance is filed by Mobile Communications Holdings, Inc. (MCHI), developer of the ELLIPSO™ low Earth orbit mobile satellite system ("Big LEO"), pursuant to Section 213 of the Small Business Regulatory Enforcement Fairness Act of 1996. This request seeks guidance from the Commission as to its interpretation of Commission Rules 25.140(d) and 25.143(b) relating to the financial standards applicable to Big LEO applicants. Specifically, MCHI requests confirmation, based on the stated facts, that (1) in MCHI's case, a letter from a minority shareholder (with sufficient current assets) in the form attached as Exhibit B will meet the requirements of Rule 25.140(d)(1); (2) a distribution agreement in the form attached as Exhibit C will satisfy Rule 25.140(d)(2)(iii); (3) to the extent that external funding is involved, a summary of relevant business terms is sufficient to satisfy Rule 25.140(d)(2) without submission of the underlying agreement; and (4) a protective order in the form attached as Exhibit D will be available to protect the terms of MCHI's business arrangements from public inspection if such agreements are submitted in summary form or in their entirety

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**REQUEST FOR SMALL ENTITY GUIDANCE
PURSUANT TO SECTION 213 OF THE
SMALL BUSINESS REGULATORY ENFORCEMENT
FAIRNESS ACT OF 1996**

Mobile Communications Holdings, Inc. ("MCHI"), by its attorneys and pursuant to Section 213 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, § 213, 110 Stat. 859 (1996) ("SBREFA") hereby seeks an interpretive ruling with respect to certain Commission rules relating to the above-captioned Big LEO application in order to facilitate compliance with the upcoming deadline for submission by MCHI of a supplemental financial showing. In particular, this request seeks guidance with respect to the Commission's interpretation of Commission Rules 25.143(b)(3) and 25.140(d) as those rules are applied to a smaller business like MCHI.^{1/}

^{1/} Section 213(a) of SBREFA contains a new provision requiring agencies "to answer inquiries by small entities concerning information on, and advice about, compliance with ... statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity." SBREFA, § 213(a). MCHI qualifies as a "small business" under applicable regulations of the Small Business Administration. See 13 CFR § 121.201. Under the most recent (March 1996) Table of Small Business Size Standards, the appropriate benchmark is either 1500 employees or \$11 million annual revenues, depending upon which standard industrial classification code is used. The Commission has not adopted a different definition for purposes of the Big LEO service.

I. BACKGROUND AND SUMMARY OF REQUEST

MCHI, the developer of the ELLIPSO™ low-earth orbit mobile satellite system, filed a license application in November 1990. Following protracted regulatory proceedings, the International Bureau in January 1995 issued a decision deferring consideration of MCHI's application pending submission of a supplemental financial showing.^{2/} The Bureau's decision was affirmed by the full Commission on June 27, 1996, thereby triggering a deadline of August 26, 1996 for submission of a supplemental financial showing by MCHI and other deferred Big LEO applicants.^{3/} MCHI has appealed the Commission's licensing decision, and the underlying Big LEO rulemaking decision, to the D.C. Circuit.^{4/}

Since the court appeals will not be resolved before the filing deadline imposed by the Commission, MCHI must move forward with a new financial showing without the benefit of guidance that may be provided by the D.C. Circuit relating to the Big LEO financial standard, particularly as that standard is applied to small business applicants like MCHI. In addition, the Commission's ex parte rules have been interpreted by the Staff to preclude any informal discussions about the sufficiency of proposed financial submissions unless all of the Big LEO parties are invited to participate. If MCHI's second financial showing is deemed inadequate, MCHI may pay a high price should its application be denied. Yet, MCHI is proceeding to make this showing pursuant to a Big LEO financial

^{2/} Mobile Communications Holdings, Inc., 10 FCC Rcd 227 (Int'l Bur. 1995)

^{3/} In re Applications of Constellation Communications, Inc.; Loral/Qualcomm Partnership, L.P.; Mobile Communications Holdings, Inc.; Motorola Satellite Communications, Inc.; TRW Inc., Memorandum Opinion and Order, FCC 96-279, released June 27, 1996 (the "Licensing Reconsideration Order"). The filing deadline was subsequently extended by the Commission until September 16, 1996.

^{4/} See Mobile Communications Holdings, Inc. v. FCC, Case No. 94-1695 (D.C. Cir.); Mobile Communications Holdings, Inc. v. FCC, Case No. 96-1239 (D.C. Cir.).

standard that is far from clear, particularly as it relates to what constitutes satisfactory external financing.^{5/}

The lack of guidance to smaller companies --- as to what information will be deemed sufficient to meet the financial standard --- is highly prejudicial given the far more complex and challenging standard that such companies must meet. Large companies need only submit a balance sheet demonstrating that "they, or their corporate parents have current assets (cash, inventory, and accounts receivable) and operating income sufficient to cover the costs of construction and launch of the system's space segment, and of operating for one year following the launch of the first satellite," along with a management "commitment" letter.^{6/} Companies without such substantial assets must provide evidence that external financing "is 'irrevocably committed,' i.e., that it has been approved and does not rest on contingencies which require action by either party to the transaction."

Licensing Reconsideration Order, supra, at ¶ 11. See also 47 C.F.R. § 25.140(c) & (d), 47 C.F.R. § 25.143(b)(3); In the Matter of Amendment of the 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, Report and Order, 9 FCC Rcd 5936, 5948-5953 (1994) (the "Big LEO Order").^{7/}

^{5/} There is scant precedent on this issue. It bears emphasis that, in the past decade, only a handful of entrepreneurial satellite companies (e.g., Orion) have satisfied the stringent financial test imposed on the Big LEO applicants. Significantly, these entrepreneurial companies were able to secure "irrevocable" external financing commitments with the advantage of a conditional license in hand, in contrast to the Big LEOs for whom such financing is a prerequisite of licensing. It is noteworthy that independent financial experts from Bear Stearns and Unterberg Harris recently expressed the view that satellite licenses are prerequisites to financing. See Communications Daily, July 25, 1996 at 7.

^{6/} This management letter need only indicate that the company is "prepared to expend the necessary funds" subject to market conditions. See, e.g., Licensing Reconsideration Order, supra, at para. 15. See also Big LEO Order, supra, at 5952 (management is not required to set aside specific funds for the system or to make an "unalterable commitment that the funds will be expended regardless of market conditions.")

^{7/} The Commission has made the astonishing statement that the two tests are "exactly equivalent". Op-

Footnote continued on next page

The Commission has indicated in its prior decisions, and in an informal meeting between the Big LEO parties and Commission Staff on July 3, 1996, that it is possible for a smaller company to qualify on the basis of a "balance sheet test" where a minority stockholder, with a sufficiently sizable balance sheet, submits a management letter committing funds to the project. However, based on the July 3, 1996 meeting with Commission Staff, it appears that this letter must be more explicit than letters submitted by a controlling shareholder, i.e., it must specify the exact dollar amount of funding that the company is "prepared to expend." We also understood the Staff as suggesting that (where no dollar amount is specified) the factual background must indicate reasons why the minority shareholder would be willing to undertake such a commitment, e.g., the minority shareholder would be a prime contractor of the satellite system if the project moved forward, sufficient to overcome a presumption that the minority shareholder is only contributing to the extent of its equity ownership. It is extremely difficult to have any confidence that one can extract guidance from such a vague set of standards presented through informal Staff advice.^{8/}

Footnote continued from previous page

position of the Federal Communications Commission to Petitioner's Emergency Motion for a Stay Pending Review, Mobile Communications Holdings, Inc. v. FCC, No. 94-1695 (D.C. Cir.), filed November 14, 1994, at 13-14. The Commission there stated:

Applicants relying on internal financing must "commit that . . . [they are] prepared to spend the necessary funds" to construct the system. . . . That is exactly equivalent to the irrevocable financing required for companies who require external financing to fund a satellite system.

Certainly, no financial expert would agree with this statement. See Exhibit A hereto. Nor is this view shared by the Small Business Administration which has called the standard "unequal and unduly burdensome" on small businesses. See April 24, 1996 Letter from Jere Glover, Chief Counsel, Office of Advocacy, Small Business Administration, to Chairman Reed Hundt.

^{8/} During the course of the July 3, 1996 meeting with Commission Staff, 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.

Adding to the complexity of the financial showing required of smaller companies (and the lack of guidance) is the fact that traditional bank loans are not available as first stage financing for Big LEO projects. None of the licensed Big LEO systems appears to have obtained such financing, despite their large size, established banking relationships, and apparent willingness (inferred from their committal letters to the Commission) to draw upon their existing assets. This is because Big LEO projects involve a new technology and service (generally regarded as higher risk by investors), in contrast to more mature satellite businesses such as domestic fixed satellite services which have a track record on which to base evaluations of the market, potential revenues and other business considerations. In this regard, the Commission's experience with the domsat standard is not transferable to the Big LEO context. Indeed, MCHI and others have made clear that initial financing of the Big LEO systems will initially involve a variety of investor agreements, which may include sale of international distribution rights or vendor financing agreements, with a public offering of debt and/or securities at the next stage.^{9f} This is the funding approach being followed by the licensed Big LEO systems, which are all seeking external financing of their systems (with the advantage of a license in hand).

Given the disproportionate difficulties placed on small businesses in meeting the Commission's Big LEO financial standards, MCHI is seeking further guidance in this request as to the Commission's interpretation of Rules 25.143(b) and 25.140(d). Specifically, MCHI requests that the Commission provide guidance as to (1) whether a letter from a minority stockholder in the form

^{9f} MCHI has previously submitted declarations of financial experts to substantiate these points. See Declaration of Davinder Sethi, Senior Advisor to Barclays de Zoete Wedd Ltd, the investment banking arm of the Barclays Group, and Letter from Trevor Nash, Director, Barclays de Zoete Wedd, to William F. Caton, appended to MCHI's May 5, 1994 comments in the Big LEO rulemaking proceedings (CC Docket No. 92-166). Copies of Mr. Sethi's declaration and Mr. Nash's letter are attached as Exhibit A.

attached hereto as Exhibit B will satisfy the Commission's financial standards set forth in Rules 25.143(b) and 25.140(d)(1); (2) whether the external financing standard in Rule 25.140(d)(2)(iii) is satisfied, in whole or in part, by the submission of an agreement involving the sale of international distribution rights for a particular territory in the form set forth in Exhibit C; (3) whether these rules may be satisfied through the submission of summary information about the terms of particular business arrangements or whether the agreements must be submitted to the Commission in their entirety; and (4) whether applicants are entitled to submit these agreements or summaries of relevant terms pursuant to a protective order, in the form attached as Exhibit D, limiting inspection to the Big LEO parties.

II. REQUEST FOR INTERPRETATION OF RULE 25.140(d)

A. Application of Commission Rule 25.140(d)(1) to Management Commitments By Minority Shareholders

Rule 25.140(d)(1), in conjunction with Rule 25.143 (b)(3), provides that a satellite applicant can demonstrate its current financial ability by submitting a balance sheet along with evidence of a management commitment to the proposed satellite system. In the Licensing Reconsideration Order, the Commission indicated that the management letter found satisfactory to meet the financial qualification rule in the 1988 *National Exchange*^{10/} case could be used as a model. The letter found acceptable in *National Exchange* was provided by Burlington Northern Inc. (BNI) and stated that BNI "intends to provide the necessary financial support for th[e] satellite project and other National Exchange projects subject to normal business reviews of market conditions and each project's progress to assure acceptable levels of risk and return."

^{10/} National Exchange Satellite, Inc., 3 FCC Rcd 6992 (1988).

In its previous financial showing, MCHI submitted a letter signed by the Chief Financial Officer of Israel Aircraft Industries, dated January 3, 1995, which states that "we therefore are prepared to expend the necessary funds to support the Ellipso Project, subject to normal business reviews of market and business conditions and progress to assure acceptable levels of risk and return." Despite the virtually identical concluding paragraphs of the IAI and BNI letters, the Commission found that the IAI letter "does not evidence a concrete commitment of IAI's current assets and operating income, in an amount of approximately \$500 million (or in any substantial lesser amount.)" Licensing Reconsideration Order, supra, at ¶ 20.

The Commission's holding in the Licensing Reconsideration Order, with respect to the IAI letter, raises an ambiguity as to whether the Commission considers management letters submitted by minority shareholders under a different standard than the *National Exchange* case even though, elsewhere in the same Order, the Commission appeared to consider a letter submitted by Bell Atlantic, an 8% shareholder of Constellation under the *National Exchange* standard.¹¹¹ In order to address such concerns, MCHI requested a July 3, 1996 meeting with FCC Staff, which was attended by all interested parties. MCHI understands the Staff as confirming during the July 3 meeting that (1) applicants can demonstrate financial qualifications on the basis of the balance sheet and management commitment of a minority shareholder; but that (2) the letter must specify the exact amount of funds that the company is prepared to expend, because of a presumption that a minority shareholder will only provide support up to the percentage of its equity ownership (which presumption is contestable but we shall not do so here.) There was also a suggestion by the Staff that additional facts, demonstrating reasons why the minority shareholder would support the project (e.g., where the minority shareholder would be a prime contractor of the satellite project), would be relevant to the

¹¹¹ Compare Licensing Reconsideration Order, supra, at ¶ 20 with ¶ 15.

interpretation of the letter. It was MCHI's understanding, however, that these facts would be relevant only to rebut the presumption of limited support where no dollar amount is specified.

Leaving aside the question of whether the Commission can properly impose an additional (and *ex post facto*) evidentiary burden on smaller companies,^{12/} for purposes of the second financial showing MCHI now seeks advance guidance by the Commission that the wording of the management commitment letter attached hereto as Exhibit B will be sufficient to meet the Commission's financial standards, assuming that the company providing the letter (1) is a minority shareholder (*i.e.*, less than 51%) of MCHI; and (2) provides evidence, such as a balance sheet, demonstrating the requisite current assets.

B. Rule 25.140(d)(2)

Commission Rule 25.140(d)(2) allows applicants to rely upon an alternative source of information with respect to financial ability where the applicant does not have current assets in excess of the satellite system costs. Specifically, applicants can submit information including (i) the terms of any fully negotiated loan or other form of credit arrangement intended to be used to finance the system; (ii) the terms of any fully negotiated sale or placement of any equity or other form of ownership interest; and (iii) the terms of any grant, or other external funding commitment intended to be used to finance the proposed facilities.

^{12/} The adoption of new financial rules relating to management commitments by minority shareholders without notice and comment, and other issues relating to the Commission's compliance with the Administrative Procedure Act, have been raised in the pending Big LEO court appeals. For example, MCHI has objected to the Commission's failure, in reviewing the management letters submitted by Motorola and Loral, to consider the minority ownership interests of those companies in Iridium and Globalstar, respectively, which are the entities obligated to finance the satellite systems. Nor did the Commission credit substantial and conflicting evidence in the record, including SEC disclosures by those companies, indicating an intention to rely upon external funding sources.

1. Submission of Commercial Agreements Is Not Required

Rule 25.140(d)(2) does not require the applicant to submit the actual business agreements and expressly requires only information with respect to the terms of the arrangements. MCHI therefore seeks confirmation from the Commission that a summary of the relevant terms, accompanied by an affidavit, is sufficient to meet the Commission's requirements, and that actual submission of agreements is not required.

2. Applicants May Rely Upon a Variety of Business Arrangements to Demonstrate Financial Qualification

As noted above, as a new technology and service, Big LEO systems do not typically rely on the traditional bank commitments available in more established satellite or communications services for first stage financing. As a result, it is likely that external financing arrangements may involve investor agreements, international distribution agreements, vendor financing or other business arrangements.

In the International Bureau's January 31, 1995 decision deferring consideration of MCHI's application, the Bureau reviewed various vendor financing agreements submitted by MCHI and stated:

With the possible exception of Arianespace's Agreement to provide \$45 million in launch services, these agreements do not appear to be fully negotiated, as evidenced by the fact that MCHI has not submitted detailed terms of the transactions as required by Section 25.140(d)(2) of the Commission's rules.

Similarly, the Bureau rejected MCHI's evidence of "other" sources of funding, primarily involving the sale of international distribution rights for the ELLIPSO™ system, as not sufficiently definite or detailed. The Commission did not provide any analysis of MCHI's business agreements in the Licensing Reconsideration Order.

In order to provide guidance to MCHI prior to final execution of new business agreements, which must be "irrevocable," it is requested that the Commission review the form distribution agreement attached as Exhibit C and confirm that this agreement meets the requirements of Commission Rule 25.140(d)(2)(iii).

3. Confidential Treatment of Business Arrangements Is Required

Given the proprietary and highly confidential nature of MCHI's business arrangements, MCHI also seeks confirmation that the terms and conditions of these arrangements, whether submitted in summary form or full agreements, are entitled to confidential treatment by the Commission. Based on the existing precedent, and the specific facts of this case, there are compelling reasons for the Commission to provide for submission of such financial information under a protective order and MCHI requests the Commission rule that a protective order in the form attached as Exhibit D will apply to disclosure of sensitive business arrangements by MCHI.

Despite the admittedly more cumbersome nature of protective orders, such measures are warranted here for the following reasons: (1) Commission rules require the submission of highly sensitive information of value to MCHI's competitors;^{13/} (2) disclosure of the information will competitively harm MCHI and may violate the privacy rights of third parties who have entered into business arrangements with MCHI; and (3) the rules impose a disproportionate burden on smaller applicants, since wholesale disclosure of sensitive business arrangements is only required in the case of smaller

^{13/} The sensitive nature of this commercial information, and the potential competitive harm to MCHI from disclosure, is demonstrated by the fact that at least one of MCHI's strategic partners entered into new business arrangements with the licensed Big LEO systems, after MCHI's application was deferred. To cite one example, in an April 26, 1996 letter to the Commission, MCHI called the Commission's attention to an announcement by Globalstar that it had entered into a joint venture with Rostelcom, the Russian telephone company, which superseded prior distribution agreements between MCHI and Rostelcom relating to the ELLIPSO™ system. (see Exhibit E hereto).

companies who cannot rely on their balance sheets to qualify and the risk of competitive harm resulting from the public disclosure of information is thus especially acute.

Under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, the Commission can withhold from public inspection "commercial and financial information obtained from a person and privileged or confidential."^{14/} Generally, commercial or financial information is deemed confidential under Exemption 4 to the FOIA where disclosure of the information would either (1) impair the Government's ability to obtain this information in the future or (2) cause substantial competitive harm to the person from whom the information was obtained. National Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974). It is well established that a party need not show actual competitive harm; a finding of competition coupled with the submission of detailed business information means that "the likelihood of substantial competitive harm is virtually axiomatic."^{15/}

The Commission has already determined that disclosure of proprietary vendor information, such as equipment prices, is protected from mandatory disclosure under Exemption 4. See, e.g., In re Freedom of Information Act Requests Control Nos. 94-310, 325, 328, 9 FCC Rcd 6495 (1990) (hereinafter FOIA Requests); Gregory F. Intoccia, MCI Telecommunications Corp., Freedom of Information Act Request Control No. 95-187, 10 FCC Rcd 13462 (1995) (vendors have a legitimate interest in protecting proprietary pricing data). The Commission has also determined that information concerning distribution rights and contracts is entitled to protection under Exemption 4. See, e.g., National Rural Telephone Cooperative, 5 FCC Rcd 502 (1990). Finally, the Commission has

^{14/} 5 U.S.C. § 552(b)(4) (1994). The terms "commercial" and "financial" are given their ordinary meaning for the purposes of FOIA. Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1290 (D.C. Cir. 1983). Information is commercial "if it relates to commerce." International Satellite, Inc., 57 RR 2d 460 (1984).

^{15/} Confidential Treatment of Information, 55 RR 2d 1659 (1984).

recognized, in the Big LEO proceedings, that pricing and cost information relating to vendor financing and distribution agreements is entitled to confidentiality. See, e.g., In re Application of Mobile Communications Holdings, Inc. for Authority to Construct the ELLIPSO Elliptical Orbit Mobile Satellite System, Order on Reconsideration, 10 FCC Rcd 1547, 1548 (Int'l Bur. 1994) (hereinafter "MCHI Confidentiality Order") (declining to release, even under protective order, detailed cost and pricing information relating to system components and distribution rights and allowing redaction of information by applicant).

In the MCHI Confidentiality Order, the International Bureau ruled that confidential treatment of cost and pricing information is required, particularly with respect to pricing of distribution rights for international markets, which is "highly sensitive information" and which could result in competitive harm to MCHI and its vendor/shareholders if disclosed. "Disclosure of this information could result in competitive harm to both MCHI (since it might disadvantage MCHI in negotiations with foreign distributors) and MCHI's vendor/shareholders (since buyers receive a clear competitive advantage if they know the prices that other buyers have been charged as a result of individual negotiations." Id. at 1548, ¶ 5. Based on MCHI's subsequent experiences, even the identity of certain vendors and distributors may be highly sensitive information of value to MCHI's competitors (see, e.g., Exhibit E). In many cases, these business relationships have been developed at substantial cost to MCHI.^{16/}

^{16/} It bears emphasis that these competitive harms fall disproportionately (and exclusively) on small businesses that may be relying, in whole or in part, on external financing and investment. To deny confidentiality could gravely impede the ability of a company to negotiate the necessary agreements, thus in practice rendering hollow a rule purporting to allow a company to demonstrate financial qualifications on the basis of external funding. For example, a small business applicant might be discriminated against by financiers, investors and vendors, in favor of larger Big LEO companies who are not similarly compelled to disclose the details of their business arrangements. See FOIA Requests, 9 FCC Rcd at 6496. The competitive position of the small business applicant is further compromised be-

Footnote continued on next page

The Commission's policy has been "to avoid disclosures of confidential information ... and to employ protective orders where appropriate."^{17/} In recent years, the Commission "has relied more frequently on protective orders and agreements" under the rationale that such orders and agreements "have the advantage of permitting the release --- albeit on a more limited basis --- of more information than would be possible without them."^{18/} The Commission has also observed that "release of confidential information under a protective order or agreement can often serve to resolve the conflict between safeguarding competitively sensitive information and allowing interested parties the opportunity to fully respond to assertions put forth by the submitter of confidential information."^{19/} For example, the Commission used the protective order mechanism in the Big LEO proceeding to protect information submitted by Motorola relating to its pioneer preference request.^{20/}

MCHI believes that use of a protective order is particularly appropriate here in light of the substantial competitive harm that would be caused by public disclosure of MCHI's business arrangements. Moreover, national policies recently expressed in Section 257 of the Telecommunications Act of 1996, with respect to elimination of small business market entry barriers, provide an additional

Footnote continued from previous page

cause release of the information could provide competitors with "key contractual provisions that they can use in tailoring competitive strategies" or disrupting business relationships. National Rural Telephone Cooperative, 5 FCC Rcd at 503.

^{17/} See In the Matter of Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, *Notice of Inquiry and Notice of Proposed Rulemaking*, GC Docket No. 96-55, FCC 96-109, released March 25, 1996, at para. 30 ("the Commission has long been sensitive to the concern that fulfillment of its regulatory responsibilities does not result in unnecessary disclosure of confidential information that places Commission regulatees at an unfair competitive advantage.")

^{18/} Id. at para. 31.

^{19/} Id. at para. 36.

^{20/} See Motorola Satellite Communications, Inc., 7 FCC Rcd 5062 (1992)(materials made available for inspection by parties in the Big LEO proceeding pursuant to protective order.) See also MCI Telecommunications Corp., 58 RR 2d 648 (1985).

compelling reason for use of a protective order in this case. As noted above, the disclosure of sensitive business arrangements in Big LEO licensing proceedings is a burdensome regulatory requirement that falls disproportionately on smaller applicants like MCHI whose only alternative may be to qualify on the basis of external financing arrangements. Companies that seek to qualify on the basis of corporate assets, typically giant corporations, have no need to disclose their confidential business arrangements. MCHI therefore seeks assurances from the Commission that its disclosure of confidential business arrangements will be subject to use of a protective order in the form attached as Exhibit D.

III. CONCLUSION

For the above stated reasons, MCHI requests that the Commission provide written guidance, pursuant to Section 213 of the Small Business Regulatory Enforcement Fairness Act, with respect to Commission Rules 25.140(d) and 25.143(b). Specifically, MCHI requests confirmation, based on the stated facts, that (1) in MCHI's case, a letter from a minority shareholder (with sufficient current assets) in the form attached as Exhibit B will meet the requirements of Rule 25.140(d)(1); (2) a distribution agreement in the form attached as Exhibit C will satisfy Rule 25.140(d)(2)(iii); (3) to the extent that external funding is involved, a summary of relevant business terms is sufficient to satisfy

Rule 25.140(d)(2) without submission of the underlying agreement; and (4) a protective order in the form attached as Exhibit D will be available to protect the terms of MCHI's business arrangements from public inspection if such agreements are submitted in summary form or in their entirety.

Respectfully submitted,

MOBILE COMMUNICATIONS
HOLDINGS, INC.

By: Jill Abeshouse Stern
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Its Attorneys

August 16, 1996

EXHIBIT A

**BARCLAYS de ZOETE WEDD LIMITED**

Corporate Finance

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Telephone 071 623 2323 Fax 071 956 4662/3/4

May 3, 1994

Mr William A Caton
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

**Re: Notice of Proposed Rulemaking
CC Docket No 92-166**

Dear Mr Caton

We are aware of the complexities and challenges facing the FCC's proactive stand on the authorisation of new and innovative global telecommunications services and your efforts to license low-earth orbiting satellite systems. As you establish the rules and policies for the Big LEOs, we would like to present our perspective on the proposed financial qualification standards and hope that these views will be of assistance.

Barclays is one of the world's largest diversified banking and financial services group with representation in over 70 countries. Barclays de Zoete Wedd (BZW) is the investment banking arm of the Barclays Group. BZW acts as financial advisor to Mobile Communication Holding, Inc (MCHI), the holding company for Ellipsat Corporation. BZW has assisted MCHI in developing a business plan and more importantly on advising MCHI on the identification and selection of strategic, technical and financial partners from around the globe.

Based on our experience, the financial standards proposed in the FCC's February 18, 1994 Notice of Proposed Rulemaking do not reflect the rigor of responsive decision-making with respect to financial allocations or commitments for this type of project. Nor do the proposed standards recognise that the true determinant of success is in the marketplace, ie that the market will make judgement on the basis of the strength of the underlying business plan. To elaborate:

- Financial commitments are made periodically after continual assessments of the progress of the project. Corporate sponsors are obliged to do this in response to competing demands on their resources and their obligation to make allocations that best serve their shareholders.

BZW - the investment banking arm of the Barclays Group
Registered number 181866 Registered office as above
Member of SFA



- The above is particularly true for new and emerging technologies, such as Big LEOs, where there is little historical evidence of manifest demand and where technical challenges will emerge as the program develops and reaches its operational phase.
- Corporates and the capital markets will commit funds at various stages during the project's development, in different forms, once again based on the continual assessment of the project's milestones and as its risk profile changes over the build phase. We believe the market place recognises the sustainable advantages unique to an applicant, such as technology deployed, marketing strategy, and feature-price advantage, and best determines the survivors and the also-rans.
- Ellipsat's business plan and system design offers unique advantages. Its flexibility and progressive deployment strategy significantly improves the timing of the financial exposure of corporate sponsors and financial investors. This enhances Ellipsat's ability to implement the proposed system.
- We should also note that the strength of the balance sheet of a company, in this case based on the company's other lines of business, should not be construed as evidence of financial viability of the company's Big LEO venture unless the necessary funds are irrevocably committed.

Yours sincerely,

A handwritten signature in black ink that reads 'Trevor Nash'. The signature is written in a cursive style and is enclosed within a hand-drawn arrow shape pointing to the right.

Trevor Nash
Director

DECLARATION OF DAVINDER SETHI

I, Davinder Sethi, hereby declare as follows:

1. This declaration is being submitted for association with the comments of Ellipsat Corporation with respect to the Notice of Proposed Rulemaking in CC Docket No. 92-166 ("Notice") proposing licensing and service rules for the Mobile Satellite Service Above 1 GHz. This declaration provides my expert opinion, with respect to the proposed financial qualifications standards for MSS Above 1 GHz licensees, and is based upon my review of the Notice and proposed Rule 25.143(b)(3) which specifies the proposed financial qualification requirements for space station authorizations in this satellite service.

2. I am currently employed as Senior Advisor to Barclays de Zoete Wedd Ltd. in the United Kingdom, the investment banking arm of the Barclays Group. Barclays is one of the world's preeminent investment banking institutions and a leader in advising and financing information technology companies around the world.

3. I have more than fifteen years experience in the fields of information technology and finance. My background spans academia, research, business and investment banking. For the

past five years, I have served in the field of investment banking, first as a director of Barclays de Zoete Wedd and now as a senior advisor to headquarters. In these capacities, my responsibilities include advising major global providers of information technologies and assisting these companies to develop and execute corporate development opportunities.

4. Prior to joining Barclays, I held positions at Bell Laboratories in communications research and at AT&T headquarters in corporate finance. My educational background includes a Ph.D. from the University of California at Berkeley in Operations Research, Economics and Statistics.

5. I am a financial advisor to Mobile Communications Holdings, Inc. (MCHI), the parent company of Ellipsat Corporation. In that capacity, I am assisting, and have assisted, the company with development of its business plan, financing and formation of strategic partnerships for the ELLIPSO system.

6. Based on my extensive experience in financing high technology ventures, and my knowledge of business and strategic plans for the ELLIPSO system, it is my expert opinion that there exists the ability and intention to proceed with implementation of the ELLIPSO system and that the marketplace will provide the necessary financing to meet construction, launch and first year

operating costs by recognizing the investment value of ELLIPSO™'s business plans.

7. After reviewing the Notice and the proposed financial standards, it is my expert opinion that (1) the proposed financial standard does not accommodate differences in the market and business strategies of the various LEO systems; (2) the standard does not reflect the unique characteristics of the Big LEO service and the complexity of the related financing issues; and (3) the standard could discriminate against new entrants, thereby discouraging beneficial competition. Each of these points is discussed below.

The Proposed Financial Standard Does Not
Accommodate Legitimate Variations in Market Approach

8. The proposed financial standard does not accommodate legitimate variations between systems in terms of market approach and strategy. Each of the Big LEO systems has proposed a different market approach and concept. In a new and commercially unproven service, it is my opinion that the ELLIPSO system offers unique advantages because of its flexibility and progressive deployment strategy.

9. ELLIPSO's market strategy and technical design do not require full system funding or implementation on "Day One." ELLIPSO allows a commercially valuable and unique option to offer

a commercial service through partial deployment. This early entry system will generate revenues, facilitating system expansion and providing a basis for later debt and equity offerings. The Commission's financial test does not appear to recognize this innovative market vision, and, indeed, penalizes this potentially cost-effective and efficient approach to service introduction.

10. Progressive deployment is an eminently sensible strategy, indeed, the only sensible strategy from a market and financial standpoint in a new and commercially unproven service. This approach fully comports with market realities and is designed to develop the market for LEO services as a basis for system expansion. The Commission's proposed financial standard may in fact artificially encourage development of systems that are not market-based, resulting in costly failures or abandonment by the developers.

The Proposed Standard Does Not Reflect the
Unique Characteristics of the Big LEO Service

11. A strict financial test is, in my view, unsuitable for an emerging technology such as the Big LEOs. Although promising, the Big LEOs are, as yet, unproven in the marketplace. The proposed systems will be extremely expensive to develop, with projections ranging from \$700 million to over \$3 billion.

12. Proposed Rule 25.143 does not comport with the financial realities of financing a global satellite system of this magnitude. Traditional bank loans are not likely to be the primary source of initial funding. All of the systems will need to rely initially upon funding by strategic partners, as a basis for second-stage bank loans or public offerings. It is wholly unrealistic to expect any of these investors to commit hundreds of millions of dollars on a non-contingent basis at the outset. Any reasonable investor expects to retain the ability to assess a project at critical milestones in order to consider relevant market and financial developments.

The Proposed Standard is
Inequitable and Unrealistic

13. Perhaps most importantly, the proposed standard will, in my view, discriminate unfairly between companies with other lines of business (often with no relation to the proposed satellite venture) and new entrants. Companies with other business activities are permitted to rely on current assets and operating income (from those activities) to satisfy financial requirements, without any demonstration that the assets or income will actually be dedicated or committed to the satellite project. A large company with ongoing lines of business, wholly unrelated to the proposed satellite system, can therefore submit a balance sheet reflecting credit and cash reserves without any intention

or ability whatsoever to apply those assets to the satellite project. Nor could the company be forced to do so if the project is judged at some point downstream to be uneconomic.

14. There is no rationale for concluding, on the basis of an unrelated balance sheet or financial statement, that a company will proceed with satellite system implementation. Indeed, satellite history offers several examples, at least, of large companies that failed to commit the necessary resources to go forward with or sustain a satellite project (e.g., SBS). In this regard, the subsidiary of an existing company is no different than a "start-up" or entrepreneurial venture, and should be similarly required to demonstrate committed funds.

15. Under the proposed standard, new entrants must provide evidence of fully negotiated loans or commitments. This is a far more onerous standard than will be imposed on companies with other lines of business. Outside investors, like company management, must have the flexibility to evaluate market conditions periodically. To be equitable, the Commission would need to require applicants relying on current assets and income to demonstrate that funds reflected on the balance sheet or financial statement are irrevocably committed to the project. This non-contingent standard would be the equivalent of the showing that is imposed on new entrants (and is proposed to indicate the artificial nature of the standard in both cases.)

16. If the Commission decides to allow applicants to rely upon current assets and operating income, it should clarify that new entrants will be permitted to rely upon the current assets and operating income of their investors and strategic partners to demonstrate financial qualifications.

Conclusion

17. In my expert opinion, it is far more appropriate for the market and investment community to make financial determinations on the basis of the operator's credit-worthiness and business plan, than for a government agency to do so on the basis of artificial paper showings which have little bearing on actual intention to proceed. The Commission should err on the side of allowing companies to move forward with system implementation and avoid imposition of unrealistic and inequitable financial requirements that may penalize particular market strategies. Any financial standards adopted by the Commission should provide maximum flexibility for the emergence and development of diverse, competing systems in this new satellite service.

The foregoing is true and correct to the best of my knowledge and belief.

Respectfully submitted,

Davidh Seth
Davinder Sethi

Dated: May 4, 1994

DISTRIBUTION AGREEMENT

This Agreement is signed and entered into on this ____ day of ____, 1996 by and between **Mobile Communications Holdings Inc. ("MCHI")**, a Delaware corporation, located at 1120 19th Street, N.W. Suite 460, Washington, D.C. 20036, and _____, [a _____ corporation, located at _____] (hereinafter referred to as "Distributor").

WHEREAS

MCHI owns the rights to the concept and design of a non-geostationary satellite system to provide position location and mobile voice and communications services (the "Services") with coverage tailored to populated land masses (the "ELLIPSO™ System") and is currently seeking the necessary regulatory approvals to implement the ELLIPSO™ System in the United States, and to distribute its services in the US and other countries; **AND**

WHEREAS

Upon obtaining the necessary regulatory approvals, MCHI intends to implement construction and deployment of the ELLIPSO™ system ; **AND**

WHEREAS

Distributor desires to promote, distribute, and resell ELLIPSO™ Services in _____ (the "Distribution Area");

NOW THEREFORE

The Parties agree to the following undertakings and commitments:

1. Distributor is hereby granted the exclusive distribution rights for the Services in the Distribution Area for a ____ period commencing upon execution of this Agreement, with a right of renewal for successive ____ periods.

2. Distributor shall be responsible for all costs and expenses related to the offering and distribution of the Services within the Distribution Area, including but not limited to ground segment expenditures, marketing, royalty payments, licensing and operational costs.

3. Distributor hereby irrevocably commits to the benefit of MCHI, the sum of _____ Dollars (\$US _____) in consideration of the distribution rights in the Distribution Area accorded herein (the "Distribution Fee"), the representation of financial capability for this undertaking being as set forth in Appendix A. The distribution rights in the Distribution Area are more fully described in Appendix B. Distributor agrees to provide whatever additional

documentation or information with respect to the parties' legal and/or financial qualifications that may be necessary to meet FCC requirements.

4. The disbursement of funds committed in paragraph 3 above shall be as follows:

- (a) Upon execution of this Agreement, ten percent (10%) or US\$ _____ (the "Escrow Amount"). These funds shall be deposited in an escrow account designated and approved by MCHI until a FCC license is awarded. Upon issuance of a FCC license, the escrow agent will be required to disburse the funds to MCHI or an entity that MCHI designates.
- (b) The balance of the Distribution Fee will be disbursed to MCHI over a twenty-four (24) month period following execution of this Agreement in accordance with the operational and technical requirements of the ELLIPSO™ program as follows: _____.

5. Distributor will promptly apply for authority to offer the Services in the Distribution Area and will be responsible for obtaining any and all authorization/s required, including but not limited to all governmental authorizations that may be required to construct and operate gateway stations and mobile terminals in the Distribution Area.

6. Distributor shall also be entitled to distribute, sell, install, and validate user terminals obtained from authorized manufacturers and which meet the network requirements for use in the Distribution Area.

7. MCHI will assist Distributor on a reasonable basis in the preparation of a Business Plan, applications for licensing with various Ministries, and on other pertinent technical matters.

8. Distributor will be responsible for, and will bear the costs of, the construction and deployment of the ground segment to complete the network requirements as defined by MCHI, including but not limited to development of sufficient gateway earth stations to support the projected traffic, in the Distribution Area in accordance with the technical specifications established by MCHI.

9. MCHI will be responsible for providing reasonable technical and engineering support to assist the start-up of operations in the Distribution Area.

10. Distributor commits to purchase a minimum of _____ minutes of the Services at US\$ _____ per minute during the thirty (30) month period commencing on the first business day after the ELLIPSO™ system begins operation. Operation shall be deemed to occur when a commercially marketable service is available in the Distribution Area even if the full constellation is not deployed.

11. With the signature of this document by both Parties, all previous representations, understandings, agreements of any kind between the Parties, whether orally or in writing, shall be

void and are hereby superseded by this Agreement which shall alone govern the Parties' continuing relationship in the areas under consideration herein.

12. Modifications to Comply with Statutory or Regulatory Requirements. If it should be determined by a governmental authority that any provision of this Agreement does not comply with any statute, regulation or binding policy of the Federal Communications Commission or other governmental authority, then the Parties agree to amend this Agreement as necessary to ensure compliance with the applicable statute, regulation or policy, including if necessary the deletion of specific provisions, provided however that if the amendments or deletions constitute substantial and material changes in the Agreement, then at the election of the Party affected detrimentally by such deletion or amendment, (i) the Parties will negotiate in good faith so the Party so affected by such deletion or amendment will receive alternative equivalent consideration, or (ii) the Party so affected may cancel this Agreement and receive fair and reasonable compensation for the rights and benefits which such Party had under this Agreement without such deletion or amendment.

13. This Agreement will terminate at the occurrence of one or more of the following events:

- (a) the FCC fails to grant MCHI a license on or before June 1, 1997.
- (b) Distributor fails to deposit the Escrow Amount within thirty (30) days after this Agreement is executed unless the Parties mutually agree in writing to extend the date.
- (c) Distributor is in material breach of this Agreement or any of the obligations and duties established herein, provided that it shall be provided a reasonable opportunity to cure such breach following written notice by MCHI.

14. This agreement may not be assigned or otherwise transferred by any Party in whole or in part without the express prior written consent of MCHI.

15. Any news release, public announcement, advertisement or publicity released by either Party concerning this Agreement, or any proposal under this Agreement, or any resulting contract or subcontract to be carried out hereunder, will be subject to prior approval of the other Party, except that this Agreement and the terms thereof may be made known to the U.S. Government, the Governments of the Distribution Area, potential customers and financing sources.

16. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the principles of conflicts of law thereof. Any proceeding relating to this Agreement shall be brought only in a state or federal court of Delaware. The parties hereby consent to personal jurisdiction in any such action brought in any such Delaware court, consent to service of process by certified mail and waive any objection to venue in any such Delaware court or to any claim that any such Delaware court is an inconvenient forum.

17. The rights and obligations of the Parties with respect to the disclosure and handling of proprietary or confidential information between the Parties shall be as set forth in a Confidential Disclosure Agreement which shall become a part of this Agreement, and which will survive the expiration or termination of this Agreement.

18. All notices or other communications required by this Agreement shall be in writing and, unless changed by prior written notice, shall be directed as follows:

MCHI: MOBILE COMMUNICATIONS HOLDINGS, INC.
1120 19th Street, NW Suite 460
Washington DC 20036, U.S.A.
Attn.: David Castiel, President
Telephone: (202) 466-4488 Facsimile: (202) 466-6940

DISTRIBUTOR:

SIGNED on this ____ day of _____, 1996.

MOBILE COMMUNICATIONS HOLDINGS, INC.

BY _____
Name: Dr. David Castiel
Title: President and CEO

F
OR DISTRIBUTOR:

Name:
Title:

338348-01 / DOCSDC1

EXHIBIT D

APPENDIX A: MODEL PROTECTIVE ORDER AND DECLARATION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

[Name of Proceeding]) Docket No. __

PROTECTIVE ORDER

This Protective Order is a device to facilitate and expedite the review of documents containing trade secrets and commercial or financial information obtained from a person and privileged or confidential. It reflects the manner in which "Confidential Information," as that term is defined herein, is to be treated. The Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or otherwise.

1. For purposes of this Order, "Confidential Information" shall in the first instance mean either (i) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith constitutes trade secrets and commercial or financial information which is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4) or (ii) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith falls within the terms of [cite Commission order designating items for treatment as Confidential Information]. Confidential Information shall be deemed to include additional copies of and information derived from Confidential Information.

2. The Commission may *sua sponte* or upon petition determine that all or part of the information claimed as "Confidential Information" is not entitled to such treatment.

3. Confidential Information submitted to the Commission shall bear on the front page in bold print, "CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION - DO NOT RELEASE." Confidential Information shall be segregated by the Submitting Party from all non-confidential information submitted to the Commission. To the extent a document contains both Confidential Information and non-confidential information, the

submitting party shall designate the specific portions of the document claimed to contain Confidential Information and shall, where feasible, also submit a redacted version not containing Confidential Information.

4. The Secretary of the Commission or other Commission staff to whom Confidential Information is submitted shall place the Confidential Information in a non-public file. In the event that any person requests that Confidential Information be released publicly, the Commission will treat the request pursuant to 47 C.F.R. § 0.461.

5. Confidential Information shall only be made available to Commission staff, Commission consultants and to counsel to the Reviewing Parties or if a Reviewing Party has no counsel to a person designated by the Reviewing Party. Reviewing Party shall mean a party to a Commission proceeding or any person or entity filing a pleading in a Commission proceeding. Before counsel to a Reviewing Party or such other designated person may obtain access to Confidential Information, counsel or such other designated person must execute the attached Declaration.

6. Counsel to a Reviewing Party or such other person designated pursuant to Paragraph 5 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of paragraph 7 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of the Order. In addition, before Authorized Representatives may obtain access to Confidential Information, Authorized Representatives must execute the attached Declaration.

7. Authorized Representatives shall be limited to:

- a. Counsel for the Reviewing Parties to this proceeding including in-house counsel actively engaged in the conduct of this proceeding and their associated attorneys, paralegals, clerical staff and other employees, to the extent reasonably necessary to render professional services in this proceeding, provided that such persons are not representing or advising or otherwise assisting . . .;
- b. Specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding except that disclosure to persons in a position to use this information for competitive commercial or business purposes shall require the approval of the Commission; or
- c. Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.

8. Confidential Information shall be maintained by a Submitting Party for inspection at least the two locations, at least one of which shall be in Washington, D.C. Inspection shall be carried out by Authorized Representatives by appointment during normal business hours. The Submitting Party shall provide copies of the Confidential Material to Authorized Representatives upon request and may charge a reasonable copying fee not to exceed twenty five cents per page.

9. Authorized Representatives may make additional copies of Confidential Information but only to the extent required and solely for the preparation and use in this proceeding, and provided further that the original copy and all other copies of the Confidential Information shall remain in the care and control of Authorized Representatives at all times and shall not pass to any other persons except as provided herein.

10. Counsel for Reviewing Parties shall provide to the Submitting Party and the Commission with a copy of the attached Declaration for each Authorized Representative within five (5) business days after the attached Declaration is executed, or by any other deadline prescribed by the Commission.

11. Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review), shall not be used for competitive business purposes, and shall not be disclosed except in accordance with this Order. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.

12. Reviewing Parties may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

- a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings;
- b. The portions containing or disclosing Confidential Information must be covered by a separate letter referencing this Protective Order;
- c. Each page of any Party's filing that contains or discloses Confidential Information subject to this Order must be clearly marked: "Confidential Information included pursuant to Protective Order, [cite proceeding];" and
- d. The confidential portion(s) of the pleading shall be served upon the Secretary of the Commission, the Submitting Party, and those

Reviewing Parties that have signed the attached Declaration. Such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Reviewing Party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. Reviewing Parties may provide courtesy copies of pleadings containing Confidential Information to Commission staff.

13. Should a Reviewing Party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, it shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to denial of further access to Confidential Information in this proceeding.

14. Within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall destroy all Confidential Information as well as all copies and derivative materials made, and shall certify that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel to a Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party.

15. Disclosure of Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of privileged information shall not be deemed a waiver of the privilege.

16. The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information. Moreover, it in no way precludes the Commission from disclosing any Confidential Information where it determines the public interest so requires.

17. This Protective Order is issued pursuant to Section 4(i) of the Communications Act as amended, 47 U.S.C. § 154(i) and 47 C.F.R. § 0.457(d).

18. As used in this Order, the term "Commission" shall also include any arm of the Commission acting pursuant to delegated authority.

DECLARATION
[Cite Proceeding]

I. _____, hereby declare under penalty of perjury that I have read the foregoing Protective Order that has been entered by the Commission in this proceeding, and that I agree that I will be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

(signed) _____
(printed name) _____
(title) _____
(affiliation) _____
(address) _____

(phone) _____
(date) _____

EXHIBIT E

SHAW, PITTMAN, POTTS & TROWBRIDGE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

2300 N STREET, N.W.
WASHINGTON, D.C. 20037-1128
(202) 663-8000
FACSIMILE
(202) 663-8007

900 THIRD AVENUE
NEW YORK, NEW YORK 10022-4728
(212) 836-4200
FACSIMILE
(212) 836-4201

April 26, 1996

JILL ABESHOUSE STERN
(202) 663-8380

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

**Re: Consolidated Application for Review and Request for Clarification
Mobile Communications Holdings, Inc. (FCC File Nos. 11-DSS-P-91;
18 DSS-P-91; 11-SAT-LA-95; and 12-SAT-AMEND-95)**

Dear Mr. Caton:

This letter provides supplemental information with respect to the above-referenced "Consolidated Application for Review and Request for Clarification" submitted by Mobile Communications Holdings, Inc. (MCHI) on March 2, 1995 which seeks review and reversal of the January 31, 1995 International Bureau decision deferring consideration of MCHI's Big LEO application. In particular, MCHI calls the Commission's attention to the enclosed excerpt from the April 18, 1996 issue of *Mobile Satellite News* which reports that Globalstar has entered into a joint venture with Rostelcom (the principal Russian long-distance telephone carrier) to be the exclusive provider of Globalstar services in the Russian federation.

This announcement is directly relevant to MCHI's Application for Review because it graphically illustrates the very real competitive disadvantage and harm MCHI is suffering as a result of the Bureau's decision. MCHI had entered into earlier agreements with Rostelcom (copies of which are attached) dating from 1993 and reaffirmed January 20, 1995 just prior to the Bureau's decision to defer MCHI's application. The Globalstar-Rostelcom agreement, which supersedes MCHI's prior agreements with Rostelcom, underscores the prejudicial nature of the Bureau's decision with respect to MCHI.

MCHI fully believes that its financial arrangements did, in fact, satisfy the Commission's rules and policies governing financial qualifications. The Rostelcom agreements further demonstrate that MCHI was proceeding in a business-like fashion to implement its system and to develop the global partnerships required to do so even while the

SHAW, PITTMAN, POTTS & TROWBRIDGE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

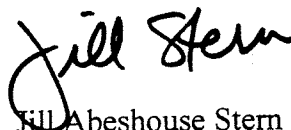
Mr. William Caton

April 26, 1996

Page 2

Bureau was considering MCHI's showing. The Bureau's failure to properly evaluate the quality of MCHI's financial commitments and the lack of concern for small business that its decision reflects have resulted in genuine, perhaps irreparable damage, to MCHI. In contrast, granting a license to MCHI will not harm its competitors, who are giant corporations and have been given a huge competitive advantage of one and a half year's headstart at the expense of their entrepreneurial small business rivals. In the intervening year, MCHI and its investors have been forced to stand by while MCHI's large competitors have moved forward to implement their business plans and to build their satellite systems. The Commission now has an opportunity to redress this inequity and should promptly do so.

Sincerely,



Jill Abeshouse Stern
Counsel to Mobile
Communications Holdings, Inc.

cc: Chairman Hundt
Commissioner Ness
Commissioner Quello
Commissioner Chong
Scott Harris
Phil Malet
Norman Leventhal
Robert Mazer
William Wallace
Bruce Jacobs

Globalstar Forms Russian Service Provider

Russia's Ministry of Telecommunications granted Globalstar L.P. [GSTRF] approval to market its services throughout the Russian Federation, Globalstar officials said. A joint venture between Globalstar and the Rostelcom Joint Stock Co. will be the organization's exclusive service provider. The venture will own and operate the gateways integrating the Globalstar satellite network with Russia's existing telephone service. Globalstar added that a Russian government study found the system is well-suited to providing telecom service to remote areas of Russia. The joint venture marks the 90th country where Globalstar has signed an exclusive service provider. (Globalstar, 703/416-5531.)

Trimble Awarded Additional Glenayre Contract

Trimble Navigation Ltd. [TRMB] won a \$5 million follow-on contract over three years to provide global positioning system (GPS) timing technology for integration with wireless networks built by Glenayre Technologies [GEMS]. The equipment will be used to synchronize transmissions used in digital paging and other narrowband services. GPS allows synchronization of transmissions from remote sites, permitting Glenayre to upgrade to new, high speed paging services. The two companies entered into an earlier \$2 million contract in November 1994. (Trimble Navigation, 408/481-8472.)

Comsat Division Signs \$2 Million Contract With Boatphone

Comsat RSI [CQ] division Plexsys Wireless Systems announced a \$2 million contract to provide maritime cellular base station and switching equipment to Boatphone, a subsidiary of Cable & Wireless [CWP]. Plexsys will supervise the installation of the equipment in five Caribbean islands, with service scheduled to start by August 30. Two additional islands are slated for later deployment. (Comsat RSI Plexsys Wireless Systems, 703/709-3020.)

Teledesic Hires Hans-Werner Braun as Chief Network Architect

Teledesic Corp., backers of the first proposed broadband LEO system, hired Hans-Werner Braun as chief network architect. Braun was one of the early developers of the Internet in the United States and comes most recently from the San Diego Supercomputer Center, where he was chief scientist and led a federally funded project to help relieve Internet congestion. At Teledesic, Braun will be responsible for developing the network architecture of Teledesic's satellite constellation. (Teledesic, 206/828-8686.)

AMSC Appoints New Vice President of Its Satellite Phone Service Unit

American Mobile Satellite Corp. named Randolph Piechocki vice president and general manager of its Satellite Telephone Service division. Piechocki takes the place of Chris McCleary, who left AMSC earlier this year. Prior to joining AMSC, Piechocki was president of TIE Systems Inc., a \$100 million telecom company. He will lead the marketing, operations and program management of the AMSC division.

Separately, Digex Inc., the small, Maryland-based Internet company which McCleary joined as chief executive, named Earl Galleher vice president and general manager-Internet server products. Galleher previously was director of marketing at AMSC. (AMSC, 703/716-6522.)

Final Analysis Appoints Michael Fatig as Director of Business Development

Final Analysis Inc., the Greenbelt, Md.-based entrepreneurial aerospace and telecom company, named Michael Fatig director of business development. Fatig was formerly manager of business development for civilian space programs at AlliedSignal Technical Services Corp. [ALD]. Final Analysis has an application pending in the FCC's second round of Little LEO processing. (Final Analysis, 301/474-3227, ext. 205.)

MOBILE COMMUNICATIONS HOLDINGS, INC.

MEMORANDUM OF INTENT BETWEEN MOBILE COMMUNICATIONS HOLDINGS, INC. & ROSTELEKOM /PERSEL

The parties met in Honolulu, Hawaii on January 24, 1995 and agreed as follows, subject to appropriate approvals:

1. Ellipsat Russia shall be formed by ROSTELEKOM/PERSEL before June 1, 1995, after proper approval.
2. Ellipsat Russia will offer services that it will acquire from Mobile Communications Holdings, Inc. (MCHI) at no more than US 30 cents/minute and US\$30/month.
3. Ellipsat Russia will make best efforts to achieve at least 48,000 subscribers after 5 years.
4. The initial capitalization of Ellipsat Russia will be approximately US\$100,000, which will be paid upon incorporation as follows:
 - a) As proposed by the Russian side, ROSTELEKOM/PERSEL -- US\$85,000 for 85% of the shares; MCHI -- US\$15,000 for 15% of the shares. SM
 - b) The numbers and percentages above are subject to negotiation.
5. In order to retain the above percentages:
 - a) MCHI shall provide the necessary ground equipment (estimated at US\$20 million), but not to include handsets or mobile terminals.
 - b) ROSTELEKOM/PERSEL will provide the interconnection to its network.
6. The parties will begin a marketing campaign no later than March 15, 1995, after execution of a final contract regarding the terms and conditions of cooperation between ROSTELEKOM/PERSEL and MCHI.



Dr. Vladimir Tchernyi
ROSTELEKOM/PERSEL

25. 01. 95
Date



Dr. David Castiel
Mobile Communications Holdings, Inc.

Jan. 25, 1995
Date

CERTIFICATE OF SERVICE

I, Larry Bakley, do hereby certify that a true and correct copy of the foregoing document was sent by first-class mail, postage prepaid, or hand-delivered, on this 16 day of August, 1996, to the following persons:

- * Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554
- * Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554
- * Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554
- * Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554
- * William E. Kennard, Esq.
General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554
- * Donald Gips
Chief, International Bureau
Federal Communications Commission
2000 M Street, N.W.
Washington, D.C. 20554
- * John Stern
Senior Legal Advisor to the
Chief, International Bureau
Federal Communications Commission
2000 M Street, N.W.
Washington, D.C. 20554

- * Thomas Tycz
Chief, Satellite & Radiocommunication Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Washington, D.C. 20554

- * Fern Jarmulnek
Chief, Satellite Policy
Satellite & Radiocommunication Division
Federal Communications Commission
2000 M Street, N.W.
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- * Cathy Sandoval
Office of Communications Business Opportunities
Federal Communications Commission
1919 M Street, N.W.
Room 644
Washington, D.C. 20554

- * S. Jenell Trigg
Office of Communications Business Opportunities
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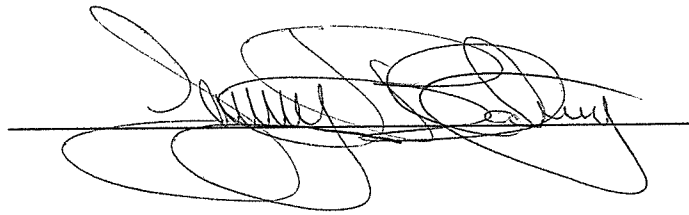
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William Wallace, Esq.
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1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

A handwritten signature in black ink, appearing to be "William Wallace", written over a horizontal line. The signature is highly stylized and cursive.

* Hand Delivered