

AKIN GUMP
STRAUSS HAUER & FELD LLP

Attorneys at Law

CONFIDENTIAL

TOM W. DAVIDSON, ESQ.
703-891-7540/fax: 703.891.7501
tdavidson@akingump.com

October 15, 2002

VIA COURIER

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

RECEIVED - FCC

OCT 15 2002

Federal Communication Commission
Bureau/Office

Re: **REQUEST FOR CONFIDENTIALITY**

Transfer of Control Application of Mobile Communications Holdings, Inc.,
FCC File No. 180-SAT-P/LA 97(26), Call Sign S2318
IBFS Nos. SAT-T/C-20020719-00104

Dear Ms. Dortch:

In response to a letter inquiry ("Inquiry") from the International Bureau,¹ Mobile Communications Holdings, Inc. ("MCHI"), by its counsel, is submitting to the Bureau the enclosed response ("Response").² The Inquiry relates to the transfer of control application ("Transfer Application") filed by MCHI seeking consent from the Federal Communications Commission ("Commission") for the transfer of control of ESBH, Inc., a wholly owned subsidiary of MCHI, to which MCHI assigned its 2 GHz Mobile-Satellite Services ("MSS") license, to ICO Global Communications (Holdings) Limited ("ICO"). MCHI's Response contains sensitive commercial and financial information, the disclosure of which would likely cause substantial competitive harm, and is therefore exempted from mandatory disclosure under Exemption 4 of the Freedom of Information Act ("FOIA Exemption 4")³ and Section 0.457(d) of the Commission's rules.⁴

MCHI, pursuant to Sections 0.457 and 0.459 of the Commission's rules,⁵ requests the Commission to withhold from public inspection and accord confidential treatment to the

¹ See Letter from Thomas S. Tycz, Chief, Satellite Division, International Bureau, FCC, to Tom W. Davidson, Counsel to Mobile Communications Holdings, Inc. (October 4, 2002).

² In order to avoid the proliferation of copies of confidential information, MCHI is filing this letter with the Secretary and two copies of the enclosed confidential material solely with the Bureau.

³ 5 U.S.C. § 552(b)(4). See Public Citizen Research Group v. FDA, 704 F.2d 1280, 1290-91 (D.C. Cir. 1983).

⁴ 47 C.F.R. § 0.457(d).

⁵ 47 C.F.R. §§ 0.457, 0.459.

Ms. Marlene H. Dortch
October 15, 2002
Page 2

Response. In support of this request, and pursuant to Section 0.459(b) of the Commission's rules, MCHI states the following:

1. MCHI seeks confidential treatment of the Response, which is comprised of information regarding MCHI's plan for implementing the Ellipso system, financial data regarding MCHI's development of the Ellipso system, including the most recent audited financial statement, and MCHI's and ICO's valuation of the assets purchased by ICO.
2. As noted above, the Response is being submitted pursuant to a specific request from the International Bureau in connection with the above-referenced Transfer Application.
3. The Response includes information regarding MCHI's implementation plans with respect to the Ellipso system and financial status which constitutes sensitive commercial and financial information that "would customarily be guarded from competitors"⁶ and is therefore exempted from mandatory disclosure under FOIA Exemption 4 and Section 0.457(d) of the Commission's rules.
4. The Response concerns the implementation of MCHI's Ellipso system. MCHI and ICO are subject to competition from a number of other MSS systems and from terrestrial wireless mobile services.
5. Disclosure of the financial information and information about MCHI's Ellipso system implementation plans contained in the Response would likely result in substantial competitive harm to MCHI and ICO by enabling competitors to use the information to their competitive advantage. For this reason, MSS providers generally do not disclose to the general public financial information about the development of their MSS systems or their business plans for implementing their systems.
6. MCHI has required all potential participants in the development of the Ellipso system, including potential investors and contractors, to sign written non-disclosure agreements which prohibit disclosure to the general public of financial information and implementation plans, such as the information contained in the Response, and restrict the disclosure of this information to selected third parties.
7. The financial information and implementation plans contained in the Response are not publicly available. As stated above, to the extent that MCHI has disclosed this information to third parties, MCHI has required such third parties to sign written non-disclosure agreements

⁶ 47 C.F.R. § 0.457(d)(2).

CONFIDENTIAL

Ms. Marlene H. Dortch
October 15, 2002
Page 3

prohibiting the third parties from disclosing the information to the general public and restricting their right to selectively disclose the information to other parties.

8. MCHI requests confidential treatment of the Response for an indefinite period. Satellite manufacturers and 2 GHz MSS competitors could use the otherwise confidential information to their competitive advantage and to MCHI's and ICO's detriment.

9. In its Inquiry, the Commission specifically authorized MCHI to file the information requested by the Commission under a request for confidentiality.

In order to provide adequate protection from public disclosure, the Commission should strictly limit distribution of MCHI's Response within the Commission on a "need to know" basis. In the event that any person or entity requests disclosure of the Response, MCHI requests that it be so notified immediately so that it can oppose such request or take other action to safeguard its interests as it deems necessary.

Please direct any questions regarding this submission to the undersigned.

Respectfully submitted,



Tom W. Davidson, Esq.
Counsel for Mobile Communications Holdings, Inc.

Enclosure

cc: Howard Griboff, Esq., Attorney Advisor, Satellite Division, International Bureau, (w/ encl.)
Karl Kensinger, Esq., Special Advisor, Satellite Division, International Bureau (w/ encl.)
Kathryn A. Zachem, Esq., Wilkinson Barker Knauer, LLP
L. Andrew Tollin, Esq., Wilkinson Barker Knauer, LLP
Craig E. Gilmore, Esq., Wilkinson Barker Knauer, LLP
John T. Scott, III, Esq., Cellco Partnership d/b/a Verizon Wireless
Charla M. Rath, Esq., Cellco Partnership d/b/a Verizon Wireless
Douglas Brandon, Esq., AT&T Wireless Services, Inc.
J.R. Carbonell, Esq., Cingular Wireless LLC
Carol L. Tacker, Esq., Cingular Wireless LLC
David G. Richards, Esq., Cingular Wireless LLC
Cheryl A. Tritt, Esq., Morrison & Foerster
Robert A. Mazer, Esq., Vinson & Elkins, LLP