

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

In the matter 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
Authority to construct, launch, and operate)	158-SAT-AMEND-96
an elliptical low-earth-orbit Mobile-Satellite)	
Service system)	Call Sign S2111

MEMORANDUM OPINION AND ORDER

Adopted: May 30, 2001

Released: May 31, 2001

By the Chief, International Bureau:

I. Introduction

1. In this order we find that Mobile Communications Holdings, Inc. (“MCHI”) failed to meet a construction milestone requirement specified in its license for a satellite system in the 1.6/2.4 GHz (*i.e.* “Big LEO”) mobile-satellite service. Consequently, the license is null and void.

II. Background

2. In 1997 MCHI received a license to launch and operate a 16-satellite “Big LEO” system for provision of two-way voice and data communications to customers equipped with mobile earth-station transceivers.¹ The International Bureau granted the license over objections from several petitioners who argued that MCHI’s license application should be denied for failure to demonstrate financial qualification. Specifically, the petitioners contended that MCHI had failed to show that it had access to funds sufficient to cover the cost of constructing the proposed system and operating it for one year. The International Bureau agreed with the petitioners that MCHI had failed to meet the financial-qualification requirement² but granted a request from MCHI for waiver of the requirement. In granting the waiver the Bureau stressed that the license was conditioned on adherence to a construction progress-milestone schedule requiring that the system be constructed and put into service in a timely manner. “We will carefully monitor [MCHI’s] progress toward implementation,” the Bureau said, “and will not hesitate to cancel the license should it fail without justification to meet the ... milestone schedule”³

3. The license order prescribed the following milestone schedule: construction of at least two of MCHI’s authorized satellites was to commence by July 1998; construction of the other satellites was to

¹ *Mobile Communications Holdings, Inc.*, 12 FCC Rcd 9663 (Int’l Bur. 1997), *applications for review pending* (“MCHI License Order”).

² *See* 47 C.F.R. § 25.143(b)(3).

³ *MCHI License Order, supra*, at ¶26.

commence by July 2000; construction of the first two satellites was to be completed by July 2001; and the system was to be fully operational by July 2003. The schedule was fully consistent with the Report and Order that established rules for the Big LEO service⁴ and was identical to the milestone schedules established for other Big LEO licensees.⁵ The license order declared that unless the schedule were to be extended for good cause, “this authorization will become null and void in the event that the licensee fails to meet [this] progress schedule.”⁶

4. Under the Commission’s rules each Big LEO licensee must file a statement within ten days of a progress milestone date specified in its license, either certifying that it has met the milestone requirement or giving notice that it has failed to meet it.⁷ In accordance with that reporting requirement, MCHI filed an affidavit on June 22, 1998 which asserted that it had met its July 1998 milestone by entering into a non-contingent contract with the Boeing Company for construction of two satellites. In an affidavit filed on July 31, 2000 to certify compliance with the second milestone requirement, MCHI’s president asserted that “MCHI has entered into a binding, non-contingent contract with Teledyne Brown Engineering, Inc. . . . relating to the construction of the satellites consistent with the milestones and technical specifications set forth in MCHI’s [license order].”

5. Subsequently, in September 2000, the Commission directed counsel for MCHI to submit copies “of MCHI’s executed contracts for satellite construction, including any amendments.”⁸ In response to that instruction, MCHI submitted copies of the following documents on October 12, 2000: (1) “Memorandum of Agreement” between MCHI and The Boeing Company, dated April 22, 1998, with amendments dated May 31, June 5, June 9, June 17, June 30, and November 12, 1998; (2) “Satellite Construction and System Definition Contract” dated June 17, 1998, with amendments dated November 12, 1998, February 26, 1999, and June 30, 1999; and (3) “Program Management Contract for the Construction of the ELLIPSO System” between MCHI and Teledyne Brown Engineering, Inc., dated July 1, 2000.⁹

III. Discussion

6. Based on our examination of the documents submitted on October 12, 2000, we find that MCHI did, in fact, enter into a two-satellite construction contract with Boeing prior to the first milestone deadline. The contract, captioned as “Satellite Construction and System Definition Contract” and signed

⁴ The Commission declared in the Report and Order that it would generally require Big LEO licensees to begin construction of two satellites within one year of receiving feeder-link frequency assignments, to begin construction of the remaining satellites within three years, to complete construction of the first two within four years, and to put their systems into operation within six years. *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*, 9 FCC Rcd 5936 ¶189 (1994). MCHI received feeder-link assignments on July 1, 1997. See *MCHI License Order*, *supra*.

⁵ See, e.g., *Motorola Satellite Communications, Inc.*, 11 FCC Rcd 13952 (*Int’l Bur.* 1996) and *L/Q Licensee, Inc.*, 11 FCC Rcd 16410 (*Int’l Bur.* 1996).

⁶ *MCHI License Order* ¶42.

⁷ 47 C.F.R. § 25.143(e)(2).

⁸ Letter dated September 28, 2000 to counsel for MCHI from Thomas Tycz, Chief of Satellite and Radiocommunication Division, International Bureau, FCC.

⁹ These documents have been withheld from the Commission’s public files pending resolution of a request that they be treated as confidential material.

by both parties on June 17, 1998, provided that Boeing was to complete construction of the two satellites by a specified date in advance of the corresponding “July 2001” deadline in MCHI’s milestone schedule.

7. We find, however, that the parties subsequently adopted amendments that essentially nullified the construction contract. On November 12, 1998 they executed an amendment that required Boeing to develop and submit a proposal for a re-negotiated construction contract (to be known as “the Definitive Agreement”) and forbade it from performing any other task without prior authorization from MCHI.¹⁰ Another amendment executed on February 26, 1999 authorized Boeing “to perform such tasks ... as are reasonably necessary to minimize any adverse schedule impact on the implementation of [MCHI’s] System while the Definitive Agreements are being negotiated” but authorized such continued performance only until March 31, 1999.¹¹ They signed a third amendment on June 30, 1999 declaring that Boeing was not to perform any work thereafter except as subsequently authorized in writing by MCHI on terms to be negotiated.¹² It appears that MCHI did not issue any such further work-authorization between then and October 12, 2000, when it complied with our request for copies of relevant contractual documents.¹³ Nor is there any indication in MCHI’s documentary submission that the construction contract with Boeing was either amended or re-negotiated after June 30, 1999. It thus appears that between June 30, 1999 and October 12, 2000 Boeing was under no contractual duty to perform satellite construction for MCHI.

8. The contract with Teledyne Brown Engineering, Inc. (“TBE”) on which MCHI predicated its second milestone certification does not require TBE to build or deliver satellites for MCHI. Rather, the contract engages TBE to provide consulting and managerial services in three successive phases. In the first phase, which extended through February 2001, TBE was to provide business advice and promotional services and prepare an estimate of the price it would charge for the services it would render in the two subsequent phases.¹⁴ In the second phase, which runs from March through August of 2001, TBE is to help MCHI negotiate a contract, or contracts, for satellite construction *with third parties*.¹⁵ In the third phase, from April 2001 to commencement of commercial operation, TBE is to monitor the performance of the third-party construction contractors, but the agreement between MCHI and TBE explicitly states that TBE “shall not be a party to such [construction] contracts and shall have no ... obligation for the execution, performance, or payment thereof,” aside from its advisory oversight role.¹⁶

9. The work schedule specified in the contract with TBE is merely tentative, moreover. MCHI reserved the right to add to, change, or delete the work to be performed by TBE and alter the times for performance.¹⁷ Further, TBE is to consult with MCHI in advance of each calendar quarter as to what work to perform in that period, and MCHI will not be liable for payment for any work performed without such prior ad hoc approval.¹⁸

¹⁰ First Amendment to Satellite Construction and System Definition Contract, ¶¶ 3 and 6.

¹¹ Second Amendment to Satellite Construction and System Definition Contract, ¶4.

¹² Third Amendment to Satellite Construction and System Definition Contract, ¶¶ 2.2 and 7.

¹³ No such authorization was included among the documents MCHI submitted.

¹⁴ Program Management Contract for the Construction of the ELLIPSO System (signed July 31, 2000), Exhibit A ¶1.1.

¹⁵ *Id.*, Exhibit A ¶1.2.

¹⁶ *Id.*, ¶20.

¹⁷ *Id.*, ¶6.1.

¹⁸ *Id.*, ¶4.2.

10. Based on the documents submitted, we conclude that MCHI did not meet the milestone requirement to commence construction of all of its sixteen proposed satellites by the end of July 2000. To meet a milestone deadline for commencement of satellite construction, a licensee relying on others to perform the required work must enter into a binding contract for construction of the satellites in question that is not subject to material contingencies that remain unresolved when the deadline arrives.¹⁹ MCHI was not a party to a non-contingent contract for construction of sixteen satellites at the end of July 2000 or at any other time prior to October 12, 2000.²⁰ Its contract with Boeing for construction of two satellites was essentially abrogated on June 30, 1999. Its contract with TBE did not provide for construction and delivery of satellites and was subject to unresolved material contingencies. At no point did MCHI request an extension of its construction milestone schedule pursuant to Subsection 25.117(e) of the Commission's rules, nor has it offered any explanation for, or even acknowledged, its failure to meet the second milestone requirement. MCHI's Big LEO license is therefore null and void by operation of the condition requiring adherence to the specified milestone schedule "unless extended for good cause shown."

IV. Ordering Clauses

11. Accordingly, IT IS ORDERED, pursuant to 47 U.S.C. §§ 151, 153(i), 155(c), 301, and 309(h) and 47 C.F.R. §§ 0.51(d) and 25.102(a), that the license issued to MCHI on July 1, 1997 for launch and operation of a "Big LEO" Mobile-Satellite Service system IS NULL AND VOID.

12. IT IS FURTHER ORDERED that MCHI's Petition for Partial Reconsideration and Request for Clarification of the order that granted its Big LEO license, filed on July 31, 1997, and the applications for review of that order filed on July 31, 1997 by L/Q Licensee, Inc., TRW Inc., and Motorola Satellite Communications, Inc. ARE DISMISSED AS MOOT.

13. This order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau

¹⁹ See *Norris Satellite Communications, Inc.*, 12 FCC Rcd 22,299 (1997), and *PanAmSat Licensee Corp.*, FCC 01-178 (rel. May 25, 2001); cf. *CBS, Inc.*, 99 FCC 2d 565 (1984).

²⁰ There is no evidence that MCHI entered into a non-contingent full-system satellite-construction contract after October 12, 2000, but it is unnecessary for purposes of this order to make any finding in this regard, because failure to meet the milestone deadline of July 2000 is dispositive.