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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of the Application of)
)
FINAL ANALYSIS COMMUNICATION)
SERVICES, INC.)
)
For Authority to Construct, Launch and)
Operate a Non-Voice, Non-Geostationary Low)
Earth Orbit Mobile Satellite System)

File No. 75-SAT-AMEND-96
25-SAT-P/LA-95

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PETITION TO DENY

Satellite Policy Branch
International Bureau

Leo One USA Corporation ("Leo One USA"), by counsel, hereby requests the Commission deny the pending application of Final Analysis Communication Services, Inc. ("FACS") to construct, launch and operate a Non-Voice, Non-Geostationary Mobile Satellite Service ("NVNG MSS") system.

On February 24, 1995, Leo One USA submitted a Petition to Deny the recently submitted FACS application. That Petition was based, in large part, on FACS' failure to satisfy the Commission's financial qualification requirements to be a NVNG MSS licensee. In an attempt to bolster its financial qualifications, FACS submitted an amendment to its application on August 19, 1996, which provides new financial information on FACS. On September 4, 1996, Leo One USA submitted a Motion to Dismiss the FACS August 19, 1996 Amendment.

Leo One USA urges the Commission to reject the August 19, 1996 FACS Amendment for several reasons. First, the information in this Amendment does not provide any evidence that FACS is financially qualified under the Commission's Rules. Rather, it further demonstrates that FACS

remains financially unqualified. Second, the Commission must reject FACS' attempt to lower its estimated costs to construct, launch and operate its satellite system. Finally, this information should be rejected because to do otherwise would undermine the integrity of the Commission's processing round and cut-off procedures.

I. Background

On November 16, 1994, FACS submitted an application to construct, launch and operate an NVNG MSS system. In its February 24, 1995 Petition to Deny, Leo One USA demonstrated that FACS was not financially qualified to be a Commission licensee. Specifically, FACS presented a financial qualifications showing that could not withstand any degree of scrutiny. First, in attempting to demonstrate that it had the financial wherewithal to fund its proposed system, FACS placed reliance on certain of its parent company's non-current assets which, under Commission rules and policy, could not be relied upon to demonstrate financial ability to fund a NVNG MSS system. That defect in FACS' financial showing, alone, was sufficient to deny FACS' application for lack of financial qualifications. However, there was more. The auditors' opinion letter submitted by FACS in its November 16, 1994 application was prepared by an individual who apparently was not qualified to conduct a financial audit and provide the opinions submitted to the Commission; he had never been licensed as a CPA in any jurisdiction in the United States.

In an attempt to rehabilitate itself, on April 10, 1995, in its Opposition to the Petitions to Deny, FACS submitted entirely new analyses of the financial capabilities of FACS and its parent, Final Analysis, Inc. (FAI). Specifically, FACS provided a completely new consolidated balance sheet for FAI and its wholly-owned subsidiary FACS. This information provided no additional evidence that FACS was financially qualified to be a NVNG MSS licensee.

On August 19, 1996, FACS for the third time submitted new financial information. In this August 19, 1996 Amendment, FACS provides new balance sheets for FAI and FACS. It did not, however, provide a consolidated balance sheet for FAI and its subsidiary FACS. Additionally, FACS provides new information on estimated construction launch and operational costs. A close review of all this information reveals that FACS continues its pattern to obfuscate rather than elucidate its financial qualifications. A review of the first set of financial material submitted with the November 16, 1994 FACS application, the second set of financial material submitted with the April 10, 1995 FACS Opposition to Petitions to Deny and now the third set of financial qualification material submitted with the August 19, 1996 Amendment reveals and reinforces the fact that FACS is not financially qualified to be an NVNG MSS licensee, and its license application must be denied.

A. FACS Does Not Have the Financial Resources to be an NVNG MSS Licensee

In its August 19, 1996 Amendment, FACS claims to "have a total of \$3,622,926 (\$2,640,000 and \$482,526 and \$500,000) in *liquid assets* to put toward the construction, launch and operations requirements."¹ FACS also notes that it has combined liabilities of \$533,321, leaving approximately \$3,000,000 to meet the costs to construct, launch and operate its proposed satellite system.

A close examination of the FACS and FAI financial statements reveals that FACS and FAI have combined liquid assets of only \$482,526. This includes FAI's cash balance of \$263,696 and FACS' cash balance of \$218,830. The remaining "liquid assets" are impossible to detect in the financial statements provided in the FACS August 19, 1996 Amendment. Evidently, \$2,000,000 of the so-called "liquid assets" is a receivable by FAI for prior year costs in connection with the

^{1/} See FACS August 19, 1996 Amendment at 5.

Company's satellite constellation project. The only satellites that FAI has informed the Commission about were the FAISAT 1 and FAISAT 2 experimental satellites for its subsidiary FACS. Thus, it is not hard to conclude that the receivables in question are monies due FAI from FACS. This intracorporate transaction does not represent liquid assets. At minimum, the Commission cannot blindly accept FACS conclusion that it has available \$3,000,000 in liquid assets.

Suspicious are heightened after reviewing in more detail the balance sheets provided by FACS. Specifically the financial statement of FAI indicates revenue of approximately \$11,814,931. FACS uses this figure to once again engage in puffery when it states that "[FACS] and its parent FAI are dynamic and growing companies." According to FACS, in 1993, FAI had total revenues of \$1 million. Only two years later its revenues were \$11.8 million. Notwithstanding these bold statements of FACS, a close examination of the financial statements reveals that the \$11,814,931 revenue figure is merely a mirage. For instance \$7,781,842 of the FAI revenue is derived from charges made to FACS by FAI for time and expenses of FAI to design and manufacture the FAISAT 2V satellite. An additional \$2,200,000 is a non-cash-transaction relating to certain unspecified barter relationships with Polyot.² Another \$1,800,000 relates to a valuation placed by FAI on certain services provided by the United States government to FAI as a non-cash grant of services. It is clear from the accounting statement that FAI has not received cash or any tangible goods from either

^{2/} Note 7 of the FAI Financial Statement indicates that this revenue is connected to revenues that Polyot expects to receive from the launch of FACS' NVNG MSS system. According to the Financial Statement "the services were sold to Polyot in parallel with launch services and spacecraft components to be provided to the company's subsidiary at a later date." See FAI Financial Statement at Note 7, page 10. This suggests that if FACS never implements its proposed NVNG MSS system, FAI will never get paid the existing \$2,000,000 receivable owed by Polyot. Instead of the receivable from Polyot being an existing current liquid asset, it seems more like a possible future asset. It certainly *is not* an asset that can be used as a basis to finance the FACS NVNG MSS system.

Polyot or the government. When the smoke clears, it is apparent that FAI had net cash revenues of \$33,089 in 1995.

FACS' inability to meet the financial qualifications test is further demonstrated by what is not included in the August 19, 1995 Amendment. According to Attachment D, the accountants prepared separate financial statements for FAI, FACS and a consolidated statement of FAI and FACS. Interestingly, even though FACS submitted a consolidated balance sheet with its previous filings, it has chosen not to submit the consolidated balance sheet with its August 19, 1996 Amendment. The statement in the balance sheet of FAI is quite revealing when it concludes, these "financial statements should be read in conjunction with the company's consolidated financial statements."³ Attachment D to the FACS August 19 Amendment states that the consolidated financial statements show a cash balance of \$482,526 and accrued expenses of \$553,321 as of December 31, 1995. This does not present a picture of a financially qualified company. Ultimately, there is nothing new in the August 19 Amendment that demonstrates that FACS is financially qualified to be a NVNG MSS licensee.

B. FACS' new cost estimates must be rejected

FACS claims that the estimated costs of its first two satellites has been reduced from \$6,216,565 to \$855,000. The principle basis for this conclusion is FAI's arrangement with Polyot for launch services and its representations that as a satellite manufacturer it has the parts for the satellites in inventory. With regard to Polyot, there is no documentation on its arrangement with FAI nor is there any tangible evidence that Polyot can actually provide the services. Given the current

^{3/} See FACS August 19, 1996, Balance Sheet of Final Analysis, Inc. at Note 2 on p.6.

state of the Russian space industry and the severe budgetary constraints imposed by the Russian Government, it is very difficult to understand how Polyot will obtain the resources necessary to provide FACS with the required launch services, especially in light of the lack of documents concerning FACS' relationship with Polyot. Furthermore, it remains a mystery how and when Polyot will be compensated for these services.⁴

As to FAI's procurement of parts, there is no demonstration that satellite parts have been actually procured or that FAI is a satellite manufacturer.⁵ FACS claims that it has "already paid all but \$610,000 of the \$2,968,245 estimated for the construction of its two satellites." This evidently means that FACS or its parent have expended approximately \$2,378,245 in procuring parts for its first two FACS satellites. A review of the financial statements of FAI and FACS does not reveal any information with regard to these expenditures. The Balance Sheet of FAI lists property and equipment valued at \$139,864 and the Balance Sheet of FACS lists property and equipment valued at \$16,311 for a total of \$156,175.⁶ How FACS and FAI obtained these parts remains unclear; therefore, the bold claim of FACS that all but \$610,000 has expended for the first two FACS NVNG MSS satellites must be rejected. Relatedly, it is hard to determine how FACS has been able to reduce the costs (i) for the remote terminal and ground station to zero; (ii) for the satellite operational costs from \$361,845 to \$135,000; or (iii) similar cost reduction from \$474,275 to \$110,00 for

^{4/} Rule 25.140, 47 C.F.R. § 25.140, requires the submission of the actual documentation for these types of financing arrangements. No such documentation accompanied the FACS August 19, 1996 Amendment.

^{5/} FACS states in its Amendment that, "as a satellite manufacturer, FACS' parent company FAI continuously produces and procures an inventory of satellite parts." See FACS August 19, 1996 Amendment at 3. However, FACS has never identified any satellites produced by FAI other than FAISAT I and FAISAT II.

^{6/} FACS August 19, 1996 Amendment at 3.

business operations, product services and administration costs. Again, it is hard to fathom these statements when the FAI and FACS balance sheets have a combined \$156,175 listed for property and equipment. Given the above, the Commission has no choice but to reject the new cost figures of FACS. The Commission must not allow FACS to upgrade its financial qualification after the November 16, 1994 cut-off date for second round NVNG MSS applications.

Even if the new materials submitted with the FACS August 19, 1996 Amendment was sufficient to demonstrate FACS financial qualification, it should still be rejected. To do otherwise would undermine the integrity of the Commission's processing round and cut-off procedures. The Commission has well established procedures for notifying the public of set deadline for submission of application materials.⁷ Information submitted after the cut-off date should be deemed ineligible for processing or, if possible, held over for a future processing round in the same service. FCC consideration of the FACS Amendment would undermine the integrity of the cut-off rules and processing round concept for the NVNG MSS and could prejudice the interests of participants in this and future proceedings. In the Public Notice establishing the cut-off date for the second NVNG MSS processing round the Commission stated, "Applications that fail to comport with [the regulations] requirements [for the NVNG MSS] as of the cut-off date will be dismissed as unacceptable for filing."⁸ As Leo One USA has previously demonstrated in this proceeding, FACS was financially unqualified as of the November 16, 1994 cut-off date, and its application must be rejected. To allow FACS to upgrade its financial qualification now would be highly prejudicial to

^{7/} See e.g., 47 C.F.R. § 25.151 (1995).

^{8/} See Public Notice DA 94-1011, September 16, 1994 at 2.

the remaining qualified applicants. This is all the more important in this proceeding where there is insufficient spectrum to accommodate all the applicants.

CONCLUSION

As demonstrated above, FACS in its August 19, 1996 Amendment, continues its pattern of submitting confusing and invalid financial information to the Commission in an attempt to demonstrate its financial qualifications to be an NVNG MSS. The Commission has no choice but to reject the August 19, 1996 FACS Amendment and deny its pending application to construct, launch and operate the proposed FACS NVNG MSS system.

Respectfully submitted,



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Dated: October 15, 1996

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition To Deny of Leo One USA Corporation was sent by first-class mail, postage prepaid, this 15th day of October 1996, to each of the following:

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