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December 11, 2003 **SECRET FILE COPY DUPLICATE**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
236 Massachusetts Avenue, N.E., Suite 110  
Washington, DC 20002

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Re: Notice of Oral Ex Parte Presentations  
Final Analysis Communication Services, Inc.  
Petition for Waiver (filed Mar. 29, 2002);  
File Nos. SAT-LOA-19941116-00088;  
SAT-AMD-19950224-00033; SAT-AMD-19960223-00031;  
SAT-AMD-19960819-00107; SAT-AMD-19971030-00175

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Ms. Dortch:

On Wednesday, December 10, 2003, Patricia Paoletta, counsel to New York Satellite Industries LLC ("NYS"), which owns FCC licensee Final Analysis Communications Services, Inc. ("FACS"), and Jan Friis and Mary Kay Williams of FACS, accompanied by counsel Randy Sifers, of Kelley Drye, and Amy Mehlman of Capitol Coalitions met with legal advisor to Commissioner Martin, Sam Feder, legal advisor to Commissioner Copps, Paul Margie, and legal advisor to Commissioner Adelstein Barry Ohlson on the status of FACS' milestone extension request, filed June 6, 2003, due to circumstances beyond its control. Substance of this ex parte was also communicated to legal advisor to Chairman Powell, Sheryl Wilkerson, Associate International Bureau Chief Jackie Ruff, Satellite Division Chief Tom Tycz, and Deputy Division Chief Cassandra Thomas.

Counsel reiterated that FACS' extension request met the standard of unforeseeable circumstances outside FACS' control that prohibited it from meeting its 2002 milestones, as well as unique circumstances mitigating in favor of extension, and that the public interest would be served in granting both a waiver of the March 2002 milestones, and approving new milestones. Counsel noted that FACS' proposed new milestone of September 2004 for completion of satellite construction for its first two satellites, and December 2004 for launch of those satellites was rapidly approaching. Extension grant in the immediate term would facilitate FACS' meeting those new proposed dates, since the greater certainty would keep FACS' partners focused on construction, as well as encourage additional investment.

FACS noted that extension denial, and having to refile for a Little LEO license is not an option for FACS. If the extension request were denied, FACS would lose

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use of the globally allocated 137-138 MHz band at an operationally acceptable level because FACS could no longer avail itself of certain pfd limits which are grandfathered in the International Telecommunication Union ("ITU") regulations for notified systems operating in these bands. If FACS' extension request is denied and it must refile, it would be constrained to operate at -140 db pfd, a level thirty-two times lower than its planned operations at -125 db. This lower power limit would put it at a severe competitive disadvantage to the one other existing, operational Little LEO, which is inconsistent with Commission policy of favoring competitive provision of services. At thirty-two times less the power in that band, service to Alaska would be severely impaired. Moreover, internationally, if FACS has to operate in 137 MHz band at thirty-two less the power, it would hamper service provision in Europe, the Middle East, and North Africa.

Moreover, were FACS required by a denial to file again, it would lose its priority in the 400 MHz band, including to one Argentine satellite that seeks to operate in that band. Given the minimal amounts of spectrum available to FACS in these two bands, use of the 137 MHz band and 400 MHz band at acceptable power limits are critical to its future viability, and to a competitive Little LEO industry.

FACS also reiterated that the public interest would be served in a viable, competitive Little LEO industry, given that the U.S. government is interested in using data from commercial satellite systems for its homeland and national security responsibilities. Little LEOS can provide low-cost data services, useful in homeland security and rural applications. In addition to these useful services, circumstances mitigating in favor of extension include the substantial resources devoted by several agencies of the U.S. government in the various study groups in the ITU, including NASA, State Department, NTIA, as well as the FCC and the Department of Defense, to make progress on the study program established by Resolution 745 (Com5/14) at this summer's World Radiocommunication Conference (WRC-03).

FACS briefly reviewed the progress made in this study program, due to the efforts of several U.S. agencies, the French Government, as well as itself, through its active participation in various ITU-R study groups. A copy of the various studies, viewed as quite acceptable to FACS, was reviewed and left with Mr. Sam Feder, Mr. Paul Margie and Mr. Barry Ohlson, and is attached to this filing. An additional public interest factor relates to the purpose of the milestone rules, which is to discourage paper satellites and warehousing spectrum or orbital slots. None of those

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considerations are at play here, given FACS repeated and demonstrated interest in moving forward with its system, as soon as permitted by the Commission.

Grant of the extension will not undermine any of the Commission's milestone policies, given the unique circumstances of the licensee's parent being brought into an involuntary bankruptcy proceeding, when that parent was also the prime contractor. FACS itself has never been financially unqualified to proceed with its system. Since its license grant, FACS has made substantial progress on its system, including launching two satellites on an experimental basis, and on spacecraft design and construction, ground systems and launch arrangements. The public interest in competitive, innovative services would be served by grant of the extension request.

Sincerely,



Patricia J. Paoletta

cc: Bryan Tramont  
Sheryl Wilkerson  
Sam Feder  
Jennifer Manner  
Paul Margie  
Barry Ohlson  
Don Abelson  
Jackie Ruff  
Tom Tycz  
Cassandra Thomas  
Mark Young  
Stewart Block