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

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In re Application of

Final Analysis Communications)
Services, Inc.)

For Authority to Construct, Launch)
and Operate a Non-Voice,)
Non-geostationary Mobile Satellite)
System in the 137-138 MHz, 148-150 MHz,)
and 400-401 MHz Bands)

File No. 25-SAT-P/LA-95

PETITION TO DENY

E-SAT, Inc., by its attorney, hereby petitions to deny the application of Final Analysis Communications Services, Inc. ("FACS"), for authority to construct, launch and operate a non-voice, non-geostationary satellite system ("NVNG") in frequency bands below 1 GHz. E-SAT, Inc. also is an applicant for a license in the NVNG Service, and as such, has a substantial interest in FACS' application.¹ As discussed below, FACS has failed to demonstrate the requisite financial qualifications for an NVNG license, and consequently, its application must be denied.²

E-SAT, Inc.'s Petition is timely filed pursuant to the Order, DA-1563, released December 22, 1994, which extended until February 24, 1995 the deadline for filing comments on applications accepted for filing in Public Notice, Report No. DS-1484, DA-1323, issued November 25, 1994.

¹ See File No. 24-SAT-P/LA-95.

² The facts on which this Petition is based are a matter of record before the Commission. Consequently, no affidavit need be filed with this Petition.

I. FACS Has Failed to Demonstrate the Financial Qualifications Required for An NVNG Licensee

The Commission, in its Report and Order³ adopting licensing and service rules for the NVNG Mobile Satellite Service, adopted financial qualifications for the NVNG MSS which will provide assurance that qualified applicants receive licenses. The financial qualifications were adopted to ensure that the public interest is served by the issuance of licenses only to those applicants which are able to proceed expeditiously with the construction, launch and implementation of their systems.

These financial qualifications, contained in Rule Section 25.142(a)(4) require that:

Each applicant for space station system authorization in the non-voice, non-geostationary mobile-satellite service must demonstrate, on the basis of the documentation contained in its application, that it is financially qualified to proceed expeditiously with the construction, launch and operation for one year of the first two space stations of its proposed system immediately upon grant of the requested authorization. Failure to make such a showing will result in the dismissal of the application. This showing shall include all information described in Section 25.140(c), (d) and (e).

Rule Sections 25.140(c), (d) and (e) provide the detailed requirements for the showing to be made.

The material provided by FACS in its application demonstrates that FACS is not financially qualified to be considered for an NVNG MSS license. FACS provides balance sheets for year-end 1993, as well as October 30, 1994. FACS attempts to rely upon the net assets in the October 30, 1994 balance sheet to demonstrate its ability to finance the estimated \$6,216, 565 cost of construction

³ Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile Satellite Service, 8 FCC Rcd 8450 (1993).

and launch of the first two satellites and operation for the first year.

However, the difference between the assets listed in the December 31, 1993 balance sheet and the October 30, 1994 balance sheet raises a substantial question as to whether FACS possesses the financial capability required by the Commission's Rules. A review of the numbers in these two balance sheets is illustrative.

At the end of December 31, 1993, FACS lists the following assets and liabilities:

Assets	\$590,528
Liabilities	<u>104,149</u>
Net Assets	\$486,379

On October 31, 1994, FACS lists the following asset and liability figures:

Assets	\$ 10,464,778
Liabilities	
(excluding shareholders' capital)	<u>222,262</u>
Net Assets	\$ 10,242,262

Based on these October 31, 1994 figures, FACS claims that it meets the Commission's financial qualifications requirements. However, this claim, as well as the October 31, 1994 balance sheet, must be viewed in the light of the additional asset which FACS claims. During 1994, FACS claims to have added an equipment asset of \$9,907,810. Nowhere does FACS explain the nature of this asset, the date of procurement, the price of the asset at time of procurement, or, how the purchase of the asset was financed.

Even if FACS could have purchased, for a small sum, an asset now valued at a much greater value than the purchase price, it provides no explanation of the basis for the current valuation. FACS provides neither an appraisal nor an expert's opinion as to the value of the asset.

Without substantiation for this startling asset acquisition (and purported appreciation of the asset), the Commission cannot permit this asset to be included in the balance sheet of FACS for the purpose of determining whether it is financially qualified to receive a license in the NVNG MSS. The Commission must subtract the equipment value claimed (\$9,907,810), leaving FACS with net assets in the amount of \$334,706 as of October 31, 1994. This amount is far short of the more than \$6 million which FACS says is required for construction and launch of its first two satellites, and operation for the first year.

Thus, FACS has failed to demonstrate that it is financially qualified to receive a license in the NVNG MSS and its application must be dismissed or denied.

II. The Policy Basis for the NVNG MSS Financial Standard Requires Denial of Applications which Fail to Meet the Standards Established by the Commission

The Commission, in proposing financial standards for the NVNG MSS, stated that:

[E]xamination of an applicant's financial qualifications ensures that the orbit-spectrum resource is not tied up by entities unable to fulfill their plans, discourages the filing of speculate applications that occupy Commission resources, and promotes the prompt availability of service to the public.⁴

The Commission also expressed concern, that "while we can accommodate all the current applicants, as well as some future entrant(s), the capacity for additional entry is not clear."⁵ The Commission recently noted the expressed need for substantial additional frequency allocations for NVNG MSS, in its Second

⁴NVNG MSS Notice of Proposed Rulemaking, 8 FCC Rcd 6330 (1993), at para. 17.

⁵ Supra., at para. 18.

Notice of Inquiry in Preparation for WRC-95.⁶ In the WRC-95 Second Notice, the Commission states that NVNG MSS proponents have indicated a need for "at least an additional 10 MHz of spectrum, available for network use by the year 2000."⁷

Based on the proposals of this second round of NVNG applications, the Commission may want to consider the implementation of even more stringent financial qualifications.

Applications, including those of FACS, which fail to demonstrate compliance with the Commission's current financial qualifications requirements for NVNG MSS, should be denied, in order to permit the fully capitalized applicants to implement their plans. As the Commission recognizes, it has on several occasions granted licenses to underfinanced applicants which ultimately were unable to go forward with their system proposals.⁸

Apart from preventing the warehousing of spectrum, the Commission wants to ensure that licensed applicants can go forward, in order to ensure meaningful system and spectrum coordination among U.S. systems and between U.S. and systems of other countries. A system which is not ready to proceed with construction may not have the information available to conduct meaningful coordination, and could possibly delay the coordination and construction of all the other systems. As a result, licensing undercapitalized systems may cause spectrum to lie fallow, and service to be delayed.

Thus, the Commission should dismiss all unqualified applications, including

⁶ WRC-95 Second Notice of Inquiry, IC Docket No. 94-31, FCC No. 95-36, released January 31, 1995.

⁷ Supra., at para. 56.

⁸ See Geostar Positioning Corp., 6 FCC Rcd 2276 (CCB 1991).

that of FACS, and proceed with processing of the applications which meet the financial qualification requirements.

III. The FACS Application Presents a Material Question of Fact Which Must be Explored by the Commission

If the Commission seeks to provide FACS with an opportunity to explain the introduction and valuation of the \$9,000,000 asset during 1994, it should require FACS to promptly submit such information so that other parties to this proceeding may comment on such a showing. In reviewing any additional information FACS may provide, the Commission should insure that FACS has provided full and complete information concerning this asset and its valuation.

"[A]bsolute candor is perhaps the foremost prerequisite for FCC licenseeship," Palmetto Communications Co., 69 RR 2d 119, 121 (Rev. Bd. 1991). As the U.S. Court of Appeals has said:

[T]he Commission must rely heavily on the completeness and accuracy of the submissions made to it, and its applicants in turn have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate. This duty of candor is basic, and well known.⁹

Thus, FACS has a duty to provide the Commission and the public with a full explanation of the basis for its claim of the purported \$9,000,000 asset, fully substantiating the source and valuation of the asset on which it bases its financial qualifications.

⁹ RKO General, Inc. v. FCC, 670 F 2d 215, 232 (D.C. Cir. 1981), cert. denied, 456 U.S. 927 and 457 U.S. 1119 (1982).

IV. Conclusion

For the foregoing reasons, the Commission should dismiss or deny the application of Final Analysis Communications Services, Inc. or immediately require the applicant to submit additional information as described above.

Respectfully submitted,



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Counsel

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February 24, 1995

Certificate of Service

I, Andrew F. Taylor, hereby certify that the forgoing "Petition to Deny of E-SAT, Inc." was served by first-class mail, postage prepaid, this 24th day of February 1995, on the following persons:

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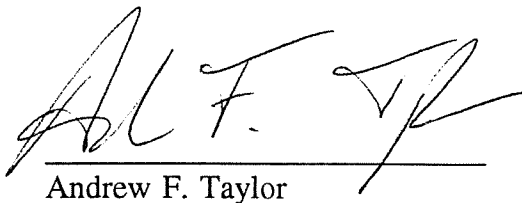
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Andrew F. Taylor

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

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In the Matter of)	
Non-Voice, Non-Geostationary Low)	
Earth Orbit Satellites Applications)	
Filed by:)	
CTA Commercial Systems, Inc.)	File No. 23-SAT-P/LA-95
E-Sat, Inc.)	File No. 24-SAT-P/LA-95
Final Analysis Communication)	File No. 25-SAT-P/LA-95
Services, Inc.)	
GE American Communications, Inc.)	File No. 26-SAT-P/LA-95
Leo One USA Corporation)	File No. 27-SAT-AMEND-95
Orbital Communications Corporation)	File No. 28-SAT-MP/ML-95
Volunteers In Technical Assistance)	File No. 29-SAT-AMEND-95

Motion for Extension of Time to Comment

Orbital Communications Corporation ("ORBCOMM"), pursuant to Section 1.46 of the Commission's Rules, requests that the Commission extend the comment date on the above-captioned applications for Non-Voice, Non-Geostationary satellite systems.^{1/} Although the Commission does not routinely grant

^{1/} The Commission had asked for comment on all seven second round NVNG satellite service applications sixty days after the Public Notice, DA 94-1323, Report No. DS-1484, released November 25, 1994.

requests for extensions of time, ORBCOMM believes that a 30 day extension is appropriate under the circumstances presented here.

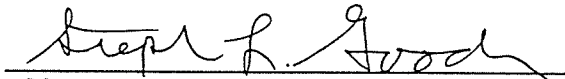
As of the cut-off date established by the Commission for the second processing round, four wholly new NVNG satellite system applications were filed (by Final Analysis, E-Sat, GE Americom and CTA), along with a major amendment of the previously filed system proposals for Leo One and VITA. Thus, ORBCOMM must review six applications to determine the compatibility of those system proposals with ORBCOMM's licensed system (as well as the compatibility with ORBCOMM's proposed modification of its own system). ORBCOMM must also review those applications to determine whether the applicants are legally, financially and technically qualified to become NVNG satellite service licensees.

Given the scope of the required analysis, ORBCOMM believes that additional time will ensure that a thorough review can be accomplished, which will provide the Commission with the best available information for making a decision. In addition, preparation for the upcoming World Radiocommunications Conference is continuing concurrent with the time for review of these six applications, which also requires ORBCOMM's (and presumably the other NVNG satellite system applicants') attention.

In light of the need for the Commission to complete the initial processing round before it can begin to process the second round applications, and the fact that completion of the first processing round is unlikely to occur in the very near future, ORBCOMM believes that none of the applicants would be

prejudiced by the requested extension of time.^{2/} On the other hand, both the Commission and each of the applicants will benefit from having a full and accurate record. Wherefore, ORBCOMM requests that the Commission grant a 30 day extension of time.

Respectfully Submitted,



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Counsel for Orbital Communications, Inc.

Dated: December 8, 1994

^{2/} ORBCOMM has contacted counsel for the other six second round applicants (as well as Starsys), and only CTA indicated that they objected to the requested extension of time (with GE Americom and Leo One not having responded to our inquiries).

CERTIFICATE OF SERVICE

I, Laura E. Magner hereby certify that on the 8th day of December 1994, a true copy of the foregoing Motion for Extension of Time to Comment was mailed, postage prepaid, to the following:

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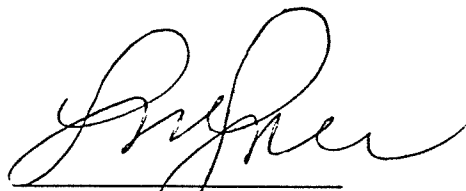
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