

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Application of)
)
Final Analysis Communication)
Services, Inc.)
)
)
For an Amendment to its)
Application for a Non-Voice)
Non-Geostationary Mobile-)
Satellite System)
_____)

File Nos. 75-SAT-Amend-96;
25-SAT-P/LA-95

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Satellite Policy Branch
International Bureau

To: The Commission

PETITION TO DENY

CTA Commercial Systems, Inc. ("CTA"), by its attorneys and pursuant to Section 25.154 of the Commission's Rules, 47 C.F.R. § 154, hereby petitions to deny the Amendment of Final Analysis Communication Services, Inc. ("FACS") to its application to construct, launch and operate a commercial Non-Voice, Non-Geostationary ("NVNG") Mobile Satellite System ("MSS"). As a second round NVNG MSS applicant, CTA has a direct interest in the Commission's consideration of the FACS amendment.

I. FINAL ANALYSIS'S AMENDMENT FAILS TO COMPLY WITH THE COMMISSION'S CUT-OFF RULES FOR NVNG APPLICATIONS.

FACS argues that its amendment is compelled, pursuant to Section 1.65 of the Commission's Rules, 47 C.F.R. § 1.65, because of a significant change in its financial

position. Under the Commission's NVNG processing rules, however, FACS was required to be financially qualified as of the time of the cut-off date for the second NVNG processing round, *i.e.*, by November 16, 1994.^{1/} As CTA has argued previously, FACS was not financially qualified at the time of the cut-off date; it cannot now cure this defect by amending its application.^{2/} Indeed, the FACS amendment request is in essence an admission of this applicant's earlier failure to establish its financial qualifications.

Allowing FACS to cure this defect nearly two years after the cut-off date would be an extraordinary departure from the Commission's well-established procedures, and would be tantamount to re-opening the processing round. Approval of the FACS amendment also potentially could prejudice other NVNG applicants who met the Commission's financial requirements by the cut-off date. At a minimum, approval of the amendment would invite similar filings from other NVNG applicants seeking to improve the posture of their applications, and ultimately could force the Commission to reopen the processing round to entirely new applicants, further delaying the conclusion of this already protracted proceeding.

In the interest of maintaining the orderliness and integrity of the second NVNG processing round and in ensuring an equitable conclusion to the proceeding, the Commission must deny the FACS amendment.

^{1/} FCC Public Notice, 9 F.C.C. Rcd. 5261 (1994). This Public Notice stated unambiguously that "[a]pplications that fail to comport with these requirements as of the cut-off date will be dismissed as unacceptable for filing."

^{2/} See CTA Consolidated Petition to Deny Final Analysis Inc. Application, at 5-7.

II. FINAL ANALYSIS'S UNSUBSTANTIATED CLAIMS OF REDUCED EXPENSES CANNOT BE TAKEN SERIOUSLY.

FACS claims that its expected expenditures for the construction, launch and operation of its satellites has been reduced by nearly 86%, yet offers virtually no substantiation of these assertions. For example, FACS argues that certain anticipated equipment and service expenditures have been revised or eliminated due to "important changes in commercial arrangements."^{3/} Specifically, FACS claims that it will incur zero launch, construction and operation costs for its satellites (originally estimated at close to \$2 million) because it has entered into a barter arrangement with Polyot to provide launch services for the entire 26 satellite Final Analysis Little Leo constellation in exchange for the right to offer Little Leo services in Russia and other CIS countries.^{4/} The only documentation that FACS offers to support these claims is a one-page letter from the Chief of Polyot's Design Bureau. No details regarding the agreement are provided, nor does FACS offer any substantiation of Polyot's ability to carry out the launches.

Similarly, FACS claims that it can reduce its estimated costs for the purchase of its first two satellites because it already has procured "virtually all of the parts" required to construct these two satellites as a result of its purchase of extra equipment for its

^{3/} Final Analysis Amendment at 2.

^{4/} Id. at 4.

experimental satellites.^{5/} Again, FACS has provided no evidence that the necessary satellite parts actually have been procured, or that they have been procured in sufficient quantities to meet actual construction needs.^{6/} FACS indicated that it ordered parts in excess quantities during the construction of its experimental satellites. Such redundancies are typically built into the construction of satellites to allow for equipment failures; these redundancies (and consequent expenditures) similarly would need to be provided for in the case of FACS's Little Leo satellites.

FACS provides comparable unsubstantiated claims regarding the expenses for the modification of an existing earth station, the purchase of equipment for additional ground stations in other locations, and the purchase of satellite operating equipment and business operating equipment.^{7/} No independent appraisal or verification of the value of any of this equipment has been provided.

In sum, FACS claims that it can slash its estimated expenses for the development of its satellite system by nearly 86%, from over \$6 million to approximately \$850,000, but provides virtually no documentation or other evidence to support this dramatic improvement in its financial fortunes.

^{5/} Id. at 3.

^{6/} Id.

^{7/} Id. at 4.

III. FINAL ANALYSIS'S AMENDMENT HIGHLIGHTS ITS LACK OF FINANCIAL QUALIFICATION FOR AN NVNG LICENSE.

Even assuming that the Commission were to accept the FACS amendment for consideration, the documentation provided by FACS in its amendment merely highlights the extent to which it is financially unqualified for an NVNG license.

As Leo One pointed out in its Motion to Dismiss the FACS amendment, the balance sheets provided by FACS and its parent company Final Analysis Inc. ("FAI") suggest a financially troubled company.^{8/} Indeed, neither FAI nor FACS can demonstrate operating revenues; based on the information provided, it appears that virtually all of liquid assets available to the companies is from financing activities. As Leo One points out, some \$4 million of the \$11.8 million that FAI claims as revenue is not actual cash, but rather is FAI's own estimation of the value of the Polyot barter arrangement and unspecified services FAI has received from the federal government. The remaining revenue derives from the issuance of stock to FACS.^{9/}

This continuing lack of significant sources of revenues underscores the extent to which FACS is financially unqualified to hold an NVNG license, particularly when the scarcity of available spectrum makes it possible that only one additional NVNG license will be granted by the Commission.

^{8/} Leo One Motion to Dismiss at 2.

^{9/} Id.

CONCLUSION

The Commission should deny the FACS request to amend its Little Leo application. CTA urges the Commission instead to proceed expeditiously with a decision on allocation of licenses for the Little Leo NVNG systems.

Respectfully submitted,

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October 15, 1996

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CERTIFICATE OF SERVICE

I, Yasmin Beckford, hereby certify that I have on this 15th day of October 1996, caused to be served a copy of CTA Commercial Systems, Inc.'s Petition to Deny, by hand or by first-class mail, postage prepaid, upon the following:

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