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

NOV 12 1996

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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Satellite Policy Branch
International Bureau

REPLY OF LEO ONE USA CORPORATION

Leo One USA Corporation ("Leo One USA"), by counsel, hereby replies to the Opposition of Final Analysis Communication Services, Inc. ("FACS") filed on October 15, 1996. Leo One USA, in its Petition to Deny, urged the Commission to reject the financial showing submitted in FACS' August 19, 1996 amendment to its application and to deny the pending application of FACS for a license to construct, launch and operate a Non-Voice, Non-Geostationary Mobile Satellite Service ("NVNG MSS") system. Leo One USA demonstrated in its petition that FACS again has failed to satisfy the Commission's financial qualifications requirements and is ineligible to receive a NVNG MSS license.

The Leo One USA petition emphasized several important points. First, contrary to the assertions in its amendment, FACS failed to establish that it has sufficient current assets to meet the Commission's requirements to demonstrate its financial qualifications. Second, serious questions remain as to the validity of the reduced cost estimates FACS presented in its amendment. Third, the FACS amendment is procedurally deficient.

Notwithstanding its submission of a consolidated financial statement in its October 30, 1996 Opposition, FACS has failed to substantiate its claim of \$3,622,926 in liquid assets. Moreover, FACS has not justified its dramatic cost reductions, which conveniently fall below the unsubstantiated \$3,622,926 number.

A. FACS Remains Financially Unqualified

FACS has failed to adequately respond to Leo One USA's legitimate questions and concerns about the data presented in FACS' amendment. FACS bases its claim of financial qualification on \$3,622,926 in liquid assets with commitments for \$2.5 million of additional capital.¹ This \$3,622,926 figure includes receivables of \$2 million "actually received from an unaffiliated third party" and \$615,000 received for sale of FACS non-voting stock. An additional \$500,000 is claimed to have been received in return for preferred shares of stock in 1996.² There are a number of important problems with these figures which FACS simply overlooks.

First, there are significant inconsistencies about the origins and purpose of the \$2 million amount which call into question the validity of FACS' claim to this money. The \$2 million figure supposedly represents a "recovery of prior year costs in connection with the [FACS'] satellite constellation project. . . ."³ FACS provides only one other clue about this money -- it was "received

^{1/} FACS Opposition at 9. Leo One USA notes that FACS previously relied on its satellite as a current asset to satisfy the Commission's financial qualifications requirements. Leo One USA has demonstrated that an in-orbit satellite cannot serve as a current asset. The FAI consolidated financial statements, however, continue to list this as a current asset. Because the FACS opposition clarifies that FACS is not relying on its "satellite under construction" figure to support its financial qualifications, Leo One USA will not reiterate in greater detail its opposition to including these items as current assets.

^{2/} FACS Opposition at 9.

^{3/} *Id.* at Appendix E, Notes to Consolidated Financial Statements, at Note 4.

from an unaffiliated third party."⁴ FACS fails to identify this third party or to explain why the entity reimbursed FACS for costs. It is unusual, to say the least, for an "unaffiliated third party" to reimburse \$2 million of a company's costs without something in return. Yet, FACS does not explain the nature or intent of this transaction.

Leo One USA also urges the Commission to consider what is meant by FACS' statement that the \$2 million represents a "recovery of prior year costs." If the costs, reported in 1995, were for a prior year (meaning before 1995), FACS' financial statements for 1994, or before, should have reflected a \$2 million receivable. Interestingly, no such receivable was reported in the FACS financial statements prior to 1995.

With regard to the \$500,000 allegedly received in cash in 1996 for preferred shares, Leo One USA notes that there is no evidence FACS still has this money. It may have been used to pay for salaries and other ongoing costs and not be available for classification as a current asset. If FACS chooses to base its financial qualification showing on assets it claims to have obtained after the date of the submitted audited financial statements, it must also submit an update of the entire financial statement. To accept anything less would open an enormous loophole for applicants to simply claim qualification on the basis of events that have not yet occurred.

Leo One USA also questions the validity of FACS' claimed revenues of \$4 million. Even a cursory examination of Note 7 to the Financial Statements reveals that this entire figure, excluding \$33,089, represents barter income, not convertible to cash. Although barter income may be reportable under financial accounting standards, it does not produce cash which can be used to

^{4/} *Id.* at 9.

construct, launch and operate a satellite system. Even more importantly, however, Leo One USA urges the Commission to consider how FACS is valuing these barter transactions. Because no cash actually changes hands, FACS and its Russian barter partners are able to place any valuation on the services provided. Why not value the \$2.2 million transaction with Polyot at \$2.2 billion or \$22,000?

It is also unclear how these "services were sold to Polyot in *parallel* with launch services and spacecraft components to be received at a later date".⁵ It appears that a portion of the barter transaction is simply a transaction between FACS and its parent Final Analysis, Inc. ("FAI"), with Polyot serving as an intermediary. This results in consolidated revenues being artificially pumped up. Furthermore, it is clear that FACS and FAI are attempting to finance FACS' proposed satellite constellation by trading services it may never be able to provide for services it may never need. In effect, FACS is attempting to finance a significant portion of its construction and launch costs on the value and future use of a license that as yet the Commission has shown no intent to issue. Without a license, FACS has no ability to finance a significant portion of its cost.

The important element for the Commission to consider is that these barter transactions, while they may meet financial accounting standards, are meaningless in terms of FACS' ability to construct, launch and operate its proposed system. The reality of the situation is that neither FACS nor FAI, has any recurring revenue, a customer base or cash from these transactions. FACS attempts to portray FAI as an established satellite manufacturer proceeding with implementation of its system.

^{5/} *Id.* at Appendix E, Notes to Consolidated Financial Statements, at Note 7 (emphasis added).

These FACS filings simply reinforce the fact that FAI has no revenue stream, almost no cash, and no discernable means to legitimately finance its proposed system.

With regard to FACS' claim of a commitment of \$2.5 million, Leo One USA will not devote substantial comments. They do not comply with even the most liberal interpretation of the Commission's financial qualification rules. For example, the rules permit an applicant to rely on a balance sheet from an equity investor, which is not the case in this situation. In the absence of a commitment from an equity investor, applicants may submit *the terms of any fully negotiated* external funding arrangement, including detailed terms of the transaction. The supposed commitments FACS relies on do not appear to be fully negotiated transactions. Moreover, FACS has not presented detailed terms of the transaction which would be required for the Commission to make a determination whether FACS meets the Commission's financial standards.

B. FACS Has Failed to Justify Its Claimed Reduction in Costs

The FACS opposition fails to adequately address the concerns Leo One USA raised about FACS' new cost estimates. In its petition to deny, Leo One USA urged the Commission to examine FACS' claim that Polyot will provide launch services and FACS' statement that it has already spent the bulk of the \$2,968,245 required to construct its first two commercial satellites. FACS' opposition does not provide sufficient new information to answer questions about either of these issues.

Most troubling is FACS' assertion that it is not required to submit any details of its relationship with Polyot and that any information submitted to the Commission "would be for in camera review".⁶ Because FACS is relying on its business arrangements with Polyot in order to

^{6/} *Id.* at 6, n.14.

demonstrate that it has met the Commission's financial requirements, the actual agreements between FACS and Polyot must contain information relevant to the Commission's determination whether FACS meets the financial test. The details of FACS' relationship with Polyot is not separately and fully reflected in FACS' filings. In the absence of the actual agreements the Commission must reject FACS' claims regarding the support Polyot will provide. Moreover, the Commission has resisted previous attempts to place entire documents under seal, recognizing that limiting disclosure in this manner would unnecessarily decrease the amount of information available to the public. FACS' statement that the Commission's rules do not apply because this is not a "financing arrangement" is absurd. To allow applicants to seek licenses based on unsubstantiated launch costs resulting from undocumented relationships with foreign industries would create a dangerous precedent and eliminate the value of the Commission's financial qualification rules.

Leo One USA also questions what Polyot is getting in return for the provision of launch services. FACS states, "Polyot gains the right to be Final Analysis's national service provider in Russia and the CIS countries."⁷ This does not provide a clear enough picture for the Commission to make a final determination about the validity of FACS' claims. For example, FACS does not explain the terms of Polyot's rights. The Commission cannot even attempt to make an informed judgment on this topic with the sparse information FACS has provided.

FACS' statement that it has purchased equipment and hired personnel which will reduce the cost of satellite operations and business operations by more than 50 percent⁸ is illogical. As FACS

^{7/} *Id.* at 6. It is hard to understand how one could possibly put a value on the rights received by Polyot since FACS does not have a license to use spectrum and therefore has no idea as to the number of available channels, the scope of system coverage or system availability.

^{8/} *Id.* at 8.

itself notes, a significant portion of these costs represents salary expenditures.⁹ If that is the case, it is hard to understand how FACS has been able to reduce the ongoing salary costs of satellite operations or other overhead costs. These are recurring, not one time, costs which are not accurately reflected in FACS' submissions.

FACS' statements about the status of its satellite construction efforts also leave unanswered questions. The Itemization of Spacecraft Component Expenditures, listed in Appendix A, is meaningless for this analysis. There is no support for these assertions and no independent verification of these figures nor any detail of what has been spent. FACS claims that Space Dynamics Laboratory "acknowledges Final Analysis's activities as a satellite manufacturer, and its procurement of substantial spares and inventory that will be useful in construction of commercial satellites."¹⁰ The SDL letter, however, states, "*We are also aware* that Final Analysis has procured substantial spares and inventory. . . ."¹¹ The text of the SDL indicates no actual knowledge of any procurement of spares or inventory but only that SDL "is aware" of such activity. FACS goes on to claim that the Center for Space Power ("CSP") "verifies Final Analysis's capabilities and activities as a satellite manufacturer."¹² Final Analysis proudly proclaims this is "not a 'bold claim,' but rather a statement of reality",¹³ but Leo One USA encourages the Commission to more closely scrutinize FACS's "reality". Although it is not specified in its letter, CSP appears to be a contractor for Final

^{9/} *Id.*

^{10/} *Id.*

^{11/} *Id.* at Appendix B (emphasis added).

^{12/} *Id.* at 8.

^{13/} *Id.*

Analysis, certainly not an unbiased analyst of FACS' capabilities. Moreover, CSP only speaks to Final Analysis' work developing its two experimental satellites, FAISAT-1 and FAISAT-2V. Leo One USA finds it intriguing that SDL also only speaks of development work on these experimental satellites. If FACS is so far along in the development of its first two commercial satellites and these two entities are close enough strategic partners that FACS holds them out as able to "verify Final Analysis's capabilities and activities", Leo One USA is puzzled why these entities are not able to provide any details about the development of these commercial satellites.

C. FACS' Amendment is Procedurally Deficient

Leo One USA has stated repeatedly throughout this proceeding that the Commission required applicants to demonstrate their financial qualifications as of the cut-off date of November 16, 1994. FACS erroneously argues that the Commission has not followed that rule in the NVNG MSS or in the Mobile Satellite Service Above 1 GHz. FACS has overlooked the important fact that the Commission's statements in the first round of the NVNG MSS and the MSS Above 1 GHz proceedings involved applications filed prior to the adoption of a financial qualifications test for those services. In the case of the second NVNG MSS processing round, all the pending applications were submitted after the Commission had adopted a financial qualifications test. In the first processing round of this service and in the MSS Above 1 GHz proceeding, no such rule existed, and the Commission was obligated to afford applicants an opportunity to amend their applications to demonstrate their financial qualifications after the appropriate tests were adopted for each service. FACS cannot claim that it is in the same situation in this processing round.

D. Conclusion

FACS attempts to portray Leo One USA as concerned about preventing competition.¹⁴ As the Commission is well aware, Leo One USA has argued strenuously that the public interest demands the introduction of competitive NVNG MSS services. The Commission is also aware, however, that it has never fostered this goal by licensing financially unqualified applicants that will warehouse spectrum and ultimately fail to provide service or increase competition.

The FACS August 19, 1996 Amendment raises more questions than it answers. FACS' aggressive accounting practices fail to comply with both the letter and the spirit of the Commission's financial qualifications rules. Essentially, FACS' financial position has not changed since November 16, 1994 -- it remains under funded and without any substantial current assets. Under any interpretation of the Commission's financial qualification requirements, the Commission is obligated 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: November 12, 1996

^{14/} *Id.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply of Leo One USA Corporation was sent by first-class mail, postage prepaid, this 12th day of November 1996, to each of the following:

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