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

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Satellite Policy Branch
International Bureau

In the Matter of)
)
FINAL ANALYSIS COMMUNICATION)
SERVICES, INC.)
)
Order and Authorization to Construct, Launch)
and Operate a Non-Voice, Non-Geostationary)
Mobile Satellite System in the 148-150.05 MHz,)
400.15-401 MHz, and 137-138 MHz bands)

File Nos. 25-SAT-P/LA-95
76-SAT-AMEND-95
79-SAT-AMEND-96
151-SAT-AMEND-96
7-SAT-AMEND-97

OPPOSITION TO REQUEST FOR NON-DISCLOSURE

Leo One USA Corporation ("Leo One USA"), by its attorneys, hereby submits this opposition to the request for non-disclosure of Final Analysis Communication Services, Inc. ("Final Analysis"). For the reasons detailed below, Leo One USA asks that the Commission deny the Final Analysis request and provide Final Analysis with the option to withdraw its filing or refile the material in the public record.

I. Introduction

On January 12, 1999, Final Analysis submitted to the Commission a Request for Non-Disclosure of certain information it characterized as commercially and technically sensitive material.^{1/} The Final Analysis Request seeks confidential treatment of a letter by General Dynamics Information Systems ("General Dynamics"), a company which has "recently entered into a strategic relationship with Final Analysis" including an equity investment.^{2/}

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^{1/} Letter from Aileen A. Pisciotta to Ms. Magalie Salas dated January 12, 1999 and Letter from Aileen A. Pisciotta to Ms. Regina Keeney dated January 12, 1999 (jointly referred to herein as "Final Analysis Request.")

^{2/} Final Analysis Request at 2.

Final Analysis offers the General Dynamics letter in support of the company's Application for Clarification and Review of its Non-Voice Non-Geostationary Mobile Satellite Service ("NVNG MSS" or "Little LEO") license.^{3/} The Final Analysis Application for Review seeks to overturn the decision of the International Bureau to deny certain proposed system modifications sought by Final Analysis due to the Bureau's determination that grant of such modifications would increase interference to other users of the same bands.^{4/} Nearly one year after the Bureau's decision, Final Analysis submits the General Dynamics letter which Final Analysis claims concludes Final Analysis' proposed system expansion to 32 satellites will "pose no threat of increased potential interference to other commercial or government band users."^{5/}

The confidential treatment Final Analysis seeks in its Request is based on its claim that the letter "contains commercially sensitive information regarding the strategic business arrangements between General Dynamics and Final Analysis as well as proprietary technical information regarding the operation, design, and implementation of the command and data handling space processors being designed by General Dynamics for the Final Analysis system."^{6/}

^{3/} Application for Clarification and Review, File No. 25-SAT-P/LA-95, dated May 1, 1998 (referred to herein as "Application for Review").

^{4/} See *Final Analysis Communication Services, Inc.*, 13 FCC Rcd 6618 *Order and Authorization* (1998).

^{5/} Final Analysis Request at 2.

^{6/} *Id.* at 3-4.

II. The Final Analysis Request Does Not Satisfy the Test for Non-Disclosure Under the FCC's Rules.

The Final Analysis Request fails to provide with sufficient specificity the need for confidential treatment. Section 0.459 of the Commission's Rules^{7/} requires that requests for confidential treatment include a statement of reasons for withholding the material from public inspection. The Commission's Rules explicitly note that casual requests, such as this Final Analysis Request, will not be considered.^{8/} Final Analysis merely states disclosure will be "competitively injurious to Final Analysis and General Dynamics" but provides no clear statement why this is proprietary information or what competitive harm would flow from disclosure.^{9/} The International Bureau, however, has explicitly stated it will not accept unsupported statements that information is "sensitive" or "confidential" as sufficient grounds for granting confidential treatment under Section 0.459.^{10/}

The Final Analysis Request also fails to demonstrate that the General Dynamics letter constitutes a trade secret or sensitive commercial, financial or technical information that would be eligible for nondisclosure under Section 0.459. It appears from the Final Analysis Request that Final Analysis is concerned about disclosure of terms of its relationship with General Dynamics. It is difficult to understand how information on that topic could be relevant to the docketed proceeding which is focused on technical issues and in particular the level of interference that would be caused by Final Analysis' proposed system modifications. Leo One USA assumes that any proprietary

^{7/} 47 C.F.R. § 0.459.

^{8/} 47 C.F.R. § 0.459(c). *See AT&T Corp.*, 11 FCC Rcd 2425 (Int'l Bur. 1996).

^{9/} Final Analysis Request at 4.

^{10/} *AT&T Corp.*, 11 FCC Rcd at 2426.

financial information concerning the relationship between these companies is irrelevant and could be redacted from the document, which could then be made publicly available.

With regard to any concern Final Analysis may have about release of technical information, the Commission's Rules and past precedent do not support wholesale nondisclosure of this type of information, especially when the information submitted is offered because it will supposedly resolve factual disagreements among the parties. Any request for confidential treatment of information "must demonstrate by a preponderance of the evidence that nondisclosure is consistent with the provisions of the Freedom of Information Act ("FOIA")."^{11/} The Commission has found disclosure appropriate when "the information is a necessary link in a chain of evidence that will resolve a public interest issue."^{12/} The Commission has noted that when the material at issue is relevant to "a significant and material question of fact," disclosure is required "to assure a fair adjudication of the open factual issue and a just resolution of the public interest question."^{13/} This is precisely the situation presented by the Final Analysis Request.

The General Dynamics letter potentially lies at the heart of a contentious disagreement among the parties. Final Analysis has certainly portrayed the General Dynamics letter as central to resolution of its Application for Review. As a party that opposed that Application for Review, Leo One USA has a direct interest in any new material being presented to the Commission on that subject. Leo One USA's opposition to the Application for Review was based on its concern that Final Analysis' proposed system modifications will cause increased interference to Leo One USA's

^{11/} *N.Y. Telephone Co.*, 5 FCC Rcd 874 (1990).

^{12/} *Classical Radio for Connecticut, Inc.*, 69 FCC 2d 1517, 1520 n. 4 (1978).

^{13/} *Knoxville Broadcasting Corp.*, 87 FCC 2d 1103, 1105 (1981).

Little LEO system. Leo One USA has submitted numerous technical analyses to support its views and to highlight inaccuracies and inconsistencies in Final Analysis' submissions. It would fly in the face of Commission precedent to deny Leo One USA access to a new analysis that is central to the controversy, the resolution of which will have a direct impact on Leo One USA, based only on general claims of proprietary information. Final Analysis' position is further undermined by the fact that General Dynamics now has a financial interest in favorable treatment of the Final Analysis Application for Review. Its technical analysis cannot be viewed as impartial. Analysis and comment by other parties on what is most likely a self-serving document is especially critical in this situation.

Disclosure of the General Dynamics letter is consistent with the International Bureau's recent handling of confidentiality requests. In the Big LEO proceeding, the International Bureau rejected Mobile Communications Holdings, Inc.'s ("MCHI") broad requests to withhold from public inspection entire agreements.^{14/} The Bureau found in that instance that withholding entire documents which contain relevant factual information would be inappropriate. Where MCHI requested protection for limited portions of documents pertaining to cost and pricing information, the Bureau found confidential treatment to be acceptable.^{15/}

Leo One USA recognizes that the General Dynamics letter may contain limited amounts of proprietary cost and price information and would not oppose a narrowly tailored request to redact very limited portions of the document. Final Analysis' generalized request for non-disclosure, however, is inconsistent with the Commission's interest in seeking public comment. The need to

^{14/} See Letter from Donald H. Gips, Chief, International Bureau to Jill Abeshouse Stern dated Oct. 29, 1996.


^{15/} *Application of Mobile Communications Holding, Inc.*, 10 FCC Rcd 1547, *Order on Reconsideration* (1994).

include the letter in the public record is particularly important where, as in this case, the document may address factual questions which are central to the controversy among the parties and where the party that filed the opposition to the application in question would be denied access to the information.

III. Conclusion

For the foregoing reasons, Leo One USA Corporation requests that the Commission reject the Final Analysis Request, and afford Final Analysis the option to withdraw its filing or resubmit the information in the public record. In the event Final Analysis chooses to resubmit the information, interested parties should be provided an additional 10 days from the date of resubmission for public comment.

Respectfully submitted,

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Dated: January 27, 1999

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposition to Request for Non-Disclosure of Leo One USA Corporation was sent by first-class mail, postage prepaid, this 27th day of January, 1999, to each of the following:

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