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

Federal Communications Commission
Office of Secretary

In the Matter of	)	
	)	
FINAL ANALYSIS	)	File Nos. 25-SAT-P/LA-95
COMMUNICATION SERVICES, INC.	)	76-SAT-AMEND-95
	)	79-SAT-AMEND-96
For Authorization to Construct, Launch	)	151-SAT-AMEND-96
and Operate a Non-Voice, Non-	)	7-SAT-AMEND-98
Geostationary Mobile Satellite System	)	
in the 148-150.05 MHz, 400.15-401 MHz,	)	
and 137-138 MHz bands	)	

To: The Chief, International Bureau

REQUEST FOR CLARIFICATION OR STAY

Final Analysis Communication Services, Inc. ("Final Analysis"), by its attorneys and pursuant to Sections 1.41, 1.43 and 1.44 of the Commission's rules, hereby submits this request for clarification or stay of a condition placed on Final Analysis's above-captioned authorization to construct, launch and operate a non-voice, non-geostationary mobile satellite service ("NVNG MSS" or "Little LEO") system.¹ In the Licensing Order, the International Bureau (the "Bureau") granted Final Analysis a Little LEO authorization pursuant to Section 309 of the Communications Act of 1934, as amended, (the "Act"). A special condition at ¶ 80 of the Licensing Order (the "Certification Condition") provides that Final Analysis certify within 30 days of its release, *i.e.* by May 1, 1998, that it is "committed" to implementing the Little LEO system according to the Licensing Order's specifications. It is with respect to this condition that Final Analysis seeks clarification or a stay.

¹ See *Final Analysis Communication Services, Inc.*, Order and Authorization, DA 98-616 (rel. April 1, 1998) (the "Licensing Order").

Final Analysis, however, intends to seek Commission review of portions of the Licensing Order. This Request is being submitted to ensure that Final Analysis is correct in believing that the Certification Condition is tolled pending completion of the FCC's review of Final Analysis's Application for Review. If this is incorrect, Final Analysis requests a stay of the Certification Condition's effectiveness, pending completion of further administrative proceedings. In view of the fact that Final Analysis's authorization by its terms will be vacated by the Bureau on May 1, 1998, if the Certification Condition is not clarified or stayed, Final Analysis requests expedited clarification before the May 1, 1998, deadline established by the Certification Condition or a stay of its effectiveness pending completion of further administrative proceedings. The following arguments are offered in support of this Request.

I. THE CERTIFICATION CONDITION MUST BE TOLLED TO PRESERVE FINAL ANALYSIS'S RIGHT TO SEEK ADMINISTRATIVE AND JUDICIAL REVIEW.

Final Analysis believes that the Bureau committed significant errors in the Licensing Order in denying or otherwise prohibiting several central components of its proposed system design and intends to seek Commission review of those Bureau actions. However, the Certification Condition could be read, improperly we believe, to seriously affect Final Analysis's ability to exercise its right to administrative review, and if necessary judicial review, of the Licensing Order. Final Analysis does not believe that this would be a correct reading or that the Bureau's intent was to cut-off Final Analysis's ability to seek review. Out of an abundance of caution, however, we are seeking clarification.

The Certification Condition requires Final Analysis affirmatively to decide whether to take the license or leave it within 30 days of grant. In the absence of clarification, this condition could be alleged to require Final Analysis to decide either to ratify or forfeit its

license as authorized even before the time for seeking Bureau reconsideration or Commission review has expired. This would be in contravention of central principles of administrative due process.

It is well-settled that a party aggrieved by a Bureau licensing action has a statutory right under the Act to seek administrative review by the full Commission.² We do not believe that the Certification Condition can properly be read that way or that the Bureau intended to curtail our exhaustion of administrative rights. Nor could Final Analysis's right to review of an adverse ruling by the Bureau be limited by intolerable conditions to the grant such as the Certification Condition.³ Thus, the Bureau should clarify that the requirement for compliance with the Certification Condition, consistent with due process, will be tolled pending administrative review of the Licensing Order.

² Section 155(c)(4) of the Act provides that a party aggrieved by any order, decision, report or action made or taken by a Bureau pursuant to delegated authority "may file an application for review by the Commission within such time and in such manner as the Commission shall prescribe, and every such application shall be passed upon by the Commission." 47 U.S.C. § 155(c)(4).

³ In the terrestrial mobile licensing context, the Court of Appeals ruled that it was improper for the FCC to attempt to deprive a PCS pioneer's preference licensee of its right to seek judicial review by couching the denial of its request for a free license in terms of a grant subject to the condition of payment of a spectrum fee. The Court found that "interpreting an application as one for a license subject to any condition of the Commission's choosing would permit the Commission to preclude judicial review of a de facto denial under Section 402(b) of the Act by couching its decision as an approval subject to some intolerable condition." *See Mobile Communications Corporation of America v. FCC*, 77 F.3d 1399, 1404 (D.C. Cir. 1996).

II. IN THE ALTERNATIVE TO CLARIFICATION, THE COMMISSION SHOULD STAY THE EFFECTIVENESS OF THE CERTIFICATION CONDITION

If Final Analysis's interpretation of the Certification Condition is incorrect, it requests that the Commission use its discretion to stay the effectiveness of the Certification Condition pending review of the Licensing Order. As discussed in this section, a stay of the Certification Condition will serve the public interest.

Without a stay of the Certification Condition and the avoidance of premature nullification of its license, the public and Final Analysis will be irreparably harmed. If Final Analysis's license is completely nullified while it seeks administrative and judicial review, it will not be able to move forward, even on long lead-time items, and will lose critical time in design and construction of its system. These roadblocks will, at a minimum, seriously delay Final Analysis's entry into the market which will impair its ability to compete with other Little LEO licensees, and at worst, may create such a cloud of uncertainty and impose on Final Analysis such regulatory barriers and delays that its participation in the Little LEO market is actually foreclosed. A stay should be granted to avoid this injury to the public.

Moreover, as the Commission is aware, Final Analysis's Little LEO license is one of five granted as part of the industry Joint Proposal⁴ that was achieved with great difficulty only after long and arduous proceedings that have been underway since 1994. The Joint Proposal was entered into with significant compromise by Final Analysis in order to avoid mutual exclusivity.

⁴ See Joint Proposal, filed by E-SAT, Inc., Final Analysis, Leo One USA Corporation ("Leo One"), Orbital Communications Corporation ("ORBCOMM"), and Volunteers in (continued...)

The importance of the Joint Proposal to this proceeding and the vitality of the Little LEO industry cannot be overstated given that it was formally relied upon by the Bureau as the very basis for the band-sharing plan and rules adopted in the *Second Round Processing Order*⁵ to facilitate the licensing of all the second round Little LEO operators. If the Certification Condition is not stayed and Final Analysis's license is vacated on May 1, 1998, while issues concerning the way in which the Bureau implemented the settlement are under review, the entire basis of the industry settlement may be eliminated, voiding the settlement itself, and the grounds for award of licenses to each of the participants in the second Little LEO processing round may be invalidated, raising again the issue of mutual exclusivity. The cloud placed over the industry settlement in the absence of a stay thus will create uncertainty for the entire Little LEO industry. Accordingly, grant of a stay of the Certification Condition is in the public interest.

(...continued)

Technical Assistance ("VITA") in IB Docket No. 96-220, on Sept. 22, 1997 ("Joint Proposal").

⁵ See *Amendment of Part 25 of the Commission's Rules to Establish Rules and Policies Pertaining to the Second Processing Round of the Non-Voice, Non-Geostationary Mobile Satellite Service*, Report and Order, IB Docket No. 96-220, FCC 97-370 (rel. Oct. 15, 1997) ("*Second Processing Round Order*").

III. CONCLUSION

For the foregoing reasons, Final Analysis urges the Bureau to clarify that the Certification Condition is tolled, or to stay its effectiveness, pending completion of further administrative review. In view of the May 1, 1998, deadline imposed in the Certification Condition, expedited grant of the relief requested herein is necessary.

Respectfully submitted,

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Dated: April 20, 1998

CERTIFICATE OF SERVICE

I, Jacquelyne White, hereby certify that a true and correct copy of the foregoing **"Request for Clarification or Stay"** on behalf of Final Analysis Communication Services, Inc. was delivered via hand delivery this 20th day of April 1998, to each of the following:

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