



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Telecommunications and**  
**Information Administration**  
Washington, D.C. 20230

**RECEIVED**

June 11, 1998

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Federal Communications Commission  
Office of Secretary

Satellite Policy Branch  
International Bureau

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, DC 20554

RE: Application for Review and Clarification, Final Analysis Communications Services, Inc.,  
File Nos. 25-SAT-P/LA-95, 76-SAT-AMEND-95,  
79-SAT-AMEND-96, 151-SAT-AMEND-96, 7-SAT-AMEND-97

Dear Ms. Salas:

Enclosed you will find an original and four copies of the letter from William T. Hatch, Acting Associate Administrator, National Telecommunications and Information Administration, to Chairman William Kennard, in the above-referenced proceeding. As indicated in the Certificate of Service, the parties to the proceeding have also been served.

Please direct any questions you may have regarding this filing to the undersigned. Thank you for your cooperation.

Respectfully submitted,

Kathy D. Smith  
Acting Chief Counsel

Enclosures



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Telecommunications and**  
**Information Administration**  
Washington, D. C. 20230

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The Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

**Federal Communications Commission**  
**Office of Secretary**

RE: Application for Review and Clarification, Final Analysis Communications Services, Inc., File Nos. 25-SAT-P/LA-95, 76-SAT-AMEND-95, 79-SAT-AMEND-96, 151-SAT-AMEND-96, 7-SAT-AMEND-97

Dear Chairman Kennard:

As you are aware, the National Telecommunications and Information Administration (NTIA) worked closely with the Commission to develop a new and innovative time-sharing plan in which Federal spectrum was made available to new data-only commercial mobile satellite service providers (non-voice, non-geostationary (NVNG) satellite systems).<sup>1</sup> In order to further the benefits derived from these cooperative efforts to improve spectrum utilization, this letter seeks to clarify a procedural issue raised by the Application for Review and Clarification filed by Final Analysis Communications Services, Inc. (Final Analysis), one such NVNG satellite system, in the above-referenced proceeding.<sup>2</sup>

NTIA shares jurisdiction with the Commission in spectrum management responsibilities related to frequency bands shared by Federal and non-Federal users.<sup>3</sup> Coordination between NTIA and the Commission is essential to ensure effective and efficient spectrum management. This is the case with shared bands now allocated for NVNG satellite systems. The use of these bands is predicated on a sharing arrangement that protects Federal Government satellite networks. This

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<sup>1</sup> 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 (NVNG Order), IB Dkt. No. 96-220, FCC 97-370 (rel. Oct. 15, 1997).

<sup>2</sup> Application for Review and Clarification, Final Analysis Communications Services, Inc., File Nos. 25-SAT-P/LA-95, 76-SAT-AMEND-95, 79-SAT-AMEND-96, 151-SAT-AMEND-96, 7-SAT-AMEND-97 (filed May 1, 1998) [hereinafter *Final Analysis Application for Review*]. In this filing, NTIA does not take a position on the merits of the substantive issues raised by this Application for Review.

<sup>3</sup> See 47 U.S.C. §§ 902(b)(2)(A), 902(b)(2)(K), 902(b)(2)(L), 922 (1995).

has been accomplished by developing sharing rules and license conditions, as well as coordinating the operation of Government satellite networks and the NVNG satellite networks once they are licensed. The staff of NTIA, the FCC, and other Federal agencies work together with the applicants to fashion workable sharing arrangements. In the case of the 137-138 MHz band, Final Analysis will time-share with the satellite operations of the National Oceanic and Atmospheric Administration (NOAA).<sup>4</sup> And in fact, NOAA met with Final Analysis to discuss the technical issues relative to reaching an acceptable Final Analysis operating plan for their satellite constellation. Additional discussions, when appropriate, will be required to finalize the agreement.

After the *NVNG Order* was issued, Final Analysis filed an amendment to its application for authority to construct, launch, and operate a commercial satellite system seeking permission to modify certain technical aspects of its original application claiming that these modifications were necessary to bring it into compliance with the *NVNG Order*.<sup>5</sup> The Commission subsequently granted an NVNG license to Final Analysis, but denied many of the requested modifications.<sup>6</sup> In its Application for Review, Final Analysis asked that the Commission reissue its license granting the modifications to its constellation design requested in the amendment. Final Analysis asserted, among other things, that the International Bureau improperly relied on certain communications from NTIA and NOAA staff in reaching its decision to deny certain amendments.<sup>7</sup>

NTIA seeks to clarify that the NTIA/NOAA staff communications to International Bureau staff referenced in the Bureau's *Final Analysis Order* were part of the normal interagency coordination process for shared spectrum bands and were of a *preliminary* nature. Under the Commission's revised ex parte rules regarding issues of shared jurisdiction, information provided by NTIA to the International Bureau in this matter should have been disclosed and relied upon in the International Bureau's decision-making process *only after advance coordination* with NTIA about the timing and extent of any disclosure.<sup>8</sup> Unfortunately, in this

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<sup>4</sup> See e.g., *NVNG Order*, *supra* note 1, at ¶¶ 82-97.

<sup>5</sup> See Amendment to Application of Final Analysis Communications Services, Inc., for Authority to Construct, Launch, and Operate a Low Earth Orbit Satellite System (File No. 25-SAT-P/LA-95) (filed Oct. 30, 1997) [hereinafter *Final Analysis Amendment*].

<sup>6</sup> Final Analysis Communications Services, Inc., Order and Authorization (File Nos. 25-SAT-P/LA-95, 76-SAT-AMEND-95, 79-SAT-AMEND-96, 151-SAT-AMEND-96, 7-SAT-AMEND-97), DA 98-616 (rel. Apr. 1, 1998) [hereinafter *Final Analysis Order*].

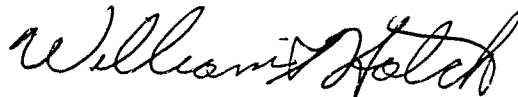
<sup>7</sup> See e.g., *Final Analysis Application for Review*, *supra* note 2, at 2, 9, 11, 23-24.

<sup>8</sup> See 47 C.F.R. § 1.1204(a)(5); see Amendment of 47 C.F.R. § 1.1200 *et seq.* Concerning Ex Parte Presentations in Commission Proceedings, GC Dkt. No. 95-21, ¶ 62

instance, this advanced coordination did not take place, and therefore, NTIA was not given an opportunity to indicate that the staff-to-staff correspondence did not represent final Federal agency views with regard to Final Analysis' requested amendments to its satellite constellation. Further, the International Bureau staff informed NTIA during the normal coordination process that the Bureau planned to deny the proposed modifications to Final Analysis' satellite constellation. As a result, NTIA did not address the full range of issues raised by Final Analysis' proposed modifications when NTIA conveyed final Federal agencies' views to the International Bureau.<sup>9</sup>

If upon review the Commission undertakes a re-examination of the *Final Analysis Order*, NTIA would be prepared to provide the Commission with its further views and those of NOAA on sharing issues and conditions.

Sincerely,



William T. Hatch  
Acting Associate Administrator  
Office of Spectrum Management

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(providing "[w]e believe that such coordination is proper to ensure that the other agency retains control over the timing and extent of any disclosure that may have an impact on that agency's jurisdictional responsibilities. If the agency involved does not wish such information to be disclosed, we will not disclose it and will disregard it in our decision-making process, unless it fits within another exemption not requiring disclosure (e.g., foreign affairs)."); *see also* Letter from Barbara S. Wellbery, Chief Counsel, NTIA, to William Caton, Acting Secretary, FCC, regarding GC Dkt. No. 95-21 (Oct. 20, 1995).

<sup>9</sup> *See* Letter from William T. Hatch, Deputy Associate Administrator, Office of Spectrum Management, NTIA, to Regina Keeney, Chief, International Bureau (Mar. 26, 1998).

## CERTIFICATE OF SERVICE

I, Teresa Goode, do hereby certify that a copy of the foregoing Letter from the National Telecommunications and Information Administration was hand-delivered (\*) or sent via first class United States mail, on this 11<sup>th</sup> day of June, 1998, to the following:

The Honorable William E. Kennard\*  
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Teresa Goode