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

Federal Communications Commission
Office of Secretary

MAY - 7 1998

In the Matter of)	
)	
FINAL ANALYSIS COMMUNICATION SERVICES, INC.)	File Nos. 25-SAT-P/LA-95
)	76-SAT-AMEND-95
)	79-SAT-AMEND-96
For 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)	151-SAT-AMEND-96
)	7-SAT-AMEND-97

APPLICATION FOR REVIEW

Leo One USA Corporation ("Leo One USA"), by its attorneys, hereby submits this application for review of the International Bureau Order granting Final Analysis Communication Services, Inc. ("Final Analysis") a license to launch and operate a Non-Voice, Non-Geostationary Mobile Satellite Service ("NVNG MSS" or "Little LEO") system.^{1/} Final Analysis has recently stated its intention to seek Commission review of those portions of the Final Analysis License which deny certain system modifications proposed in Final Analysis' October 30, 1997 amended application.^{2/} To the extent the Commission grants any such Final Analysis application for review, other second round Little LEO licensees will suffer harmful interference. In that event, Leo One USA submits the Commission must review Final Analysis' financial qualifications and reverse the International Bureau's erroneous conclusion that Final Analysis is financially qualified to hold the Final Analysis License.

^{1/} Final Analysis Communication Services, Inc., DA 98-616, Order and Authorization (April 1, 1998) ("Final Analysis License"). This application for review is submitted pursuant to Section 1.115 of the Commission's Rules. 47 C.F.R. § 1.115.

^{2/} See Request for Clarification or Stay of Final Analysis Communication Services, Inc. dated April 20, 1998.

A. **Background**

In October 1996, the Commission issued a Notice of Proposed Rule Making setting out rules designed to eliminate mutual exclusivity in the second Little Leo processing round.^{3/} The *NPRM* proposed, among other things, to adopt a stricter financial qualification test for Little LEO applicants. In September 1997, after long and difficult negotiations, the five remaining second round applicants agreed to a comprehensive band sharing and settlement plan.^{4/} That Joint Proposal^{5/} set out detailed parameters for licensing three new Little LEO systems and for providing expansion capabilities to two existing systems. The five applicants voluntarily and unanimously agreed to the Joint Proposal.^{6/} This settlement agreement embodied significant compromises and concessions to particular applicants. For example, in the case of Final Analysis, the applicants agreed to grant Final Analysis preferential rights to future spectrum allocations to ensure Final Analysis'-needs were met.

Based almost exclusively on the Joint Proposal, the Commission adopted its October 15, 1997 *Report and Order*^{7/} establishing rules for resolving the second processing round. That *Report and*

^{3/} 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*, IB Docket No. 96-220, *Notice of Proposed Rule Making* (rel. Oct. 29, 1996) ("*NPRM*").

^{4/} Three applicants (CTA, Inc., GE Starsys and GE Americom) had withdrawn their second processing round applications.

^{5/} Joint Proposal among E-SAT, Final Analysis, Leo One USA, Orbcomm, Orbital Sciences Corporation and VITA in IB Docket No. 96-220 (Sept. 19, 1997) ("*Joint Proposal*").

^{6/} It is important to note, however, that the Joint Proposal was based on each applicant's understanding of the technical details in the applications pending before the Commission at that time. Had Leo One USA been aware of the Final Analysis amended technical details and the changes in the sharing environment that would result, Leo One USA would not have agreed to the Joint Proposal.

^{7/} *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*, FCC 97-370, *Report and Order* (rel. Oct. 15, 1997) ("*Report and Order*").

Order established the exact Little LEO systems agreed to in the Joint Proposal. Because the Joint Proposal allowed the Bureau to accommodate all remaining applicants, the *Report and Order* did not amend the Little LEO rules to adopt a stricter financial qualification test.^{8/} The *Report and Order* invited all five applicants to amend their applications to conform to the *Report and Order*.

The *Report and Order* had cautioned applicants that only those amendments necessary to conform to the *Report and Order* would be accepted unconditionally -- all others would be evaluated under the Commission's existing Part 25 Rules.^{9/} Notwithstanding the Commission's admonition, Final Analysis submitted an amendment which proposed far reaching technical changes beyond those required to conform to the *Report and Order*.^{10/} Because those changes would have caused interference to the other second round licensees, the International Bureau rejected those changes and licensed Final Analysis to launch and operate the exact system Final Analysis had agreed to in the Joint Proposal and the Commission had designated for Final Analysis in the *Report and Order*.

The Final Analysis Amendment also contained updated financial qualification material. In the Final Analysis License, the Bureau simply accepted Final Analysis' assertion that it had raised \$3 million from investors as proof of financial qualification to satisfy Section 25.142(a)(4) of the

^{8/} See *Report and Order* at 10-11 ("Because our spectrum sharing plan can accommodate all of the second processing round applicants in the available spectrum, we find it unnecessary to require a second round applicant to meet the strict financial standard. Therefore, we will retain our relaxed financial standard to determine a second round applicant's financial qualification for a license.").

^{9/} See *Report and Order* at 52-54 ("an amendment . . . which would increase frequency conflicts . . . would render the application a newly filed application to be considered in a future processing group.").

^{10/} See Amendment to Application dated (Oct. 30, 1997) ("Amendment").

Commission's Rules.¹¹ The Bureau did not make any finding, however, that Final Analysis possessed *current assets* as required by the Commission's Rules.

To the extent the Commission grants any application for review which Final Analysis may file, authorizing Final Analysis' proposed system modifications will create new interference adversely affecting the other parties to the Joint Proposal. The Joint Proposal was designed to eliminate this possibility by establishing technical parameters which permitted sharing of the band. The *Report and Order* merely codified this agreement in the second processing round rules. Any change in the sharing environment will mean the Commission is no longer able to accommodate all the second round applicants. In that case, it should review the Bureau's conclusions about Final Analysis' financial qualifications under the existing rules.

B. Final Analysis Is Not Financially Qualified.

The Bureau incorrectly concluded that Final Analysis had satisfied the requirements of Section 25.142(a)(4) of the Commission's Rules. That rule requires each Little LEO applicant to show it is financially qualified to construct, launch and operate for one year the first two satellites of its proposed system. Section 25.140 of the Rules¹² provides guidance on the showing required to demonstrate this financial qualification. Applicants must submit a current balance sheet demonstrating the applicant possesses "current assets and operating income" sufficient to cover the system costs.

¹¹ 47 C.F.R. § 25.142(a)(4).

¹² 47 C.F.R. § 25.140.

C. **Conclusion**

For the foregoing reason, Leo One USA requests that the Commission find Final Analysis financially unqualified and revoke the Final Analysis License in the event it reverses the Bureau's technical decisions in the Final Analysis License.

Respectfully submitted,

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Dated: May 1, 1998

In the Final Analysis License, the Bureau concluded Final Analysis' costs totaled \$2.785 million. The Bureau relied on Final Analysis' statement "that it has raised over \$3 million from investors"^{13/} to satisfy Final Analysis' proposed system costs.

The record demonstrates, however, that Final Analysis has not proven current assets and/or operating income of \$3 million. The balance sheet included in the October 30, 1997 Final Analysis Amendment listed current assets of \$208,893. The Amendment includes "Notes to Financial Statements" which set out events subsequent to the December 31, 1996 year end. Note 10 states:

the Company sold 386,375 shares of Series H Non-voting Convertible Preferred Stock to investors for \$8.00 per share generating aggregate proceeds of \$3,091,000.^{14/}

The Amendment contains no additional information about these funds, and at no time has Final Analysis provided a balance sheet that indicated that these are included as current assets. In fact, it is curious that Final Analysis did not provide an updated balance sheet to account for these funds or a balance sheet for Final Analysis' parent Final Analysis, Inc.

With regard to this \$3 million, Leo One USA submits there is no evidence Final Analysis still has this money or that the Series H shares were sold for cash. The Series H shares may well have been issued for cash, a note, settlement of a debt, in-kind services or other, non-cash consideration which may not meet the definition of a current asset. If Final Analysis chose to base its financial qualification showing on assets it claimed to have obtained after the date of the submitted audited financial statements, it should have also submitted an update of the entire financial statement. The Commission has an obligation to require, at a minimum, this level of additional information and to

^{13/} Final Analysis License at 28.

^{14/} Amendment, Ernst & Young Audit Statement at 16.

refrain from simply accepting the unsubstantiated claims of the applicant. To accept anything less than an updated financial statement would open an enormous loophole for applicants to simply claim qualification on the basis of events that have not yet occurred. Moreover, Leo One USA submits subsequent financial updates to audited financials are meaningless in this case absent consolidated statements of Final Analysis and its parent. A consolidated statement would have allowed the FCC and other affected parties to properly evaluate the current asset position net of intercompany eliminations such as sales and receivables between affiliates. Full disclosure of consolidated financials is critical to verifying a current asset position.

A reexamination of the Amendment leads only to the conclusion that Note 10 raises more questions than it answers. Final Analysis' aggressive accounting practices failed to comply with both the letter and the spirit of the Commission's financial qualification rules. The Final Analysis Amendment is incapable of supporting a finding of financial qualification. Reversing the Bureau's rejection of the technical amendments proffered by Final Analysis will cause harmful interference to the other parties to the Joint Proposal. In that case, the Commission is obligated to reevaluate Final Analysis' financial qualifications. As long as the Bureau was accommodating the requests of all the parties in accordance with the Joint Proposal, Final Analysis' financial qualifications were less significant. To the extent entities other than Final Analysis are not fully accommodated, the Commission has an obligation to ensure an unqualified and under funded entity does not block better funded and qualified entities from implementing their planned and licensed systems.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Application for Review of Leo One USA Corporation was sent by first-class mail, postage prepaid, this 1st day of May, 1998, to each of the following:

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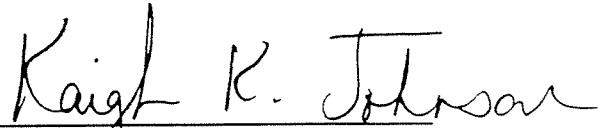
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