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JUN - 8 1998

Federal Communications Commission
Office of Secretary

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

Received

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

JUN 19 1998

OPPOSITION

Final Analysis Communication Services, Inc. ("Final Analysis"), by its attorneys, submits this Opposition to the "Comments" filed by Leo One USA Corporation ("Leo One") on May 27, 1998 in the above captioned matter.¹ Leo One asks that the Commission confirm that the Certification Letter filed by Final Analysis on May 15, 1998² in fulfillment of the condition in Paragraph 80 of the Final Analysis *Licensing Order*³ satisfies the condition, and that Final Analysis's May 14, 1998 Petition for Reconsideration seeking a stay of the condition be

¹ Leo One's filing is styled as "comments on a blizzard of filings." Such a pleading, which does not respond to any particular filing by Final Analysis, is not authorized under the Commission's Rules. In particular, it is late-filed under Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106 with respect to Final Analysis's May 14, 1998 Petition for Reconsideration, and should be returned without consideration. In any event, Leo One's efforts to create its own unauthorized pleading opportunities is just further evidence of its disregard of Commission Rules and procedures *see, e.g.*, Letter from John I. Riffer, FCC Assistant General Counsel, Administrative Law Division, to Robert A. Mazer, counsel for Leo One, dated June 5, 1998 (strongly admonishing Leo One for violations of the Commission's *ex parte* rules), and the Commission should admonish Leo One not to file additional unwarranted and irregular pleadings. However, against the possibility that the Commission may accept the "Comments" as some sort of motion to dismiss or request for clarification or declaratory ruling, Final Analysis submits this Opposition in accordance with Section 1.45 of the Commission's Rules, 47 C.F.R. § 1.45.

² Letter from Aileen A. Pisciotto to Regina M. Keeney, Chief, FCC International Bureau, dated May 15, 1998 conveying Letter from Nader Modanlo ("Certification Letter").

dismissed as moot. Leo One's request is not only unwarranted and meritless, but it actually proves the point made by Final Analysis in its Petition for Reconsideration that the certification requirement is prejudicial.

First, Leo One's request is unwarranted on its face as the Certification Letter is perfectly clear. Final Analysis expressed its "present intention" to construct and coordinate its system in compliance with the *Licensing Order* license because that order is the subject of a pending Application for Review,⁴ pursuant to which the *Licensing Order* may be revised. The Certification Letter was also clear that it was filed only because, in the absence of action by the International Bureau on its pending request, it risked the loss of its license. Final Analysis was compelled to file the certification on that date, and had to do so without giving up its rights. In this respect, there is nothing inconsistent with Final Analysis's expression of commitment to construct and coordinate the system as authorized and its reservation of all rights to seek a stay of the condition and/or a reversal of the underlying *Licensing Order*. To conclude otherwise would require a determination that, simply through inaction, the Commission could deprive parties of due process.

Second, Leo One's request is completely without merit. The International Bureau has clarified that compliance with the Certification Condition should not compromise Final Analysis's due process rights in this proceeding.⁵ In its Petition, Final Analysis showed that compliance with the Certification Condition is in fact prejudicial. The Certification Letter was expressly filed "without prejudice" to pending proceedings concerning its *Licensing Order*. Leo

(...continued)

³ Final Analysis Communication Services, Inc., DA 98-616, Order and Authorization (rel April 1, 1998) ("*Licensing Order*").

⁴ Final Analysis, Application for Review, filed May 1, 1998.

⁵ *Final Analysis Communication Services, Inc.*, Order, DA 98-881 (rel. May 8, 1998).

One's request is merely an effort to obtain clarification from the Commission that the Certification Letter should be deemed to prejudice Final Analysis's position. This is completely inappropriate.

Finally, Leo One's request, and in particular its statement, at p. 2, that "Final Analysis appears to have survived what it graphically characterized as a 'Hobson's Choice'" is a perfect indication that what Final Analysis has tried to avoid has occurred. Final Analysis argued that imposition of the Certification Condition would cause detrimental reliance among others in the industry that would prejudice Commission decision-making on its Application for Review. Leo One, in seeking further assurances upon which it can rely, essentially requests confirmation that this is the case. Any finding in favor of Leo One would, therefore, be prejudicial to Final Analysis in deprivation of its due process rights.

Final Analysis does not consider its pending Petition to be moot, and further believes that in its Application for Review it has made a compelling case that the *Licensing Order* must be modified. It therefore respectfully requests that the International Bureau expeditiously grant its Petition for Reconsideration and stay the Certification Condition pending Commission action on its Application for Review. Only such action would preserve all of Final Analysis's rights in this proceeding and prevent further confusion among the other licensees.⁶

Most importantly, Final Analysis urges the Commission to recognize Leo One's untimely

⁶ The fact that the certification is not even necessary is made evident by the fact that Final Analysis and Orbital Communications Corporation ("ORBCOMM") are proceeding with coordination even though certain aspects of both constellations are unresolved. See Joint letter to of Aileen A. Pisciotta, counsel for Final Analysis, and Stephen L. Goodman, counsel for ORBCOMM to Regina M. Keeney, FCC International Bureau Chief, dated June 2, 1998. The Commission is urged to further note that, at this point, the only real ongoing coordination efforts involve ORBCOMM, which does not appear to find Final Analysis's position in this proceeding confusing. Leo One professes confusion, but is not apparently active in coordination. In this respect, it is clear that its pleadings on this issue are intended more to harass Final Analysis than to achieve any positive results for the industry.

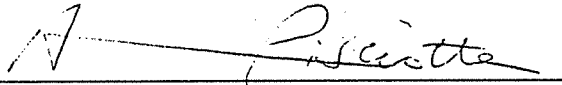
pleading for what it is, merely one more self-serving attempt on the part of that company to manipulate the administrative process to its advantage. Final Analysis has shown in detail in its May 1, 1998 Application for Review and its June 2, 1998 Reply that many of the errors in the *Licensing Order* are traceable to misrepresentations and mischaracterizations made by Leo One. Leo One here, and elsewhere,⁷ has shown itself to lack credibility in this proceeding. In this light, its Comments are not deserving of consideration.

WHEREFORE, for the reasons stated, Final Analysis respectfully requests the Commission deny the requests made by Leo One's in its "Comments" as untimely filed and unjustified.

Respectfully submitted,

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Dated: June 8, 1998

Its Attorney

⁷ See, e.g., Final Analysis's May 7, 1998 Request for Investigation of Leo One.

CERTIFICATE OF SERVICE

I, Beatriz Viera, hereby certify that a true and correct copy of the foregoing "**Opposition**" to the Comments filed by Leo One USA Corporation, on behalf of Final Analysis Communication Services, Inc. was delivered by hand or regular mail this 8th day of June 1998, to each of the following:

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