

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

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MAR 29 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
FINAL ANALYSIS COMMUNICATION)
SERVICES, INC.)
)
For Authority 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

Received

APR 8 2002

Satellite Policy Branch
International Bureau

Directed to: Chief, International Bureau

PETITION FOR WAIVER

FINAL ANALYSIS COMMUNICATION SERVICES, INC.

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Dated: March 29, 2002

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SUMMARY

Final Analysis Communication Services, Inc. (“FACS”) submits this request for waiver of Section 25.161 of the Commission’s Rules, 47 C.F.R. § 25.161, with respect to the completion of construction and launch milestones for its first two commercial Non-Voice, Non-Geostationary Mobile Satellite Service (“NVNG MSS” or “Little LEO”) satellites. FACS’s authorization specifies that the first two satellites must be completely constructed by March 2002 and launched by September 2002. Section 25.161 provides that an authorization shall automatically be terminated if construction completion milestones specified in an authorization are not met.

FACS’s initial satellites, constructed and launched under experimental authorization, were intended to be utilized in its commercial constellation, but did not remain operational. FACS will not be able to meet the upcoming construction and launch milestones for two new commercial satellites and therefore seeks this waiver with respect to those two milestones. FACS demonstrates incontrovertibly that the public interest will be far better served by a grant of the requested waiver than by denial.

First and foremost, FACS has demonstrated its intention to proceed. Since receiving its authorization, FACS’s has expended over 70 million dollars toward the implementation of its satellite system, making significant progress in all three critical areas of system implementation, including spacecraft design and construction, ground system implementation and launch arrangements.

Second, decisional deadlock that recently led to bankruptcy of Final Analysis, Inc. (“FAI”), FACS’s parent, has hampered FACS’s progress. The assets of FAI have been purchased in an auction held by the bankruptcy court by New York Satellite Industries, LLC

("NYSI"). Once the post-bankruptcy transfer of control has been approved, FACS will be able to proceed with its business without hindrance.

Third, grant of the requested waiver will not result in the warehousing of any spectrum and will not undermine any Commission policies regarding construction milestones. FACS shares its spectrum with other users. Because that spectrum will continue to be available to those other users, any delay in the implementation of FACS's full constellation will not harm any other user or potential user of spectrum. More importantly, Little LEO constellations are uniquely able to implement service with less than a full constellation. Thus, grant of the requested waiver may not actually result in any material delay in FACS's market entry.

Fourth and finally, grant of the requested waiver is critical to the achievement of the Commission's longstanding objective of fostering a competitive NVNG MSS marketplace. Only one Little LEO operator is currently fully operational. Grant of the requested waiver will enable FACS to provide an important competitive presence in this valuable market.

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Directed to: Chief, International Bureau

PETITION FOR WAIVER

Final Analysis Communication Services, Inc., (“FACS”), by its attorneys and pursuant to Section 1.3 of the Commission’s Rules, 47 C.F.R. § 1.3, respectfully petitions for a waiver of Section 25.161 of the Commission’s Rules, 47 C.F.R. § 25.161, and the milestones for completion of construction (March 2002) and launch (September 2002) of the first two satellites of its licensed constellation, as set forth in its above-referenced license for a Non-Voice, Non-Geostationary Mobile Satellite Service (“NVNG MSS” or “Little LEO”) system.¹

I. INTRODUCTION

As demonstrated herein, the public interest would best be served by waiver of Section 25.161 of the Rules with respect to these two milestone requirements for FACS. The unique

¹ *Final Analysis Communication Services, Inc.*, Order and Authorization, 13 FCC Rcd. 6618 (Int’l Bur. 1998); Memorandum Opinion and Order, FCC 001-343 (rel. Dec. 3, 2001) (“*FACS License*”).

circumstances set forth below establish good cause for granting the waiver rather than terminating the FACS satellite station authorization if its next two construction milestones are not met. The policies that the milestone requirements were designed to foster will not be undermined by grant of the requested waiver. In fact, the public interest in fostering competition will be best served by grant of this Petition.

Since well before receipt of its license to construct, launch, and operate its NVNG MSS system, FACS has proceeded aggressively with the development of its system. FACS met the first two milestones in its license. FACS also has expended in excess of 70 million dollars toward the implementation of its satellite system, including for the launch of satellites (two of which were experimental satellites that could have served as the initial operating satellites of the system), the acquisition of launch services, the development of its ground system, the design of major elements of the satellites, and the acquisition of key components of its commercial constellation. FACS clearly has demonstrated its intent to proceed.

Moreover, FACS shares its spectrum with other users. That spectrum will continue to be available to those other users, so any delay in the construction of FACS's full constellation does not harm or prejudice any other user or potential user of spectrum. More importantly, because the unique nature of Little LEO constellations allows implementation of service with less than a full constellation, grant of the requested waiver may not actually result in any material delay in FACS's market entry. Thus, grant of the requested waiver would not in any way result in, lead to, or encourage "warehousing" of valuable spectrum.

In light of FACS's demonstrated progress toward construction and clear intent to proceed, and the unique capabilities of NVNG MSS systems to offer competitive services with less than a full constellation, grant of the requested waiver to permit FACS to continue the

development of its system would best serve the public's interest in the establishment of a competitive "Little LEO" marketplace.

II. BACKGROUND

A. Spectrum Assignment and Use In NVNG MSS

The *FACS License* includes the express provision that the authorization will become "NULL AND VOID" in the event that the 26 satellites authorized are not constructed, launched and successfully placed into operation in accordance with the technical parameters and terms and conditions set forth in the license.² Section 25.161 of the Commission's Rules, provides, in pertinent part, that

a station authorization shall be automatically terminated in whole or in part without further notice to the licensee upon:

(a) The expiration of the required date of completion of construction or other required action specified in the authorization, or after any additional time authorized by the Commission, if a certification of completion of the required action has not been filed with the Commission unless a request for extension of time has been filed with the Commission but has not been acted on....

Thus, absent a waiver of this rule, the *FACS License* will terminate by its terms if the construction milestones specified in the license are not met.

The Commission historically has relied upon construction milestones to ensure that satellite licensees actually implement their authorized systems and do not "warehouse" spectrum that might be used by other licensees. Warehousing concerns with respect to any particular satellite service, however, must be assessed in light of the particular characteristics of that service. In this respect, the circumstances surrounding NVNG MSS spectrum assignments and potential frequency use are relevant in the consideration of FACS's milestone waiver request.

² *Final Analysis License* at ¶ 93.

The assignment plan adopted in the *Second Round Report and Order*³ is unique in several respects. After the first round NVNG MSS systems were authorized,⁴ a small amount of spectrum remained for assignment to additional systems and a second processing round was opened. In conducting the second processing round, the Commission stated that its primary objective was “to foster an environment that promotes competition through new entry.”⁵ Thus, the Commission determined that it was in the public interest to license multiple new entrants to compete with first round NVNG MSS licensees.

Due to the small amount of spectrum available, it took three years of difficult discussions and the withdrawal of some of the second round participants to achieve an assignment plan for second round licensees. The *Second Round Report and Order* implemented the plan, based largely on an industry agreement, which included band segmentation for downlinks, shared frequencies for uplinks, timesharing by the commercial systems with several government users, and a “daisy chain” of relocation on certain frequencies based upon future spectrum allocations. For FACS, the assignment also included approval for more service channels than actually could be accommodated in the available spectrum and a first priority on future international allocations of NVNG MSS spectrum to fill out its channel requirements.

The first critical aspect of the second round assignment plan pertinent to the instant petition is that the Commission’s overriding objective in the hard-won second round assignment

³ *In the Matter of 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, 13 FCC Rcd 9111 (1997) (“*Second Round Report and Order*”).

⁴ *In the Matter of Amendment of the Commission’s Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile Satellite Service*, Report and Order, 8 FCC Rcd 8450 (1993) (“*First Round Report and Order*”).

⁵ *Second Round Report and Order* at ¶ 11.

plan was the implementation of competition in NVNG MSS. Currently, the only fully operational commercial NVNG MSS system is the ORBCOMM system, which is a large constellation authorized to operate a total of 48 satellites with service links in the VHF band (137 MHz -138 MHz).⁶ None of the other first round licensed systems have been implemented. Therefore, achievement of the Commission's competition objectives for Little LEOs depends upon the successful implementation of one or more second round systems. Grant of FACS's request will facilitate the Commission's competition objectives for NVNG MSS.

The second relevant aspect of the Commission's second round assignment plan is the nature of the NVNG MSS service and the fact that services can be provided to users even before a constellation is fully completed. NVNG MSS is a uniquely flexible service. There is very little spectrum for Little LEOs overall; but, as the assignment plan and the characteristics of the authorized systems demonstrate, there are various ways in which Little LEO systems can make good use of the spectrum they have to provide competitive services. NVNG MSS services involve short data bursts that can be uplinked from, and downlinked to, virtually anywhere in the world. These services are very valuable because of their global reach and very low cost. The possible applications include environmental monitoring, data gathering from fixed assets such as utility meters, tracking of mobile assets such as ships and trucks, alphanumeric messaging, and web clipping. The Commission has also recognized that NVNG MSS services are capable of

⁶ ORBCOMM was authorized in the first processing round to launch and operate 36 satellites. *Orbital Communications Corporation*, Order and Authorization, 9 FCC Rcd 6476 (1994), *recon den.*, 10 FCC Rcd 7801 (1995). In the second processing round it was approved for an additional 12 satellites. *Orbital Communications Corporation*, Order and Authorization, 13 FCC Rcd 10828 (1998). The Commission has recently approved the assignment of ORBCOMM's NVNG MSS authorization to ORBCOMM License Corp. to facilitate the emergence of the ORBCOMM system from bankruptcy. *In re Orbital Communications Corporation and ORBCOMM Global, L.P.*, Order and Authorization, DA 02-576 (rel. March 11, 2002).

providing certain telecommunications services to tribal lands and other unserved areas that have not been linked to the telecommunications infrastructure.⁷ A variety of factors, including the number of satellites in the constellation, data storage features and timesharing obligations, affect the gaps between messages. These gaps in turn impact the types of applications that a particular constellation may offer. However, even with one satellite, which may pass over a particular spot on the Earth a few times a day, several types of applications may be provided, such as automated meter reading. In this respect, Little LEO systems differ markedly from Big LEO and other mobile and fixed satellite operations, which require deployment of a full constellation before any service can be offered.

Therefore, competition in NVNG MSS may be provided across a range of applications to different degrees by different constellations, or even by the same constellation as deployment of additional satellites is staged over time. The systems authorized in the second round reflect this diversity. They include large constellations, specifically the FACS system with service links in the VHF and UHF band authorized for 26 satellites, and the Leo One Worldwide (“Leo One”)⁸ system with service links in the UHF band (400 MHz – 401 MHz) authorized for 48 satellites. They also include small systems, specifically E-SAT, the only system planning to operate using spread spectrum technology, with a constellation of 6 satellites and service links in the VHF band,⁹ and Volunteers for Technical Assistance (“VITA”) authorized for one satellite in the UHF band.¹⁰

⁷ See *Extending Wireless Telecommunications Services to Tribal Lands*, Notice of Proposed Rulemaking, 14 FCC Rcd 13679, 13694 (¶ 37) (1999).

⁸ *Leo One USA Corporation*, Order and Authorization, 13 FCC Rcd 2801 (1998). Leo One subsequently changed its name to Leo One Worldwide.

⁹ *E-SAT, Inc.*, Order and Authorization, 13 FCC Rcd 19859 (1998). E-SAT, currently controlled by DBS Industries, Inc., also has entered into an agreement with Iridium

(continued...)

Consequently, in assessing whether the public interest will be served by a waiver of construction milestones, the Commission should consider the variety of ways in which Little LEO spectrum may be used, the flexibility of the systems to initiate service in some allocations with less than a full constellation, and the prospects for phased implementation of competition in different applications. Consideration of these factors will assure the Commission that competitive NVNG MSS service can be provided in the originally specified timeframe, by 2004, notwithstanding the grant of the requested waiver.

B. Second Round Licensee Construction and Launch Milestones

In NVNG MSS, the Commission declined to codify a particular set of milestones, determining instead to establish particular guidelines in each individual license.¹¹ Nonetheless, in the second processing round, the Commission followed the general pattern set forth in the first processing round of requiring commencement of construction of the first two satellites within a year of grant of the license, commencement of construction of the remaining satellites within three years of grant, completion of construction of the first two satellites within four years of grant and launch of the entire system within six years of grant. All of the second round licensees have the same milestone intervals, and all but one have exactly the same milestone dates.

Satellite LLC, the company that purchased the original Iridium system out of bankruptcy, to utilize Iridium's L-band capacity for certain data service applications. *See* DBS Industries, Inc., Report SB-2 (Small Business), January 11, 2002.

¹⁰ *Volunteers in Technical Assistance*, Order and Authorization, 13 FCC Rcd 10845 (1998). VITA, also a first round licensee, is authorized to operate NVNG MSS services for non-commercial, humanitarian applications.

¹¹ *First Round Report and Order* at ¶ 18.

The specific construction milestones set forth in the *FACS License* are as follows:¹²

	Construction Commenced	Construction Completed	Launch
First Two Satellites	March 1999	March 2002	September 2002
Remaining Satellites	March 2001	March 2004	March 2004

FACS met its first two milestones, requiring commencement of construction of the first two satellites by March 1999 and commencement of construction of the remaining satellites by March 2001, respectively. However, it is now unable to meet the next two milestones – completion of construction of the first two satellites by March 31, 2002 and launch of the first two satellites by September 2002.

C. FACS's Requirement For Waiver of the Existing Construction Milestones

The fact that FACS now requires a waiver of two of its milestones is primarily the result of events outside of the control of the company, which led to a significant interruption in progress toward the completion of construction of its first fully operational commercial satellites. In brief, as early as 1999 the company became hindered by decision-making deadlock between the two voting shareholders (each of which at that time held negative control) of its parent company, Final Analysis, Inc. ("FAI").¹³ The deadlock eventually resulted in litigation and created significant uncertainties and delays in the pursuit of the company's construction program.

FACS attempted to resolve this decision-making deadlock by various measures.

Notwithstanding FACS's efforts to resolve the outstanding disputes through structural changes,

¹² *Final Analysis License* at ¶¶ 79 and 93.

¹³ At the time, FACS was owned 100% by FAI, which in turn was owned 50% by Nader Modanlo and 50% by Michael Ahan.

business arrangements and settlement negotiations, the litigation persisted. These circumstances not only drained the resources of the company but, despite the best efforts of the management to keep construction on track, so adversely affected FACS's ability to conduct business that progress on its construction program virtually came to a halt.

Eventually, the continuation of these conditions led to the initiation on September 4, 2001 of Chapter 7 bankruptcy proceedings for the involuntary dissolution of FAI.¹⁴ As of January 14, 2002, the assets of FAI were auctioned by the Trustee in bankruptcy to the highest bidder. New York Satellite Industries, LLC ("NYSI"), a company owned and controlled by Mr. Modanlo, was the successful bidder.¹⁵

These events all occurred during a period of time of a severe downturn in financial markets for the satellite industry. For example, it was around this time that several mobile satellite operators filed for bankruptcy, including Iridium,¹⁶ ICO,¹⁷ and ORBCOMM.¹⁸ In fact, the market was so bad that the assets of such companies ultimately were sold for a small fraction

¹⁴ *In re Final Analysis, Inc.*, Case No. 01-21039 (Bankr. Md. 2001).

¹⁵ Approval was granted on February 7, 2002 for the *pro forma* transfer of control of FACS to the FAI Trustee in bankruptcy. An application for approval of the transfer of control of FACS from the FAI Trustee to NYSI has been filed and remains pending.

¹⁶ Bankruptcy under Chapter 11 filed on August 13, 1999. See Brian Graney, *Iridium Files for Chapter 11*, THE MOTLEY FOOL, Aug. 13, 1999, available at: <<http://www.fool.com/news/1999/irid990813.htm>>.

¹⁷ Bankruptcy under Chapter 11 filed on August 27, 1999. See Satellite Firm Faces Bankruptcy, Wired News, Aug. 27, 1999, available at: <<http://www.wired.com/news/print/0,1294,21478,00.html>>.

¹⁸ Bankruptcy under Chapter 11 filed on September 11, 2000. See *Orbcomm Files for Chapter 11*, WASHINGTON BUSINESS JOURNAL, Sept. 15, 2000, available at: <<http://washington.bizjournals.com/washington/stories/2000/09/11/daily24.html>>.

of the amount that originally had been invested.¹⁹ The combined effects of FAI's corporate deadlock, debilitating litigation, and depressed financial markets for mobile satellite ventures dealt FACS a stunning blow. These circumstances, which could not have been foreseen and defied the company's persistent efforts to resolve, have hampered the company's ability to complete construction of the first two commercial satellites by the end of March 2002, the milestone deadline.

Against these odds, however, the company has made substantial progress toward meeting its construction and launch milestone deadlines. Under its new ownership and management structure and freedom from the FAI decisional deadlock that previously stymied the company, FACS is poised to move forward to implement an aggressive plan to complete construction as soon as possible.

III. STATUS OF FACS'S PROGRESS TOWARD ITS MILESTONES

A. Status of Compliance With Completion of Construction and Launch Milestones

FACS has made substantial progress toward compliance with its completion of construction and launch milestones, including through the establishment of key strategic partnerships and relationships with major independent suppliers. As mentioned above, FACS has already expended millions of dollars toward the implementation of its system. The significant progress FACS has made in each of the three critical areas of spacecraft design, construction, and launch, as well as ground system implementation, is described below.

¹⁹ In the case of Iridium, outside investors ultimately purchased the assets for \$25 million, or 0.5% of the original investment. *See Will Iridium Bankruptcy Buyout Be Deal of the Century*, SPACEDAILY, Nov. 16, 2000, available at: <<http://www.spacedaily.com/news/iridium-00e.html>>.

Through the bankruptcy proceeding, NYSI acquired the assets of FAI and will dedicate them to FACS for the engineering of the FAISAT system and construction of the spacecraft.

1. Spacecraft Design and Construction

FACS has in fact already designed, constructed and launched satellites, two of which, FAISAT-1 and FAISAT-2v, were authorized pursuant to experimental licenses.²⁰ FAISAT-2v in particular served as the platform for services to be provided by VITA under that company's first round authorization, and would have served as FACS's first commercial satellite if it had remained in operation.²¹

Aside from these experimental satellites, as FACS reported to the Commission in 1999,²² FACS made other significant strides in the construction of its initial commercial satellites, including (i) initiation of the architecture design process for the commercial constellation; (ii) development of statements of work for numerous components, particularly long lead time items such as software and major components, and (iii) negotiations with various subcontractors for production of major subsystems. Today, all subsystems for the satellite constellation are beyond the preliminary design stage with the majority of design elements completed. In fact, the key components of its first two entirely commercial satellites, the command and data handling subsystem, which includes the on-board computers, are substantially constructed.

Since the grant of the FACS commercial license, non-refundable payments have been made based on acceptance of milestone compliance for some of the major components from

²⁰ FAISAT-1, Call Sign KE2XGY; FAISAT-2v, Call Sign KS2XCY.

²¹ FAISAT-2v was launched in 1997 and, at the time that the *Final Analysis License* was granted, Final Analysis was in intermittent communication with the spacecraft. Subsequently, regular communication with the satellite was lost.

²² Letter dated April 1, 1999 from Aileen A. Pisciotta, Counsel to Final Analysis Communication Services, Inc. to Roderick K. Porter, Acting Chief, International Bureau.

various subcontractors, has conducted design reviews on various subsystems, and in some cases has already taken delivery of engineering units and prototypes of equipment. FACS has heavily invested in core infrastructure and capital equipment to support the construction and deployment of the FAISAT constellation, including a class 100,000 environmental clean room construction, maintenance, and upgrades to support satellite construction and integration.

2. Ground System

In connection with the operation of its experimental satellites, FACS constructed and today maintains fully implemented and operational ground systems, including ground stations in Logan, Utah, and a ground station and control center in Lanham, Maryland.²³ FACS plans to request approval to operate these same facilities as the initial ground segment for its commercial constellation. FACS has acquired an extensive array of electrical and mechanical ground support equipment.

3. Launch Vehicles

FAI entered into a final, non-contingent Launch Services Agreement dated June 20, 1998 with P.O. Polyot of Omsk, Russia ("Polyot") for the launch of its entire commercially licensed constellation. Under the contract, Polyot manufactured and delivered four dedicated Cosmos launch vehicles for the launch of FACS's entire constellation. Polyot received a license from the Russian Space Agency on February 15, 1999 specifically for the launch of FACS's satellites. NYSI has acquired FAI's contracts with Polyot through the FAI bankruptcy proceeding. As with the other assets of FAI acquired by NYSI, these launch vehicles will be made available to FACS.

²³ Logan, UT Ground Station Experimental License, Call Sign KS2XDA, File No. 0226-EX-RR-1999; Lanham, MD Ground Station Experimental License, Call Sign WA2XHE, File No. 0224-EX-RR-1999.

IV. A WAIVER OF THE COMMISSION'S RULES IS IN THE PUBLIC INTEREST

Section 1.3 of the Commission's Rules specifies that a waiver will be granted if "good cause" is shown, including a demonstration that special circumstances warrant deviation from the general rules and that deviation would better serve the public interest than strict adherence to the rule.²⁴ Clearly special, unique circumstances warrant the waiver requested herein; and the waiver requested would better serve the public interest than strict adherence.

A. Special Circumstances In This Case Warrant Deviation From The General Rule

It is well established that special circumstances that justify a waiver include considerations of hardship, equity or more effective implementation of overall policy.²⁵ The past four years have presented some of the most difficult and challenging circumstances for even the largest and best-established satellite companies. Investors and financial markets seemed to turn their backs on the satellite industry as a whole. These difficulties were magnified several fold for a small company such as FACS. It was in the midst of these already difficult times that FACS suffered the additional hardship of debilitating decisional deadlock and the burdens and distractions of litigation that threatened the very existence of the company.

However, it is not the hardship, *per se* that justifies a waiver in this case. Rather it is the fact that, despite these difficulties, FACS has been able to accomplish so much. The company has designed, manufactured and launched satellites and built out a ground system, has secured the launch of its entire constellation, has signed important customer contracts that will generate funds for the completion of construction of its next satellites, has created important strategic

²⁴ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990); see also *Comsat Corporation*, Order, 11 FCC Rcd 9622, 9625

²⁵ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

partnerships and relationships, and has invested millions of dollars that, among other things, have already yielded the manufacture of key components for its next satellites. In light of these significant investments and the progress already made toward completion of construction, considerations of equity dictate that FACS be granted a waiver and be permitted to complete its program.

B. Public Interest Would Be Better Served By Grant of the Waiver Than By Denial

Clearly the public interest would be best served by grant of the waiver requested. The Commission has determined that NVNG MSS provides a variety of valuable low cost data service to the public and that the public interest in the availability of such services would best be served by a competitive industry. To date, there is only one fully operational NVNG MSS system in the market. FACS has actually built and launched satellites and is moving forward to complete its constellation. FACS intends to succeed in achieving the Commission's goal of providing a truly competitive industry.

The public's interest in the success of the FACS system is further assured by the fact that the circumstances that created the delay have now been largely overcome. The corporate governance issues that have plagued the company over the past several years have been resolved. The company is now poised to move forward with an aggressive program to implement its system.

With the problems causing delay behind it, and with so much progress already made, it would be contrary to all notions of equity, as well as to the public interest, to deny the requested waiver and eliminate the opportunity for FACS to proceed as authorized. This is further underscored by the fact that FACS will be able to provide competitive service as soon as its first commercial satellites are successfully placed in orbit. As described above, due to the technical

characteristics of Little LEO operations and the nature of the applications offered, service may be initiated, and the public may enjoy the benefits of competition, even before the entire constellation is deployed.

C. General Rule Is Not Undermined

Grant of the requested waiver would not in any way undermine the Commission's general policies and rules regarding construction milestones. In fact, because Little LEO systems are unique to the extent that service may be initiated prior to the deployment of a full constellation, existing precedent regarding construction milestones is not fully on point. Nevertheless, grant of this waiver request is consistent with existing precedent.

Specifically, in all prior cases where satellite construction milestone extensions and waivers have been denied, the licensee had either not even met its first milestone for commencement of construction or the Commission had serious doubts that the licensee had the intent to proceed with completion of construction.²⁶ In contrast, where as here the licensee has demonstrated that it is not "warehousing" spectrum but rather that it has met the first two milestones and has made substantial progress toward completion of construction and

²⁶ See, e.g., *AMSC Subsidiary Corporation, Applications to Modify Space Station Authorizations in the Mobile Satellite Service*, Memorandum Opinion and Order, 8 FCC Rcd 4042 (¶ 13) (failure to begin construction raises questions regarding the licensee's intention to proceed); *Norris Satellite Communications, Inc., Application for Review of Order Denying Extensions of Time to Construct and Launch Ka-band Satellite System*, Memorandum Opinion and Order, 12 FCC Rcd at 22306 (¶ 17) (by failing to commence construction or request extension within the milestone deadline, licensee in that Order did not demonstrate a commitment to proceed with its proposed system). See also *AMSC Order*, 8 FCC Rcd 4040, 4042-43 (¶ 14) (construction commencement demonstrates intention to proceed with business plan); *Application of GE American Communications, Inc., for Orbital Reassignment and for Modification of Authorization to Construct and Launch the Satcom H-1 Domestic Fixed-Satellite*, Memorandum Opinion and Order, 7 FCC Rcd 5169, 5169 (¶ 3) (Com. Car. Bur. 1992) (construction commencement demonstrates intention to proceed with business plan).

preparations for launch, and may implement service with less than a complete constellation, it is appropriate and consistent with Commission precedent to grant a waiver.²⁷

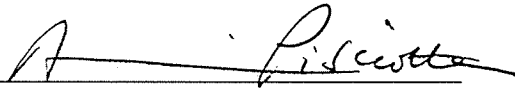
FACS intends to proceed as quickly and as vigorously as possible to establish a new proposed schedule for the implementation of its full constellation.²⁸

V. CONCLUSION

Wherefore, for the foregoing reasons, FACS respectfully requests that the Commission waive Section 25.161 of its Rules with respect to the milestones for completion of construction (March 2002) and launch (September 2002) of the first two satellites, as set forth in the above-referenced license of FACS.

Respectfully submitted,

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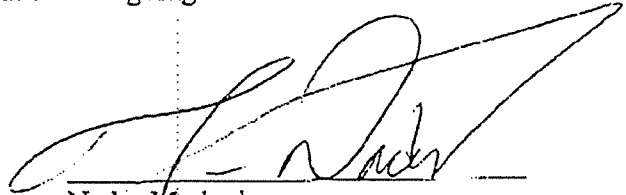
Dated: March 29, 2002

²⁷ See *GE American Communications, Inc.* Order and Authorization, 16 FCC Rcd 11038 (2001); and *Earth Watch Incorporated*, Order and Authorization, 12 FCC Rcd 19556 (1997).

²⁸ A new schedule cannot be established until the pending request for approval of transfer of control of FACS to NYSI has been granted and business arrangements can be finalized under the new ownership structure.

Declaration

Pursuant to Section 1.16 of the Commission's Rules, 47 C.F.R. § 1.16, I, Nader Modanlo, Chairman and President of Final Analysis Communication Services, Inc., hereby submits this declaration in support of the foregoing Petition for Waiver dated March 29, 2002. I have read the Petition, and the statements contained therein are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct. Executed on March 29, 2002.

A handwritten signature in black ink, appearing to read "Nader Modanlo", written over a horizontal line.

Nader Modanlo
Chairman and President
Final Analysis Communication
Services, Inc.

CERTIFICATE OF SERVICE

I, Beatriz Viera-Zaloom, hereby certify that a true and correct copy of the foregoing **Petition for Waiver**, on behalf of Final Analysis Communication Services, Inc., was hand delivered this 29th day of March 2002, to the individuals on the following list:

William Caton
Acting Secretary
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