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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

REPLY COMMENTS

Final Analysis Communication Services, Inc. ("Final Analysis"), by its attorneys hereby submits this reply to the comments of Leo One USA Corp. ("Leo One") on Final Analysis's 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 The condition at issue (the "Certification Condition") is a condition imposed in the International Bureau's decision (the "Bureau Order") of April 1, 1998, on the grant of Final Analysis's Little LEO authorization that requires Final Analysis to certify in writing within 30 days of the release of the order its commitment to proceeding with implementation of the system as authorized by the Bureau.²

Leo One's arguments in opposition to clarification or stay of the Certification Condition make no sense. First, Leo One implies that by requesting a tolling of the certification

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

requirement Final Analysis is seeking a suspension of construction milestones. This is simply not the case. Final Analysis does not desire an extension of construction milestones. As Leo One knows, Final Analysis has actually begun construction under a Section 319(d) waiver.³ Final Analysis has no interest in delaying this proceeding and in fact, has asked for expedited consideration of the Application for Review it recently filed of the *Licensing Order*.⁴

Second, Leo One is wrong in arguing that the certification requirement is unrelated to the Joint Proposal. There can be no closer relationship than the fact that the licensed system must match the system Final Analysis agreed to in the industry settlement. Final Analysis cannot be deemed to have entered into an agreement that would bind it to build a system that it has never, and would never, propose and one that it believes is unworkable. If that is the end result of this licensing proceeding, then there has not been a meeting of the minds and there is no agreement. Therefore, the settlement fails. Any other conclusion strains rationality. Leo's statements that "The Joint Proposal⁵ eliminated mutual exclusivity in this proceeding;" and "Final Analysis cannot change this fact;" are absurd.⁶ Mutual exclusivity is eliminated only by mutual agreement. If Final Analysis does not receive the benefit of the bargain, there is no agreement

(...continued)

² The deadline was recently extended to May 8, 1998. *Final Analysis Communication Services, Inc.* Order, DA 98-838 (rel. May 1, 1998).

³ See Letter from Donald H. Gips, Chief, International Bureau, FCC, to Aileen A. Pisciotto, Counsel to Final Analysis, *Re: Request for Section 319(d) Waiver filed by Final Analysis Communication Services, Inc. (File No. 144-SAT-WAIV-96)*, dated Sept. 30, 1996 (granting Section 319(d) construction waiver).

⁴ See Final Analysis, Application for Clarification and Review, filed on May 1, 1998 ("Application for Review").

⁵ Joint Proposal of E-SAT, Inc., Final Analysis, Leo One, Orbital Communications Corporation, Orbital Sciences Corporation and Volunteers in Technical Assistance, Inc., IB Docket No. 96-220, filed September 22, 1997.

⁶ Leo One Comments at 4.

and mutual exclusivity returns.

Finally, Leo One is wrong that any “cloud” in this proceeding is of Final Analysis’s own making. In its Application for Review,⁷ Final Analysis clearly demonstrates that the license it has been granted inaccurately and unfairly denies certain critical amendments required to conform to the *Second Round Report and Order*⁸ that should have been accepted by the International Bureau under any of three legal principles – (1) the amendments are necessary to conform to the frequency plan (“System 2”) assigned to Final Analysis in the *Second Round Report and Order*; (2) the amendments do not create any increased potential for interference; and (3) the amendments are necessitated by significant changes in operating parameters and frequency assignments imposed by the *Second Round Report and Order* completely unforeseen when Final Analysis’s original application was filed in 1994.⁹ Clarification or stay of the certification requirement is necessary so that the Commission can cure this error on review and the Bureau can correctly issue a license to Final Analysis that will serve the public interest – not, as Leo One wrongly implies, to serve Final Analysis’s interest.

Most importantly, as amply demonstrated in Final Analysis’s Application for Review, the Bureau’s decision is so obscure in certain respects that it is unclear if, or what, the Bureau has permitted or prohibited with respect to certain critical system parameters, such as data rates and link configurations, specified in Final Analysis’s original application and subsequent

⁷ See Application for Review at 7-19, 22-3.

⁸ *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, *Report and Order* (rel. October 15, 1997).

⁹ See *Second Round Report and Order* at ¶ 131; 47 C.F.R. §§ 25.116(b)(1), (c)(4).

amendments.¹⁰ Without Commission clarification on review of these aspects of the Bureau's decision, Final Analysis does not actually know what it would be certifying to. Because Final Analysis does not know what it would be certifying to, it is completely unreasonable to require Final Analysis to aver, as demanded by the certification condition, that it is committed to implementing the system "as authorized" in the Bureau Order.

In any event, with respect to certain other technical parameters clearly set forth in the *Licensing Order*, the licensed system is an unworkable regulatory hybrid constellation that is commercially untenable in the real world.¹¹ Final Analysis has demonstrated in its Application for Review that several decisions reached in *Licensing Order*, including denial of constellation redesign and increased downlink power, are based upon a misreading of the record and incorrect analysis. Clarification that the certification condition is tolled or stayed pending review thus also is necessary so that the Commission has the opportunity to cure the defects in the current license issued to allow Final Analysis to proceed with a workable Little LEO system.

Finally, a requirement that Final Analysis certify to do something that it has said it cannot do – i.e., build the system as licensed -- before consideration of its Application for Review is completed, would deny Final Analysis its fundamental due process rights. Final Analysis must be given the opportunity to pursue its administrative remedies to obtain a license for the system it has designed, consistent with the Joint Proposal and applicable Commission rules and policies, before it is required to commit to the design and construction of another system it has not proposed.

¹⁰ See Application for Review at 20-22.

¹¹ See *id.* at 5-7.

WHEREFORE, Final Analysis urges the Bureau to reject Leo One's comments and grant the relief requested in Final Analysis's Request for Clarification or Stay, in the public interest, convenience and necessity.

Respectfully submitted,

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Dated: May 7, 1998

CERTIFICATE OF SERVICE

I, Beatriz Viera, hereby certify that a true and correct copy of the foregoing “**Reply Comments**” on behalf of Final Analysis Communication Services, Inc. was delivered via hand delivery or regular mail this 7th day of May 1998, to each of the following:

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