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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

EMERGENCY MOTION FOR STAY PENDENTE LITE

Final Analysis Communication Services, Inc. (“Final Analysis”), by its attorneys, hereby submits this emergency motion for a temporary stay of enforcement of a condition (the “Certification Condition”) on its above-captioned Little LEO license pending the Bureau’s reconsideration of its order released on May 8, 1998 (the “*Denial Order*”).¹ The *Denial Order* rejected Final Analysis’s April 20, 1998 Request for Clarification or Stay and extended to May 15, 1998, the deadline for Final Analysis to certify that it is committed to proceeding with its Little LEO system as authorized in the Bureau’s *Licensing Order*.² If Final Analysis does not so certify, its license will be rendered “null and void.” In a Petition for Reconsideration being filed simultaneously herewith and incorporated herein by reference, Final Analysis is seeking reconsideration of the *Denial Order*.

¹ See *Final Analysis Communication Services, Inc.*, Order, DA 98-881 (rel. May 8, 1998) (the “*Denial Order*”).

² See *Final Analysis Communication Services, Inc.*, Order and Authorization, DA 98-616 (rel. Apr. 1, 1998) (the “*Licensing Order*”).

For the reasons stated in Final Analysis's Petition for Reconsideration, a temporary stay *pendente lite* of the May 15 certification date, while the Bureau reconsiders Final Analysis's Petition for Reconsideration, is in the public interest, convenience and necessity. As discussed in the Petition for Reconsideration, the four factors warranting a temporary stay under *Holiday Tours* are present here.³ In support of this motion, Final Analysis relies on and incorporates herein by reference its showing on the four factor *Holiday Tours* test set forth in its Petition for Reconsideration.

In particular, the harm to Final Analysis in the absence of a temporary stay of the May 15 deadline imposed by the *Denial Order* for compliance with the Certification Condition, is both certain and irreparable. For the reasons enumerated in the Petition for Reconsideration, enforcement of the condition will irremediably prejudice Final Analysis's interests in the Commission's review proceeding and will impose on the company a premature and manifestly unfair choice.

Moreover, the enforcement, under the threat of loss of license, of a condition with which the company has said it cannot comply in good faith, is tantamount to revocation of Final Analysis's license. Such a result is contrary to the procedures for revocation of a license under Section 312 of the Act which afford Final Analysis the right to a hearing prior to final action on revocation of its license.⁴

³ See *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); see also *Petitions for Stay of January 1, 1980 Divestiture Requirement*, 76 F.C.C.2d 339 at ¶ 5 ("While the Commission is confident that its denial of the three waivers will be sustained by the Courts, a stay is warranted given the irreversible nature of divestiture").

⁴ See *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327, 332 66 S.Ct. 148, 150 (1945) ("The Commission for specified reasons may revoke any station license pursuant to the procedures (continued...)

Furthermore, as demonstrated in the Petition for Reconsideration, the potential harm to other parties of a temporary stay of the May 15 certification deadline *pendente lite* of the Bureau's reconsideration of the *Denial Order* is remote in comparison to the harm to Final Analysis in the absence of a stay. In fact, a stay of the requirement that Final Analysis certify its commitment to coordinating and building a system that, as shown in Final Analysis's Application for Review, cannot be implemented, will spare the other licensees the necessity of committing resources to wasteful coordination.

Accordingly, a temporary stay *pendente lite* of enforcement of the Certification Condition is in the public interest. If, as Final Analysis has demonstrated, the Bureau's *Denial Order* was in error, temporarily delaying enforcement of the certification requirement *pendente lite* until such time as the Bureau can cure the error on reconsideration will avoid the premature nullification of Final Analysis's license.

(...continued)

described in Section 312(a) But in all those instances the licensee is given an opportunity to be heard before final action can be taken.”)

WHEREFORE, Final Analysis urges the Bureau to grant this emergency request for temporary stay of the May 15 certification deadline set forth in the *Denial Order, pendente lite*, until the Bureau acts on Final Analysis's Petition for Reconsideration of the *Denial Order*. If the Bureau denies Final Analysis's Petition for Reconsideration, Final Analysis requests at least a seven (7) day extension of the Certification Condition from the effective date of the Bureau's order on reconsideration.

Respectfully submitted,

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Dated: May 14, 1998

CERTIFICATE OF SERVICE

I, Beatriz Viera, hereby certify that a true and correct copy of the foregoing "**Motion for Stay Pendente Lite**" on behalf of Final Analysis Communication Services, Inc. was delivered via hand delivery or regular mail this 14th day of May 1998, to each of the following:

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