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MAY 18 1998

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

Federal Communications Commission  
Office of Secretary

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

File Nos. 25-SAT-P/LA-95  
76-SAT-AMEND-95  
79-SAT-AMEND-96  
151-SAT-AMEND-96  
7-SAT-AMEND-98

Received

MAY 22 1998

Satellite Policy Branch  
International Bureau

To: The Commission

OPPOSITION AND PETITION TO DISMISS

FINAL ANALYSIS COMMUNICATION  
SERVICES, INC.

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Its Attorneys

Dated: May 18, 1998

## SUMMARY

Final Analysis Communication Services, Inc. files this Opposition and Petition to Dismiss in response to the Application for Review filed by Leo One USA Corporation (“Leo One”) on May 1, 1998. The order issued on delegated authority which is the subject of Leo One’s Application is the International Bureau’s grant of a Little LEO license to Final Analysis (“*Licensing Order*”). Leo One asks the Commission to find that, in the event Final Analysis’s own request for review of the *Licensing Order* is granted such that other Little LEO licensees may not be accommodated, the Commission should find Final Analysis financially unqualified. Leo One’s Application must be rejected as procedurally defective and substantively incorrect.

Final Analysis’s license was awarded in the second Little LEO processing round along with four others, including one granted to Leo One. All of the second round licenses conform to a band plan arrived at pursuant to an industry settlement submitted to the International Bureau as Joint Proposal and adopted in the *Second Round Report and Order* in IB Docket 96-220. On the same date as Leo One filed its pleading, Final Analysis filed its own Application for Review of its license, seeking reversal of the International Bureau’s denial of certain system modifications it proposed to conform to the *Second Round Report and Order*.

Leo One’s Application for Review is procedurally defective because Leo One makes no showing that it is aggrieved by the *Licensing Order*. Also, Leo One does not ask the Commission to revise the *Licensing Order* in any way. Leo One asks for Commission action only in the event that Final Analysis’s Application for Review is granted so that other second round licensees are excluded from the agreed upon band plan. In this respect, Leo One really seeks premature reconsideration of a Commission decision that has not yet been made. The Commission’s Rules do not provide for any such filing. As Leo One’s Application for Review is

improperly filed, it should be summarily dismissed.

In any event, Leo One has not raised any substantive issue requiring Commission action. Leo One fails to demonstrate that, even if Final Analysis's Application for Review is granted, it will suffer any additional potential interference. Final Analysis has demonstrated in its Application for Review that no such increase in potential interference will occur.

Similarly, Leo One has failed to show that Final Analysis has not properly demonstrated its financial qualifications. Final Analysis has met the appropriate financial qualifications standard. In fact, it is the only second round Little LEO licensee that has filed detailed and updated cost estimates as well as recent audited financial statements. Additionally, Final Analysis has more than adequately demonstrated its qualifications by deed as well as word, as it has invested over \$40 million to date in the development of its system. Leo One's challenges to Final Analysis's financial qualifications are baseless.

In contrast, Leo One never submitted detailed or updated cost estimates, has never filed a balance sheet or audited financials, and has filed only the barest information on its financial condition. In a separate Request for Investigation of Leo One, Final Analysis has brought to the Commission's attention recent evidence that Leo One may have, in fact, misrepresented its financial qualifications to the Commission by omitting mention of material encumbrances on its assets. Thus, under Leo One's own test, it is Leo One, not Final Analysis, that should be financially disqualified.

Leo One's Application for Review is just one more in a long line of meritless and harrasing filings that Leo One has used to attempt to discredit and disqualify Final Analysis. The Commission should not countenance the continuation of such wasteful efforts.

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in the 148-150.05 MHz, 400.15-401 MHz,	)		
and 137-138 MHz bands	)		

To: The Commission

**OPPOSITION AND PETITION TO DISMISS**

Final Analysis Communication Services, Inc. ("Final Analysis"), by its attorneys, files this Opposition and Petition to Dismiss in response to the Leo One USA Corporation ("Leo One") May 1, 1998 Application for Review ("Leo One Application") of the International Bureau Order granting a license for a "Little LEO" system in the above captioned proceeding.<sup>1</sup> Leo One attempts to argue, at p. 1, that "[t]o the extent that the Commission grants any ...Final Analysis application for review, other second round Little LEO licenses will suffer harmful interference."<sup>2</sup> In such event, Leo One maintains, the Commission must review and reverse the International

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

<sup>2</sup> Prior to the filing of Leo One's Application for Review on May 1, 1998, Final Analysis had submitted a Request for Clarification or Stay on April 20, 1998 ("Request") of the certification condition set forth in ¶ 80 of the *Licensing Order*. In its Request, Final Analysis also stated, among other things, its intention to seek Commission review of the denial in the *Licensing Order* of certain technical changes proposed in its October 30, 1997 amended application ("Conforming Amendment"). Thus, Leo One's Application for Review is premised on Final Analysis's statement in the Request that it intended to seek Commission review of the *Licensing Order*, rather than Final Analysis's actual Application for Review of the *Licensing Order* which was duly filed on May 1, 1998.

Bureau's finding that Final Analysis is financially qualified to hold a Little LEO license. Leo One's Application should be summarily rejected as defective under Section 1.115 of the Commission's Rules, 47 § 1.115 as it makes no showing that Leo One is aggrieved by the *Licensing Order* or that any Commission review of the action on delegated authority is necessary or proper. Even if the Application is deemed properly filed, it relies upon arguments that are unsupported and spurious. Leo One's arguments on Final Analysis's financial qualifications are illogical, misleading and erroneous at best, and self-incriminating at worst. Therefore, Leo One's Application for Review must be denied.

## I. BACKGROUND

This pleading by Leo One must be recognized for what it is -- merely the latest and most extreme measure in Leo One's long-standing and relentless campaign to prevent Final Analysis from reaching the market. Repeatedly, Leo One has complained that other Little LEO licensees have acted anticompetitively.<sup>3</sup> But it is really Leo One that has aggressively manipulated Commission processes to attempt to hobble or eliminate its competition.

Both Final Analysis and Leo One are signatories to the Joint Proposal<sup>4</sup> which established the band plan and sharing arrangement permitting the avoidance of mutual exclusivity in the Little LEO second processing round. The industry settlement embodied in The Joint Proposal, was adopted by the International Bureau in the *Second Round Report and Order*<sup>5</sup> as the basis for

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<sup>3</sup> See, e.g., Leo One March 31, 1998 Opposition at 2 to the March 16, 1998, Orbital Communication Corporation ("ORBCOMM") Application for Review of the Leo One License, *Order and Authorization*, DA 98-238 (rel. February 13, 1998).

<sup>4</sup> Joint Proposal, filed by E-SAT, Inc. ("E-SAT"), Final Analysis, Leo One, ORBCOMM, and Volunteers in Technical Assistance ("VITA") in IB Docket No. 96-220, on September 22, 1997 ("Joint Proposal").

<sup>5</sup> 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  
(continued...)

issuing all second round licenses, including the Leo One license. All parties to the Joint Proposal agreed to rescind objections to each others' applications and to forbear from filing any further objections unless they were directly adversely affected. Nonetheless, Leo One has continued to raise any conceivable argument to try -- in a clear breach of both the letter and spirit of The Joint Proposal -- to have Final Analysis disqualified. Leo One has filed innumerable pleadings intended to raise any and all possible doubts about Final Analysis's application , including endless ex parte letters<sup>6</sup> and a Petition to Deny Final Analysis's amended application.<sup>7</sup>

In keeping with this campaign, Leo One filed the instant pleading, not to have the Commission overturn an underlying International Bureau order, but rather to block Final Analysis's efforts to obtain relief for system modifications that have been erroneously denied. Leo One effectively seeks premature reconsideration of a Commission decision that has not yet been reached on a Final Analysis's own Application for Review – which, at the time of Leo One's Application for Review, had not even been filed. Not only is Leo One's Application for Review procedurally improper, it is completely baseless, grounded only on mischaracterization of the record.<sup>8</sup> It is a nuisance pleading, not permitted by the rules, that just wastes the Commission's time.

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(...continued)

Satellite Service (“NVNG MSS” or “Little LEO”), Report and Order, IB Docket No. 96-220 (rel. Oct. 15, 1997) (“Second Round Report and Order”).

<sup>6</sup> *See, e.g.*, Letters from Robert A. Mazer and Albert Shuldiner, Counsel for Leo One, to Regina Keeney, Chief, FCC International Bureau, dated March 16, 20 and 24, 1998 (urging the Commission to conduct exhaustive and extraordinary due diligence on Final Analysis's Russian launch arrangements on the basis of unsubstantiated press filings). *See also* responsive letters by Aileen A. Pisciotta, Counsel for Final Analysis, to Regina Keeney, Chief, FCC International Bureau, March 20 and 26, 1998.

<sup>7</sup> Leo One Petition to Deny, December 4, 1997.

<sup>8</sup> Leo One has demonstrated a pattern of mischaracterization and misrepresentation in this proceeding. On May 7, 1998, Final Analysis filed a Request for Investigation of Leo One for misrepresentation of facts concerning Leo One's own financial qualifications as a result of newly  
(continued...)

## II. LEO ONE'S APPLICATION IS PATENTLY DEFECTIVE AND SHOULD BE SUMMARILY DISMISSED

### A. Leo One Fails To Make The Required Showing That It Is Aggrieved By The International Bureau's *Licensing Order*

Leo One does not even attempt to, and in fact cannot, demonstrate that it is aggrieved by the *Licensing Order*. The Commission's rules are clear. An application for review under Section 1.115 may be filed only by a person "aggrieved by any action taken pursuant to delegated authority." Leo One makes no allegation or showing whatsoever, nor can it, that it is harmed or aggrieved by the *Licensing Order* in any way. Actually, Leo One argues precisely the opposite.

Specifically, in its Application, at p. 3, in referring to what the *Licensing Order* did not adopt, Leo One states that

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*.

Leo One also states, at p. 4, that "new interference adversely affecting the other parties to the Joint Proposal" will be created "[t]o the extent the Commission grants any application for review which Final Analysis may file." Again, at p. 6, Leo One states "[r]eversing the Bureau's rejection of the technical amendments proffered by Final Analysis will cause harmful interference to the other parties to the Joint Proposal."

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(...continued)

discovered evidence that Leo One has failed to disclose encumbrances on its "current assets." In that Request, Final Analysis also details reasons for concern that Leo One has been less than forthright with the Commission with respect to its own cost estimates as well as with respect to its financial resources. ORBCOMM also has complained of Leo One's mischaracterization of facts. *See, e.g.*, Letter from Stephen L. Goodman, Counsel for ORBCOMM, to Donald Gips, Chief, International Bureau, *Re: Correction of Misstatements Contained in Other Parties' Reply Comments*, filed on January 31, 1997 in IB Docket No. 96-220 (stating that Leo One used incorrect assumptions as to the parameters of ORBCOMM's system and thereby mischaracterized ORBCOMM's constellation).



Thus, Leo One fails to make even a threshold case that it has been aggrieved by any action taken in the *Licensing Order*. Rather, implicit in Leo One's Application is the premise that it likes the *Licensing Order* just the way it is and does not want it modified. As it has shown no harm, and in fact is asking the Commission not to review the *Licensing Order*, Leo One is not entitled to any relief.

**B. Leo One Fails to Make The Required Showing That Commission Action is Necessary and Appropriate**

As clearly set forth in Section 1.115(b)(2), an application must "specify with particularity," the basis upon which the Commission is asked to review the action taken on delegated authority. An Application must urge Commission action with respect to the order below to resolve either: (i) a conflict with statute, regulation, case precedent, or established Commission policy; (ii) a question of law or policy which has not previously been resolved by the Commission; (iii) application of a precedent or policy which should be overturned or revised; (iv) an erroneous finding as to an important or material question of fact; or (v) prejudicial procedural error. Leo One does not, and cannot, urge the Commission to do any of these things.

Leo One asserts, at p. 4, that the International Bureau "incorrectly concluded that Final Analysis had satisfied the requirements of Section 25.142(a)(4) of the Commission's Rules." However, Leo One does not ask the Commission to overturn the *Licensing Order* on this basis. Rather, Leo One states, at p. 6, that "[a]s long as the Bureau was accommodating the requests of all the parties in accordance with the Joint Proposal, Final Analysis's financial qualifications were less significant." Thus, Leo One does not allege any error of law, policy, precedent, fact or procedure in the International Bureau's finding that Final Analysis is financially qualified. Leo One states only, at p. 6:

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.

Thus, Leo One would have the Commission take action only if the *Licensing Order* is modified pursuant to Final Analysis's Application for Review, and only to the extent that such modifications mean that not all second round licensees can be included in the agreed upon band plan. Consequently, Leo One asks the Commission to do nothing. Leo One's arguments are premature and simply inappropriate for an application for review.

### **III. LEO ONE'S APPLICATION FOR REVIEW IS SUBSTANTIVELY DEFICIENT AND SHOULD BE DENIED**

#### **A. Leo One Has Not Demonstrated That It Would Be Harmed By Grant of Final Analysis's Application For Review**

Leo One has not made any substantive case to support any Commission action. Leo One completely fails to show that grant of Final Analysis's Application for Review would cause technical harm to it or any other second round licensee. Leo One states only very vaguely that the technical amendments denied by the International Bureau in the *Licensing Order* "would have caused interference to the other second round licensees," (at p. 3), and that, grant of any application for review requested by Final Analysis of the *Licensing Order* "will create new interference adversely affecting the other parties to the Joint Proposal" (at p.4) (emphasis added).

First, Leo One mischaracterizes the nature of the agreement reached among the second round applicants in the Joint Proposal. Leo One would have the Commission believe that the Joint Proposal constituted a comprehensive agreement which exactly specified the precise parameters of each of the Little LEO systems. This is simply not the case. As made abundantly evident in the licenses granted to most of the second round applicants, the Joint Proposal, as well as the International Bureau's implementing *Second Round Report and Order*, left many details unspecified. For example, with respect to the Leo One License itself, the Commission approved

amendments including an increase in bandwidth as well as greatly increased power levels not specified in the Joint Proposal or *Second Round Report and Order* and left several other details to post-licensing coordination.<sup>9</sup> Other licensees similarly proposed and were licensed for various changes in system configuration, including orbital altitude and power levels not specified in the Joint Proposal.<sup>10</sup> Leo One's assertion, at p. 3, that the International Bureau's *Second Round Report and Order* "established the exact Little LEO systems agreed to in the Joint Proposal" (emphasis added), is a pure fallacy. Therefore, it does not follow that any proposed system parameter not expressly covered in the Joint Proposal necessarily undoes the agreement. It has already been demonstrated, by the Leo One License and others, that deviations from the Joint Proposal may have absolutely no adverse effect on the other licensees. Each proposed change has to be evaluated individually.

Second, Leo One neither attempted nor made any valid showing that it will be adversely affected by any individual amendment proposed by Final Analysis. Nor does Final Analysis believe that Leo One can make such a showing. Indeed, as detailed in Final Analysis's Application for Review, Leo One has failed to demonstrate that it will suffer any increase even in the potential for interference, not to mention actual interference. Instead, Final Analysis has demonstrated that Leo One's claims that potential interference to its uplinks will be increased by changes in Final Analysis's constellation and satellite design are simply wrong as a technical matter,<sup>11</sup> and that Leo One's claims about increased potential interference due to Final Analysis's

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<sup>9</sup> Leo One *Order and Authorization*, DA 98-238 (rel. February 13, 1998) ("Leo One License").

<sup>10</sup> E-SAT, Inc., *Order and Authorization*, DA 98-619 (rel. April 1, 1998) ("E-SAT License") at ¶ 23; Orbital Communications Corporation ("ORBCOMM"), *Order and Authorization*, DA 98-617 (rel. March 31, 1998) ("ORBCOMM License") at ¶ 24.

<sup>11</sup> See Final Analysis Application for Review, at pp. 9-14, and 16-19.

downlink operations are based upon a misreading of the record.<sup>12</sup> Leo One has not shown that grant of Final Analysis's Application for Review will adversely impact any Little LEO licensee.

Finally, particularly because Leo One has not demonstrated any harm to any Little LEO licensees, it has completely failed to demonstrate that grant of the relief requested in Final Analysis's Application for Review would result in the exclusion of any licensees from the sharing plan. Thus, Leo One's claim, at p 4, that "[a]ny change in the sharing environment will mean the Commission is no longer able to accommodate all the second round applicants" is bald hyperbole. Final Analysis specifically states in its Application for Review that it only seeks to implement a constellation, consistent with the Joint Proposal, that gives it the benefit of the bargain it struck to implement an operable and cost effective system. It does not seek to implement a system that creates any increased potential to any other Little LEO licensee or that otherwise impairs the technical integrity of the sharing plan agreed to in the Joint Proposal.

**B. Leo One Has Not Demonstrated That The International Bureau Erred in Finding Final Analysis Financially Qualified**

1. The International Bureau Correctly Applied the Appropriate Standard

It is clear that Leo One does not argue that the Commission should overturn the *Licensing Order* on the basis of the application of the financial qualifications test by the International Bureau. Leo One advocates, at p. 6, that the Commission review Final Analysis's financial qualifications only "[t]o the extent entities other than Final Analysis are not fully accommodated." Final Analysis agrees that, to the extent that all licensees do remain fully accommodated, the International Bureau's application of a streamlined financial qualifications standard was appropriate and should be upheld.

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<sup>12</sup> *Id.* at p. 21.

Leo One in essence asks the Commission to find that, if Final Analysis's Application for Review has merit, other licensees will be excluded from the agreed upon band plan, and Final Analysis should therefore be disqualified. But, a conclusion that Final Analysis's Application for Review has merit presumes that no additional potential interference is created, and that all parties can be accommodated. As a matter of pure logic, then, Leo One's argument makes absolutely no sense.

Even to the extent that it may be determined that the Joint Proposal fails,<sup>13</sup> it is not just Final Analysis's financial qualifications that would be at issue. In this respect, the relief Leo One has requested is premature and inappropriate. In the event the industry settlement is undone and mutual exclusivity returns, the Commission will have to reevaluate the qualifications standard as it applies to all licensees. It would be completely irregular and manifestly unfair to impose a stricter standard just on one company, Final Analysis. As summarized in the *Second Round Report and Order*, the International Bureau has already struggled mightily with this issue. Before the industry settlement, the International Bureau had proposed the exclusion of first round licensees as well as the imposition of a very strict financial standard and the prospect of auctions on all remaining second round licensees. If the Joint Proposal is undone, such options affecting all second round licensees, including Leo One, will have to be reconsidered.

Most critically, in support of its spurious arguments concerning Final Analysis's financial showing, Leo One simply lies to the Commission. Leo One states, at p. 5, that "[i]n the Final Analysis License, the Bureau concluded that Final Analysis's costs totaled \$2.785 million." This is just wrong. It is as plain as day that the International Bureau accepted Final Analysis's cost estimate of \$885,000 for completion of the first two satellites in compliance with the

financing requirement.<sup>14</sup> The International Bureau noted that, in the event Final Analysis's barter arrangement for launches with Polyot failed, total costs would rise to \$2.785 million, but found no reason to assume that Final Analysis's launch agreement would fail. Moreover, the International Bureau noted that no commenter -- including Leo One -- disputed Final Analysis's representation of its receipt of over \$3 million from investors.<sup>15</sup> The place for Leo One to challenge that figure would have been in its December 4, 1997 Petition to Deny Final Analysis's October 30, 1997 amendment, not here.<sup>16</sup> Thus, Leo One attempts to completely mislead the Commission by citing an irrelevant cost figure and failing to mention that it opted not to take the opportunity to raise these issues below.

2. Under Leo One's Proposed Standard Leo One Itself Should Be Disqualified

The standard Leo One attempts to argue that Commission should impose (in the event not all licensees can be accommodated) is actually met by Final Analysis. It is not met, however, by Leo One. Under its own standard, Leo One itself should be disqualified.

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(...continued)

<sup>13</sup> Leo One, at p. 2 note 6, agrees that there may not have been a meeting of minds in the Joint Proposal and that the agreement itself may not be effective.

<sup>14</sup> *Licensing Order* at ¶76. In fact, Final Analysis has already completed many elements of its initial system under a Section 319(d) waiver. See Letter from Donald H. Gips, Chief, International Bureau, FCC, to Aileen A. Pisciotta, 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).

<sup>15</sup> Leo One attempts to cast doubt on the reliability of this figure by imagining that these proceeds could have been in non-cash form. There simply are no grounds for such speculation. In fact, the amounts were paid exclusively in cash directly to Final Analysis Communication Services, Inc. and have been applied exclusively to the construction of Final Analysis's Little LEO system. Furthermore, as Final Analysis does not rely upon any support from its parent company for its demonstration of financial qualifications, Leo One is also wrong in arguing that Final Analysis should have submitted consolidated financial statements.

<sup>16</sup> In fact, in its December 4, 1997 Petition to Deny Final Analysis's Conforming Amendment, Leo One omitted any mention of Final Analysis's financial qualifications.

Leo One claims, at pp. 4-6, that Final Analysis's financial showing is deficient because it has not filed an updated balance sheet and has not provided current information as to cash on hand. Leo One goes on to state, at p. 7, that the Commission has an obligation to "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."

The record shows uncontrovertibly that Final Analysis has met this standard, even though the International Bureau has not required it. Final Analysis has twice submitted audited financials.<sup>17</sup> It was the only second round applicant to do so. Final Analysis has also submitted detailed summaries of its cost estimates,<sup>18</sup> as well as updates to the Commission of the status of its launch arrangements.<sup>19</sup> Most importantly, Final Analysis has demonstrated repeatedly, in the real world, its capabilities and commitment to the construction, launch and operation of its Little LEO system. It has already spent over \$40 million in development, including for the launch of two experimental satellites, the construction of its initial commercial satellites, installation of its ground system, and design of its terminals.

In contrast, as amply demonstrated in numerous pleadings by Final Analysis and others regarding the Leo One License, Leo One has never provided one shred of real evidence that it is financially qualified. Leo One's own cost figures are outdated, underestimated and

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<sup>17</sup> See Final Analysis Application Amendments filed August 19, 1996 and October 30, 1997.

<sup>18</sup> Id.

<sup>19</sup> Letter from Aileen A. Pisciotto, Counsel for Final Analysis, to Regina Keeney, Chief, FCC International Bureau, March 16, 1998.

inconsistently represented.<sup>20</sup> Leo One also has never filed any sort of balance sheet, let alone audited financials. Only on the demand of the International Bureau did Leo One submit a bank letter verifying cash on account.<sup>21</sup> However, because Leo One has never identified any liabilities, it's actual financial position is completely unknown. As Final Analysis has noted in its separate Request for Investigation, Leo One has probably seriously misrepresented its current assets.<sup>22</sup> Leo One, as much as any licensee, has benefited from the International Bureau's acceptance of its unsubstantiated claims.<sup>23</sup> Therefore, its arguments regarding Final Analysis's financial qualifications are mystifying.

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<sup>20</sup> See, e.g., Letter from Aileen A. Pisciotta and Peter A. Batacan, Counsel to Final Analysis, to Magalie R. Salas, Secretary, Federal Communications Commission, dated February 3, 1998.

<sup>21</sup> Letter from Robert A. Mazer and Albert Shuldiner, Counsel for Leo One, to Magalie R. Salas, FCC Secretary, dated January 22, 1998.

<sup>22</sup> Final Analysis Request for Investigation, at p. 6.

<sup>23</sup> See Leo One License, at ¶¶ 44-45 (accepting as "plausible" Leo One's unsubstantiated assertions that its cost estimates have not changed since its original application was filed in 1994, despite the system modifications required by the *Second Round Report and Order*). ORBCOMM has observed that these pre-license representations by Leo One were contradicted by post-license comments by Leo One that it in fact incurred a \$10 million sacrifice in implementing the Joint Proposal. See ORBCOMM April 15, 1998 Reply to Leo One Opposition to ORBCOMM Application for Review of the Leo One License.




**IV. CONCLUSION**

WHEREFORE, for the reasons stated, the Commission should summarily dismiss Leo One's Application For Review as patently defective under Section 1.115 or, in the alternative, deny the relief requested as totally unsupported and unwarranted.

Respectfully submitted,

**FINAL ANALYSIS COMMUNICATION SERVICES, INC.**

By: 

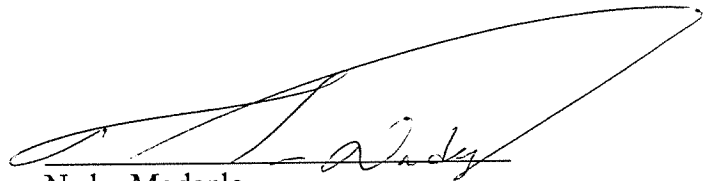
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Dated: May 18, 1998

Its Attorneys

**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 submit this declaration in support of the foregoing Opposition to the Application for Review filed by Leo One USA Corporation. I have read the Opposition 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.

A handwritten signature in black ink, appearing to read 'Nader Modanlo', is written over a horizontal line. The signature is stylized and cursive.

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

Executed on: May 18, 1998

## CERTIFICATE OF SERVICE

I, Beatriz Viera, hereby certify that a true and correct copy of the foregoing "**Opposition and Petition to Dismiss**" on behalf of Final Analysis Communication Services, Inc. was delivered by hand or regular mail this 18th day of May 1998, to each of the following:

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Commissioner Gloria Tristani\*  
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