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MAY 27 1998

Federal Communications Commission
Office of Secretary

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

Received

JUN - 4 1998

Policy Branch
International Bureau

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

COMMENTS
OF
LEO ONE USA CORPORATION

Leo One USA Corporation ("Leo One USA"), by its attorneys, hereby submits these comments on the blizzard of filings recently submitted to the Commission by Final Analysis Communication Services, Inc. ("Final Analysis" or "FACS"). In the past several days, Final Analysis has filed an "Emergency Motion for Stay *Pendente Lite*,"^{1/} a "Petition for Reconsideration,"^{2/} and a letter,^{3/} as well as other filings that are not addressed in these comments. These three interconnected, conflicting filings raise more questions than answers for the Commission and parties to this proceeding. As an initial matter, Leo One USA seeks confirmation that submission of the Pisciotta/Mondanlo Letter in fact constitutes a commitment on the part of Final

^{1/} Emergency Motion for Stay *Pendente Lite* of Final Analysis dated May 14, 1998 ("Emergency Motion").

^{2/} Petition for Reconsideration dated May 14, 1998 and *Erratum* dated May 15, 1998 ("Petition").

^{3/} Letter from Aileen A. Pisciotta to Regina M. Keeney, Chief, International Bureau, dated May 15, 1998 ("Pisciotta/Mondanlo Letter"). Leo One USA notes counsel for Final Analysis has confirmed Final Analysis intentionally did not serve this on parties to this proceeding in violation of Section 1.47 of the Commission's Rules. 47 C.F.R. § 1.47. Apparently, Final Analysis did make this available to the press, however, which provided the only source of notice to Leo One USA of this filing.

Analysis to "proceed with its system as authorized."^{4/} Leo One USA seeks further confirmation that to the extent the Pisciotta Letter satisfies the requirements of Paragraph 80 of the FACS License, the Emergency Motion and the Petition for Reconsideration are rendered moot and can be summarily dismissed.

The Pisciotta/Mondanlo Letter states, "Final Analysis hereby certifies that *its present intention* is to proceed in compliance with the authorization"^{5/} Leo One USA is concerned that by using the phrase "its present intention," Final Analysis is limiting its commitment in some fashion and encourages the Commission to obtain clarification from Final Analysis on this point.

With regard to the Emergency Motion and the Petition, Leo One USA assumes these have been rendered moot by the Pisciotta/Mondanlo Letter. The Emergency Motion and the Petition were intended to delay or eliminate the requirement that Final Analysis certify whether it intends to proceed with its system as authorized. Both filings were directed at the International Bureau's denial^{6/} of Final Analysis' Request for Clarification or Stay.^{7/} To the extent the Commission determines Final Analysis has made the necessary election, there is no need to consider the other Final Analysis filings, and they should be summarily dismissed. Contrary to its previous assertions, abiding by the requirements of Paragraph 80 have not caused irreparable injury, and Final Analysis appears to have survived what it graphically characterized as "a Hobson's-Choice."^{8/}

^{4/} *Final Analysis Communication Services, Inc.*, DA 98-616, *Order and Authorization* (rel. April 1, 1998) ("FACS License") at ¶ 80.

^{5/} Pisciotta/Mondanlo Letter at 2 (emphasis added).

^{6/} *Final Analysis Communication Services, Inc.*, DA 98-881 (rel. May 8, 1998).

^{7/} Request for Clarification or Stay dated April 20, 1998.

^{8/} Petition at 7.

For the foregoing reasons, Leo One USA requests that the Commission seek clarification of the Pisciotta/Mondanlo Letter and dismiss the Emergency Stay and Petition.

Respectfully submitted,

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Dated: May 27, 1998

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments of Leo One USA Corporation was sent by first-class mail, postage prepaid, this 27th day of May, 1998, to each of the following:

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REPLY COMMENTS

Leo One USA Corporation ("Leo One USA"), by its attorneys, hereby submits these reply comments to the Opposition and Petition to Dismiss^{1/} submitted by Final Analysis Communication Services, Inc. ("FACS" or "Final Analysis") to the Leo One USA Application for Review of the International Bureau's decision granting Final Analysis a license to construct, launch and operate a Non-Voice, Non-Geostationary Mobile Satellite Service ("NVNG MSS") system.^{2/} The Leo One USA Application for Review seeks Commission review of the International Bureau's erroneous decision that Final Analysis is financially qualified. The FACS Opposition provides no new insights on this issue and should not dissuade the Commission from a full examination of this issue.

^{1/} Opposition and Petition to Dismiss, File No. 7-SAT-AMEND-98, dated May 18, 1998 ("FACS Opposition"). Leo One USA notes applications for review of the Final Analysis license were submitted independently by Leo One USA and Orbcomm. Final Analysis filed this "Opposition and Petition to Dismiss" in response to the Leo One USA application and an "Opposition" to the Orbcomm application. Leo One USA questions whether Final Analysis, by stylizing its oppositions differently, is seeking different forms of relief in response to the separate applications for review.

^{2/} See *Final Analysis Communication Services, Inc.*, DA 98-616, released April 1, 1998 ("Final Analysis License Order").

A. Leo One USA Is Aggrieved by the Final Analysis License.

Leo One USA is harmed by the International Bureau's erroneous decision that Final Analysis is financially qualified. Leo One USA agrees with Final Analysis that the Joint Proposal "established the band plan and sharing arrangement permitting the avoidance of mutual exclusivity in the Little LEO second processing round."^{3/} The Joint Proposal and the Commission's implementation of the Joint Proposal in the second processing round *Report and Order*,^{4/} however, were based on the technical designs of the various Little LEO systems as they existed at the time. The *Report and Order* codified this approach by restricting applicants to the submission of conforming amendments necessary to comply with the band plan adopted in the Joint Proposal and detailed in the *Report and Order*.^{5/}

Final Analysis chose to ignore the agreement of the parties and the Commission's instructions by filing a nonconforming amendment containing significant technical changes which would have caused harmful interference to other pending applicants. The International Bureau's finding that Final Analysis is qualified, rather than dismissing outright or deferring consideration of its

^{3/} FACS Opposition at 2, citing Joint Proposal among E-SAT, Inc., Final Analysis, Leo One USA, Orbital Communications Corporation, Orbital Sciences Corporation and Volunteers in Technical Assistance in IB Docket No. 96-220 (Sept. 19, 1997) ("Joint Proposal").

^{4/} *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*, FCC 97-370, *Report and Order* (rel. Oct. 15, 1997) ("*Report and Order*").

^{5/} *Id.* at 52-54.

nonconforming amendment, has allowed Final Analysis to continue pursuing its request for these changes^{6/} which would increase interference to and directly harm Leo One USA.

B. The Leo One USA Application for Review Cannot Be Examined in a Vacuum.

Leo One USA's Application for Review is only one of several requests for the Commission to review the International Bureau decision. Both Orbcomm and Final Analysis filed timely applications for review based on separate issues from those Leo One USA raised. Final Analysis would have the Commission separately review these items. That approach, however, is completely illogical. The Commission will need to examine all the applications for review jointly to develop a comprehensive approach. The three parties have raised interrelated but conflicting requests for Commission action. Because all these applications for review relate to the same Order and the same set of issues, they should receive concurrent consideration.^{7/}

^{6/} See Application for Clarification and Review of Final Analysis Communication Services, Inc. dated May 1, 1998. In its May 15, 1998 Petition for Reconsideration of the International Bureau's Order of May 8, 1998 denying Final Analysis' Request for Clarification or Stay of the Certification imposed in the Final Analysis Licensing Order, Final Analysis argues that it will be irreparably harmed if required to begin construction of the system authorized in the Final Analysis License Order. It is interesting to note that Final Analysis indicated in its December 15, 1997 Opposition to Petition to Deny (at 3) that it had invested to date over \$30 million in system development and in its May 1, 1998 Application for Clarification and Review (at 5) that it had spent about \$40 million in system development. If Final Analysis is to be believed, it expended \$10 million in a four and one-half month period even though its October 31, 1997 Amendment had not been granted. Thus, it is difficult to see how Final Analysis could be irreparably harmed if its Application for Clarification and Review is denied.

^{7/} Final Analysis criticizes Leo One USA for submitting its application for review in anticipation of the Final Analysis application for review. The Final Analysis Application for Clarification and Review requested the exact relief Leo One USA had anticipated, thereby justifying the protection of Leo One USA's interests by filing its own Application for Review.

C. Final Analysis Is Financially Unqualified Under the Existing Little LEO Rules.

Final Analysis mischaracterizes the Leo One USA Application for Review by claiming Leo One USA's argument rested on an unraveling of the Joint Proposal.^{8/} Leo One USA has demonstrated the Bureau incorrectly applied the *existing* financial qualification test in the Final Analysis License Order. Thus, the Final Analysis License Order would be subject to revocation under the existing rules. This would not be "irregular" or "manifestly unfair" as Final Analysis claims.

With regard to the specific issues relating to its financial qualifications, Final Analysis states in its Opposition that "[i]t is plain as day that the International Bureau accepted Final Analysis' cost estimate of \$885,000 for completion of the first two satellites" Contrary to Final Analysis' bravado, no where in the Final Analysis License Order does the Commission accept Final Analysis' contention that it will cost \$885,000 to complete construction of the first two Final Analysis' satellites. Rather, the Commission refuses to make a finding whether \$1.93 million in launch costs should be included in determining Final Analysis' total costs to construct and launch its first two satellites. The Commission merely concludes that if the \$1.93 million in launch costs is included, the total costs would be \$2.785 million which would be less than the \$3 million in stock recently sold by Final Analysis. Thus, the Commission never made a finding regarding what constitutes Final Analysis' remaining costs to construct, launch and operate its first two satellites.

There are two issues raised by Final Analysis' contention on this issue. First, should its launch costs be included in its total cost estimate? The record in this proceeding provides no clear

^{8/} See FACS Opposition at 9.

answer to this question. The most recent correspondence to Final Analysis from Polyot^{9/} merely states that Polyot will cooperate with Final Analysis in the development of the FAISAT system.^{10/} It does not state that Polyot *will* provide launch services to Final Analysis through a barter arrangement. Relatedly, even if Polyot were committed to providing the launch services, there are serious questions whether Polyot has the authority to offer such services.^{11/} Given this background and the record in this proceeding, it is impossible for the Commission to make a finding that the \$1.93 million in launch costs should be excluded from Final Analysis' cost estimate.

Second, questions remain whether \$3 million received by Final Analysis should be deemed a current asset. Final Analysis' failure to provide a balance sheet including the \$3 million^{12/} or independent verification that it had \$3 million in the bank fuels this issue. As Leo One USA noted in its Application for Review of the Final Analysis License Order, there is no evidence that Final Analysis realized cash or cash equivalent from the sale of Series H shares of Final Analysis stock. Given the lack of a record on this issue, it is impossible to determine that the \$3 million should be treated as cash or a current asset.^{13/}

^{9/} Final Analysis has claimed in this proceeding that Polyot will provide all launch services on a barter basis as opposed to a cash basis.

^{10/} See Letter from O. P. Dorofeyev, General Director of "Polyot" Production Association, to Nader Modanlo, President, Final Analysis, dated February 27, 1998 which appears as an attachment to the Letter from Aileen A. Pisciotta, Counsel to FACS, to Regina Keeney, Chief, International Bureau, dated March 16, 1998.

^{11/} See Letter from Y. N. Koptev, Director, Russian Space Agency, to O. P. Dorofeyev, General Director of "Polyot" Production Association, March 10, 1998.

^{12/} It is curious that Final Analysis claims to have expended \$10 million on satellite development costs since December 15, 1997 but has been unable to produce a balance sheet with current assets in excess of \$3 million. See *supra* Note 6.

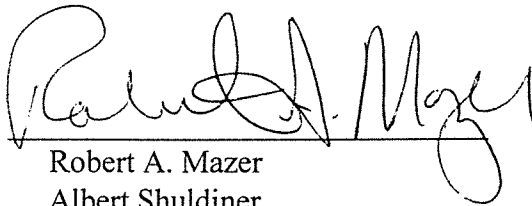
^{13/} Leo One USA did not address this issue previously because the \$3 million was not included in Final Analysis' balance sheet and therefore Leo One USA did not believe the Commission could rely on this representation as a basis to find Final Analysis financially qualified.

As the record in this proceeding demonstrates, serious questions remain regarding Final Analysis' ability to construct, launch and operate the initial two satellites of its satellite system. As a result of the Joint Proposal, the Commission was willing to overlook the issues regarding Final Analysis' financial qualifications. To the extent the Joint Proposal is undermined by Final Analysis' attempt to expand its system capabilities,^{14/} the Commission has little choice but to insure that an underfinanced company does not impair the ability of well financed companies to implement their NVNG MSS systems. Here, a record does not exist for the Commission to make a finding that Final Analysis is financially qualified.

Conclusion.

For the foregoing reasons, Leo One USA requests that the Commission reject the FACS Opposition and grant the Leo One USA Application for Review.

Respectfully submitted,

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Dated: June 1, 1998

^{14/} See Application for Clarification and Review of Final Analysis dated May 1, 1998.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply Comments of Leo One USA Corporation was sent by first-class mail, postage prepaid, this 1st day of June, 1998, to each of the following:

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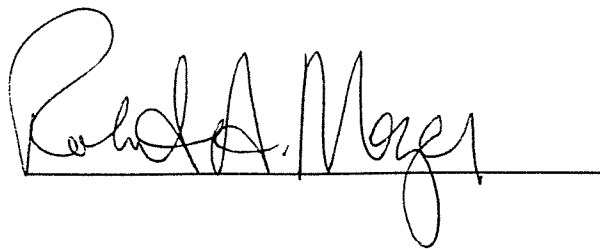
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