

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
FINAL ANALYSIS)
COMMUNICATION SERVICES, INC.)
)
For Authority to Transfer Control of)
NVNG MSS License to New York Satellite)
Industries, L.L.C.)

File No. SAT-T/C-20020125-00010

Received

APR 29 2002

To: Chief, International Bureau

Satellite Policy Branch
International Bureau

REPLY TO COMMENTS

Final Analysis Communication Services, Inc. ("FACS"), by its attorneys, submits this Reply to the Comments filed on April 12, 2002 by Michael Ahan ("Ahan Comments") on the above captioned application for consent to transfer of control ("Application"). The Application seeks consent to the transfer of control over the licensee as a result of a sale of the assets of the licensee's parent company in a bankruptcy proceeding.

Throughout the bankruptcy proceeding, the Judge, Trustee, and participants recognized the necessity of avoiding delay and acted expeditiously so as to preserve the most valuable FAI asset—its interest in the FACS license. Indeed, the sale of FAI's assets in the bankruptcy proceeding occurred less than four months after the Trustee was appointed. The FCC's processes should not now be used to cause delay. The Application can and should be granted expeditiously.

The unsupported Ahan Comments, which purport to "correct certain misstatements of fact," allege that the Application contains "critical omissions" and misrepresentations to the Commission. As demonstrated herein and in the Statement of George N. Grammas, who was

corporate Secretary of FAI and FACS (the “Grammas Statement”) (attached as Exhibit 1), it is the Ahan Comments, not the FACS Application, that intentionally misrepresent facts. The Ahan Comments raise no pertinent issues and no reasons whatsoever why the Application should not be granted.

I. THE AHAN COMMENTS ARE A MERITLESS STRIKE PLEADING

Mr. Ahan is a 50% shareholder of FACS’s former parent company, Final Analysis, Inc. (“FAI”). The other 50% shareholder of FAI, Nader Modanlo, is the controlling party of the proposed transferee, New York Satellite Industries LLC (“NYSI”). As reflected in the Ahan Comments, over the past couple of years Messrs. Ahan and Modanlo, erstwhile shareholders in FAI, became adversaries in extensive corporate litigation. Mr. Ahan also participated actively in the bankruptcy proceedings that ultimately led to the sale of certain FAI assets, including all interest in FACS, to NYSI. The Ahan Comments are but the latest volley by Mr. Ahan who, individually, and with certain other parties, has engaged in numerous legal battles with Mr. Modanlo, FAI, and FACS.

The Ahan Comments do not expressly ask for the denial of the Application and in fact raise only erroneous, moot, and/or irrelevant arguments that taken together constitute an abuse of the Commission’s processes and a waste of the valuable time and resources of the International Bureau. As is explained in a letter from the Transferor Trustee in Bankruptcy, attached hereto as Exhibit 2, Mr. Ahan fully participated in the bankruptcy proceedings.

More importantly, at the bankruptcy hearing for the sale, Mr. Ahan, who had raised objections to the sale process and other aspects of the bankruptcy proceeding, was questioned by the Judge; and, in response to the Judge’s questions, Mr. Ahan testified that he believed the sale should go forward and agreed that a prompt sale was in the best interest of FACS. Thereafter, the group in which Mr. Ahan sought to acquire the assets of FAI did not prevail at the

bankruptcy sale and could not match the bid NYSI made. Clearly, the Ahan Comments filed in this proceeding constitute a nuisance strike pleading, interfere with the orderly conclusion of the FAI bankruptcy proceeding, are procedurally defective,¹ and are untimely filed.² Accordingly, they should be given no consideration, and the Application that effectuates the bankruptcy sale should be expeditiously granted.

II. THERE ARE NO MISREPRESENTATIONS OR MATERIAL OMISSIONS IN THE APPLICATION

A. The Application Correctly Reflects Mr. Modanlo's *De Jure* Control Of FACS

The Ahan Comments characterize as “inaccurate and misleading” the statement in the Application that prior to the time that FAI entered into bankruptcy Mr. Modanlo “held *de jure* control of the licensee.” In making this claim, the Ahan Comments confuse the issue of control of FACS with the control of its parent company, FAI. The Ahan Comments really dispute the notion that Mr. Modanlo held *sole de jure* control of FAI, but the Application makes no such representation. Indeed, the fact that prior to the bankruptcy FAI was owned 50/50 by Messrs. Modanlo and Ahan is not disputed.

Rather, the Application states that Mr. Modanlo had *de jure* control of the licensee, FACS, prior to the initiation of the bankruptcy proceeding. The circumstances pursuant to which Mr. Modanlo gained and held *de jure* control of FACS are set forth in detail in footnote 1 to Exhibit A. Specifically, as stated in the Application, prior to the FAI bankruptcy, 9.56% of

¹ Mr. Ahan has failed to comply with Section 25.154(a)(4) of the Commission's Rules, which provides that comments on an application must be supported by an affidavit from an individual with knowledge about the underlying factual assertions, and which contains specific allegations of fact to demonstrate that grant of the application would be *prima facie* inconsistent with the public interest. 47 C.F.R. § 25.154(a)(4).

² The Application was placed on Public Notice on March 12, 2002 (Report No. SAT-00104) and the comment deadline was April 11, 2002. See 47 C.F.R. §§ 1.4(b) and 25.154(a).

the total shares on a fully diluted basis and 13.98% of the Class A voting common stock, the only class of FACS voting stock, of FACS were owned of record by PO Polyot (“Polyot”) with the right to vote held in an irrevocable proxy granted by Polyot to Mr. Modanlo. The remainder of FACS’s class A voting common stock was held by FAI, which in turn was owned 50/50 by Messrs. Modanlo and Ahan.³ Because Mr. Modanlo held the right to vote 50% of the FAI shares plus all of the Polyot shares of FACS stock, he held the majority of votes and thus clearly had *de jure* control of FACS prior to initiation of the FAI bankruptcy proceeding.

The Ahan Comments focus on the irrelevant issue of control of FAI in a vain effort to characterize the issuance of stock to Polyot, and therefore the acquisition of *de jure* control of FACS by Mr. Modanlo, as somehow inappropriate and ineffective. The argument raised in the Ahan Comments boils down to the assertion that Mr. Modanlo somehow engineered the implementation of various corporate governance procedures in violation of Maryland state corporate law and relied upon such “illegal” procedures to issue FAI stock to Polyot. The Ahan Comments also include as Exhibit A a Preliminary Injunction Order⁴ issued by the Circuit Court for Montgomery County, Maryland, which unwound certain disputed corporate decisions and, among other things, ordered that Polyot should have no voting rights as a shareholder of FACS. Thus, the Ahan Comments paint the picture that in the Application FACS has erroneously represented that Mr. Modanlo held a proxy to vote Polyot shares of FACS stock.

³ The Application also fully discloses that Polyot had initially been issued stock in FAI but that subsequent to the Satellite Division’s September 5, 2000 grant of *pro forma* transfer of control of FACS to Mr. Modanlo, the Polyot shares in FAI were redeemed and that FACS shares were issued to Polyot instead.

⁴ The Preliminary Injunction Order was originally proposed by FACS.

However, the Ahan Comments acknowledge, in footnote 6, that the litigation in which the Preliminary Injunction was issued was later dismissed.⁵ With the dismissal of the action, the proscription in the Preliminary Injunction against the issuance of FACS voting stock to Polyot had no further effect. Thus, the point implied in the Ahan Comments that Mr. Modanlo did not hold a proxy to vote Polyot shares of FACS stock because of the Preliminary Injunction is both wrong and moot.⁶

Similarly, arguments raised in the Ahan Comments that certain corporate decisions taken in connection with the issuance of stock to Polyot were inappropriate or illegal under Maryland law, and that the Polyot stock transaction was invalidated, are wrong and improperly raised in this proceeding. The very same issues have been litigated between Messrs. Ahan and Modanlo in Maryland state courts and have been raised by Mr. Ahan in the FAI bankruptcy proceedings. Mr. Ahan has sought to have the bylaws invalidated through various legal proceedings, either directly or through third party actions that he supported. Although one state court proceeding is ongoing, to date, no court or arbitrator has found any bylaw to be invalid. The Ahan Comments inappropriately seek to have the Commission adjudicate matters of Maryland corporate law.

⁵ See *Final Analysis Communication Services, Inc. v. Nader Modanlo, et al.*, Case no. 213930, Notice of Dismissal (Cir. Ct. for Montgomery County, Md., filed October 20, 2000).

⁶ Further evidence of an inappropriate effort to mislead the Commission is the statement made in the Ahan Comments (on pages 5-6) that “Polyot’s shares in FAI were later **purportedly** redeemed in exchange for voting shares in FACS.” (emphasis added). In fact, on November 30, 2000 (after the litigation in which the Preliminary Injunction was issued was dismissed), the FACS board, including Mr. Ahan, unanimously voted to issue voting shares of FACS to Polyot. See Grammas Statement.

The Ahan Comments cannot, and do not, demonstrate that any misrepresentation or misstatement was made in the instant Application with respect to Mr. Modanlo's *de jure* control of FACS.

B. The August 15, 2000 Application for Consent to *Pro Forma* Transfer of Control of FACS Contained No Misrepresentations or Material Omissions

The Ahan Comments also erroneously assert that FACS's August 15, 2000 application for *pro forma* transfer of control included inaccurate and misleading statements⁷ that Mr. Modanlo would not exercise the Polyot proxy prior to receipt of the Commission's consent to transfer control. Specifically, the Ahan Comments first allege that Mr. Modanlo "apparently" utilized the proxy from Polyot to vote at a FACS shareholder meeting to remove Mr. Ahan from the FACS board⁸ and then repeatedly assert this false and completely conjectural statement as if it were a "fact." As described in the Grammas Statement, Mr. Modanlo did not use the proxy from Polyot in connection with that vote. Any and all assertions and suppositions in the Ahan Comments that Mr. Modanlo improperly utilized the Polyot proxy prior to receiving the Satellite

⁷ The Ahan Comments (on page 6) allege that FACS did not disclose to the Commission that Polyot, the recipient of voting rights in FAI, was a Russian corporation with Russian government ownership. The Commission's letter notifying counsel of grant of FACS's application for *pro forma* transfer of control clearly acknowledges that the transfer of FAI stock was to "PO Polyot, a corporation located in Omsk, Russia." See Letter dated September 5, 2000 from Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, Federal Communications Commission to Randall W. Sifers, Counsel to Final Analysis Communication Services, Inc. Although the application did not describe Polyot as an entity with foreign government ownership, there was no necessity or intent to hide that information. From informal discussions with FCC staff, it was apparent that they were aware that Polyot had foreign government ownership.

⁸ Mr. Ahan was not present at the meeting and the Ahan Comments provide no support whatsoever for the allegations concerning what transpired at the meeting. On page 5 of the Ahan Comments, the statement is made that "Mr. Modanlo then convened a meeting of the FACS shareholders and, **apparently** utilizing the proxy from Polyot, voted to remove Mr. Ahan from the FACS board..." (emphasis added). The Ahan Comments later flatly assert, without any support, "In fact, on the same day that the application was filed, Mr. Modanlo exercised the proxy from Polyot to vote Mr. Ahan off the FACS board and replace him..." That did not happen, as the Grammas Statement at Exhibit 1
(continued...)

Division's September 2000 approval for the *pro forma* change in control and made misrepresentations to the Commission regarding the use of the Polyot proxy are flatly false.⁹

C. Maryland Corporate Litigation Dismissed Prior to Filing of the Application Was Not a Critical Fact Required to be Disclosed

The Ahan Comments state that the initiation of the litigation in Maryland state court challenging the corporate actions taken to effect a change in the FACS board and to issue FACS voting stock to Polyot was a "critical fact" that should have been disclosed in the Application. In light of the fact that the litigation was dismissed long before the Application was filed, as the Ahan Comments fully acknowledge, it strains any notion of relevance to conclude that the litigation was a critical fact that was omitted in the Application.

(...continued)

reflects clearly. It is this sort of unsupported and erroneous pleading, not FACS's application, that misleads the Commission.

⁹ As referenced in the Grammas Statement, as a shareholder and board member, Mr. Ahan was given copies of the corporate minutes from all of the August 15, 2000 meetings. Mr. Ahan also has listened to extensive sworn testimony in various court proceedings about what transpired at the August 15, 2000 meetings. All of these factual accounts consistently show that Mr. Modanlo did not exercise the proxy or otherwise vote the shares held by Polyot on August 15, 2000. Thus, the statements made in the Ahan Comments with respect to such actions were made with actual knowledge that they are untrue.

III. CONCLUSION

For the reasons stated, FACS respectfully requests that the Ahan Comments either be returned as procedurally defective and improperly filed or completely ignored, and that the pending Application be expeditiously granted.

Respectfully submitted,

FINAL ANALYSIS COMMUNICATION SERVICES, INC.

By: 

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Dated: April 22, 2002

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

In the Matter of)	
)	
FINAL ANALYSIS)	
COMMUNICATION SERVICES, INC.)	File No. SAT-T/C-20020125-00010
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For Authority to Transfer Control of)	
NVNG MSS License to New York Satellite)	
Industries, L.L.C.)	

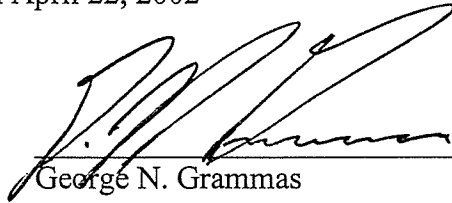
STATEMENT OF GEORGE N. GRAMMAS

During the relevant period of the events discussed below, I was the corporate secretary for Final Analysis, Inc. (“FAI”) and Final Analysis Communication Services, Inc. (“FACS”). I have reviewed the corporate minute books of FAI and FACS and make the following statements to the best of my knowledge and belief based on the corporate minute books and my recollection of the relevant board and shareholder meetings:

1. PO Polyot granted Nader Modanlo a proxy to vote any and all voting shares held by Polyot in FAI dated and effective as of August 15, 2000.
2. Nader Modanlo did not exercise the proxy to vote and did not otherwise vote the shares held by Polyot on August 15, 2000 or anytime prior to FCC grant of approval on September 5, 2000 of the *pro forma* transfer of control of Final Analysis Communication Services, Inc. (File no. SAT-T/C-20000815-00120).
3. Mr. Ahan received copies of the minutes of the August 15, 2000 board of directors and shareholders meetings of FAI and FACS. Those meetings were duly noticed. The minutes show that Mr. Modanlo did not exercise the proxy or otherwise vote the shares held by Polyot in FAI on August 15, 2000.

4. On November 30, 2000, the FACS board, including Mr. Ahan, unanimously voted to authorize the issuance of voting shares of FACS to Polyot, with the understanding that the FAI shares issued to Polyot would be redeemed by FAI.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 22, 2002



George N. Grammas

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April 22, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
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Re: Final Analysis Communication Services, Inc., Application for Consent to Transfer Control from the Estate of Final Analysis, Inc. to New York Satellite Industries, LLC; File No. SAT-T/C-20020125-00010

Dear Madam Secretary:

I am the transferor in the above-referenced application, and I support the expeditious grant of the application. I have been requested by the transferee to respond to the comments filed April 12, 2002, on behalf of Mr. Michael Ahan, opposing the transfer.

As previously disclosed to the FCC on September 4, 2001, a petition for an involuntary Chapter 7 bankruptcy was filed in the United States Bankruptcy Court for the District of Maryland for Final Analysis, Inc. ("FAI"), then the parent corporation of FCC licensee Final Analysis Communication Services, Inc. ("FACS"). On February 7, 2002, the FCC granted approval for the pro forma transfer of control of FACS to me, as Trustee for the Estate of FAI.

I had solicited bids from interested parties and third parties to acquire certain assets of FAI, including the stock that FAI owned of FACS (together, the "FAI Asset"). There were multiple hearings before the Court regarding the availability of information about the FAI asset to third parties. On January 11, 2002, I presented to the Court the bid that I considered to be the best offer for the FAI Asset. Mr. Ahan, in his individual capacity and a corporation in which he has substantial control ("Protolex, LLC") was an active participant in the bid process. Mr. Ahan filed and prosecuted objections to the sale process and submitted a bid, with certain colleagues, under the name of "Star New" to purchase the FAI Asset.

ROSE & ASSOCIATES, LLC
ATTORNEYS AT LAW

Madam Secretary
April 22, 2002
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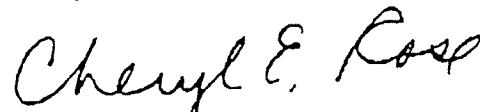
During the hearing to approve the sale of the FAI Asset, the Court heard testimony and legal argument regarding the importance of a timely conclusion of the sale process. Judge Keir, the bankruptcy judge who conducted the hearing on the sale of the FAI Asset, heard the testimony of Mr. Ahan and directly questioned Mr. Ahan regarding his objections to the proposed sale. In response to the Court's questions, Mr. Ahan testified that he believed that the sale should proceed, and he agreed that a prompt resolution of the sale was in the best interest of FACS and FAI's creditors. Indeed, the Court concluded the sale in an expeditious manner in order to preserve the status of the FCC license, which was deemed the most valuable component of the FAI Asset, for the purchaser.

After considering the objections of various parties and hearing legal argument, the Court held an auction in which bidders were presented with a final opportunity to present their highest, best and final bid. The Court conducted a fair and open sale of the FAI asset, and the Court approved the sale of the FAI Asset from the FAI Estate to New York Satellite Industries, LLC ("NYS").

On January 14, 2002 and pursuant to the bid process stated by the Court on January 11, 2002, I executed a Bill of Sale in favor of NYS. However, at present, the Estate has retained control over the FACS stock and the FACS license. The Estate is prepared to execute documentation transferring control to NYS (or its designees) after receiving a request to do so from NYS or its agents, which request is expected to be received after the FCC has issued an order consenting to the transfer of control of the FACS license from the Estate to NYS (or its designee).

In conclusion, I support the application filed by NYS, and I encourage the FCC to grant the prompt approval of the pending application.

Sincerely,



Cheryl E. Rose, Chapter 7 Trustee for the
Estate of Final Analysis, Inc.

CERTIFICATE OF SERVICE

I, Beatriz Viera-Zaloom, hereby certify that a true and correct copy of the foregoing Reply to Comments was delivered by hand or by first-class mail this 22nd day of April 2002, to the individuals listed below:

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Beatriz Viera-Zaloom

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