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April 12, 2002

APR 15 2002

Satellite Policy Branch
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

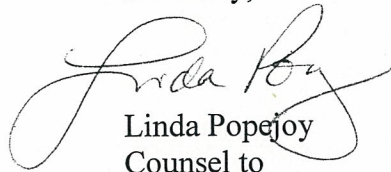
Re: *Final Analysis Communication Services, Inc.'s Application to Transfer Control-SAT-T/C-20020125-0010*

Dear Mr. Caton:

Transmitted herewith, on behalf of Michael Ahan, by his attorneys, are an original and four copies of comments regarding the above-referenced proceeding.

Please contact the undersigned if you have any questions.

Sincerely,



Linda Popejoy
Counsel to
Michael Ahan

cc: Fern Jarmulnek
Mark Young
Kathleen A. Campbell

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

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Directed to: Chief, International Bureau

COMMENTS

Michael Ahan, by his attorneys and pursuant to Section 25.154 of the Federal Communications Commission's ("FCC" or "Commission") rules, 47 C.F.R. § 25.154, respectfully submits these comments in response to the transfer of control application ("Application") filed by Final Analysis Communication Services, Inc. ("FACS" or "licensee") to transfer its non-voice, non-geostationary mobile satellite service ("NVNG MSS") license from Cheryl Rose, Trustee for the Estate of Final Analysis, Inc. ("FAI") to New York Satellite Industries, L.L.C ("NYSI"), a Delaware limited liability company under the control of Nader Modanlo.

I. INTRODUCTION

FACS is a non-common carrier licensee in the NVNG MSS under the call sign S2150.¹ FACS was a 100% wholly owned subsidiary of FAI, a privately held Maryland corporation. Mr. Ahan and Mr. Modanlo each owned fifty percent of the issued and outstanding shares of common stock of FAI. On September 4, 2001, a petition for involuntary Chapter 7 bankruptcy was filed in the United States Bankruptcy Court of the District of Maryland, Case Number 01-21039, to liquidate the assets of FAI. On October 24, 2001, the Bankruptcy Court appointed Cheryl Rose of Rockville, Maryland, as Trustee for the Estate of FAI. This transferred control of FAI to the Trustee and consequently resulted in the involuntary transfer of control of FACS. Pursuant to Section 25.119(d) of the Commission's rules, FACS filed with the Commission an Application for Consent to Transfer Control of FACS from FAI to the Trustee. On January 14, 2002, the Trustee for FAI sold, assigned and transferred the assets and properties of FAI, including FAI's interest in the FACS NVNG MSS license, to NYSI. In March 2002, FACS filed the above referenced Application seeking the Commission's consent to transfer control of the NVNG MSS license from the Trustee to NYSI.

Mr. Ahan seeks to correct certain misstatements of fact made in the Application, as well as to draw to the Commission's attention critical omissions from the Application which render other statements misleading.

¹ See *Final Analysis Communication Services, Inc.* Order and Authorization, 13 FCC Rcd 6618 (1998).

II. MISSTATEMENTS OF FACT IN THE APPLICATION

A. *Nader Modanlo Did Not Have Sole De Jure Control of FAI.*

The Application states that “[p]rior to the time that FAI entered into bankruptcy, Mr. Modanlo held *de jure* control of the licensee.” See Application, Exhibit A, p. 1. This statement is both inaccurate and misleading. Until November 14, 1999, Mr. Modanlo did not have sole *de jure* control of FAI. Mr. Modanlo and Mr. Ahan each owned 50% of the issued shares of FAI, which in turn owned 100% of the voting stock of FACS. Both Mr. Modanlo and Mr. Ahan were officers and board members of both companies. In the case of FAI, Mr. Modanlo and Mr. Ahan were the only board members. Thus, Mr. Modanlo and Mr. Ahan both had negative control² of both companies, and neither of them held sole *de jure* control.³

Beginning in 1999, Mr. Modanlo and George Grammas, corporate counsel and secretary of both FAI and FACS, took a series of actions designed to end the shared negative control of the companies and create positive control of both entities by Mr. Modanlo. On November 14, 1999, certain bylaws (the “Modanlo bylaws”) of FAI and FACS were purportedly adopted by a 3 to 2 vote of the FACS Board, with Mr. Ahan voting against the new Modanlo bylaws. By their terms, the Modanlo bylaws eliminated the negative control of the companies and granted Mr. Modanlo positive *de jure* control and *de facto* control of both entities.⁴ In particular, the

² A fifty-percent shareholder is deemed to have negative control if that shareholder can exercise a veto and thereby block decisions affecting every aspect of the company’s activities.

³ FACS and Mr. Modanlo acknowledged the existence of joint negative control in FACS’s March 29, 2002 Petition for Waiver. In the Petition, at page 8, FACS stated that as of 1999, FACS was experiencing a “decision-making deadlock between the two voting shareholders (each of which at that time held negative control) of its parent company [FAI].”

⁴ The Modanlo bylaws were purportedly adopted by the FACS board of directors. The FACS board had the power to take certain actions on behalf of FAI, because Messrs. Modanlo and Ahan had granted the FACS board a limited proxy to act on their behalf with respect to

Modanlo bylaws provided that, in the event of a deadlock among the shareholders, the tie could be broken by the vote of the Chairman of the Board. Mr. Modanlo was Chairman of both companies. Thus, in the case of FAI, Mr. Modanlo could exercise two votes in a tie situation, one as a shareholder and one as the Chairman. In the case of FACS, Mr. Modanlo was given the power to break a shareholder deadlock as if he were a holder of FACS voting stock, which he was not. In addition, the Modanlo bylaws provided that only 50% of the shareholders were required to constitute a quorum at a shareholders meeting, meaning that, in the case of FAI, Mr. Modanlo alone could constitute a quorum and could vote on any matter presented at the meeting. The Modanlo bylaws further provided that a majority of the board would only constitute a quorum at a board meeting if the chairman (Mr. Modanlo) was present.

Not only was the procedure by which the Modanlo bylaws were purportedly adopted defective, two different law firms have rendered opinions that the Modanlo bylaws themselves were in violation of Maryland law. Under Maryland law, any departure from the ordinary scheme of one vote per share must be contained in a corporation's charter, not its bylaws. A change in a corporate charter may be effectuated by a vote of two-thirds of all shares entitled to cast a vote in the matter. In the case of FAI, although the FACS board had a limited proxy to vote the common stock of FAI, the proxy did not extend to any matter requiring more than a majority vote. In the case of FACS, the FACS board had no power under Maryland law to effectuate a change in the corporation's charter; only the shareholders (FAI) had that capacity. Similarly, Maryland law also requires a change in the corporation's charter for any deviation

certain matters. The proxy did not, however, give the FACS board the power to take any action on behalf of FAI that would require more than a majority vote of FAI's shareholders. As discussed below, a change in the company's bylaws required more than a majority vote. Thus, the FACS board did not, in fact, have the power to adopt the new Modanlo bylaws for FAI. Moreover, neither FAI nor FACS sought FCC approval before the Modanlo bylaws, which granted Mr. Modanlo positive *de jure* and *de facto* control, were adopted.

from the statutory definition of a “quorum” as applied to shareholder meetings. Although the Modanlo bylaws adopted on November 14, 1999 deviated from the definition of “quorum” under Maryland law by only requiring 50% rather than a majority, this change was not effectuated through an amendment to the two corporations’ charters, and was thus ineffective under Maryland law.

Subsequent to the adoption of the illegal Modanlo bylaws, on August 15, 2000, Mr. Modanlo convened a meeting of the FAI shareholders in which only he participated. Mr. Modanlo – who, with only fifty-percent voting rights, constituted a quorum under the Modanlo bylaws – then proceeded to elect a new board member to FAI, Karl Olsoni, an employee of FAI who was subordinate to Mr. Modanlo.⁵ FAI then purportedly had three board members, Mr. Modanlo, Mr. Olsoni, and Mr. Ahan. Mr. Modanlo then immediately convened a meeting of the FAI board of directors, in which he and Mr. Olsoni participated. Because the board now purportedly consisted of three members, Mr. Modanlo and Mr. Olsoni constituted a majority of the board and, under the Modanlo bylaws, could pass resolutions if they both agreed. Mr. Modanlo and Mr. Olsoni then voted to grant voting shares of FAI to a Russian organization, PO Polyot (“Polyot”). Apparently, prior to the grant of voting shares to Polyot, Polyot had already executed a written grant of an unlimited voting proxy to Mr. Modanlo permitting Mr. Modanlo to vote any shares of FAI or FACS that were owned by Polyot.

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 and replace him with Mr. Olsoni. Polyot’s shares in FAI were later purportedly redeemed in exchange for

⁵ Mr. Olsoni, the Chief Financial Officer of FAI, reported directly to Mr. Modanlo, the President.

voting shares in FACS. As noted above, Polyot had already granted Mr. Modanlo an irrevocable proxy to vote Polyot's shares in either FAI or FACS. All of the actions taken on August 15, 2000 were a result of the illegal Modanlo bylaws adopted on November 14, 1999, and were thus illegal as well.

B. *The August 15, 2000 Application for Consent to Non-Substantial (Pro Forma) Transfer of Control of FAI Was Inaccurate and Misleading.*

On August 15, 2000, *on the same day* that voting shares of FAI were transferred to Polyot, FAI applied for the Commission's consent to the transfer those shares, and the concurrent transfer of the voting rights back to Mr. Modanlo via an irrevocable proxy. The application, which was approved on a *pro forma* basis without public notice, was inaccurate and misleading in several respects.

First, the application did not disclose the name of the recipient of voting rights in FAI or that the recipient – Polyot – was an entity owned and controlled by the Russian government. Second, the application falsely claimed that the voting rights had not yet been exercised, and would not be exercised until the Commission's consent was transferred. *See also* FCC 312 – Schedule A to the August 15, 2000 Application (in which Mr. Modanlo certifies that “stock will not be delivered and that control will not be transferred until the Commission's consent has been received”). In fact, on the same day that the application was filed, Mr. Modanlo exercised the proxy from Polyot to vote Mr. Ahan off of the FACS board and replace him with Mr. Olsoni.

In addition, the August 15, 2000 application made an oblique reference to the transfer of control of FAI and FACS to Mr. Modanlo via “certain decisional rights held by the chairman of

FAI pursuant to company by-laws.” The application failed to specify the nature of these “decisional rights,” and failed to reveal that the Modanlo bylaws had been illegally adopted nearly a year prior to the application and had no force and effect under Maryland law. The application also falsely states that the “decisional rights” granted to Mr. Modanlo in the Modanlo bylaws had not been exercised, and would not be until the Commission granted its consent to the transfer. As noted above, on the same day that the application was filed, Mr. Modanlo exercised his “decisional rights” under the illegal Modanlo bylaws to elect a new board member to FAI, grant voting rights to Polyot, and replace Mr. Ahan with Mr. Olsoni on the board of FACS.

C. *The Application Neglects to State that a Lawsuit was Commenced Challenging Mr. Modanlo's Actions.*

The Application also omits the critical fact that, following the August 15, 2000 shareholder and board meetings, a lawsuit was commenced challenging Mr. Modanlo's attempt to change the board membership of FACS and the grant of voting stock in FACS to Polyot. After a four-day evidentiary hearing in the Circuit Court for Montgomery County, Maryland, the Court issued a Preliminary Injunction finding that the board remained constituted as it had prior to August 15, 2000 (with Mr. Ahan as a member), and Polyot did not have voting rights in FACS. See Exhibit A, attached hereto (October 4, 2000 Preliminary Injunction Order).⁶

III. CONCLUSION

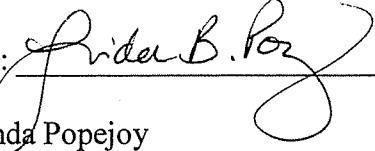
As is evident from the discussion above, FAI/FACS have misrepresented the status of both companies before the Commission in both the August 15, 2000 Pro Forma Application for Transfer of Control and this current Application. As an original owner of FAI, which owned FACS, Mr. Ahan takes this opportunity to correct critical misstatements and omissions made in

⁶ For business reasons unrelated to the merits of the suit, the suit was later dismissed without prejudice and with certain conditions, by the majority of the FACS board of directors.

the two applications regarding the manner and time frame in which Mr. Modanlo obtained control over FACS and FAI.

Respectfully submitted,

MICHAEL AHAN

By: 

Linda Popejoy
Dorsey & Whitney LLP
Suite 300 South
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004
202-824-8831

Counsel to Michael Ahan

Dated: April 12, 2002

Exhibit A

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

FINAL ANALYSIS COMMUNICATON)
SERVICES, INC.,)

Plaintiff)

v.)

NADER MODANLO, et al.,)

Defendants)

AW 01 CV 1330

Civil Case No: 213930

PRELIMINARY INJUNCTION ORDER

Upon consideration of Final Analysis Communication Services. Inc. ("FACS"), Nader Modanlo ("Modanlo"), Robert Moore and Karl E. Olsoni, Jr.'s (together with FACS, the "Movants") Motion for Preliminary Injunction. Petition to Compel Arbitration. and Motion to Stay Litigation, it is hereby

ORDERED, that the request contained in Motion for Preliminary Injunction be and the same hereby is GRANTED, in part, and it is specifically determined as follows:

In the absence of a Preliminary Injunction, there is an immediate risk of substantial and irreparable harm to FACS which will jeopardize its bond financing, and ability to perform its March 2001 launch and as a result, it is hereby

ORDERED, that the governance, control and management structure of the business of FACS, including, but not limited to the Board of Directors and officers be established and maintained as they existed on August 14, 2000; and it is further

ORDERED, that Modanlo shall serve as Chairman and President of FACS; and it is further

ENTERED

OCT 04 2000

Clerk of the Circuit Court
Montgomery County, Md.

ORDERED, that Final Analysis Communications Services, Inc., and anyone acting on its behalf are hereby enjoined from the following, except with the unanimous consent of the FACS Board of Directors as it existed on August 14, 2000:

- a) Representing to any third party that the governance, management structure and control of FACS is other than it was on August 14, 2000;
- b) Operating FACS' business, including daily operations, in any way inconsistent with the governance, management structure and control of FACS as it was on August 14, 2000;
- c) Making withdrawals or transfers of funds from any FACS account except as in the ordinary course of FACS business as it was conducted on or before August 14, 2000.
- d) Conducting any business at meetings of the FACS shareholders that is dependent upon the challenged bylaw Sections 2.6 and 2.7 regarding quorum and the chairman's tie-breaking authority; and
- e) Executing contracts in excess of \$10,000 without unanimous Board consent; and it is further

ORDERED, that Polyot shall have no voting rights as a shareholder of Final Analysis Communications Services, Inc., and it is further

ORDERED, that Modanlo shall cause to be issued to the Board and this Court monthly reports outlining:

- a) Current financial state of the Company;
- b) Contracts in negotiation;
- c) Plans for and/or status of deployment of the System;

ENTERED

OCT 04 2000

Clerk of the Circuit Court
Montgomery County, Md

- d) Plans for and/or status of the next launch;
- e) Any engineering problems encountered and how they are being addressed and
- f) Plans for and/or status of bond financing; and it is further

ORDERED. that the Board of Directors, by majority vote, shall appoint or elect an executive vice president who, among his other duties, shall cosign all Final Analysis Communications Services, Inc. checks and all transfers of money in excess of Ten Thousand Dollars (\$10,000.00). along with Mr. Modanlo; and it is further

ORDERED. that pending the Board of Director's appointment or election of the executive vice president described herein. the Chairman is authorized to pay those pending bills that have accrued in the ordinary course of FACS' business. which payments shall be subject to review by Ronald West as set forth below; and it is further

ORDERED. that Ronald West, Esquire, C.P.A., is hereby appointed Special Master for the purpose of investigating and reporting to the Court concerning the following:

- a) Past extraordinary disbursements of assets from "FACS";
- b) Whether "FACS" operations are presently being conducted in the normal course of business, including whether receipts are being properly accounted for and whether expenditures are being made and obligations incurred only in the normal course of business;
- c) The current financial condition of "FACS", including its prospects for continued operation as a going concern; and
- d) Any other matters found relevant to his investigation during the course of the performance of his duties; and it is further

ENTERED

OCT 04 2000

Clerk of the Circuit Court
Montgomery County, Md. 86

ORDERED. that Mr. West shall serve in the capacity of Special Master pending further order of this Court; and it is further

ORDERED. that the Special Master shall have the powers which he considers reasonably necessary to accomplish the above-referenced objectives, including:

- i) reviewing the books and records of "FACS";
- ii) reviewing pleadings and documents;
- iii) meeting with parties and counsel; and
- iv) directing the issuance of subpoenas to compel production of documents or other tangible things; and it is further

ORDERED. that the Special Master shall report to the Court at such times and in such manner as the Court may direct; and it is further

ORDERED. that the Special Master shall be paid at the hourly rate of \$300 and the Special Master's fee shall be paid by "FACS"; and it is further

ORDERED. that all parties shall cooperate fully with the Special Master; and it is further

ORDERED. that Mr. West shall report to Court within three weeks of the signing of this Order as to which financial records and books shall be made available to the Board, and under what circumstances; and it is further

ORDERED. that the Movants' request to compel arbitration be, and the same hereby is granted as to the Shareholders Agreement and the Engineering Contract and this matter is referred to the pending arbitration at the American Arbitration Association as provided for in the arbitration provision of the Shareholders Agreement and the Engineering Contract; and it is further

ENTERED

OCT 04 2000

Clerk of the Circuit Court
Montgomery County, Md. 36

ORDERED, that the Parties shall engage in mediation commencing as soon as practicable using the services of _____; and it is further

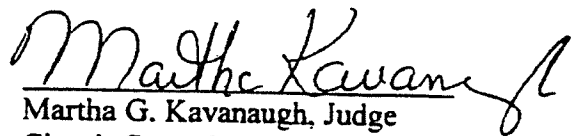
ORDERED, that the Movants' request to stay this matter, including further discovery, following the Court's determination on the Movants' requests for a Preliminary Injunction, be and the same hereby is granted, and that this matter is hereby STAYED until December 1, 2000, or pending further order of this Court; and it is further

ORDERED, that Parties will be in contempt of Court should the terms of this Preliminary Injunction be violated in any respect; and it is further

ORDERED, that this Order shall remain in effect until the Scheduling Conference on December 1, 2000 or by further Order of the Court; and it is further

ORDERED, that Movants shall not be required to post a bond.

SO ORDERED this 20 day of Sept, 2000.


Martha G. Kavanaugh, Judge
Circuit Court for Montgomery County, Maryland

ENTERED

OCT 04 2000

Clerk of the Circuit Court
Montgomery County, Md. 66

CERTIFICATE OF SERVICE


I, Lee Fuller, hereby certify that a true and correct copy of the foregoing Comments, filed on behalf of Michael Ahan, were hand delivered this 12th day of April 2002, to the individuals on the following list:

William F. Caton, Acting Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Fern Jarmulnek, Deputy Chief
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Lee F. Fuller