

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
)
For Authority to Transfer Control of)
NVNG MSS License to New York Satellite)
Industries, L.L.C.)

ORDER AND AUTHORIZATION

Adopted: August 16, 2002

Released: August 19, 2002

By the Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. By this Order, we grant Final Analysis Communication Services, Inc. ("Final Analysis") and Cheryl Rose, Trustee for the estate of Final Analysis, Inc. ("FAI") authority to transfer control of the license held by Final Analysis to New York Satellite Industries, L.L.C. ("NYSI").

II. BACKGROUND

2. FAI, a privately held for-profit Maryland corporation, is the parent company of Final Analysis, which holds a license to launch and operate a non-voice, non-geostationary satellite orbit satellite system in low Earth orbit.

1 Final Analysis Communication Services, Inc. application for transfer of control, File No. SAT-T/C 20020125-00010 at Exhibit A, p.1 (filed January 25, 2002) (the "Application").

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

3 See Final Analysis Communications Services, Inc's Application to Construct, Launch and Operate the FACS Low-Earth Orbit Satellite System, dated November 16, 1994, Exhibits VI and VIII (the application includes amendments filed February 24, 1995, February 23, 1996, August 19, 1996, and October 30, 1997.) Final Analysis had only one class of common (voting) stock. Id.

4 Id.

forma transfer of control application to transfer less than ten percent of the stock of FAI from its equal shareholders, Nader Modanlo and Michael Ahan, to PO Polyot, a corporation located in Omsk, Russia.⁵

3. On September 14, 2001, a petition for involuntary Chapter 7 bankruptcy was filed against FAI in the United States Bankruptcy Court for the District of Maryland to liquidate the assets of FAI.⁶ According to Final Analysis, equal ownership of FAI by Nader Modanlo and Michael Ahan was problematic, leading to extensive corporate litigation and eventually to FAI's bankruptcy.⁷ After the bankruptcy court granted the petition, allowing a bankruptcy case to proceed, it appointed Cheryl Rose as Trustee for the company. Shortly thereafter, the Commission approved transfer of control of the Final Analysis license from FAI to the Trustee.⁸

4. On January 14, 2002, the Trustee sold the assets and properties of FAI, including all the stock of Final Analysis, to NYSI, a Delaware limited liability corporation that is held 100% by Nader Modanlo.⁹ Pursuant to the terms of the sale, the Trustee is to retain control over the license until such time as the Commission grants an order approving the transfer.¹⁰ Final Analysis filed the instant Application seeking approval to transfer control of its license to NYSI on January 25, 2002.

III. DISCUSSION

A. Public Interest Analysis

5. In considering this Application, the Commission must determine whether the proposed transfer of control will serve the public interest, as set forth in Section 310(d) of the Communications Act of 1934, as amended (the "Communications Act").¹¹ That legal standard requires that we weigh the potential public interest harms against the potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest, convenience, and necessity.¹² Our analysis considers

⁵ *Final Analysis Communication Services, Inc. Application for Consent to Non-substantial (pro forma) Transfer of Control*, File No. SAT-T/C-20000815-00120 (filed August 15, 2000; granted September 5, 2000) ("FAI Pro Forma Transfer"). Nader Modanlo and Michael Ahan retained an equal portion of the remaining stock of FAI.

⁶ United States Bankruptcy Court for the District of Maryland, Case number 01-21039. *See* Application at 2.

⁷ *See* Final Analysis Communication Services, Inc. Reply to Comments (filed April 22, 2002). *See also* Michael Ahan Comments (filed April 12, 2002) (the "Ahan Comments").

⁸ Final Analysis Communication Services, Inc. Application for Consent to Involuntary Transfer of Control, File No. SAT-T/C-20011105-00094 (filed November 5, 2002; granted February 7, 2002).

⁹ *See* Application at 2. *See also* letter to William F. Caton, Acting Secretary, Federal Communications Commission from Aileen A. Pisciotta, Counsel to Final Analysis Communication Services, Inc., dated February 20, 2002, submitting Supplemental Statement to Exhibit A. Nader Modanlo holds 100% of the equity and voting stock of NYSI.

¹⁰ Application at Exhibit A, p.2, attached Exhibit (Bill of Sale) and attached Exhibit (Federal Communications Commission Addendum to Trustee's Bill of Sale).

¹¹ 47 U.S.C. § 310(d).

¹² The applicant bears the burden of proving that its request is in the public interest. The Commission evaluates whether an applicant has met its burden of proof that the transfer will advance the public interest by considering four factors: "(1) whether the transaction would result in a violation of the Communications Act or any other applicable statutory provision; (2) whether the transaction would result in a violation of Commission rules; (3) whether the transaction would substantially frustrate or impair the Commission's implementation or enforcement of

(continued...)

the likely competitive effects of the proposed transfer of control and whether such transfer raises significant anti-competitive issues.¹³ The Communications Act also requires that we consider the transfer application as if the proposed transferee were applying for the license under Section 308 of the Act.¹⁴

1. Competitive Effects

6. To evaluate the competitive effects of the proposed transaction, the Commission identifies the relevant product and geographic markets. For satellite service providers, the Commission has determined that the relevant product markets include domestic and international telecommunications markets.¹⁵ In such cases, we consider whether the proposed transaction will lessen or enhance competition in the provision of communications services in, to or from the United States.¹⁶

7. In evaluating the public interest benefits of this transaction, we review the parties' claims of public interest benefits based on a continuity of management. The Application asserts that Nader Modanlo, who is the controlling party of NYSI, was also a shareholder of FAI, the parent of Final Analysis, and managed the licensee before and during FAI's bankruptcy. Because the proposed transaction will change the licensee's ownership entity but will not introduce new individuals to the ownership of the licensee, we find that the proposed transaction is not likely to cause competitive harm in either domestic or international telecommunications services.

2. Qualifications

8. We must determine whether the applicants are qualified to hold and transfer licenses under Section 310(d) of the Communications Act. The Commission generally does not re-evaluate the qualifications of transferors.¹⁷ As part of our public interest analysis, however, we must determine whether the proposed transferee is qualified to hold a Commission license. No party has challenged the legal, financial or other basic qualifications of NYSI, the transferee. As noted in the Application, the transferee is a newly-formed entity whose controlling individual owner was previously subject to public interest review for his indirect ownership of Final Analysis. Based on our own review of NYSI's qualifications, and having found no reason to further examine those qualifications, we conclude that NYSI is legally and otherwise qualified to hold the Final Analysis license.

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the Communications Act, or would interfere with the objectives of the Communications Act or other statutes; and (4) whether the transaction promises to yield affirmative public interest benefits." *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, Memorandum Opinion and Order, 15 FCC Rcd 9816, 9820-21 ¶ 9 (2000) (citations omitted).

¹³ See e.g., *AT&T Corp. et al., Applications For Grant of Section 214 Authority*, 14 FCC Rcd 19140, 19148 (1999).

¹⁴ 47 U.S.C. § 310(d).

¹⁵ See *Application of WorldCom, Inc., and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18039 ¶ 23, 18070 ¶ 78 (1998).

¹⁶ *Lockheed Martin Corporation et al.*, Order and Authorization, 15 FCC Rcd. 22910, 22916 (2000).

¹⁷ *Voicestream Wireless Corporation, et al, Applications for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 16 FCC Rcd. 9779, 9790 (2001).

B. Comments on Application

9. Michael Ahan, who co-owned FAI with Nader Modanlo before the company entered bankruptcy, filed comments in this proceeding.¹⁸ We note, however, that the Ahan Comments are not a petition to deny the Application. Mr. Ahan instead asserts that he seeks to correct certain misstatements and omissions regarding the manner and time frame in which Modanlo obtained control over Final Analysis and FAI.¹⁹ As discussed below, our review of the Ahan Comments finds that they raise no issues that would prevent us from acting on the instant transfer.

10. Parties challenging an application by means of a petition to deny must satisfy a two-step test established in 47 U.S.C. § 309(d)(1) & (2), as detailed in *Serafyn v. F.C.C.*²⁰ In the first step, the protesting party must submit a petition containing specific allegations of fact, supported by affidavits of persons with personal knowledge of the allegations, that are sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest.²¹ Second, the petition must present a substantial and material question of fact. If the Commission concludes that both steps of the test have been met, it designates the application for a hearing.

11. As a procedural matter, because the Ahan Comments do not satisfy the requirements of a petition to deny, we need not analyze them as such. Beyond this assessment of their procedural posture, however, we note that the substance of the information raised in the Ahan Comments concerns corporate governance and interpretation of state corporate law. The Ahan Comments assert that it is inaccurate and misleading for Final Analysis to assert in this Application that Modanlo held *de jure* control of the FAI when it entered into bankruptcy.²² In response, Final Analysis states that the Application correctly indicates that Modanlo had *de jure* control of Final Analysis, the licensee, prior to the bankruptcy of FAI, its parent company.²³

12. The Ahan Comments do not question the dispositive issue for Commission purposes, which is that Modanlo gained control of the Final Analysis license in 2000 and maintained that control until FAI entered bankruptcy. Final Analysis applied for, and was granted Commission authority to transfer control of its license to Modanlo at that time.²⁴ The Ahan Comments argue that the corporate procedure by which Modanlo gained control of the Final Analysis license was defective or violated state law.²⁵ These matters of corporate law were addressed in the Bankruptcy Court with the benefit of an evidentiary hearing.²⁶

¹⁸ *See supra*. n. 7.

¹⁹ Ahan Comments at p. 2.

²⁰ *See* 47 U.S.C. § 309(d)(1)-(2); *see also Serafyn v. F.C.C.*, 149 F.3d 1213, 1216 (D.C. Cir. 1998).

²¹ *Id.*

²² Ahan Comments at p. 3.

²³ Final Analysis Communications Services, Inc. Reply to Comments at p. 3 (filed April 22, 2002) (“Final Analysis Reply”).

²⁴ *See* n. 5, *supra*. To the extent that Ahan questions that application, his comments are untimely.

²⁵ For instance, the Ahan Comments allege that FAI adopted new bylaws in violation of Maryland law, and that subsequent actions taken in reliance of those bylaws were illegal. *See* Ahan Comments at 3-6.

²⁶ Final Analysis Reply at p. 2. *See also* Trustee’s letter in support of the Application, Exhibit 2 to Final Analysis Reply, at p. 2.

Commission precedent directs that we should defer to a judicial determination where a court of competent jurisdiction has ruled with respect to legal and factual conclusions regarding contractual disputes.²⁷ Thus, consistent with the Commission's precedent, we will defer to the Bankruptcy Court with respect to the allegations made in the Ahan Comments and will not review them here.

IV. CONCLUSION

13. We find that the proposed transfer is not likely to cause competitive harm, and that the proposed transferee is qualified to hold the license. We therefore find that approval of the proposed transaction will serve the public interest, convenience and necessity, by resolving ownership of the licensee's parent corporation, thereby allowing the licensee to move forward with applications pending before the Commission.

V. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that the Final Analysis Communication Services, Inc. Application for Transfer of Control of NVNG MSS License to New York Satellite Industries, L.L.C., File No. SAT-T/C-20020125-00010, IS GRANTED.

15. IT IS FURTHER ORDERED that the transaction approved herein shall be completed within 60 days from the date of this *Order and Authorization*. Within 30 days of consummation, New York Satellite Industries, L.L.C. shall notify the Commission in writing of the date of consummation and the file numbers of the applications involved in the transaction. 47 C.F.R. § 25.119(f).

16. This *Order and Authorization* is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Fern Jarmulnek
Deputy Chief
Satellite Division
International Bureau

²⁷ *Applications of TV Active, LLC et al. for Consent to the Assignment of Licenses*, 16 FCC Rcd. 18938, 18944 (Wireless Bureau, 2001); *Regents of the University System of Georgia v. Carroll*, 338 U.S. 586, 602 (1950).