

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of the Commission’s Space Station Licensing Rules and Policies)	IB Docket No. 02-34
)	
2000 Biennial Regulatory Review— Streamlining and Other Revisions of Part 25 of the Commission’s Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations)	IB Docket No. 00-248

Directed to: The Commission

COMMENTS

Final Analysis Communication Services, Inc. (FACS), licensee of a Non-Voice, Non-Geostationary Mobile Satellite Service (“NVNG MSS” or “Little LEO”) system, by its attorneys respectfully submits these Comments in the above-referenced proceedings, in response to the Notice of Proposed Rulemaking and First Report and Order.¹

FACS commends the Commission on its initiative to examine ways to streamline the satellite licensing process. Reduction in the time required to resolve mutual exclusivity among applicants and to award licenses is critical to the achievement of a vital and competitive U.S. satellite marketplace. FACS also shares the Commission’s view that the Commission’s satellite licensing process needs to be expedited to facilitate participation of U.S. satellite systems in the

¹ *Satellite License Procedures*, Notice of Proposed Rulemaking and First Report and Order, 67 Fed. Reg. 12498 (2002).

global market and to help ensure that the United States will continue to meet its International Telecommunication Union (“ITU”) treaty obligations.

FACS also commends the Commission’s decision to extend the licensing term of satellites and earth stations to 15 years. Such a decision appropriately recognizes the increase in the useful lives of many spacecraft as well as the extended time required to earn returns on the significant investments required to deploy satellite systems.

FACS is not convinced, however, that the Commission’s proposed “first-come, first served” alternative to processing rounds is the best or even an effective means of licensing new satellite systems and services in the public interest. FACS is concerned about the chilling impact the adoption of such a process would have on innovative and competitive satellite proposals, particularly from new privately-financed companies and operators.

Specifically, FACS is concerned about what impact adoption by the United States of such a process would have outside this country. It is possible and even likely that other countries would also adopt such a process following the U.S. lead, and that companies, possibly state controlled, would be quick to be the first to file for all available spectrum, thereby foreclosing U.S. operators from being able to secure access to spectrum in other countries. In the international environment, a first-come, first-served strategy could work significantly to the detriment of U.S. interests.

FACS is also concerned that, with the continued consolidation and mergers in the satellite industry, all new satellite systems and spectrum would be controlled by a few large incumbent U.S. companies and non-U.S. operators. Moreover, the first-come first-served process does not seem to accommodate or promote multiple systems and operators and would seem to allow one

entity to secure all available spectrum for itself where multiple systems might otherwise be licensed, technically and economically feasible, and pro-competitive.

Indeed, a first-come, first-served approach creates an incentive for large and entrenched satellite operators to file speculative warehousing applications that will be difficult, if not impossible, to control despite the protections outlined in the Commission's proposal. Such a result is not in the public interest. Artificial controls that operate to prevent entry in new bands from existing and well-funded satellite companies may preclude research and development in the interest of the industry and the public. On the other hand, warehousing by entrenched satellite operators may stifle new entry and innovation. Stricter enforcement of construction milestones is not necessarily an effective antidote as it is typically two to three years before it can be known whether a critical milestone can be met. By that time, the opportunities and investment available to other applicants may have passed.

The Commission historically has relied upon construction milestones to ensure that satellite licensees actually implement their authorized systems and do not warehouse spectrum that might be used by other licensees. Although strict milestone enforcement can help the Commission identify the licensees that are not and will not be implementing their systems, warehousing concerns with respect to any particular satellite service should be assessed in light of the particular characteristics of that service and its spectrum assignments and requirements.²

Moreover, although Section 25.161 of the Commission's rules specifies that an extension of milestone dates will be granted only in the case of unforeseen circumstances, in fact the Commission typically has approved extensions in the form of a grant of a waiver under Section

² See, e.g., *GE American Communications, Inc., Request for Extension of Time to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, 16 FCC Rcd 11038 (2001); *NetSat28 Company, L.L.C. For Authority to Construct, Launch, and Operate a Ka-Band Communications Satellite in the Fixed-Satellite Service in Orbital Location 95° W.L.*, 16 FCC Rcd 11025 (2001).

1.3 of the Rules, for “good cause shown” that such a waiver would be in the public interest. In light of the increasing diversity and uniqueness of individual satellite proposals, the public interest demands that the Commission consider whether good cause exists for granting a waiver, and whether the policies the milestone requirements were designed to foster will not be undermined by grant of the requested waiver, rather than terminating a particular satellite station authorization if its construction milestones are not met. This is especially true where a licensee has met its initial milestones, has made a significant investment in the construction of its system, and has demonstrated its intent to proceed.

FACS notes that the Commission has separately proposed elimination of the financial qualifications requirements for satellite operators and stricter enforcement of construction milestones. FACS supports the elimination of the financial qualification requirement and agrees that it provides only a preliminary and often an imprecise assessment of whether an applicant will be able to proceed with construction, launch, and operation. The issue is often the principal focus of extensive administrative litigation. Thus, elimination of the issue would conserve Commission and applicant resources with no adverse effect on the licensing process.

FACS believes that the Commission can and should replace reliance on the financial qualifications requirement with an emphasis on compliance with construction milestones, as long as the Commission’s “bright-line” test for extension of such milestones does not preclude a showing that the public interest would be served by such an extension. In this respect, it is even more critical not to adopt a first-come, first-served approach to licensing to avoid arbitrary and draconian enforcement of construction milestones that damage the industry and disserve the public interest.

For the stated reasons, FACS urges the Commission to not adopt a “first-come, first-served” approach to satellite licensing and instead to further consider the alternative of facilitated resolution of processing round negotiations among mutually exclusive applicants.

Respectfully submitted,

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