

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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APR 24 1995

In re the Applications of

FINAL ANALYSIS, INC.

For Authority to Establish a Low-Earth Orbit
Satellite, to Modify a Fixed Ground Station, and
to Establish 9,240 Remote Mobile Terminals in the
Experimental Radio Services

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

File Nos. 4682-EX-PL-95
4680-EX-PL-95
4683-EX-PL-95

To: Chief Engineer

**REPLY AND MOTION TO STRIKE OF
STARSYS GLOBAL POSITIONING, INC.**

STARSYS Global Positioning, Inc. ("STARSYS"), by its attorneys, hereby replies to the Opposition that was filed by Final Analysis, Inc. ("Final Analysis") in the above-captioned proceeding. Although STARSYS responds in full to the merits of Final Analysis's pleading, it nevertheless moves to strike the Opposition as abusive of the Commission's processes, and for Final Analysis's intemperate personal attacks on opposing counsel and altogether unprofessional demeanor.

There is an old bromide that admonishes lawyers as follows: "If you don't have the facts, argue the law; if you don't have the law, argue the facts; if you have neither the facts nor the law, stand up, take off your shoe, and pound it loudly on the table." Metaphorically speaking, because Final Analysis's socks have some very big holes in them, Final Analysis would have been well advised to keep its shoe on its foot.

With that said, STARSYS will resist the temptation to respond in kind. Instead, it will treat Final Analysis's unprompted personal attacks and other

exhibitions of ad hominem vitriol as if they were substantive assertions directed at the merits of STARSYS's pleading. Not surprisingly, once the smoke Final Analysis is blowing is dispersed, it is plain to see that there is neither heat nor light to its protestations.

I. Final Analysis, For All Of Its Bombast, Has Failed To Respond To Any Of The Challenges, Legal Or Technical, Made Against Its "Experimental" Program.

In its Comments, STARSYS sought the denial of Final Analysis's three-pronged experimental program on three separate legal grounds: (1) the program is inconsistent with the Commission's 1992 Policy Statement on Experimental Applications^{1/} in that it represents a commercial endeavor whose alleged research/experimental cover does not coincide with the scope of the proposed project, and that it would interfere with STARSYS's NVNG MSS system; (2) Final Analysis's application is fatally deficient on the justification and planned use of more than 9,000 user terminals spread across North America; and (3) the proposed modification of the Logan, Utah "master ground station" would violate the conditions of the most recent license found in the Commission's files. These are almost exclusively legal and policy arguments, and, notwithstanding Final Analysis's curious and repeated objections, are well within the competence of STARSYS's legal counsel.^{2/}

^{1/} 7 FCC Rcd 4586 (1992) ("Policy Statement").

^{2/} While Final Analysis excoriates STARSYS for making uncertificated technical assertions, STARSYS notes, with no small irony, that Final Analysis includes a technical assertion to support such equivocal and nonresponsive statements as

(continued...)

Hiding under a mantle of invective and colorful rhetoric, Final Analysis has distorted each of STARSYS's responsible allegations to the point of nonrecognition. Unfortunately, in almost every instance, Final Analysis has failed to respond to the argument STARSYS advanced. For example, in response to STARSYS's assertion that the proposed Final Analysis satellite would interfere with STARSYS's NVNG MSS system (which is to operate on the same 50 kHz channel at 400.595-400.645 MHz that Final Analysis now seeks to use), Final Analysis asserts that Commission rules require it to cease operations to avoid interfering with licensed users. Final Analysis Opposition at 8. STARSYS is well aware of what the rules require; its argument, however, was that the proposal of Final Analysis to operate directly on top of a frequency applied for by STARSYS violates the guideline from the Policy Statement that specifies that the grant of an experimental application "should be consistent with [the Commission's] general policy to protect against

^{2/}(...continued)

"despite the unfounded assertions of STARSYS' lawyers, [Final Analysis's claimed experimental objectives] cannot be accomplished with no RTs, or one RT, or 100 RTs." Final Analysis Opposition at 7 (footnote omitted). One does not need a technical certificate to say nothing. In no way does Final Analysis's retort respond to STARSYS's assertion that Final Analysis has completely failed to justify its request for 9,240 remote terminals (RTs); indeed, it practically makes the case for the Commission to embrace STARSYS's suggestion that Final Analysis be allowed a maximum of 100 RTs. See STARSYS Comments at 8. Furthermore, even if the RTs to be established by Final Analysis were to cost it \$150 a unit (a very optimistic figure given the small size of the production run) 9,240 terminals would cost \$1.39 million -- a hefty price to pay to accommodate alleged statistical distributions based on a map. See Final Analysis Opposition at 8.

harmful interference to licensed stations."^{3/} Not only does Final Analysis fail to respond to this assertion, it essentially admits that the co-channel link would cause harmful interference to STARSYS. See Final Analysis Opposition at 8.^{4/}

Most disturbing is the degree to which Final Analysis obfuscates STARSYS's core assertion -- i.e., that the experimental program as a whole betrays an undeniably commercial objective. While Final Analysis recites STARSYS's concern (Final Analysis Opposition at 5), nowhere does it deny the charge. To be sure, it states (albeit in an unverified statement made by counsel) that "it does not have a customer for its proposed experimental services." Id. at 9. Yet, Final Analysis never actually responds to the assertion of STARSYS that the objective is commercial and, as such, violative of the Policy Statement.

In filing its Comments in the first place, STARSYS read between the lines of the three applications that make up the Final Analysis "experimental"

^{3/} Policy Statement, 7 FCC Rcd at 4586, quoted in STARSYS Comments at 5. STARSYS expects to be licensed shortly for NVNG MSS operation in the 400.595-400.645 MHz band. STARSYS notes that Final Analysis recently amended its NVNG MSS application to remove the frequency conflict with STARSYS.

^{4/} As for STARSYS's citation of a concern regarding orbital congestion of nongeostationary satellites at specific altitudes that was expressed in NVNG MSS comments filed by Motorola Satellite Communications, Inc. ("Motorola"), Final Analysis has overstated the case here as well. STARSYS noted the concern expressed by Motorola, and suggested that until the issue is addressed, it would make good policy sense not to authorize experimental satellite space stations that may exacerbate the problem should one be found. See STARSYS Comments at 6. There was no expression of "fear" by STARSYS that a collision with Final Analysis's satellite was imminent. See Final Analysis Opposition at 6 & n.5.

program, factored in its ongoing concerns about the abuse of Experimental Radio Services applications by prospective NVNG MSS providers, and concluded that Final Analysis had not demonstrated its compliance with the admonition in the Policy Statement against commercialization. All Final Analysis's response has done is blur the extant lines further, and engender new questions of character and veracity. The Commission cannot find Final Analysis's experimental program consistent with the Policy Statement on the basis of the current record.^{5/}

Having failed with its attempt at obfuscation on the commercial-objective charge, Final Analysis tries the steamroller approach with respect to STARSYS's observation that by specifying a launch date for its proposed satellite that is just five months after the initial application was filed, Final Analysis has raised the specter that it has engaged or is engaging now in the premature construction of its proposed satellite. See STARSYS Comments at 4. Final Analysis's sole response is to admonish STARSYS as follows:

^{5/} There is another matter that must be responded to in connection with this point. Contrary to Final Analysis's belief, STARSYS's assertion that the Commission should require Final Analysis to prove that its experimental program is not an attempt to get "an undeserved and impermissible leg up on its NVNG MSS competitors" was not some kind of a sign that "STARSYS is afraid" that Final Analysis might get an advantage over it. See Final Analysis Opposition at 8 (citing STARSYS Comments at 5), 9. STARSYS's statement was made in connection with its argument that Final Analysis, despite the lip service claim of adherence to the Policy Statement that it made in its application, had proposed an unabashedly commercial system. STARSYS, in fact, does not view Final Analysis or any of the other putative new entrants in the second NVNG MSS processing round as possessing the present or even near-term ability to pose a competitive threat to STARSYS.

STARSYS should remember that FAI and its subsidiary Final Analysis Communication Services, Inc. are in the business of designing, constructing, and launching satellites, If STARSYS wishes to know how these matters can be handled on an expedited basis, it should consider hiring Final Analysis to design and implement its project. Otherwise, it should simply stand aside.

Final Analysis Opposition at 9-10.

Where is the response? Is this an admission that the proposed satellite is, indeed, under construction without any waiver or other color of authority?

STARSYS notes that there has been no backing off of the August 1995 launch date.

Even if the Final Analysis application were granted today, it strains credulity for Final Analysis to assert its satellite can go from the drawing board to the launch pad in a mere four months.^{6/} Clearly, the Commission should commence an investigation into whether Final Analysis or its NVNG MSS applicant subsidiary have unlawfully commenced construction of the proposed experimental satellite, and if so, what impact such activities have on the company's character qualifications.

Finally, STARSYS is completely nonplussed by the response Final Analysis makes to STARSYS's argument that the proposed "master ground station" would violate the conditions of the underlying license. See Final Analysis Opposition

^{6/} In this respect, Final Analysis's boasts are belied by its own application. There, a more contrite Final Analysis stated that "[i]n order to launch its satellite by August, Final Analysis must commence work on the design and manufacturing of the satellite immediately." Final Analysis Application, Exhibit at 4 (emphasis added). This was on March 6. Since the launch date has not been slipped, and if Final Analysis's call for expedition is truthful, the only inference one can reasonably draw nearly two months later is that Final Analysis has commenced design and manufacturing work in advance of authorization.

at 10. Making some very serious allegations about STARSYS's conduct, Final Analysis claims that the license STARSYS retrieved from the Commission's files and attached to its Comments is "a draft which was never issued and never went into effect[,]" and that the valid license went into effect on November 11, 1994, and remains in effect. Id.

Again, and in a manner that is only made more conspicuous by the magnitude of the pejorative rhetoric it employs, Final Analysis has both misstated the facts and failed to respond to the key assertion. STARSYS's principal argument concerned the special condition in the license for Experimental Fixed Station KE2XGU that states:

This authorization is issued for the express purpose of conducting experimental operations described in the related application and required by NASA CENTER FOR SPACE POWER Contract No. LETTER 10-10-94 & U.S. AIR FORCE - PHILLIPS LABORATORY Contract No. LETTER 10-11-94. The use of this radio station in any other manner or for any other purpose will constitute a violation of the privileges herein authorized. Except as subsequently authorized by the Commission, this radio station shall not be operated after the expiration date of the contract designated in the related application and enumerated above.

STARSYS Comments at 8-9 (quoting Final Analysis, Inc., License KE2XGU at 2). STARSYS noted that there was nothing in the record to show that Final Analysis had secured the necessary contractual permission to use Station KE2XGU in the manner requested, and it noted that Final Analysis had not sought a waiver or other relaxation of the special conditions on its license. Id. at 9. STARSYS also pointed out that despite the fact that Final Analysis stated in its response to Question 7 on the FCC Form 442 modification application that the modification is to be used to fulfill the requirement of a government contract with an agency of the United States

Government, Exhibit 1 to Final Analysis's experimental program contains no mention whatsoever of a government contract to operate at 153-157.5 MHz. It concluded that Final Analysis had misstated the case as to Government requirements for its proposed modified "master ground station" facility. Id. Lastly, STARSYS noted that the license it retrieved from the Commission's -- i.e., the license for Call Sign KE2XGU, issued to Final Analysis and effective December 28, 1994, that bears the same file number that is in Final Analysis's modification application -- bears an expiration date of March 31, 1995. Id. at 8, 9 & Attachment.

Not only does Final Analysis ignore the substantive allegations made by STARSYS, its attack on STARSYS's reputation and character -- an attack which is based exclusively on STARSYS's failure to rely on a license that Final Analysis claims went into effect on November 11, 1994 and still remains in effect -- is both disingenuous and ultimately moot.^{7/} The license for Call Sign KE2XGU bearing an effective date of November 11, 1994 (a copy of which is attached hereto) contains exactly the same special condition as quoted above. By ignoring STARSYS's argument in such an outlandish way -- not to mention its disregard of STARSYS's

^{7/} Final Analysis has provided no substantiation whatsoever for its contention that the license STARSYS retrieved from the Commission and attached to its Comments was a "draft" that was never issued and never went into effect. Inasmuch as the license STARSYS filed with its Comments was more recent than the license pointed to by Final Analysis, the correct inference is exactly the opposite of the one advanced by Final Analysis.

identification of the inconsistency in its Form 442 application -- Final Analysis has left unanswered the key question raised by STARSYS.^{8/}

In sum, Final Analysis has failed to respond to any of the serious issues that STARSYS thoughtfully raised regarding the proposed "experimental" program. To the contrary, Final Analysis's response begs myriad additional questions as to its basic qualifications to hold a license in any service, and the Commission should expeditiously initiate appropriate hearing proceedings to ascertain those qualifications.

II. The Commission Should Strike Final Analysis's Opposition From The Record As Abusive Of The Commission's Processes.

Final Analysis has filed a pleading that is undeniably beyond the bounds of legitimate advocacy. Its Opposition is laced with intemperate and unprompted ad hominem attacks not only on STARSYS but on its attorneys (see, e.g., Final Analysis Opposition at 7, 8); it casts disparaging, unsubstantiated and altogether unprofessional aspersions about the bona fides of the STARSYS NVNG MSS system and the rationality of its motives and behavior (see, e.g., id. at 9, 10); it displays a flipness and braggadocio that is inappropriate for any pleading before the Commission, (see,

^{8/} STARSYS's argument (see Comments at 9-10) that the high power of the proposed ground transmitter would obviously interfere with existing users in the bands, and thereby prejudice the prospects for future, more reasonable experiments, was apparently too sophisticated for Final Analysis's comprehension. The remedy is not cessation of operations upon the incidence of interference (see Final Analysis Opposition at 8). At that point, the damage feared by STARSYS would have been done. Instead, the solution is the development by Final Analysis of a more restrained and temperate experimental approach.

e.g., id. at 9, 9-10); and it makes wholly erroneous and irrelevant claims that have nothing to do with the application under consideration (see id. at 5 n.3).

These actions are bad enough. When they are considered in conjunction with the fact, as STARSYS has demonstrated dispassionately above, that Final Analysis has resorted to such woeful tactics in an effort to avoid joining the issues STARSYS raised in its Comments, they can only be considered abusive of the Commission's processes. For these reasons, STARSYS calls upon the Commission to send Final Analysis the message that such amateurish displays are not welcome from attorneys who claim to be qualified to practice before the Commission, and to strike Final Analysis's Opposition from the record of this proceeding.

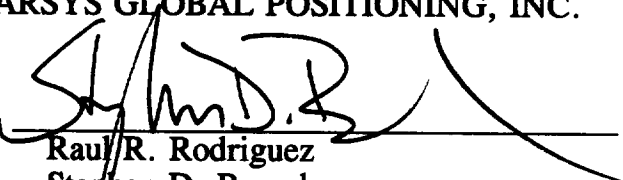
CONCLUSION

On the basis of the foregoing discussion and STARSYS's original Comments, STARSYS urges the Commission to deny Final Analysis's above-captioned experimental applications, and to strike its Opposition from the record.

Respectfully submitted,

STARSYS GLOBAL POSITIONING, INC.

By:


Raul/R. Rodriguez
Stephen D. Baruch

Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006
(202) 429-8970

April 21, 1995

Its Attorneys

CERTIFICATE OF SERVICE

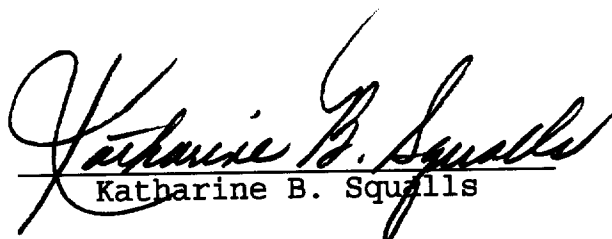
I, Katharine B. Squalls, do hereby certify that a copy of the foregoing "Reply and Motion to Strike of STARSYS Global Positioning, Inc." was mailed by United States first-class postage prepaid this 21st day of April 1995, to the following:

*H. Franklin Wright
Office of Engineering and Technology
Federal Communications Commission
2025 M Street, N.W.
Room 7322
Washington, D.C. 20554

*Scott B. Harris
Office of Bureau Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 830
Washington, DC 20025

*Kristi L. Kendall, Esq.
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 517
Washington, DC 20025

Ronald J. Jarvis, Esq.
Catalano & Jarvis, P.C.
1101 30th Street, N.W.
Suite 300
Washington, DC 20007


Katharine B. Squalls

*By Hand Delivery

ATTACHMENT

7500 GREENWAY CENTER, SUITE 1240, GREENBELT, MD 20770

United States of America
FEDERAL COMMUNICATIONS COMMISSION
EXPERIMENTAL
RADIO STATION CONSTRUCTION PERMIT
AND LICENSE

APR 12 2000

EXPERIMENTAL

(Nature of Service)

KE2XGU

(Call Sign)

XC FX

(Class of Station)

4097-EX-PL-94

(File Number)

NAME

FINAL ANALYSIS INC.

LOGAN, (CACHE) UT - NL 41-38-15; WL 111-48-49

(Location of Station)

Subject to the provisions of the Communications Act of 1934, subsequent acts, and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions and requirements set forth in this license, the licensee hereof is hereby authorized to use and operate the radio transmitting facilities hereinafter described for radio communications.

Frequency MHz	Emission Designator	Authorized Power Watts	Tolerance (+/-)
141.77500	25K0F1D	200W (ERP)	0.005%
149.70000	100K1D	200W (ERP)	0.005%
149.30000	100K1D	200W (ERP)	0.005%

Operation: In accordance with Sec. 5.202(b), (i) & (j) of the Commission's Rules.

Special Conditions:

See Attached Page 2

This authorization effective November 11, 1994 and
will expire 3:00 A.M. EST November 1, 1996

FEDERAL
COMMUNICATIONS
COMMISSION



Special Conditions:

- (1) This authorization is issued for the express purpose of conducting experimental operations described in the related application and required by NASA CENTER FOR SPACE POWER Contract No. LETTER 10-10-94, U.S. AIR FORCE - PHILLIPS LABORATORY Contract No. LETTER 10-11-94 & NASA SPACE COMMUNICATIONS TECHNOLOGY CTR Contract No. LETTER 10-18-94. The use of this radio station in any other manner or for any other purpose will constitute a violation of the privileges herein authorized. Except as subsequently authorized by the Commission, this radio station shall not be operated after the expiration date of the contract designated in the related application and enumerated above.
- (2) The station identification requirements of section 3.152 of the Commission's Rules are waived.
- (3) Licensee is required to file a PROGRESS REPORT every 3 months from the date of grant. This progress report shall be filed with FCC, Frequency Liaison Branch, Room 7326, Washington, D.C. 20554.
- (4) The frequencies 141.775 and 399.8375 MHz shall be limited to controlling and monitoring health of satellite and telemetering data from Phillips Lab experiment. These frequencies are not to be used for mobile satellite service experimentation.