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September 8, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Via Hand Delivery

Mr. Peter Cowhey
Chief, International Bureau
Federal Communications Commission
Room No. 858
2000 M Street, N.W.
Washington, D.C. 20554

Re: IB Docket No. 96-220 -- NVNG MSS Rulemaking

Dear Mr. Cowhey:

Orbital Communications Corporation ("ORBCOMM") wants to take this opportunity to respond briefly to one issue raised in the August 28, 1997 Letter from Aileen Pisciotta and Peter Batacan on behalf of Final Analysis Communications Services, Inc. ("Final Analysis") concerning resolution of the current rulemaking for the Non-Voice, Non-Geostationary Mobile Satellite Service ("NVNG MSS" or "Little LEO"). ORBCOMM disagrees with Final Analysis' claim, made for the first time in the August 28 Letter, that it would require access to all of the 137-138 MHz band not assigned to ORBCOMM. Final Analysis has provided absolutely no support for its new demand for some 720 kHz of spectrum in this band.

As ORBCOMM has argued previously, its relatively modest needs for more downlink spectrum to support an additional twelve satellites can be accommodated without foreclosing another "large" Little LEO system from being licensed in the 137-138 MHz band. Indeed, ORBCOMM has presented frequency plans to accomplish this task.[1/] Under ORBCOMM's proposed frequency plan, some 600 kHz of usable downlink spectrum in the 137-138 MHz band would be available for a new NVNG system (including both exclusive spectrum and spectrum shared with NOAA), an amount more than sufficient to support a new entrant.

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1/ See, e.g., Letter from Stephen L. Goodman to Harold Ng dated August 13, 1997.

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Conspicuously missing from Final Analysis' August 28 Letter is any substantive support for their claim that they would need access to all of the 720 kHz, and hence no justification for their position that ORBCOMM's request for an additional 70 kHz of spectrum would be granted only if and when Final Analysis has transitioned to alternative spectrum.[2/] Final Analysis failed to provide any channelization scheme or similar analyses that would demonstrate a legitimate requirement for access to all of that spectrum. ORBCOMM believes that a viable, competitive system can be deployed with substantially less than the 720 kHz of downlink spectrum in the 137-138 MHz band Final Analysis now asserts it needs. Assuming Final Analysis intends to design a system to operate in the 137-138 MHz band consistent with its previous proposal (a near real time service with a constellation of 24 or 36 satellites), Final Analysis would need eight to ten 25 kHz service downlinks plus a 50 kHz feeder downlink in the 137-138 MHz band. Even if Final Analysis required double the number of service downlinks and feeder downlinks to minimize any capacity losses due to sharing with the NOAA satellites, it could still deploy such a system in the 600 kHz available under ORBCOMM's proposal.[3/]

ORBCOMM thus urges the Commission to ignore Final Analysis' belated attempt to preclude ORBCOMM from obtaining any additional spectrum in this second processing round in the guise of Final Analysis' concession to use the 137 MHz band under certain conditions. Presumably Final Analysis is merely following the strategy of Leo One -- take an absolute position, don't provide any engineering support for that position, and then claim that you will not be satisfied with anything less.[4/] ORBCOMM does not believe that the Commission should be bullied by such tactics.

As ORBCOMM has explained previously, it would ill-serve the public interest to preclude ORBCOMM from obtaining the "net" 30 kHz of new downlink spectrum to support an additional twelve satellites in light of the myriad public benefits that such system

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[2/] Final Analysis is being hypocritical, insofar as it is guilty of the same conduct for which it criticized Leo One in its August 28 Letter. See August 28 Letter at pp. 9-10.

[3/] This analysis is overly conservative, insofar as it does not take into account the fact that Final Analysis is also demanding access to all of the non-DMSP spectrum in the 401 MHz band for additional service downlinks.

[4/] For example, Leo One has now asserted a "cliff effect" of denying it access to a non-DMSP channel in the 401 MHz band. Leo One has not, however, quantified in the record the predicted number or duration of any outages that might occur when a Leo One satellite was within the specified angular separation of multiple DMSP satellites communicating with earth stations such that neither of the DMSP sub-bands would be available for Leo One's use. Although it is not possible to calculate the precise number or interval of such outages without knowing the frequency plan or constellation of the DMSP and Leo One satellites, ORBCOMM believes such occurrences will be extremely rare and of very short duration.

enhancements will bring. Moreover, such exclusion from this processing round is unnecessary, insofar as granting ORBCOMM's request does not preclude competitive entry by another "large" system in the 137-138 MHz band.[5] In contrast, granting ORBCOMM's request would be pro-competitive, both because it would not limit entry and because it would allow ORBCOMM to compete more effectively against the various terrestrial and satellite alternatives to ORBCOMM's Little LEO services. For all of these reasons, ORBCOMM urges the Commission to grant ORBCOMM its request for a very modest amount of downlink spectrum in the 137-138 MHz band expeditiously. As the record makes clear, such a decision will well serve the public interest.

Sincerely,

Stephen L. Goodman
Counsel for ORBCOMM

cc: Chairman Hundt
Commissioner Quello
Commissioner Ness
Commissioner Chong
William Kennard
Regina Keeney
Thomas Tycz
Cecily Holiday
Fern Jarmulnek
Ruth Milkman
Cassandra Thomas
Daniel Connors
Harold Ng
Alex Roytblat
Parties of Record

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[5] Excluding ORBCOMM is also unnecessary to eliminate mutual exclusivity, in light of the recent industry developments. Moreover, to the extent the Commission is simply interested in eliminating mutual exclusivity, it could have done so merely by applying its current NVNG financial standard strictly with respect to the new second round applicants, none of whom meet that test. See e.g., Mission Broadcasting Corporation v. FCC, 113 F.3d 254 (D.C. Cir. 1997)(upholding Commission's use of financial qualifications standards to dismiss broadcast applicants). Final Analysis, Leo One and E-SAT all fail that test as properly interpreted and applied. See, ORBCOMM Comments on the Application of Final Analysis, February 24, 1995, at pp. 2-4; ORBCOMM Comments on the Application of Leo One, November 16, 1994, at pp. 5-9; ORBCOMM Comments on the Application of E-SAT, February 24, 1995, at pp. 2-3.