

Before the  
**NATIONAL TELECOMMUNICATIONS AND  
INFORMATION ADMINISTRATION**  
Washington, DC 20230

In the Matter of )  
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Request for Comment on )  
Improvements to the U.S. Preparation ) Docket No. 031016259-3259-01  
Process for World Radiocommunication )  
Conferences )  
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**COMMENTS OF NEW YORK SATELLITE INDUSTRIES, LLC AND FINAL  
ANALYSIS COMMUNICATION SERVICES, INC.**

New York Satellite Industries, LLC (“NYS”) and Final Analysis Communication Services, Inc. (“FACS”) hereby comment on the National Telecommunications and Information Administration’s (“NTIA”) October 23, 2003 request in the above-captioned proceeding.<sup>1</sup> NYS is the parent company of FACS, which holds a Federal Communications Commission (“FCC” or the “Commission”) license to operate a non-voice, non-geostationary mobile satellite service low Earth orbit (“Little LEO”) system.<sup>2</sup> FACS has participated in U.S. preparation for World Radiocommunication Conferences (“WRCs”) since before the WRC-97 and had several representatives on the delegation to the most recent such conference, WRC-03.

In view of the increasing complexity and importance of the preparatory process and the conferences themselves, the Commission and NTIA have worked well together and with the

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<sup>1</sup> *Request for Comment on Improvements to the U.S. Preparation Process for World Radiocommunication Conferences*, 68 Fed. Reg. 60646 (Oct. 23, 2003) (Notice, Request for Comments) (“Request for Comment”).

<sup>2</sup> *See Final Analysis Communication Services, Inc.; For Authorization to Construct, Launch and Operate a Non-Voice, Non-Geostationary Mobile Satellite System in the 148-150.05 MHz, 400.15-401 MHz, and 137-138 MHz bands*, Order and Authorization, 13 FCC Rcd 6618 (1998), *aff’d*, 16 FCC Rcd 21453 (2001).

public to advance U.S. interests at the International Telecommunication Union (“ITU”). NTIA, in conjunction with the FCC, the U.S. Department of State, and the other pertinent federal agencies (collectively the “U.S.G.”), deftly managed a large number of agenda items at WRC-03, to unprecedented success, often in the face of broad multinational resistance. In particular, the U.S.G. team should be applauded for its preparation and achievement at the recent WRC-03 and encouraged to advance the public interest by swiftly implementing all of the WRC-03 allocations.<sup>3</sup>

## **I. MUCH OF THE CRITICISM OF THE FCC AND NTIA IS UNINFORMED OR OUTDATED**

Some observers have been overly critical of FCC and NTIA preparation for WRC conferences. The U.S. General Accounting Office’s (“GAO”) September 2002 report argued that the FCC and NTIA process was inadequate, hampered by prolonged negotiations over key issues, and detached from any coordinated national spectrum policy.<sup>4</sup> The GAO Report also raised concerns that federal users’ interests were not adequately protected during WRC preparation. GAO claimed that the current process did not effectively promote the interests of the United States and suggested significant changes.<sup>5</sup> Accordingly, the GAO Report recommended increased coordination between NTIA and the FCC leading to a national spectrum

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<sup>3</sup> The FCC recently implemented some, but not all, of the WRC-03 decisions. *See Amendment of Parts 2, 25, and 87 of the Commission’s Rules to Implement Decisions from World Radiocommunication Conferences Concerning Frequency Bands Between 28 MHz and 36 GHz and to Otherwise Update Rules in this Frequency Range; Amendment of Parts 2 and 25 of the Commission’s Rules to Allocate Spectrum for Government and Non-Government Use in the Radionavigation-Satellite Service*, FCC 03-269 (rel. Nov. 4, 2003), attached as [Decisions from the World Radiocommunications Conference](#).

<sup>4</sup> *See* U.S. General Accounting Office, *Telecommunications: Better Coordination and Enhanced Accountability Needed to Improve Spectrum Management*, GAO-02-906, at 3 (Sept. 2002) (“GAO Report”), available at <http://www.gao.gov>.

<sup>5</sup> GAO Report at 34.

policy, and for the FCC, NTIA, and the State Department to review WRC preparatory activities following WRC-03.<sup>6</sup>

As noted below, NYS and FACS benefited from recent coordination between NTIA and other agencies, particularly regarding WRC-03 activities. Moreover, the Government already has improved its spectrum policy and streamlined the process, and further improvements are close at hand. On May 29, 2003, President Bush issued his Spectrum Policy Initiative.<sup>7</sup> In furtherance of this initiative, NTIA recently announced a series of public meetings “designed to gather information from the private sector and state and local governments about better ways to manage the nation’s airwaves.”<sup>8</sup> These hearings will help NTIA to refine spectrum policy for the twenty-first century. Shortly after the GAO’s Report, on November 1, 2002, the FCC released its Spectrum Policy Task Force Report designed to aid “the Commission in identifying and evaluating changes in spectrum policy that will increase the public benefits derived from the use of radio spectrum.”<sup>9</sup>

Demonstrating their commitment to the national and public interest, both NTIA and the FCC agreed that there was room for improvement and pledged to find ways to work more closely on spectrum policy, and to review the adequacy of their preparation.<sup>10</sup> This Request for

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<sup>6</sup> *Id.*

<sup>7</sup> See President George W. Bush, *Presidential Memo on Spectrum Policy* (June 5, 2003), available at <http://www.whitehouse.gov/news/releases/2003/06/20030605-4.html>.

<sup>8</sup> Press Release, National Telecommunications & Information Administration, *Commerce Department Invites Scientists, Experts and Public to Provide Input on Improving Management of Airwaves* (Nov. 18, 2003), available at [http://www.ntia.doc.gov/ntiahome/press/2003/specinit\\_11182003.htm](http://www.ntia.doc.gov/ntiahome/press/2003/specinit_11182003.htm).

<sup>9</sup> *Spectrum Policy Task Force Report*, ET Docket No. 02-135, at 1 (Nov. 1, 2002).

<sup>10</sup> See, e.g., *id.* at 67- 68.

Comment evidences NTIA's desire to improve its already significant spectrum management efforts.

The GAO Report questioned whether NTIA adequately protects federal users' interests during the WRC preparation. NYS and FACS can attest that NTIA was extremely diligent in ensuring that the proposed 1.4 GHz Little LEO feeder-link allocation would be compatible with incumbent federal uses. Indeed, it took many years of careful study and discussion to convince NTIA of the compatibility of Little LEO use of the 1.4 GHz band. NYS commends NTIA's objectivity in reviewing the data, including both information from federal users and studies from other countries' Administrations. NYS appreciates NTIA's assistance following WRC-03 in working with other U.S. agencies to identify their use or interest in 1.4 GHz and adjacent bands in addition to foreign use of these bands. NYS and FACS look forward to working with NTIA to complete analysis of the few remaining systems so as to demonstrate that Little LEOs use of the 1.4 GHz band is compatible with federal use. Such coordination will ensure that spectrum is assigned for these services thereby providing crucial additional spectrum and enabling these low-cost data services to be deployed in the near term.

In view of NYS' and FACS' experience, and the successes of other U.S. companies, NTIA should not lose sight of the commendable work the U.S.G. has done up to this point under challenging circumstances. Recent Conferences are more complex than ever: WRC-03 alone had nearly fifty distinct agenda items. This unprecedented workload added substantial, complex and time-consuming WRC preparation to the existing responsibilities of NTIA and the FCC. FACS itself witnessed NTIA and the Commission working in tandem, and in cooperation with other federal agencies, both before and during WRC-03 to advance U.S. interests. Since WRC-03, FACS has benefited from NTIA's coordination on its behalf with federal user agencies.

## **II. FACS WORKED SUCCESSFULLY WITH NTIA AND THE FCC TO OBTAIN A FEEDER LINK ALLOCATION AT WRC-03**

FACS' recent experiences with the WRC preparation process and the WRC-03 itself have been both positive and instructive. The primary goal of the Little LEO industry in WRC-03 was to obtain an international allocation for MSS feeder links in the 1390-1392 MHz (uplink) and 1430-1432 MHz (downlink) bands. FACS worked closely with the federal government prior to the WRC-97 and WRC-2000. In January 2002, the Commission allocated the 1390-1392 MHz and 1430-1432 MHz bands as Little LEO feeder links, adding footnote US368 to the Table of Frequency Allocations.<sup>11</sup>

FACS, the FCC, NTIA and the State Department worked closely together in preparation for WRC-03. This cooperation was productive in four ways. First, NTIA and the FCC took the lead role in the complex, but fruitful, coordination between Little LEOs and incumbent federal users of the 1.4 GHz band. The studies performed pursuant to such coordination demonstrated that Little LEOs could use the spectrum without interfering with federal users. Second, with NTIA's approval, the feeder link issue was added to the WRC-03 Agenda and the merits of a global allocation were fully vetted before becoming ultimately embodied as an official U.S. position. Third, the government assisted the Little LEO industry in submitting studies to the Inter-American Telecommunication Commission ("CITEL") prior to WRC-03, thereby gaining support for the allocation from some members of Region 2. Fourth, the U.S.G. was instrumental in building support at WRC-03 for the feeder link issue with other key delegations to the conference.

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<sup>11</sup> See *Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands*, Report and Order and Memorandum Opinion and Order, 17 FCC Rcd 368, 392-93 (2002) ("2002 Reallocation Order"); 47 C.F.R. § 2.106 footnote US368.

The active and coordinated engagement of the U.S.G. was instrumental and successful. As FACS had consistently advocated for years, WRC-03 allocated spectrum for Little LEO feeder links in the 1390-1392 MHz and 1430-1432 MHz bands.<sup>12</sup> While the ultimate Resolution incorporating the allocation, Resolution 745, was a negotiated compromise, FACS is fully aware that it would have been impossible to obtain without coordinated U.S.G. support. Without U.S.G. advocacy during the Conference, including by senior officials from the FCC and State Department, there would have been insufficient support at WRC-03 for the Little LEO industry and the U.S. position. In short, FACS' experience was a success story—not just for the Little LEO industry, but also for interagency collaboration, and private-public sector cooperation.

### **III. THE COMMISSION AND NTIA SHOULD FOCUS ON PROMPT IMPLEMENTATION OF ALLOCATIONS MADE AT WRCs**

As the Request for Comment recognized, the United States has had some difficulties implementing WRC decisions domestically.<sup>13</sup> Fortunately, U.S. domestic implementation of Little LEO feeder links remains consistent with international decision making. But, in any case FCC implementation of WRC allocations must focus on the U.S. public interest in deploying new services. History suggests that new and successful services authorized first in the United States ultimately will be accepted abroad.

Since WRC-03, NTIA and the FCC have strongly supported FACS' efforts to address the few outstanding study questions raised by Resolution 745. Recently, NTIA met with FACS to discuss coordination with federal users in and adjacent to the 1.4 GHz band. In a fine example of

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<sup>12</sup> NYS also recognizes the crucial role played by WRC Ambassador Janice Obuchowski in achieving a global feeder link allocation. While NYS agrees that the Ambassador appointment process should be changed to provide the WRC Ambassador and head of the U.S. Delegation as much time as possible to study the issues, and chair bilateral discussions with key partners and regional blocks, Ambassador Obuchowski performed admirably under challenging circumstances.

<sup>13</sup> Request for Comment, 68 Fed. Reg. at 60648.

its inter-agency federal spectrum management role, NTIA assisted with introductions and presentations to other interested agencies to narrow and finalize sharing techniques with incumbent co-frequency or adjacent federal users. Likewise, the FCC and FACS have discussed implementation of the new allocation and Resolution 745. All agencies have been prompt and helpful in providing assistance and guidance.

Such success stories suggest that the current WRC preparation and interagency process needs only a “tune-up,” not a major overhaul. In particular, NYS opposes the suggestion that the Commission promulgate a notice and comment rulemaking for each WRC agenda item.<sup>14</sup> This is certain to delay, not hasten, implementation of WRC allocations, with negative consequences for U.S. competitiveness. Instead, the Commission should only initiate rulemakings where an insufficient record exists or the allocation impacts an unknown number of potential providers in an undeveloped industry. In the case of the Little LEO feeder link spectrum in particular, the Commission already issued a Notice of Proposed Rulemaking (“NPRM”) and a Report and Order.<sup>15</sup> Another rulemaking would be lengthy, duplicative and costly, and would only delay the provision of new services to the public.<sup>16</sup>

A more streamlined process, where appropriate, would better serve the public interest. Once an international allocation is added, applicants should be free to seek an assignment of the allocated frequencies. This will allow the Commission to review individual applications to

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<sup>14</sup> *See id.* (9(c)).

<sup>15</sup> *See Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Band*, Notice of Proposed Rulemaking, 15 FCC Rcd 22657 (2000).

<sup>16</sup> Further such delays for Little LEO spectrum allocations would be particularly unfortunate. The FCC already has found that such low-cost data services serve the public interest. Little LEO providers will deliver a number of services, not the least of which is homeland security, both in the U.S. and to our allies against terrorism.

ensure that the public interest is served by the licensee's use of the spectrum as allocated. It will also allow for a parallel, more rapid implementation of WRC decisions. This will reduce the burden on both the Commission and private industry.

#### **IV. CONCLUSION**

In NYS/FACS's experience, encompassing three WRCs, the FCC and NTIA work well together and have done a commendable job preparing for and performing at WRCs. Moreover, recently NTIA in particular has provided a helpful and pro-active forum for coordination between commercial and government spectrum users. Although further streamlining undoubtedly is possible, the suggestions of some critics for more procedure actually would complicate the process. If the diagnosis is an infestation of red tape, a rulemaking is not the cure. For Little LEOs, the FCC should capitalize on the success it, NTIA, and the State Department achieved at WRC-03 by ensuring rapid service provision within the domestic licensing environment. More generally, the NTIA and FCC should eschew any post-WRC rulemakings whenever a more streamlined proceeding is available, and focus agency resources on their respective, and already effective, coordination and licensing responsibilities.

