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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

EXPEDITED ACTION REQUESTED

In the Matter of	)	
	)	
Aeronautical Radio Inc.	)	File No. 0130-EX-RR-2004,
	)	Call Sign WC2XPE
Experimental License Renewal	)	

To: Chief, Office of Engineering and Technology

INFORMAL OBJECTION OF THE BOEING COMPANY

The Boeing Company ("Boeing"),¹ pursuant to Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, hereby files this Informal Objection² to the renewal application filed by Aeronautical Radio Inc. ("ARINC") to conduct a "limited market study" with 120 aircraft through November 1, 2006 using its proposed SKYLinkSM Ku-band Aeronautical Mobile-Satellite Service ("AMSS") system.³ As discussed herein, the Commission should renew ARINC's limited market study authority for no more than 15 aircraft.

The provision of AMSS service on a commercial basis to up to 120 aircraft cannot accurately be characterized as a "limited market study" and circumvents the Commission's

¹ Boeing is the licensee of the Connexion by BoeingSM system, the first system licensed by the Commission to provide broadband AMSS services on a commercial basis in the Ku-band.

² This pleading is styled as an informal objection in accordance with the Commission's preference for informal procedures in the context of experimental licensing. See Amendment of Part 5 of the Commission's Rules to Require Electronic Filing of Applications for Experimental Radio Licenses and Authorizations, *Order*, FCC 03-207 (rel. Aug. 20, 2003) at ¶ 6.

³ See Aeronautical Radio Inc., Application for Experimental Radio Station Authorization Renewal, File No. 0130-EX-RR-2004, Call Sign WC2XPE (filed Sept. 13, 2004) ("*ARINC Renewal Application*").

normal licensing requirements for commencing commercial operations. Accordingly, the Commission should reduce the number of SKYLinkSM terminals that ARINC may operate and charge for service to the 15 permitted under ARINC's prior experimental license. Further, if the Commission is unable to act on the renewal application prior to expiration of the existing experimental license, it should temporarily authorize ARINC to conduct its limited market study with no more than 15 aircraft until a final determination is made because ARINC has confirmed that it does not operate the SKYLinkSM service with more than 15 aircraft.

I. A "LIMITED MARKET STUDY" TO 120 AIRCRAFT CIRCUMVENTS THE COMMISSION'S LICENSING RULES

As discussed at length in an informal objection to grant of an experimental modification that expanded ARINC's limited market study authority from 15 to 120 aircraft and to allowed it to charge customers for SKYLinkSM service,⁴ the provision of AMSS service to such a large number of aircraft under experimental authority circumvents the Commission's traditional licensing process (which, in ARINC's case, remains ongoing due to unresolved technical questions regarding the SKYLinkSM system) by enabling ARINC to operate commercially and serve a significant percentage of the business aircraft market without a regular license. Rather than repeat its arguments in this proceeding, Boeing has attached its prior informal objection to this submission and hereby incorporates it by reference.⁵

Although the Commission granted ARINC a two-week extension of time to respond to Boeing's informal objection in the experimental modification proceeding, and the pleading cycle

⁴ See Informal Objection of The Boeing Company, File No. 0029-EX-ML-2004, Call Sign WC2XPE (filed Sept. 13, 2004).

⁵ See Attachment 1.

in this experimental renewal proceeding is essentially the same,⁶ Boeing believes that the Commission should be able to render a decision on the substantive issues in one or both of these proceedings by November 1, 2004 – the date on which ARINC’s existing experimental authority expires. If the Commission is unable to act on the renewal application by this date, however, as discussed below the Commission should authorize ARINC to continue its limited market study on a temporary basis with no more than 15 aircraft.

II. ARINC SHOULD BE PERMITTED TO OPERATE WITH NO MORE THAN 15 AIRCRAFT DURING THE PENDENCY OF ITS RENEWAL APPLICATION

Section 1.62(a)(1) of the Rules provides that where a renewal application is filed with respect to an “activity of a continuing nature,” the underlying license shall remain in effect until the Commission makes a final determination with respect to the renewal application.⁷ With respect to activity not of a continuing nature, however, Section 1.62(b) provides that the Commission may in its discretion grant a temporary extension of the license pending a determination with respect to the renewal application.⁸ Because ARINC’s activities are not of a continuing nature, certainly at least with respect to providing service to more than 15 aircraft, if the Commission does not act on ARINC’s renewal application by November 1, 2004, it should exercise its authority under Section 1.62(b) and grant a temporary extension for ARINC to provide service to no more than 15 aircraft during the pendency of the renewal application.

⁶ Boeing believes that the pleadings in this renewal proceeding would be due one day prior to those in the experimental modification proceeding. Boeing would not object to a one-day extension of time for ARINC to respond in this proceeding to make the pleadings due on the same day, thereby facilitating the submission of consolidated responses in both proceedings.

⁷ 47 C.F.R. § 1.62(a)(1).

⁸ 47 C.F.R. § 1.62(b). The requirement that an activity must be of a “continuing nature” to obtain an automatic extension of authority by filing a renewal application was adopted by Congress in Section 9(b) of the Administrative Procedure Act. *See* 5 U.S.C. § 558(c).

There is little guidance in FCC precedent or federal case law on what constitutes “activity of a continuing nature.” However, ARINC’s renewal application confirms that it does not operate the SKYLinkSM system with more than 15 aircraft. In the section of its renewal application entitled “Description of the Limited Market Study,” ARINC expressly states:

The Limited Market Study is apportioned among several different models of aircraft manufactured by at least two different manufacturers. The aircraft include FAA designated “experimental” aircraft and also privately owned aircraft whose owners agreed to take part in the Limited Market Study. Because executive jet aircraft typically fly only two or three days a week, and some may be out of CONUS for extended periods, *ARINC tests its SKYLink service on up to fifteen aircraft.* This permits ARINC to collect data from one to seven simultaneous flights. . . .⁹

As a result, regardless of how the term is defined, ARINC’s experimental operations beyond 15 aircraft cannot be considered “activity of a continuing nature” because such operations do not exist. ARINC’s admission also confirms that there will be no prejudice to ARINC if the Commission temporarily limits the experimental authority to 15 aircraft during the brief period beyond November 1, 2004 that it may need to rule on the ARINC renewal application.

This approach is not only consistent with Section 1.62 and the Administrative Procedure Act, but it is also consistent with other provisions of the experimental licensing rules and the express conditions included in ARINC experimental authorization. For example, Section 5.83(b) of the Rules provides that experimental licenses are “subject to change or cancellation by the Commission at any time without hearing if in its discretion the need for such action arises.”¹⁰ In addition, Special Condition 5 of ARINC’s experimental authorization provides: “ARINC

⁹ *ARINC Renewal Application*, Exh. 1 (Narrative Statement) at 2 (emphasis added).

¹⁰ See 47 C.F.R. § 5.83(b).

acknowledges and accepts that this authorization is for experimental purposes only and there is no vested interest in continuation beyond the term of this license.”¹¹

In sum, ARINC should not be permitted to obtain a *de facto* grant of impermissibly expanded limited market study authority by virtue of filing a renewal application, particularly when the application itself confirms that ARINC is not providing service to more than 15 aircraft and there would be no prejudice if the Commission affords ARINC temporary authority during the pendency of the renewal application to continue operating with up to 15 aircraft.

III. CONCLUSION

For the reasons set forth herein and in Boeing’s prior informal objection, the Commission should permit ARINC to continue its limited market study under experimental authority with no more than 15 aircraft.

Respectfully submitted,

THE BOEING COMPANY

By: Philip L. Malet *for*

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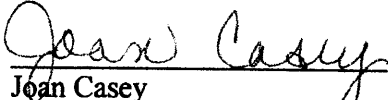
¹¹ See Aeronautical Radio Inc., Experimental Radio Station Authorization, File No. 0029-EX-ML-2004, Call Sign WC2XPE (eff. June 16, 2004) at Special Condition 5.

CERTIFICATE OF SERVICE

I, Joan Casey, hereby certify that a copy of the foregoing Informal Objection of The Boeing Company was served via hand delivery upon the following:

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ATTACHMENT 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

SEP 13 2004

EXPEDITED ACTION REQUESTED

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Aeronautical Radio Inc.) File No. 0029-EX-ML-2004,
) Call Sign WC2XPE
Experimental License Modification)
To Expand Limited Market Study)

To: Chief, Office of Engineering and Technology

INFORMAL OBJECTION OF THE BOEING COMPANY

The Boeing Company ("Boeing"),¹ pursuant to Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, hereby files this Informal Objection² to the license modification granted to Aeronautical Radio Inc. ("ARINC") that significantly expands the experimental operations of the SKYLinkSM system, a proposed Ku-band Aeronautical Mobile-Satellite Service ("AMSS") system.³ Contrary to ARINC's application, the expansion of this experimental authorization from 15 to 120 aircraft and to allow it for the first time to charge customers for SKYLinkSM service is not the type of "limited market study" sanctioned by the Commission's Rules.

¹ Boeing is the licensee of the Connexion by BoeingSM system, the first system licensed by the Commission to provide broadband AMSS services on a commercial basis in the Ku-band.

² This pleading is styled as an informal objection rather than a formal petition for reconsideration pursuant to guidance from the staff and the Commission's stated preference for the use of informal procedures in the context of experimental licensing. See Amendment of Part 5 of the Commission's Rules to Require Electronic Filing of Applications for Experimental Radio Licenses and Authorizations, *Order*, FCC 03-207 (rel. Aug. 20, 2003) at ¶ 6.

³ See Aeronautical Radio Inc., Experimental Radio Station Authorization, File No. 0029-EX-ML-2004, Call Sign WC2XPE (eff. June 16, 2004) ("*ARINC June 2004 Experimental License*"). Grant of the ARINC experimental license modification has not been placed on public notice. See Public Notice, Experimental Actions, Report No. 369 (rel. Aug. 3, 2004) (covering experimental applications granted from 6/1/04 to 7/1/04).

The provision of AMSS service on a commercial basis to up to 120 aircraft cannot accurately be characterized as a “limited market study” and circumvents the Commission’s normal licensing requirements for starting commercial operations. Accordingly, Boeing requests that the Commission immediately reduce the number of SKYLinkSM terminals that ARINC may operate and charge for service to the 15 permitted under ARINC’s prior experimental license.⁴ In addition, given ARINC’s own public announcements regarding the launch of the SKYLinkSM service, ARINC should confirm that it otherwise remains in compliance with its experimental license and the Commission’s Rules. Because this Informal Objection relates to ongoing operations under ARINC’s experimental license, which expires on November 1, 2004 but may be renewed, expedited action is requested.

I. EXPANSION OF A “LIMITED MARKET STUDY” TO 120 AIRCRAFT CIRCUMVENTS THE COMMISSION’S LICENSING RULES

The Commission recently authorized ARINC to expand its previous limited market study from 15 to 120 aircraft and to allow it to charge customers for SKYLinkSM service. The provision of AMSS service to such a large number of aircraft circumvents the Commission’s traditional licensing process (which, in ARINC’s case, remains ongoing due to unresolved technical questions regarding the SKYLinkSM system) by enabling ARINC to operate commercially and serve a significant percentage of the addressable business aircraft market without a regular license. Thus, ARINC’s “limited market study” is fundamentally inconsistent with the rules and policies governing experimental licenses, and the Commission should immediately reduce the number of aircraft that may participate in ARINC’s market study to 15 --

⁴ Section 5.83(b) of the Rules, 47 C.F.R. § 5.83(b), provides that experimental licenses are “subject to change or cancellation by the Commission at any time without hearing if in its discretion the need for such action arises.”

the number of aircraft authorized under ARINC's prior experimental license and for which ARINC previously committed not to charge for service.⁵

ARINC claimed in its experimental modification request that it needs Commission authority to conduct a limited market study of 120 aircraft "to determine whether there is a viable market for the service."⁶ However, confirming the economic viability of a service is not a basis upon which the Commission may authorize experimental licensees to conduct limited market studies. Rather, in deciding to permit limited market studies under experimental authority, the Commission explained that such studies must be "appropriate to the nature of the service provided and not larger than necessary to adequately examine market responses and technology performance under market conditions."⁷

ARINC's provision of service to up to 120 business aircraft is in no way appropriate to the nature of the service to be provided and is far larger than necessary to examine market responses and the performance of the SKYLinkSM system. Indeed, 120 aircraft constitute more than 10% of the total number of AESs that ARINC seeks to operate on a regular commercial basis, and more than 5% of the entire business aviation market – a significant *market share* rather than a "limited market study."⁸ ARINC plainly can study service pricing and technology performance issues with a much smaller fraction of the paying customers it has sought to enlist. Notably, the Commission previously limited the permissible scope of ARINC's prior market

⁵ See Aeronautical Radio Inc., Experimental Radio Station Authorization, File No. 0029-EX-ML-2003, Call Sign WC2XPE (eff. June 3, 2003); see also Application for *ARINC June 2004 Experimental License*, Exh. 1, Narrative Statement at 1.

⁶ See Application for *ARINC June 2004 Experimental License*, Exh. 1, Narrative Statement at 1.

⁷ Amendment of Part 5 of the Commission's Rules to Revise the Experimental Radio Service Regulations, 13 FCC Rcd 21391 (1998) at ¶ 23 ("1998 *Experimental Rules Order*").

⁸ Boeing estimates the current addressable business aviation market for broadband AMSS to be on the order of 2,300 – 2,400 aircraft.

study to 15 aircraft;⁹ and ARINC's prior authority for 15 aircraft substantially exceeds the scope of Boeing's own limited study of the commercial aviation market, which was conducted using only 10 Connexion AESs¹⁰ for a market that is many times larger than the business aviation market.¹¹

ARINC's business activities and public announcements regarding the SKYLinkSM service also belie any claim that it needs to determine whether there is a viable market for AMSS service (even if this were an appropriate basis for limited market study authority). ARINC has announced that it is already actively marketing the SKYLinkSM service, began customer installations and launched SKYLinkSM service in the United States, and implemented full SKYLinkSM satellite coverage over North America.¹² There is no doubt that ARINC believes that there already is a viable market for the SKYLinkSM service, at least for business aircraft.¹³

Boeing does not object to ARINC conducting an appropriately sized market study or charging for service in the context of such a study. However, the substantial expansion of ARINC's previous limited market study from 15 to 120 aircraft is fundamentally inconsistent

⁹ See Aeronautical Radio Inc., Experimental Radio Station Authorization, File No. 0029-EX-ML-2003, Call Sign WC2XPE (eff. June 3, 2003).

¹⁰ See The Boeing Company, Experimental Radio Station Authorization, File No. 0032-EX-ML-2002, Call Sign WC2XVE (eff. Oct. 3, 2002). A subsequent modification added authority to operate 10 reflector antenna AESs. See The Boeing Company, Experimental Radio Station Authorization, File No. 0038-EX-ML-2003, Call Sign WC2XVE (eff. Aug. 18, 2003).

¹¹ Boeing estimates the addressable commercial aviation market to be upwards of 10,000 aircraft.

¹² See *infra* at 5-6.

¹³ ARINC also plans to demonstrate a new Commercial SKYLinkSM system aimed at commercial airlines at the World Airline Entertainment Association ("WAEA") conference to be held in Seattle, Washington from September 21-24, 2004. See ARINC Press Release, *ARINC Will Show New Broadband Internet Solution for Commercial Aircraft at WAEA* (Aug. 24, 2004) (available at <<http://www.arinc.com/news/2004/08-24-04.html>>).

with the Commission's experimental licensing rules and policies, and circumvents the Commission's traditional licensing requirements. Accordingly, the Commission should limit the number of aircraft in ARINC's limited market study to the 15 previously authorized.

II. ARINC SHOULD CONFIRM THAT ITS COMMERCIAL ACTIVITIES ARE CONSISTENT WITH ITS EXPERIMENTAL LICENSE AND THE COMMISSION'S RULES

While Boeing would expect ARINC's commercial operations to be consistent with the experimental nature of the SKYLinkSM service, a review of ARINC's press releases and related news items over the past two years suggests that ARINC may have already launched the SKYLinkSM service commercially in a manner that is inconsistent with the Commission's Rules and the conditions of its experimental license. In particular, it is difficult to reconcile ARINC's public announcements regarding SKYLinkSM equipment sales and launch of service in the United States with the requirements to maintain ownership of SKYLinkSM equipment and to explicitly notify customers that the service is experimental and may be cancelled at any time.

In September 2002, ARINC "announced that Gulfstream Aerospace Corporation has contracted to purchase ARINC's SKYLinkSM in-flight broadband system for installation on Gulfstream corporate jets."¹⁴ In June 2003, ARINC announced that it "will be launching the SKYLink service in the 4th quarter of 2003;"¹⁵ and, in October 2003, ARINC confirmed that

¹⁴ See ARINC Press Release, *ARINC's SKYLink Broadband System To Take Flight with Gulfstream Aerospace* (Sept. 11, 2002) (available at <<http://www.arinc.com/news/2002/09-11-02.html>>) (emphasis added). At that time, Gulfstream ordered 40 SKYLinkSM AESs and associated equipment. See NBAA Convention News, *Gulfstream orders Arinc's broadband* (Sept. 2002) available at <http://www.ainonline.com/Publications/nbaa/NBAA_02/nbaad3_02_gulfstreampg46.html>.

¹⁵ See ARINC Press Release, *ARINC Launches New Broadband, Satellite Services Operation* (June 12, 2003) (available at <<http://www.arinc.com/news/2003/06-13-03.html>>).

“ [w]e expect to complete our first customer installation later this month, and we’ll launch full SKYLink service coverage of the continental United States at that time.”¹⁶ ARINC further stated that “SKYLink Broadband Service and SKYLink hardware will be offered by manufacturers as a factory option on new aircraft. In addition, ARINC Direct will work with aircraft owners, manufacturers and completion centers to retrofit SKYLink on in service aircraft;”¹⁷ and that it “actively markets SKYLink through the one-year-old ARINC Direct business unit focused on business aviation.”¹⁸ More recently, ARINC stated that “SKYLink satellite coverage went live over North America in April 2004, and SKYLink-equipped business jets now have 2-way broadband connectivity from coast to coast.”¹⁹

Although the underlying facts are not fully disclosed in ARINC’s press releases, the purchase of SKYLinkSM equipment by aircraft manufacturers that are offering SKYLinkSM equipment and service to business jet customers and the nationwide launch of the SKYLinkSM service are indicative of actual commercial operations, which are inconsistent with the rules and policies governing experimental licenses.²⁰ Furthermore, the terms of ARINC’s existing experimental authorization explicitly require that ARINC maintain ownership of all SKYLinkSM equipment and inform customers that the SKYLinkSM service is for experimental purposes only

¹⁶ See ARINC Press Release, *SKYLinkSM by ARINC DirectSM Enters Production -- First Satellite Broadband for Business Aircraft* (Oct. 6, 2003) (available at <<http://www.arinc.com/news/2003/10-06b-03.html>>).

¹⁷ *Id.*

¹⁸ See ARINC Press Release, *ARINC Captures Major Share of World Aviation SATCOM Market in 2003* (Jan. 30, 2004) (available at <<http://www.arinc.com/news/2004/01-30-04.html>>).

¹⁹ See ARINC Press Release, *ARINC Will Show New Broadband Internet Solution for Commercial Aircraft at WAEA* (Aug. 24, 2004) (available at <<http://www.arinc.com/news/2004/08-24-04.html>>).

²⁰ See generally 47 C.F.R. Part 5; see also 1998 Experimental Rules Order at ¶¶ 18-23.

and can be cancelled at any time.²¹ Given ARINC's public announcements, it is not at all clear that ARINC is adhering to these conditions.

In adopting rules and policies to permit limited market studies under experimental authority, the Commission observed:

... in some instances its experimental processes have been abused by companies attempting to establish under the guise of experimental licenses commercial businesses that would normally require permanent licenses. Such abuse can be particularly unfair when a commercial business is being provided under an experimental license in competition with a similar business provided under a permanent license.²²

The same concerns are implicated here. ARINC seeks to operate the SKYLinkSM system on a commercial basis with up to 120 aircraft under the guise of its expanded experimental authority and has already announced the launch of the SKYLinkSM service. This is precisely the type of circumstance that the Commission's experimental licensing rules and policies are designed to prevent. Indeed, this case is especially troubling given the significant technical issues that remain at issue concerning ARINC's pending application for a regular license.²³

Accordingly, ARINC should confirm that its commercial activities relating to the SKYLinkSM service are fully consistent with the Commission's rules and the terms of its experimental license, including the requirement to maintain ownership of all SKYLinkSM

²¹ See *ARINC June 2004 Experimental License* at Special Conditions 3, 4; see also 47 C.F.R. § 5.93(a) (equipment ownership requirement). The Commission requires experimental licensees to maintain ownership of equipment used in limited market studies because, among other things, "such equipment sales may result in initiation of a service which, in turn, may compete unfairly with regularly licensed services and which consumers may mistakenly regard as a fully-licensed, permanent service." *1998 Experimental Rules Order* at ¶ 23.

²² *1998 Experimental Rules Order* at ¶ 23.

²³ See generally Boeing submissions in earth station application docket File Nos. SES-LIC-20030910-01261 and SES-AMD-20031223-01869, Call Sign E030205, which are hereby incorporated by reference. The unresolved technical issues associated with the SKYLink system's operations constitute a separate basis for limiting ARINC's experimental authority.

equipment and notify customers that service is for experimental purposes only and can be cancelled at any time.

III. CONCLUSION

Given the inappropriately large "limited market study" that ARINC seeks to conduct under experimental authority, and the significant questions raised by ARINC's own public announcements, the Commission should immediately exercise its authority under Section 5.83(b) of the Rules to limit ARINC's market study to 15 total aircraft, and require ARINC to confirm that its commercial activities comply with the conditions of its experimental license and the Commission's Rules.

Respectfully submitted,

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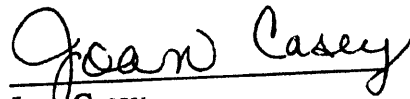
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CERTIFICATE OF SERVICE

I, Joan Casey, hereby certify that a copy of the foregoing Informal Objection of The Boeing Company was served via first-class mail, postage prepaid, upon the following:

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this 13th day of September, 2004.



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