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Federal Communications Commission
Office of Secretary

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

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 ROCKWELL COLLINS CORPORATION

Rockwell Collins Inc. ("Rockwell Collins"), pursuant to Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, hereby files this Informal Objection[1] to the above captioned grant of an experimental radio station construction permit and license to Aeronautical Radio, Inc. ("ARINC") dated June 16, 2004.[2] Rockwell Collins manufactures and markets commercial aeronautical satellite communications systems for both the air transport and general aviation markets. In addition, Rockwell Collins is teaming with The Boeing Company ("Boeing") to provide high-speed connectivity to the business aviation market through Rockwell Collins' eXchange[sm] product via Connexion by Boeing[sm] ("Connexion"). Rockwell Collins is, therefore, a party of interest to this action.

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[1] 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.

[2] *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*"). The June 2004 grant of the ARINC experimental license was a modification of an existing grant and 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).

BACKGROUND

In September 2003, ARINC was granted authority pursuant to its experimental license to conduct a Limited Market Study of its SKYLink^{SM} system with up to 15 aircraft.[3] ARINC requested and was granted authority to conduct an 18-month Limited Market Study to field a broadband, high data rate, satellite communication system for transmission to and from mobile aeronautical platforms that meets the interference requirements of the Ku band fixed satellite service.[4] As part of its application, ARINC stipulated that it would retain ownership of the Airborne Integrated STCOM Terminals for the duration of the study. In response to inquiries from Commission staff, ARINC stated that it "will not charge fees nor recover any developmental costs under the requested experimental license".[5] ARINC defined the purpose of the Limited Market Study to obtain data on how individuals would use its SKYLink^{SM} system in order to refine system usage models to better predict how many active users can be service on a single transponder without exceeding the VCC VSAT mask.[6] Subsequently, ARINC concluded that the Limited Market Study authorized by the Commission in September 2003 (15 aircraft, no fees) had "demonstrated that the SKYLink^{SM} service is technologically viable".[7]

In June 2004, ARINC requested and was granted a modification of its experimental license. The modified license permitted ARINC to increase the number of aircraft terminals

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[3] *See* Aeronautical Radio Inc., Experimental Radio Station Authorization, File No. 0029-EX-ML-2003, Call Sign WC2XPE (eff. June 03, 2003).

[4] *Id*, *See* Exhibit 1 "Narrative Statement".

[5] *Id. See* e-mail communication between Anthony Serafini and William Kolb "ARINC response to FCC inquiry dated May 19, 2003.

[6] *Id. See* Exhibit 1 "Technical Description of the SKYLink^{SM} Broadband System Proposed for Limited Market Study".

[7] *See* Application for *ARINC June 2004 Experimental License*, Exh. 1, Narrative Statement.

from 15 to 120 and to levy fees for service.[8] ARINC justified the need to charge fees as necessary to evaluate "whether the SKYLink[SM] service is economically sustainable".[9] ARINC stated that modification of the license and expansion of the Limited Market Study was necessary "to determine whether there is a viable market for the service".[10]

DISCUSSION

Rockwell Collins believes that the ARINC experimental license as modified in June 2004 exceeds the scope of the FCC's statutory experimental licensing authority by permitting ARINC to offer commercial-like services that may unfairly compete with regularly licensed services and which consumers may mistakenly regard as a fully-licensed, permanent service. ARINC's own public announcements suggest that it may have commenced commercial service under its experimental authority which clearly violates the Commission's Rules.[11] Accordingly, Rockwell Collins requests that the Commission immediately rescind the modification granted in June 2004.[12]

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[8] *See* Application for *ARINC June 2004 Experimental License.*

[9] *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.

[10] *Id.*

[11] In September 2002, ARINC "announced that Gulfstream Aerospace Corporation has contracted to purchase ARINC's SKYLink[SM] in-flight broadband system for installation on Gulfstream corporate jets. *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>).

[12] 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."

Pursuant to 47 U.S.C. § 5.3, an experimental license may be granted to conduct the following type of operations:

(a) Experimentations in scientific or technical radio research.

(b) Experimentations under contractual agreement with the United States Government, or for export purposes.

(c) Communications essential to a research project.

(d) Technical demonstrations of equipment or techniques.

(e) Field strength surveys by persons not eligible for authorization in any other service.

(f) Demonstration of equipment to prospective purchasers by persons engaged in the business of selling radio equipment.

(g) Testing of equipment in connection with production or regulatory approval of such equipment.

(h) Development of radio technique, equipment or engineering7 data not related to an existing or proposed service, including field or factory testing or calibration of equipment.

(i) Development of radio technique, equipment, operational data or engineering data related to an existing or proposed radio service.

(j) Limited market studies.

(k) Types of experiments that are not specifically covered under paragraphs (a) through (j) of this section will be considered upon demonstration of need for such additional types of experiments.

Neither economic sustainability nor market viability is included within the scope of the above-mentioned criteria. Further, while the FCC permits Limited Market Studies on a case-by-case basis, concerns over the improper use of such studies to permit commercial-like services have clearly been expressed.[13]

[13] *See Generally* Amendment of Part 5 of the Commission' Rules to Revise the Experimental Radio Service Regulations ("*1998 Experimental Rules Order*").

In its 1998 *Report and Order* revising the Experimental Licensing rules, the Commission stated that:

> The recommendation to permit the sale of very limited quantities of equipment operated under the scope of an ERS license so as to enable the licensee to determine the extent of market demand for products at various price points is of concern. In general, the Commission believes that such information can be obtained from marketing surveys, and that equipment sales for this purpose are not necessary. Also, 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.[14]

Clearly the expansion of authority granted in the June 2004 experimental license modification goes beyond a "limited market study" as contemplated by 48 C.F.R. § 5.3(j). ARINC's activities under the modification are in the nature of commercial service that are contrary to the terms of its experimental license. ARINC currently has an application pending to operate AMSS in the Ku-Band.[15] Rockwell Collins submits that this application is the appropriate venue for authorization of the type of service that ARINC is currently operating under experimental authority. The AMSS licensing process permits the necessary evaluation of compliance with technical and operational requirements.

CONCLUSION

Assessment of marketability by operating a commercial-like service clearly exceeds the scope of the experimental licensing program and is inconsistent with the Commission's 1998 *Report and Order.* ARINC justified the modification as necessary to determine the effects of pricing on usage. Rockwell Collins does not dispute the need to investigate and determine the

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[14] *See generally* 47 C.F.R. Part 5; *see also* Amendment of Part 5 of the Commission' Rules to Revise the Experimental Radio Service Regulations, 13 FCC Rcd 21391 (1998) at ¶23 ("*1998 Experimental Rules Order*").

[15] *See* Aeronautical Radio, Inc. Application for Blanket Authority to Operate Aboard Aircraft Up To 1000 Technically-Identical Transmit and Receive Mobile Earth Stations in the 11.7-12.2 and 14.0-14.5 GHz Frequency Bands, File No. SES-LIC-20030910-01261, Call Sign E030205 (September 2, 2003).

effects of pricing as necessary for a viable business plan. However, the manner and extent to which ARINC is operating is clearly outside the scope of the FCC's experimental licensing authority.

Accordingly, Rockwell Collins respectfully requests that the FCC exercise its authority pursuant to 47 C.F.R. § 5.83(b) and immediately rescind the modification as granted to ARINC in June 2004 and order the ARINC to comply with the terms of its original experimental license authority.

Respectfully submitted,

Linda C. Sadler

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September 13, 2004

CERTIFICATE OF SERVICE

I, Lisa Gaisford, hereby certify that a copy of the foregoing Informal Objection of Rockwell Collins, Incorporated was served via first-class mail, postage prepaid, upon the following:

Carl R. Frank
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Counsel for ARINC

on this 13th day of September, 2004.

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