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

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**EXPEDITED ACTION REQUESTED**

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

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| 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

## ARINC'S SURREPLY TO CONSOLIDATED REPLY OF THE BOEING COMPANY

Aeronautical Radio, Inc. ("ARINC") hereby replies to the Consolidated Reply of The Boeing Company ("Boeing").[1] Boeing has not identified any irregularity in ARINC's experimental license, or its qualification to be routinely renewed. ARINC's pending application requests renewal of its experimental license to allow ARINC to "test[] its SKYLink[SM] service on up to *fifteen* aircraft."[2] It therefore should be renewed expeditiously for up to fifteen aircraft, and with the continuing authorization to charge for service in the limited market study.

[1] *See* Consolidated Reply of The Boeing Company, File Nos. 0029-EX-ML-2004 & 0130-EX-RR-2004, Call Sign WC2XPE (filed Oct. 19, 2004) ("Boeing Consolidated Reply").

[2] *See* Aeronautical Radio Inc., Application for Renewal of Experimental Radio Station License, File No. 0130-EX-RR-2004, Call Sign WC2XPE, Narrative Statement at 2 (emphasis added) ("ARINC Renewal Application").

Boeing argues that there are "significant questions" concerning ARINC's experimental operations. This is false, for several reasons. *First*, Boeing claims that "public announcements by ARINC over the past several years . . . suggest that ARINC has inappropriately commenced commercial operations under its experimental authority."[3] But ARINC is not currently charging participants in its limited market study for AMSS service -- hardly a characteristic of "commercial operations." Moreover, only a few AES units exist.[4] Indeed, Boeing effectively concedes that no SKYLink℠ commercial operations exist by acknowledging that ARINC is "operating *only three* SKYLink℠ units."[5] Those are the facts. While the market puffery to which Boeing alludes is unfortunate (and will not be repeated), mistaken SKYLink℠ press releases cannot themselves transform three experimental units into "commercial operations."

*Second*, while Boeing also effectively concedes that its informal objections are moot because it only requested that ARINC's market study authority be limited to fifteen aircraft,[6] it nevertheless begs the Commission to address the "separate legal issues raised in Rockwell Collins' Informal Objection."[7] But there are no separate legal issues raised in Rockwell's

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[3] Boeing Consolidated Reply at 3.

[4] As ARINC explained in its Consolidated Opposition, two of those units are "in Gulfstream's possession." ARINC's Consolidated Opposition to the Informal Objections of Boeing and Rockwell Collins, File Nos. 0029-EX-ML-2004 & 0130-EX-RR-2004, Call Sign WC2XPE, at 5 (filed Oct. 12, 2004) ("ARINC Consolidated Opposition"). Gulfstream is a "partner in the development of the SKYLink℠ system." *Id.* The "third and final unit" is "installed on a third-party-owned Gulfstream aircraft." *Id.* at n.15. All of the units are owned by ARINC and the parties are fully informed that the SKYLink℠ service is for experimental purposes only and can be cancelled at any time. *Id.* at 5 & n.15-16.

[5] Boeing Consolidated Reply at 4 (emphasis added).

[6] *See* Boeing Consolidated Reply at 3-4; *see also* ARINC Consolidated Opposition at 2 n.5 (citing concessions of Boeing that ARINC should be able to continue its limited market study with fifteen aircraft and should continue to have the ability to charge for services provided pursuant to that market study).

[7] Boeing Consolidated Reply at 3-4.

insubstantial filing.[8] Rockwell merely charged, like Boeing, that ARINC was providing "commercial-like services" under its experimental license.[9] ARINC has shown that not to be the case, so Rockwell's informal objection must be dismissed right along with Boeing's.

*Finally*, Boeing suggests for the first time that ARINC's need for authority to operate with fifteen aircraft or to charge for service has been called into question.[10] Boeing never justifies its notion, nor explains the relationship between the facts and this new claim. Moreover, this new claim is entirely inconsistent with Boeing's prior acknowledgments that ARINC could continue its limited market study with fifteen aircraft *and* the authorization to charge for service.[11] ARINC intends to increase in the very near future the number of aircraft involved in its limited market study (while not exceeding fifteen aircraft in total), and therefore requires the authority to continue testing on up to fifteen aircraft. Likewise, ARINC's ongoing limited market study will require the ability to charge in the future, and therefore ARINC continues to

[8] Boeing is wrong to suggest that Rockwell sought to curb ARINC's ability to charge for service provided pursuant to its limited market study. *See* Boeing Consolidated Reply at 4. In its informal objection, Rockwell did not quarrel with ARINC's ability to charge for such service. *See* Rockwell Modification Objection at 5-6 ("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 effects of pricing as necessary to a viable business plan."). And even if Rockwell did seek to prohibit ARINC from charging for service, it would have no basis whatsoever for requesting such arbitrary and capricious action of the Commission. It is well established in Commission policy and practice that experimental licensees are properly permitted to charge for service provided in a limited market study. Indeed, "the purpose of limited market studies is to obtain information about the viability of new products in the marketplace." Notice of Proposed Rulemaking, *In the Matter of Amendment of Part 5 of the Commission's Rules to Revise the Experimental Radio Service Regulations*, 11 FCC Rcd 20130, ET Docket No. 96-256, FCC 96-475, ¶ 17 (Dec. 20, 1996). Moreover, the Commission's limited market study rule was created expressly so that developers could charge for service. *See* Proposed Rules, *Amendment to Diminish Restrictions on the Licensing and Use of Stations in the Experimental Radio Service (Other Than Broadcast)*, 47 Fed. Reg. 35,535, Gen. Docket No. 82-469, FCC 82-330, ¶ 26 (August 16, 1982) (noting that the purpose of limited market studies is to "provide vital information" to "the developer of a new service or device" concerning "the sensitivity of demand to various prices and quality levels").

[9] Informal Objection of Rockwell Collins Corporation, File No. 0029-EX-ML-2004, Call Sign WC2XPE, at 3-5 (filed Sept. 13, 2004) ("Rockwell Modification Objection").

[10] Boeing Consolidated Reply at 4.

[11] *See* ARINC Consolidated Opposition at 2 n.5.

require the authority to do so. Boeing's new claim that ARINC doesn't need such authority is nothing more than an attempt to obstruct and delay the development of a competing service. While it is obvious that Boeing would prefer to perpetuate its monopoly over AMSS broadband Internet service, that is not in accord with the interest of the public in the development of new products and the promotion of competition.

Boeing's arguments are wholly without merit. Because it has not identified any obstacle to renewal of ARINC's experimental license, the Commission should grant ARINC's renewal immediately.

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October 25, 2004

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Surreply to Consolidated Reply of The Boeing Company was served via first-class mail, postage prepaid, this 25th day of October 2004, upon the following:

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