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Federal Communications Commission
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of AERONAUTICAL RADIO INC. Experimental License Modification To Expand Limited Market Study	))))))	File No. 0029-EX-ML-2004, Call Sign WC2XPE
In the Matter of AERONAUTICAL RADIO INC. Experimental License Renewal	)))))	File No. 0130-EX-RR-2004, Call Sign WC2XPE

To: Chief, Office of Engineering and Technology

CONSOLIDATED REPLY OF THE BOEING COMPANY

The Boeing Company ("Boeing") hereby replies to the Consolidated Opposition filed by Aeronautical Radio Inc. ("ARINC") in the above-captioned proceedings.[1] Although ARINC concedes that the expansion of experimental authority for the proposed SKYLink[SM] Ku-band Aeronautical Mobile-Satellite Service ("AMSS") system from 15 to 120 aircraft goes well beyond that needed for its "limited market study," substantial questions remain whether ARINC's experimental operations are consistent with the Commission's Rules. Thus, the

[1] *See* ARINC'S Consolidated Opposition to the Informal Objections of Boeing and Rockwell Collins, File Nos. 0029-EX-ML-2004 and 0130-EX-RR-2004 (filed Oct. 12, 2004) ("*ARINC Consolidated Opposition*"); *see also* 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*"); Aeronautical Radio Inc., Application for Renewal of Experimental Radio Station Authorization, File No. 0130-EX-RR-2004 (filed Sept. 13, 2004) ("*ARINC Renewal Application*").

Commission may seek to further limit or condition ARINC's renewal authority as a result of the issues raised in these proceedings.

I. EXPERIMENTAL AUTHORITY FOR 120 AIRCRAFT GREATLY EXCEEDS WHAT IS NECESSARY FOR ARINC'S "LIMITED MARKET STUDY"

In its Informal Objection to the expansion of ARINC's experimental authority to operate the SKYLink^{SM} system, Boeing argued that the provision of AMSS service on a commercial basis for up to 120 aircraft cannot accurately be characterized as a "limited market study," and instead constituted a significant departure from the Commission's normal licensing requirements for starting commercial operations.[2] ARINC now agrees that experimental authority for such a large number of business aircraft goes well beyond what it needs for a limited market study.[3]

In its September 2004 renewal application, ARINC sought authority to conduct its limited market study through November 1, 2006 under "the exact terms and conditions of its existing authorization."[4] At that time, ARINC's experimental authority had already been expanded from 15 to 120 aircraft and included authority to charge for SKYLink^{SM} service.[5] ARINC now seems to suggest that it had requested renewal authority for only 15 aircraft.[6]

ARINC apparently misunderstands the scope of its experimental renewal application. By filing for renewal of the June 2004 experimental license under "the exact terms and conditions of its existing authorization," ARINC requested authority to continue its "limited market study" for

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[2] *See* Informal Objection of the Boeing Company, File No. 0029-EX-ML-2004, Call Sign WC2XPE (filed Sept. 13, 2004) ("*Boeing Informal Objection*").

[3] *See generally ARINC Consolidated Opposition* at 1-3.

[4] *See ARINC Renewal Application*, Exh. 1 (Narrative Statement) at 1.

[5] *See ARINC June 2004 Experimental License.*

[6] *See ARINC Consolidated Opposition* at 2-3.

up to 120 aircraft and charge for SKYLink^{SM} service. In any event, although ARINC's renewal application cannot fairly be read as a request to reduce its market study authority from 120 to 15 aircraft, the Commission may view ARINC's latest submission as an acknowledgement to so limit its authorization. As discussed below, however, the Commission may conclude that it is necessary to further limit or condition ARINC's experimental authorization.

II. SIGNIFICANT QUESTIONS REGARDING ARINC'S EXPERIMENTAL OPERATIONS REMAIN UNANSWERED

Although ARINC disclosed certain violations of its experimental authorization regarding the ownership of equipment in its Consolidated Opposition,[7] it has failed to address adequately any of the other issues raised in the Informal Objections of Boeing and Rockwell Collins, Inc. ("Rockwell Collins"). In particular, Boeing cited numerous public announcements by ARINC over the past several years that suggest that ARINC has inappropriately commenced commercial operations under its experimental authority.[8] ARINC dismissively characterizes these activities as mere "marketing puffery,"[9] but does not otherwise address the issues raised in the Informal Objections. Thus, it is not clear that ARINC's commercial activities relating to the SKYLink^{SM} service are fully consistent with the Commission's rules and the terms of ARINC's experimental license.

In addition, ARINC incorrectly characterizes the Informal Objections of Boeing and Rockwell Collins as "moot" because ARINC now seeks renewal authority for a limited market study of only 15 aircraft.[10] In its Informal Objection, Rockwell Collins asked the Commission to

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[7] *See id.* at 5-6.

[8] *See generally Boeing Informal Objection.*

[9] *See ARINC Consolidated Opposition* at 5.

[10] *See id.* at 3.

rescind ARINC's June 2004 experimental modification because it was granted on inappropriate grounds.[11] Rescinding the June 2004 experimental modification as requested by Rockwell Collins would not only reduce the limited market study from 120 to 15 aircraft, but also eliminate ARINC's authority to charge for SKYLink^{SM} service. Accordingly, the separate legal issues raised in Rockwell Collins' Informal Objection must still be addressed by the Commission.

Finally, ARINC's Consolidated Opposition reveals that it is operating only three SKYLink^{SM} units on Gulfstream aircraft in connection with its limited market study.[12] This admission appears to be inconsistent with the claim in ARINC's renewal application that "[t]he Limited Market Study is apportioned among several different models of aircraft manufactured by at least two different manufacturers,"[13] and calls into question the need for authority to operate with 15 aircraft or charge for service to determine market viability. Given ARINC's recent disclosure of apparent rule violations regarding SKYLink^{SM} equipment ownership and the uncertainty regarding its experimental operations generally, the Commission may conclude that it is necessary to further limit or condition ARINC's experimental license.[14]

[11] *See generally* Informal Objection of Rockwell Collins Corporation, File No. 0029-EX-ML-2004, Call Sign WC2XPE (filed Sept. 13, 2004) (arguing that grant of the experimental modification was outside the scope of the Commission's authority because determining the "economic sustainability" or "market viability" of a service is not a basis upon which to obtain limited market study authority). Importantly, ARINC's renewal application is also based on its desire "to determine whether the SKYLink service is economically sustainable" and "whether there is a viable market for the service." *See ARINC Renewal Application*, Exh. 1 (Narrative Statement) at 1.

[12] *See ARINC Consolidated Opposition* at 5 and n.15.

[13] *See ARINC Renewal Application*, Exh. 1 (Narrative Statement) at 2.

[14] For example, the Commission could limit ARINC's experimental operations to 3-5 aircraft until such time as the outstanding issues associated with ARINC's experimental operations are fully resolved or ARINC demonstrates a need to conduct experimental operations with a larger number of aircraft.

III. CONCLUSION

Although ARINC has now reduced its renewal request for its experimental authorization for no more than 15 aircraft, significant questions regarding ARINC's experimental operations generally and grant of ARINC's June 2004 experimental modification remain that must be resolved by the Commission. In addition, given the issues raised in this proceeding, the Commission may seek to further limit or condition ARINC's renewal authority.

Respectfully submitted,

THE BOEING COMPANY

By: Philip L. Malet /CN

Philip L. Malet
Carlos M. Nalda
Steptoe & Johnson, LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
202-429-3000

Counsel for The Boeing Company

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CERTIFICATE OF SERVICE

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

Carl R. Frank
John Bartlett
Kelion Kasler
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Counsel for ARINC

this 19th day of October, 2004.

Joan Casey

Joan Casey
Assistant to Carlos M. Nalda
Steptoe & Johnson, LLP
1330 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 862-3886