

**Public Interest Statement in Support of Application for
Renewal of Experimental License KI2XCS**

AirCell, Inc. (“AirCell”) submits the instant application to renew its experimental license, call sign KI2XCS, which expires on January 1, 2004. KI2XCS provides AirCell with authority to operate up to 1800 mobile units for a market study of the corporate, business and pleasure market segments. 1/ In addition to KI2XCS, AirCell has recently been granted two separate experimental licenses: call sign WD2XEI, for extending its study to other market segments, and WD2XEW, for testing digital transmission technologies. Neither of these new licenses provides authority that is duplicative of that provided by KI2XCS.

AirCell has a continuing need to explore the impact and marketability of its system in a variety of circumstances. In its June 2000 order, the Commission recognized the value of such ongoing study and the need for AirCell to maintain an experimental license *in addition to* its waiver of the airborne cellular rule, finding that “meaningful data were and can be derived from continuing and expanding the AirCell ‘experiment.’” 2/ The Commission also stated that:

[b]ecause AirCell may properly wish to continue improving its technology through testing under the aegis of the OET license as it simultaneously continues commercial implementation of its system consistent with the restrictions set forth in the Bureau waiver, AirCell’s OET experimental license is not superceded by our decision in this Order upholding the Bureau’s waiver of Section 22.925 of our rules. 3/

1/ See Letter from Richard M. Smith, Chief, OET, to David L. Sieradzki, counsel to AirCell, Feb. 11, 1998.

2/ AirCell, Inc. Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, Or, in the Alternative, for a Declaratory Ruling, *Memorandum Opinion & Order*, 15 FCC Rcd 9622, 9648 ¶ 53 (2000) (“*AirCell Order*”).

3/ *Id.* at 9648, n.166. The Commission further clarified that “there is no legal relation between the number of mobiles authorized under the OET experimental license and AirCell’s operations under the Bureau waiver” *Id.* at 9648.

Moreover, OET staff has previously rejected assertions that AirCell's continued use of its experimental license is somehow inappropriate. 4/

In addition to ongoing experimentation, the instant license continues to be used by AirCell to collect data in support of its pending request for an extension of its waiver of the airborne cellular rule. 5/ This request has faced significant opposition from three cellular licensees ("Opposing Carriers"), which continue to submit voluminous filings in the docket. To respond to their allegations, AirCell has conducted extensive additional testing in the past 5-6 months, relying in part on its authority under the experimental license. 6/ Just last week, the Opposing Carriers filed another 123 pages of technical and engineering materials in the docket, which AirCell is currently reviewing. 7/ AirCell may determine that further testing – again relying on the experimental license – would be appropriate in preparing its response. Given the ongoing efforts of the Opposing Carriers to challenge AirCell's waiver, AirCell needs to maintain this experimental license to address and respond to technical arguments as well as to improve its system.

The Commission has recognized on multiple occasions that AirCell has proven that its system does not cause harmful interference to terrestrial cellular operations. 8/ The Commission has also recognized that providing such a service is in the public interest, as it "makes available to general aviation aircraft air-ground communications capabilities that would otherwise be unavailable, enhancing public

4/ See Letter from Jim Burtle, Chief, Experimental Licensing Branch, Office of Engineering and Technology, to Kathryn Zachem, Wilkinson Barker Knauer, LLP *et al.* (Oct. 11, 2002).

5/ See AirCell, Inc., Petition for Extension of Waiver, WT Docket 02-86 (filed Mar. 28, 2002).

6/ See Reply Comments of AirCell, Inc., WT Docket 02-86 (filed June 9, 2003).

7/ See AT&T Wireless Services, *et al.*, Rebuttal to Reply Comments of AirCell, Inc. and Motion for Leave to File Rebuttal, WT Docket 02-86 (filed Oct. 15, 2003).

8/ AirCell, Inc., Petition, Pursuant to Section 7 of the Act, For a Waiver of the Airborne Cellular Rule, Or, in the Alternative, for a Declaratory Ruling, *Order*, 14 FCC Rcd 806 (WTB 1998), reconsideration granted in part, denied in part, *Order on Reconsideration*, 14 FCC Rcd 19430 (WTB 1999), review denied, *Memorandum Opinion and Order*, 15 FCC Rcd 9622 (2000), review granted in part, denied in part, *AT&T Wireless Servs., Inc. v. FCC*, 270 F.3d 959, 968-69 (D.C. Cir. 2001) ("*AT&T Wireless Servs.*"), reh'g denied (Jan. 29, 2002); *Order on Remand*, 18 FCC Rcd 1926 (2003), review filed (D.C. Cir. Feb. 26, 2003).

safety by giving pilots access to safety-related communications.” 9/ This conclusion was affirmed by the D.C. Circuit in 2001, which found that such a finding was “amply supported by the record.” 10/

Thus, renewal of the instant experimental license would be in the public interest, as it would permit AirCell to continue to refine and improve the important air-to-ground services it offers.

9/ *AirCell Order* at 9643-44.

10/ *AT&T Wireless Servs.*, 270 F.3d at 966.