

July 28, 2003

VIA HAND DELIVERY

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20054

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JUL 28 2003

Federal Communications Commission  
Office of Secretary

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Policy Branch  
International Bureau

Re: The Boeing Company  
Authority For Use of the 1990-2025/2165-2200 MHz and  
Associated Frequency Bands for a Mobile-Satellite System  
File Nos. SAT-MOD-20030711-00128, SAT-MOD-20020726-0013,  
179-SAT-P/LA-97(16), 90-SAT-AMEND-98, SAT-LOA-19970926-00149,  
SAT-AMD-19980318-00021

Dear Ms. Dortch:

On July 24, 2003, The Boeing Company ("Boeing"), through its attorneys and pursuant to Section 25.143(e)(3) of the Commission's rules,<sup>1</sup> filed its required certification that it had satisfied its second milestone for its 2 GHz mobile-satellite service ("MSS") license by completing the Critical Design Review ("CDR") for its geosynchronous 2 GHz MSS satellite on July 17, 2003. As indicated in the letter accompanying Boeing's certification, the CDR documentation for Boeing's 2 GHz MSS satellite not only reflects the modified authorization that the Commission issued to Boeing on June 24, 2003 ("Authorization Order"),<sup>2</sup> but also reflects the minor changes that Boeing requested in its Application for Modification that was filed with the Commission on July 11, 2003 ("Modification Application").<sup>3</sup>

The Commission has previously permitted satellite licensees to satisfy their milestone requirements by achieving conformity with the technical terms of their system authorization, or with the technical terms of a subsequently granted modification application filed in advance of,

<sup>1</sup> See 47 C.F.R. § 25.143(e)(3) (2002).

<sup>2</sup> See *The Boeing Company, For Modification of Authority For Use of the 1990-2025/2165-2200 MHz and Associated Frequency Bands for a Mobile-Satellite System*, DA 03-2073 (June 24, 2003) ("Authorization Order").

<sup>3</sup> See *The Boeing Company, Application For Modification of Authority For Use of the 1990-2025/2165-2200 MHz and Associated Frequency Bands for a Mobile-Satellite System*, FCC File No. SAT-MOD-20030711-00128 (July 11, 2003) ("Modification Application").

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or concurrently with, the milestone deadline.<sup>4</sup> The Commission has provided this flexibility to licensees as long as the proposed modification does not result in delays in the implementation of the network and the provision of services to consumers.<sup>5</sup>

The Commission has never stated, however, whether it will extend this flexible policy to its recently created milestone for CDR completion. The public interest would clearly be served by extending the policy to the CDR milestone in order to permit licensees to respond to changes in technology and consumer demand, as long as the changes do not delay the construction and implementation of the licensed network.

In the event that the Commission declines to extend its flexible policy to its CDR milestone, however, Boeing, out of caution, herein requests a limited waiver of the Commission's policy in order to permit Boeing to satisfy its CDR milestone using the technical parameters of its Modification Application, rather than the technical parameters of its Authorization Order. The Commission has the authority to waive its rules and policies if there is "good cause" to do so.<sup>6</sup> Waiver is appropriate if (1) special circumstances warrant a deviation from the general rule, and (2) such deviation would better serve the public interest than would strict adherence to the general rule.<sup>7</sup> Circumstances that would justify a waiver include "considerations of hardship, equity, or more effective implementation of overall policy."<sup>8</sup>

Good cause exists to grant Boeing a limited waiver of the Commission's CDR milestone requirements. Boeing's decision to conform its CDR documentation to the technical parameters of its Modification Application was in direct response to the Commission's recent decisions to authorize MSS licensees to incorporate an ancillary terrestrial component ("ATC") into their

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<sup>4</sup> See, e.g., *Boeing Modification Order*, ¶ 28 n.56; *Teledesic LLC Application for Authority to Construct, Launch, and Operate a Ka-Band Satellite System in the Fixed Satellite Service; Objection of @contact LLC*, DA 02-1430, ¶¶ 8 & 9 (June 18, 2002) ("*Teledesic Order*") (observing that the Commission often receives requests from licensees to modify the technical design of their satellites while they are being constructed and those licensees are permitted to satisfy their milestone requirements using these modified parameters).

<sup>5</sup> See *Teledesic Order*, ¶ 11.

<sup>6</sup> See 47 C.F.R. § 1.3. See also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) ("*WAIT Radio*"); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

<sup>7</sup> See *Northeast Cellular*, 897 F.2d at 1166. See also *Comsat Corporation, Petition for Partial Relief from the Current Regulatory Treatment of Comsat World Systems' Switched Voice, Private Line, and Video and Audio Services*, Order, 11 FCC Rcd 9622, 9625 (1996); *Petition of General Communications, Inc. for a Partial Waiver of the Bush Earth Station Policy*, Memorandum Opinion and Order, 11 FCC Rcd 2535, 2536 (Int'l Bur. 1996).

<sup>8</sup> *WAIT Radio*, 418 F.2d at 1159.

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networks<sup>9</sup> and to increase the service link spectrum assigned to 2 GHz MSS licensees.<sup>10</sup> The Commission issued these important decisions more than a year after the Commission granted Boeing its 2 GHz MSS license and only months before its CDR deadline. The Commission's changes in the rules for 2 GHz MSS, although requested and welcomed by 2 GHz MSS licensees, nevertheless qualify as unusual circumstances justifying a waiver of the Commission's CDR milestone policy.

Failure to grant a waiver would constitute a substantial hardship for Boeing and would impair Boeing's service offerings to the public. The Commission concluded in its ATC order that MSS licensees can use ATC to expand coverage, improve efficiency and enhance competition in important markets that MSS networks serve, including the maritime, aeronautical, commercial-transportation and public-safety markets.<sup>11</sup> If Boeing had not incorporated the technical changes included in its Modification Application into its CDR documentation, then Boeing would have been left at a clear competitive disadvantage as compared to other MSS networks. Furthermore, the public interest benefits that can be achieved through the provision of ATC would not be made available as a part of Boeing's service, reducing competition and spectrum efficiency, and potentially withholding unnecessarily new communication services from consumers.

Instead, in order to enable Boeing's network to accommodate commercially viable services incorporating ATC, Boeing needed to incorporate relatively minor technical changes into the design of its network. Specifically, Boeing increased the power of its satellite in order to communicate seamlessly with dual-mode user terminals that are sufficiently small in size to be commercially attractive to consumers. Boeing also increased the capacity of its network in order to accommodate increased user density resulting from the provision of expanded service offerings incorporating ATC in addition to its previously proposed aeronautical communication, navigation and surveillance ("CNS") services.

All of the technical changes proposed by Boeing in its Modification Application clearly qualify as minor technical changes. Boeing's Modification Application did not include any request for additional spectrum or orbital positions and did not raise any new spectrum sharing issues with respect to other authorized spectrum users. Instead, the satellite network design that

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<sup>9</sup> See *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Report and Order and Notice of Proposed Rulemaking, FCC 03-15 (Feb. 10, 2003) ("ATC Order").

<sup>10</sup> See *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems; The Establishment of Policies and Service Rules for the Mobile-Satellite Service in the 2 GHz Band*, Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order, FCC 03-16, ¶ 32 (Feb. 10, 2003) ("2 GHz Reallocation Order"); see also *Authorization Order*, ¶ 38.

<sup>11</sup> See *ATC Order*, ¶ 23.

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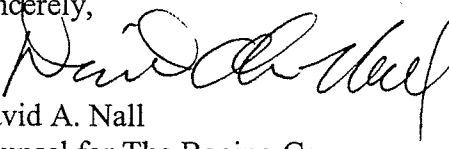
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is including in Boeing's CDR documentation is technically capable of operating using the service link and feeder link assignments previously issued by the Commission to Boeing in its Authorization Order. Furthermore, Boeing has already incorporated its proposed modifications in its network design. Thus, no possibility exists that Boeing's proposed minor technical changes could delay the construction, launch and operation of its network.

For each of these reasons and, particularly, in light of the Commission's recent decision to grant MSS licensees with ATC authority, the public interest would clearly be served by permitting Boeing to satisfy its CDR milestone requirement using the technical parameters of its July 11th Modification Application. Therefore, to the extent that it is deemed necessary, a limited waiver of the Commission's CDR milestone compliance policy is warranted for Boeing's 2 GHz MSS system.

Please let us know if you have any questions. Thank you for your attention to this matter.

Sincerely,



David A. Nall  
Counsel for The Boeing Company

cc: Thomas Tycz, Chief, Satellite Division

Enclosure