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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Rules and Policies on Foreign Participation  
in the U.S. Telecommunications Market

IB Docket No. 97-142

**REPLY**

Aeronautical Radio, Inc. (ARINC), by its attorneys, hereby replies to the *Opposition to Petition for Partial Reconsideration* submitted by Société Internationale de Télécommunications Aéronautiques (SITA).<sup>1</sup> ARINC, in its *Petition for Partial Reconsideration*<sup>2</sup> of the Commission's *Foreign Participation Order*,<sup>3</sup> demonstrated that the aeronautical enroute service is a private, noncommercial service that is not within the ambit of the World Trade Organization (WTO) Basic Telecom Agreement. SITA has provided no evidence to the contrary, and given no reason why the Group on Basic Telecommunications (GBT) would have any interest in this specialized, noncommercial, enhanced communication service, which is operated by, or on behalf of, the end users.

<sup>1</sup> Société Internationale de Télécommunications Aéronautiques, *Opposition to Petition for Partial Reconsideration*, IB Docket No. 97-142 (Feb. 10, 1998) ("*SITA Opposition*").

<sup>2</sup> Aeronautical Radio, Inc., *Petition for Partial Reconsideration*, IB Docket No. 97-142 (Jan. 8, 1998) ("*ARINC Petition*").

<sup>3</sup> *Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, Report and Order and Order on Reconsideration, FCC 97-389 (Nov. 26, 1997) ("*Foreign Participation Order*").

Communications are essential to the safety of air transportation. Without the specialized, reliable communications services provided by the aeronautical enroute service, U.S. air carriers would not be permitted to operate.<sup>4</sup> ARINC fully supports free trade and ensuring that foreign air carriers and other aircraft operators have access to essential communications facilities in the United States on the same basis as U.S. air carriers. ARINC has pursued this policy for decades, long before free trade in telecommunications was ever considered.

SITA, in its Opposition has raised a number of matters that are beyond the scope of this rulemaking. For example, SITA claims that “the introduction of competition will produce lower rates for aeronautical enroute services and prompt service innovations . . .”<sup>5</sup> This unsupported assertion is erroneous for two reasons. First, under the Commission’s Rules, the aeronautical enroute service must be provided to aircraft operators on a cooperative basis.<sup>6</sup> The cost of the facilities and operations must be covered by the aircraft operators participating in the service. Under such circumstances, “competition” by additional providers might not reduce cost; rather, it could increase the cost to the end users by adding duplicative facilities and personnel to accommodate the same volume of traffic and same number of aircraft. Thus, the decision to add facilities and to staff them must ultimately be made by the aircraft operators that will be obligated to bear the cost of the additional stations.

Today, most of the stations licensed to ARINC use facilities and are staffed by personnel provided by the airlines and other aircraft operators. Even in those instances where ARINC has

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<sup>4</sup> See 14 C.F.R. § 121.99.

<sup>5</sup> *SITA Opposition* at 2.

<sup>6</sup> 47 C.F.R. § 87.261(b).

been called upon by the industry to provide common user facilities, other providers of facilities are accommodated under ARINC licenses.

Second, SITA's claim that additional datalink facilities in the United States might spur innovation is baseless. SITA has provided AIRCOM service since 1984, yet has offered no significant service innovations during that period of time. Service innovation is driven by the requirements of the air transport companies and the ingenuity of equipment manufacturers. Because of the need for common worldwide standards of aeronautical communications, innovations are actually encouraged by ARINC, which through its Airline Electronic Engineering Committee (AEEC) provides a forum for setting common requirements and propounding standards by which new services and techniques might be evaluated and deployed. With only about 7,000 air transport aircraft worldwide, no one can economically deploy a new aeronautical radio system without reaching consensus among the users.

Innovation has not been inhibited by the FCC's present frequency management policies. Current work by the industry on the next generation VHF datalink is proceeding in international aviation fora. ARINC, working with the air transport and avionics industries and SITA, has established the standards for a new higher-speed, bit-oriented VHF datalink known as VDL Mode 2. VDL Mode 2 is compatible with the aeronautical telecommunication network (ATN). The International Civil Aviation Organization (ICAO) has adopted international Standards and Recommended Practices (SARPs) for this new system, which is almost ready for deployment throughout the world. In the meantime, several proposed technologies for future generations of aeronautical datalink systems are being considered by ARINC and the world aviation community. Technological and service innovation in aeronautical communications has not been impeded by the FCC's frequency management policies.

SITA offers no commercial reason why the Basic Telecom Agreement should be extended to cover aeronautical enroute service. The aeronautical enroute service is provided on a cooperative basis and controlled by the aircraft operators which use the service. In the private radio services, the needs of the end users must dictate the deployment of the systems.

SITA also asserts that ARINC's public/private distinction would exempt carrier's carriers from the WTO Basic Telecom Agreement.<sup>7</sup> However, the appropriate distinction is between private noncommercial and public commercial. A carrier's carrier provides commercial communications to common carriers for the transmission of public correspondence. The aeronautical enroute service is a noncommercial cooperative service in which public correspondence is barred by U.S. and international regulations.<sup>8</sup> The fact that some "private carriers" are not treated as common carriers under the Communications Act does not mean that they are not providing commercial facilities for public correspondence.

That the GBT did not include private aeronautical communications systems in the WTO Basic Telecom Agreement is shown by the fact that most countries do not have, and have no intention of adopting, multiple systems within their borders. In a few countries where SITA established early AIRCOM facilities covering a limited number of terminals, such as Mexico and Central America, ARINC has expanded ACARS, at the request of U.S. and international aviation, to provide the level of service and coverage that the air transport industry requires. In other countries, such as Japan and Brazil, the government has established a monopoly provider of services and neither ARINC nor SITA is permitted to establish its own facilities. The fact that

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<sup>7</sup> *SITA Opposition* at 4.

<sup>8</sup> *See* 47 U.S.C. § 87.261(a); ITU Radio Regulations 3633.

Brazil includes private services in its WTO Basic Telecom Agreement commitment, but nonetheless excludes the aeronautical services from competition, underscores the fact that the aeronautical services simply are not intended to be covered.

In the *Foreign Participation Order*, the FCC did not address the fact that, as an enhanced service, AIRCOM is not covered by the WTO Basic Telecom Agreement. SITA seems to assert that there is some “basic” ingredient in its AIRCOM service that should be governed by the WTO Basic Telecom Agreement. If that were true, this basic transport function would be severable from AIRCOM, and available without the enhanced AIRCOM. However, neither ARINC’s ACARS nor SITA’s AIRCOM can be separated in this fashion. The enhanced features control the operation of the systems, and neither ARINC nor SITA offers basic service without the enhanced features on these systems. Whatever else the WTO Basic Telecom Agreement was intended to cover, it does not cover enhanced services such as AIRCOM.

Finally, SITA appears to object to the ARINC’s undertaking to provide ACARS in Europe.<sup>9</sup> ARINC’s activities in Europe respond to a specific request from, and firm contract with, a European airline and are supported by a number of European civil aviation administrations. In keeping with the cooperative nature of this service, ARINC must respond to requests for facilities where existing facilities are not adequate to meet the needs of the airlines and the aviation authorities. ARINC is currently pursuing licensing in Europe under the existing laws of each country with the support of European aviation interests. ARINC does not seek to use the WTO Basic Telecom Agreement to force itself into countries where it is not needed, nor does it seek to change the internal frequency management policies of these countries.

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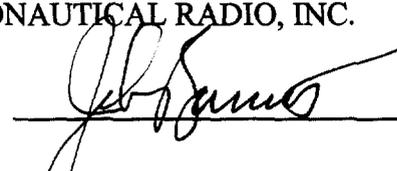
<sup>9</sup> See *SITA Opposition* at 2.

Thus, as shown above and in the ARINC *Petition for Partial Reconsideration*, the Commission should reconsider the *Foreign Participation Order* to the extent that it determined that the aeronautical enroute and fixed services should be governed by the U.S. commitments under the WTO Basic Telecom Agreement. The services involved are neither public nor basic. The aeronautical enroute and fixed services are private, noncommercial services, and the aeronautical datalink service discussed by SITA is an enhanced service. SITA has advanced no reason that these services should be covered.

Respectfully submitted,

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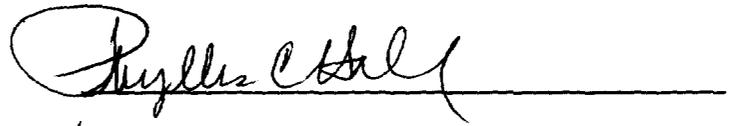
February 20, 1998

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The undersigned hereby certifies that the preceding document was delivered by United States first class mail (except as otherwise indicated), postage prepaid, to the persons listed below.

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