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November 17, 2004

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Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Ex Parte Notice**

Amendment of Part 22 of the Commission's Rules to Benefit the
Consumers of Air-Ground Telecommunications Services
WT Docket No. 03-103

Dear Ms. Dortch:

On November 16, 2004, Gerald Knobloch, President and Chief Executive Officer of Space Data Corporation ("Space Data"), Jennifer L. Kostyu and the undersigned of Morrison & Foerster LLP, on behalf of Space Data, met with Bryan Tramont, Chief of Staff to Chairman Powell, and Sheryl Wilkerson, Legal Advisor to Chairman Powell, regarding the above-referenced proceeding.

The parties discussed various licensing approaches that have been proposed for the air-to-ground ("ATG") spectrum band. Space Data explained why the assignment of two exclusive licenses, rather than a single 4 MHz license or two overlapping licenses, would best serve the public interest and the development of a competitive ATG market. Space Data pointed out that that assigning a single exclusive 4 MHz license would perpetuate the existing monopoly in the ATG market and result in the inefficient use of limited ATG spectrum. Space Data argued that even if the Commission encourages bidding consortia to participate in the auction of a single 4 MHz license, there is no reason to believe that a winning consortia would have the incentive to disaggregate or share the spectrum in order to provide competing services. Such a result is at odds with the Commission's statutory objective of "promoting... competition... by avoiding

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excessive concentration of licenses and by disseminating licenses among a wide variety of applicants.”¹

Space Data recommended instead that the Commission auction two exclusive licenses. Space Data argued that, given the limited amount of ATG spectrum, meaningful competition in the ATG market is achievable only if the Commission restricts licensees (or affiliated licensees) from holding the entire 4 MHz of ATG spectrum. Space Data noted that the Commission routinely restricts the amount of spectrum a single licensee can hold in frequency bands that do not enjoy robust competition.

Space Data also discussed an alternative licensing proposal that would allow the market to decide through a combinatorial bidding auction whether an exclusive or shared licensing scheme provides the highest and best use of the ATG spectrum. In addition, the parties discussed the need for guard bands between the ATG and adjacent spectrum bands. Space Data urged the Commission to examine thoroughly any guard band requirements to ensure that limited ATG spectrum is put to its maximum use. Space Data also relied upon the arguments set forth in the attached PowerPoint presentation.

Pursuant to Section 1.1206(b) of the Commission’s rules, an electronic copy of this letter is being filed with the office of the Secretary. If you have any questions regarding this notification, please contact the undersigned.

Very truly yours,

/s/ Cheryl A. Tritt

Cheryl A. Tritt
Counsel to Space Data Corporation

Attachments

cc: Bryan Tramont
Sheryl Wilkerson

¹ 47 U.S.C. § 309(j)(3)(B).