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December 8, 2004

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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:

Today, Gerald Knoblach, President and Chief Executive Officer of Space Data Corporation ("Space Data"), Eric Frische, Chief Technical Officer of Space Data, and Jennifer L. Kostyu and the undersigned of Morrison & Foerster LLP, on behalf of Space Data, met with Commissioner Jonathan S. Adelstein and Barry Ohlson, Commissioner Adelstein's Senior Legal Advisor, regarding the above-referenced proceeding.<sup>1</sup>

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 noted 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. Such a result is at odds with the Commission's statutory objective of "promoting... competition... by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants."<sup>2</sup>

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<sup>1</sup> Mr. Knoblach and Mr. Frische attended the meeting by telephone.

<sup>2</sup> 47 U.S.C. § 309(j)(3)(B).

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Space Data recommended instead that the Commission auction two exclusive licenses. In the alternative, however, the Commission could allow the market to decide whether a two-exclusive licenses or shared licensing scheme provides the highest and best use of the ATG spectrum through a combinatorial bidding auction. 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 all 4 MHz of ATG spectrum. Space Data noted that the Commission routinely restricts the total amount of spectrum a single licensee can hold in frequency bands that do not enjoy robust competition, as it did less than a month ago when it placed ownership restrictions on two Direct Broadcast Satellite (“DBS”) service channels that are scheduled for auction.<sup>3</sup>

In addition, Space Data responded to concerns expressed by Nextel Communications, Inc. (“Nextel”) that Space Data’s stratospheric network could cause harmful interference to licensees operating adjacent to the ATG spectrum band. Space Data has proposed using iDEN or other narrowband technology in a 1 to 1.5 MHz exclusive use ATG license. Upon examination of Nextel’s November 16, 2004 technical study, Space Data determined that Nextel expressed concern only regarding potential interference from wideband wireless technologies such as CDMA and Flarion, not narrowband technologies. Space Data noted that narrowband signals drop off much more rapidly than either CMDA or Flarion signals, creating far less potential for interference. Furthermore, regardless of whether a wideband or narrowband technology is used, the nature of Space Data’s stratospheric network eliminates near-far interference issues. Specifically, Space Data’s balloon-borne network and airborne aircraft would never be sufficiently near other operators’ receivers to cause interference. Space Data also would hand off its communications traffic to terrestrial operators when the aircraft was near to or on the ground. Space Data also relied upon the arguments set forth in the attached PowerPoint presentation.

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<sup>3</sup> See *Auction of Direct Broadcast Satellite Licenses*, AUC-03-52, FCC 04-271 (rel. Dec. 3, 2004) (prohibiting DBS licensees that operate satellites at orbit locations providing coverage to all 50 states from acquiring either of the last two available channels located at a particular orbit location in order to promote the development of an additional DBS service provider).

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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*

Attachment

cc: Commissioner Jonathan S. Adelstein  
Barry Ohlson