

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

In the Matter of)	
)	
Amendment of Part 22 of the Commission’s Rules to Benefit the Consumers of Air-Ground Telecommunications Services)	WT Docket No. 03-103
)	
Biennial Regulatory Review - Amendment of Parts 1, 22, and 90 of the Commission’s Rules)	WT Docket No. 05-42
)	
Application of Verizon Airfone Inc. for Renewal of 800 MHz Air-Ground Radiotelephone License, Call Sign KNKG804)	File No. 0001716212
)	

**THE BOEING COMPANY
OPPOSITION TO PETITION FOR RECONSIDERATION**

The Boeing Company (“Boeing”) hereby submits its opposition to Space Data Corporation’s (“Space Data”) petition for reconsideration of the Report and Order issued in the above-captioned proceeding.^{1/} Boeing urges the Commission to uphold its decision to prohibit air-to-ground (“ATG”) licensees from providing ancillary terrestrial services in the ATG band. As the Commission found, given the meager amount of spectrum allocated to the ATG service, the public interest would be best served by devoting it solely to that purpose. In addition, allowing ancillary services has the serious potential to cause harmful interference to adjacent band terrestrial operations and reduce competition in the ATG market.

^{1/} *Amendment of Parts 1 and 22 of the Commission’s Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service*, WT Docket No. 05-42, Report and Order, FCC 04-287 (rel. Feb. 22, 2005) (“*ATG Order*”).

DISCUSSION

In the *ATG Order*, the Commission dedicated just four megahertz of spectrum in the 800 MHz band for air-ground use, and two ATG licensees will operate on those frequencies regardless of the outcome of the auction. This is the only spectrum currently allocated specifically for air-ground services. For that reason, the Commission correctly rejected requests to use the spectrum for terrestrial services on an ancillary basis.^{2/} The Commission agreed with T-Mobile that, because the ATG band is immediately adjacent to commercial mobile radio services (“CMRS”) spectrum, there is a significant risk that ATG licensees would decide to abandon the air-ground market if they had the option of using this limited spectrum resource for terrestrial services.^{3/}

Space Data’s primary argument in favor of permitting ancillary terrestrial services on ATG spectrum is that ATG licensees allegedly would be able to provide better service to rural and underserved markets than terrestrial carriers offer today.^{4/} Space Data, however, ignores that ample spectrum is currently allocated for those services in rural areas. Absent harmful interference to existing CMRS operations, Space Data could obtain wireless licenses or enter into agreements with existing licensees to provide its “balloon-borne stratospheric” services to rural customers.^{5/}

^{2/} *ATG Order* ¶ 53 (“At this time, we decide not to permit a licensee to provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.”).

^{3/} *Id.* (citing Letter from Thomas J. Sugrue, Vice President, Government Affairs, T-Mobile USA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 03-103 (Nov. 15, 2004)).

^{4/} According to Space Data, the need for additional service in rural areas is especially acute because the rule requiring cellular carriers to offer analog service will sunset in 2008. To the extent rural customers continue to demand analog service, however, rural cellular carriers will continue to offer it, with or without the mandate.

^{5/} If the balloon technology would cause harmful interference to CMRS, it is irrelevant whether Space Data is operating on CMRS or ATG frequencies -- its terrestrial service would be prohibited.

For the same reasons, there is no merit to Space Data’s contention that public safety concerns in rural areas necessitate its provision of ancillary terrestrial service. Even if Space Data’s balloon platforms are a technically and economically feasible means of providing ATG service, the available terrestrial spectrum makes it unnecessary to use any of the ATG channels to ensure that rural America has sufficient terrestrial public safety options. Moreover, Space Data’s argument fails to take into account the Commission’s conclusion that a robust air-ground service itself can provide an important means for communication during in-flight emergencies.^{6/} As Cingular correctly notes, “[i]n the absence of extensive test data showing that terrestrial use of air-ground frequencies will not diminish the reliability of air-ground service, the Commission clearly should not authorize the provision of terrestrial service on air-ground frequencies and thereby jeopardize its availability for public safety needs.”^{7/}

Nor does Space Data provide any information that would allow the Commission to determine that the proposed ancillary terrestrial services will not cause harmful interference to existing CMRS operations. As Nextel and APCO previously explained, the adjacency of the lower ATG band to the National Public Safety Plan Advisory Committee (“NPSPAC”) channels and the upper band’s adjacency to 900 MHz SMR frequencies require ATG to be integrated into the comprehensive interference abatement procedures the Commission adopted in the *800 MHz*

^{6/} See *AirCell, Inc.*, 15 FCC Rcd 9622, 9643-44 (2000) (waiving the airborne cellular prohibition for AirCell “may provide ‘safety-related voice communications between pilots and emergency personnel, and be used to uplink in-cockpit, up-to-the-minute weather and air traffic information as well as potentially provide in-flight monitoring of airframe and engine operations, serving to better inform personnel of aircraft operations.’”); *Allocation of the 849-851/894-896 MHz Bands*, 5 FCC Rcd 3861 ¶ 18 (1990) (“inflight communications can provide an additional means of emergency communications”), *recon. in part*, 6 FCC Rcd 4582 (1991).

^{7/} Cingular Wireless Comments at 7 (filed Sept. 23, 2003).

Report and Order.^{8/} Nextel recognized that Boeing's and AirCell's proposed approach, which contemplates the possibility of ATG licensees handing off signals to existing terrestrial systems at low altitude and implementing other protective measures, would be "unlikely to cause harmful interference to adjacent-band operations."^{9/} Nextel, however, raised legitimate concerns that interference abatement would not be possible when there is ground-level transmission of signals from the ATG band. Given that the "complex, \$4.86 billion plan that the Commission recently adopted to resolve public safety interference required years of effort and significant cooperation from both the private sector and public-safety licensees," the Commission should, at the very least, "exhaustively consider all possible interference scenarios before permitting any ancillary terrestrial use of the ATG spectrum."^{10/}

Space Data's response that its terrestrial services would be offered solely on a secondary basis does not alleviate these concerns. The ongoing and enormously expensive 800 MHz band restructuring itself provides a case in point -- without sufficient data in the record to demonstrate that ancillary terrestrial services in the ATG spectrum would not harm adjacent band operations, a simple pronouncement that such terrestrial services must be shut down if and when interference is proven is wholly insufficient to protect the public interest.

^{8/} See Letter from Trey Hanbury, Senior Counsel, Nextel Communications to Marlene H. Dortch, Secretary, FCC, WT Docket 03-103, Attachment at 4 (Dec.3, 2004) ("*Nextel Dec. 3, 2003 Ex Parte*"); Letter from Robert M. Gurss, Director, Legal & Governmental Affairs, to the Honorable Michael Powell, Chairman, FCC, WT Docket 03-103 (Nov. 29, 2004); *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Report and Order, and Order, 19 FCC Rcd 14969 (2004) ("*800 MHz Report and Order*").

^{9/} See *Nextel Dec. 3, 2003 Ex Parte*, Attachment at 4. Nextel further noted that, among other things, the intersystem interference mitigation protections that two ATG operators would need to deploy would also "have the salutary effect of diminishing out-of-band emissions." Letter from Trey Hanbury, Senior Counsel, Nextel Communications to Marlene H. Dortch, Secretary, FCC, WT Docket 03-103, Attachment at 9 n.15 (Nov. 16, 2004).

^{10/} See Letter from Trey Hanbury, Senior Counsel, Nextel Communications, to Marlene H. Dortch, Secretary, FCC, WT Docket 03-103 (Dec.8, 2004).

Space Data's well-worn promises of improved rural and public safety services provide no basis for the Commission to reconsider its prohibition on ancillary terrestrial use of ATG frequencies. Rather than creating more options for either CMRS or ATG consumers, grant of Space Data's proposal has the serious potential to undermine competition in both markets through diversion of scarce spectrum resources and increased interference.

CONCLUSION

For the foregoing reasons, Boeing respectfully requests that the Commission deny Space Data's petition for reconsideration of the ancillary use prohibition.

Respectfully submitted,

THE BOEING COMPANY

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CERTIFICATE OF SERVICE

I, Karen Smith, hereby certify that on this 16th day of June, 2005 a copy of the foregoing Opposition was served via first class mail, excepted where noted otherwise, on the following:

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