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November 15, 2005

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

**Re: WT Docket Nos. 03-103 and 05-42
Notice of *Ex Parte* Presentation**

Dear Ms. Dortch:

This is to inform you that representatives of AirCell, Inc. ("AirCell") participated in an *ex parte* meeting on November 14, 2005 to discuss a number of issues in the above-referenced proceedings. Specifically, Bill Gordon, AirCell Vice President for Regulatory Affairs, and I, counsel to AirCell, had a telephone conference with Fred Campbell, Acting Legal Advisor to FCC Chairman Kevin Martin. During this meeting, AirCell discussed the issues raised in the two attached hand-outs.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, I am filing this notice electronically in the above-referenced dockets. In addition, I am sending one copy of this notice via e-mail to the FCC representatives listed below. Please contact me directly with any additional questions.

Respectfully submitted,

/s/ Michele C. Farquhar

Michele C. Farquhar
Counsel to AirCell, Inc.

Attachments

HOGAN & HARTSON L.L.P.

Ms. Marlene H. Dortch

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cc: Fred Campbell
Barry Ohlson
John Branscome
John Giusti
Cathleen Massey
Kathy Harris
Richard Arsenault
David Furth
Jay Jackson
Zenji Nakazawa
Roger Noel
James Ballis
Jennifer Gilsenan
Charlene Lagerwrff
Thomas Lucey
Moslem Sawez
Marcus Wolf

Background on ATG Transition Issues

WT Docket No. 03-103

Overview. This background paper: (1) explains how the FCC's current rules could delay deployment of new air-to-ground (ATG) service and impair competition under either of two ATG auction scenarios; (2) responds to Airfone's *ex parte* of November 11, 2005; and (3) provides further details regarding the ATG transition process.

(1) Negative Impact of Current Transition Rules. Under either ATG auction scenario outlined below, the introduction of new ATG broadband service could be delayed, and the potential for competition in the ATG band could be thwarted, as a result of the current transition rules. To avoid this outcome, AirCell has proposed a one-year transition from the close of the ATG auction, and a shorter renewal period (which would expire on the sooner of December 31, 2007, or when 85% of Airfone's existing customer base has discontinued use of the incumbent technology). *In addition, AirCell urges the FCC to impose milestones and/or a regular reporting process on Airfone to ensure that the incumbent is making progress and taking some steps regarding the transition process on an ongoing basis.*

Scenario 1: Airfone Wins 3 MHz License; New Entrant Wins 1 MHz License

Rather than modifying equipment to enable its current customers to continue with the expensive and inefficient incumbent narrowband service offering (consolidated into the 1 MHz band), both Airfone and its customers will have an incentive to convert directly to Airfone's new broadband offering in the 3 MHz band. However, Airfone's license for exclusive use of the 1 MHz band remains valid until 2010, even if there is only minimal or no use of the band. Airfone will have no incentive to relinquish its license early, as this would enable competition to Airfone's new service. By delaying the start of new ATG service from a competitor, Airfone will have a "first mover" advantage in signing-up (and locking-in) large commercial airline customers.

Scenario 2: New Entrant Wins 3 MHz License

Under current rules, Airfone has two years from the date of license grant to consolidate its operations to the 1 MHz portion of the band. A new broadband service cannot share the spectrum with Airfone's incumbent narrowband system without interference, so a new licensee cannot commence service until Airfone has vacated the spectrum. Airfone will have a market incentive *not* to consolidate its operations any more rapidly than two years, because the sooner it vacates the 3 MHz of spectrum, the sooner its incumbent system will face competition from a new broadband provider in the ATG band. Thus, the introduction of new services and ATG band competition could be artificially delayed. (Airfone could also use the two-year period as leverage to extract an inappropriate fee to expedite its transition.)

(2) Response to Airfone Ex Parte of November 11. Airfone raises the prospect of “coordinating use of the Air-Ground spectrum with Canada and Mexico to ensure interference-free operations throughout North America” as the latest *post hoc* rationalization for a lengthier transition period than necessary. AirCell disagrees that such coordination will require a full year to conclude, given that no major spectrum reallocation decision is involved. Moreover, the primary ATG providers in both Canada and Mexico are Airfone partners operating the Airfone system, so there will only be a small number of interested parties and a common perspective among these countries.

AirCell also disagrees that broadband operations in the 3 MHz block could not begin until international coordination is completed. By using directional antennas on cell sites located near the Canadian and Mexican borders, broadband operations could commence on a non-interfering basis. This would also be facilitated by the fact that any consolidation of the Airfone system into the 1 MHz band would likely occur concurrently in all three countries to facilitate interoperability for aircraft that travel across borders. Once this transition occurs, there will be no operations in the 3 MHz band in any of the three countries, so there would be no interference concerns.

In any event, consolidating the incumbent’s narrowband operations into the 1 MHz portion of the band should not require any government-to-government consultations. Indeed, Airfone’s *ex parte* indicates that it plans to convert its narrowband customers to a broadband ATG model, which suggests that Airfone is not actually planning to transition *any* customers to the 1 MHz spectrum block. Therefore, AirCell recommends that Airfone’s renewal period should expire concurrently with the transition period if Airfone wins the 3 MHz ATG license (*see* Scenario 1 above) to enable the 1 MHz ATG licensee to access this spectrum in a timely manner.

If the FCC adopts AirCell’s proposed shorter transition and renewal periods, AirCell believes that the FCC, as well as Canada and Mexico, will move forward quickly with any necessary consultations and agreements regarding broadband ATG services, and the new ATG licensees will have an incentive to use their best efforts to ensure that this happens. If the current transition rules remain, however, then this incentive may be absent, and any negotiation process with Canada and Mexico could in fact take longer than necessary.

(3) Further Background on ATG Migration Process. As summarized in more detail in the attached Appendix, almost all of Airfone’s general aviation aircraft customers undergo a comprehensive inspection and maintenance at least once per year, and often twice a year. AirCell believes that most of Airfone’s general aviation customers with Magnastar phones will upgrade to a broadband system or alternative technology during this process rather than transition to the 1 MHz

spectrum block. Furthermore, this upgrade would probably not be handled by Airfone, but would be performed by one of the hundreds of aircraft dealers or fixed based operators (FBOs) throughout the United States who handle the regular inspection and maintenance operations for these same planes.

Despite what Airfone has stated in its filings to the FCC, AirCell has heard conflicting and inconsistent statements from Airfone marketing representatives and Airfone customers in the ATG market, suggesting that there is confusion about whether Airfone plans to consolidate its operations into the 1 MHz portion of the ATG band, and how this process might occur. For example, some Airfone representatives have told AirCell representatives (as well as their own customers) that Airfone can handle this transition process remotely for *all* aircraft – general aviation as well as commercial – which contradicts Airfone’s previous statements to the FCC. Other Airfone representatives have told customers that they will merely need a software upgrade, which will require sending their ATG “box” (about the size of a shoe box) to the manufacturer (Teledyne) for a slight modification, and the box will be returned relatively soon thereafter.

In any event, AirCell believes that any such process can be accommodated very quickly – certainly within one year – if Airfone does, in fact, transition any customers to the 1 MHz portion of the ATG band. To ensure that Airfone does not unnecessarily delay this process, the FCC should impose milestones and/or a regular reporting requirement on Airfone. AirCell continues to believe, however, that virtually all general aviation and commercial aircraft customers will choose to upgrade their systems to new ATG technology instead.

Finally, AirCell is certain that no incumbent Airfone customers will be stranded given the availability of alternative technology, either from the other ATG licensees (if the transition and renewal periods are adjusted to facilitate competition) or through reasonably priced satellite alternatives such as AirCell’s new Axxess system.

APPENDIX**AirCell Background Paper on ATG Transition Process**

AirCell, Inc. ("AirCell") is the largest supplier of air-ground telephone systems for general aviation in the world, selling more systems than its three closest competitors combined. It is from this experience that AirCell provides the following information:

There are several different manufacturers of general aviation jet aircraft. Each type of aircraft must receive comprehensive inspections and maintenance on a regular basis. The exact schedule for these services varies from manufacturer to manufacturer, but almost all of Airfone's general aviation aircraft customers receive these comprehensive inspections and maintenance at least once a year, and often twice a year.

During these procedures, the aircraft is dismantled to the degree necessary to inspect and conduct maintenance on numerous systems (engines, hydraulics, avionics, wiring, airframe, etc). It is during this process that most of Airfone's 3,000 general aviation customers with Magnastar telephones will likely make the swap from Magnastar to a current generation telephone system. Since these aircraft will already be in a state of disassembly, there will be no significant addition in cost or time to swap out the telephone systems. The additional cost will primarily be the cost of the hardware itself.

In the few instances in which an aircraft is unable to schedule a Magnastar replacement during the scheduled maintenance and inspection period, or in which the aircraft owner simply wants the telephone installation completed without waiting for the other scheduled service, a stand-alone swap can be conducted – albeit at a higher cost. In these instances, AirCell has observed, the additional cost is typically not a barrier to installation. General aviation aircraft are extraordinarily expensive to own and operate, but the cost is justified by the utility the aircraft provide to the executives and other passengers who use them for business purposes; a new air-ground telephone system is an extension of that utility. For this reason, AirCell has already done a number of stand-alone installations with previous generations of air-ground telephone systems, and these can be handled on an expedited basis.

The regular aircraft maintenance and inspections are performed at an aircraft dealer or fixed based operator ("FBO"). There are hundreds, if not thousands, of FBOs and aircraft dealers throughout the United States. The service work on the aircraft, including the specific effort to swap the telephone systems, is conducted by trained mechanics in FAA authorized workshops. The FAA approval of the telephone installation is done on a Form 337 Field Approval. These approvals are managed by the aircraft dealer and their in-house Designated Engineering Representative.

AirCell recently introduced a new line of aircraft telephone systems (Axxess) specifically designed to be an attractive alternative to the current Magnastar system. The Axxess system was introduced at the National Business Aviation Association (NBAA) convention in Orlando, Florida on November 10, 2005. These air-ground systems will be available for delivery in January of 2006. The AirCell systems will be based on the Iridium satellite network, but will be easily upgradeable to a terrestrial or satellite broadband system, as they become available in the future. AirCell is also developing a modular attachment to the Axxess system that will enable a simple transceiver swap with current Magnastar radios. This will allow for a simple switch to an AirCell product for those that want the advantage of a new system while leaving existing cabin wiring and hard-mount phones in place. If a Magnastar customer decides to purchase the AirCell Axxess system with the special interface, then the change from the current Magnastar system to the Axxess system could take place at any time.

It remains Air Cell's view that all 3,000 Magnastar radios in general aviation aircraft can be swapped for new systems within a one-year period. With advance notice, all hardware can be provided to the dealers prior to a scheduled inspection and maintenance appointment or a stand-alone installation.

AirCell Talking Points
WT Docket No. 03-103

Problem: The FCC's ATG transition plan creates a serious impediment for new ATG deployment, for the 1 MHz license as well as the 3 MHz license.

- Deployment of the 3 MHz ATG license will be delayed for two full years after license grant – much longer than needed to consolidate incumbent operations in the 1 MHz portion of the band – and it will seriously delay the new ATG licensee's service to the public.
- The 1 MHz license is valuable, but the five-year renewal period creates an even more severe deployment problem for that license.
- The FCC's rules operate as a real roadblock to deployment of new ATG service, as well as competition, and may have a chilling effect on the auction.

Solution: AirCell's transition proposal will expedite ATG service to the public, ensure a more competitive ATG market, and protect a dwindling number of incumbent users.

Proposal: Airfone should vacate the 3 MHz portion of the band within one year of the close of the ATG auction, rather than on the license grant date. Airfone's license renewal should expire on the sooner of Dec. 31, 2007 or when 85% of its existing customer base (as of the effective date of the ATG Reconsideration Order) have discontinued use of the incumbent technology.

- AirCell will be ready to deploy almost immediately after the ATG auction, but the transition rules block that option for either ATG license, and the incumbent has no incentive to speed its transition.
- AirCell is ready to launch service in the ATG band with its inaugural airline in late 2006, and to begin full commercial service by early 2007.
- The growing commercial aviation market is ready for new broadband ATG services – airlines want service, and airborne passengers want service (especially data). This market has been woefully underserved for years now.
- Incumbent users will not be harmed by AirCell's new proposal:
 - One year will be adequate time for Airfone to modify equipment on the 3,000 general aviation aircraft cited in its recent filing. (Most of these customers will not keep or migrate the incumbent service, but will install new broadband ATG service instead.) AirCell is the leading provider of ATG service in the general aviation market, and it is very familiar with the needs and service preferences of these financially secure customers.
 - Most of Airfone's current ATG customers will likely choose to migrate to a state-of-the-art service with a longer lifespan, so there will be extremely few, if any, incumbent users left in the 1 MHz ATG band once broadband ATG options are available.

The Public Interest Will Be Served By AirCell's Proposal. AirCell is not seeking special treatment that will benefit only itself – its transition proposal will benefit ANY new ATG licensee that wins spectrum in the auction, and it will serve the public interest by speeding deployment of ATG service and ensuring a more competitive market.