

September 18, 2007

VIA ELECTRONIC FILING

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

**Re: The Boeing Company
Written Ex Parte Presentation
IB Docket No. 07-101**

Dear Ms. Dortch:

In light of the growing support for such action, the Commission should expeditiously adopt a new regulatory framework for the fixed-satellite service in the Ku-band that provides primary status to earth stations mounted on either terrestrial or aeronautical vehicles. ARINC is the most recent company to express support for this approach, stating in its reply comments that it “supports comments submitted by [T]he Boeing Company (“Boeing”) that urge the FCC concurrently to adopt parallel regulations regarding aircraft mounted earth stations.”¹

ARINC’s support is in addition to that already expressed by other parties. Both the Satellite Industry Association (“SIA”) and ViaSat, Inc. (“ViaSat”) supported extending a technologically-neutral licensing approach, including primary status, to aeronautical services in the context of the vehicle-mounted earth station (“VMES”) proceeding.² It is also worth noting that General Dynamics Corporation (“General Dynamics”), the petitioner in the VMES proceeding, did not specifically oppose the aircraft-mounted earth station (“AMES”) licensing proposal. Further, Boeing described in its reply comments

¹ Reply Comments of ARINC, IB Docket No. 07-101, at 1 (filed September 4, 2007).

² See Reply Comments of the Boeing Company, IB Docket No. 07-101, at 2-3 (filed September 4, 2007).

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why the same arguments raised by General Dynamics for primary status for VMES, extend to the request to extend primary status to AMES.³

Only one party to the VMES proceeding specifically opposed the proposal for the Commission to adopt AMES licensing rules concurrently with VMES. Maritime Telecommunications Network, Inc. (“MTN”) argued in a footnote to its reply comments that the Commission did not provide adequate notice to the public in the *VMES NPRM*⁴ such that the possible elevation of AMES to primary status was a foreseeable outcome of the proceeding.⁵ MTN argues that there were a limited number of references to aeronautical services in the *VMES NPRM*, which “cannot be reasonably construed” to provide such adequate notice.⁶

Boeing extensively documented the adequate notice provided in the *VMES NPRM* of a potential primary allocation for aeronautical services.⁷ In addition, the Commission specifically sought comment on the proposed rules contained in the *VMES NPRM*.⁸ The proposed rules include Section 25.201, a proposed definition of VMES. In its reply comments, to effectuate the same regulatory treatment for AMES and VMES, Boeing proposed a small modification to the VMES definition.⁹ The parties certainly had adequate notice that parties might comment on, and propose changes to, the definition of VMES. Several parties, including SIA, ViaSat, ARINC and MTN did in fact comment on whether the Commission should include AMES in its licensing rules for VMES, and all comments except MTN embraced including AMES. Furthermore, MTN had adequate opportunity, and exercised that opportunity, to comment on the proper licensing regime for AMES in conjunction with VMES.

MTN also argues that the VMES proceeding is not the proper proceeding for consideration of AMES licensing, and that “to the extent Boeing wishes to revisit the allocation of [aircraft earth stations], it should do so through a petition for further rule making in the pending [aeronautical mobile satellite

³ See Boeing Reply Comments at 3.

⁴ Amendment of Parts 2 and 25 of the Commission’s Rules to Allocate Spectrum and Adopt Service Rules and Procedures to Govern the Use of Vehicle-Mounted Earth Stations in Certain Frequency Bands Allocated to the Fixed-Satellite Service, IB Docket No. 07-101, *Notice of Proposed Rulemaking*, FCC 07-86, (May 15, 2007) (“*VMES NPRM*”).

⁵ See Reply Comments of Maritime Telecommunications Network, Inc., IB Docket No. 07-101, at note 23 (filed September 4, 2007) (“MTN Reply Comments”).

⁶ *Id.*

⁷ See Comments of the Boeing Company, IB Docket No. 07-101, at 13-14 (filed August 17, 2007).

⁸ *VMES NPRM*, ¶ 16.

⁹ See Boeing Reply Comments at 3-4. This proposal would modify the definition of VMES so that the definition no longer confines itself to vehicles that “travel primarily on land.” Section 25.201 would read as follows:

Vehicle-Mounted Earth Station. A VMES is an earth station, operating from a motorized vehicle that receives from and transmits to fixed-satellite space stations and operates pursuant to the requirements set out in § 25.XXX of this part.

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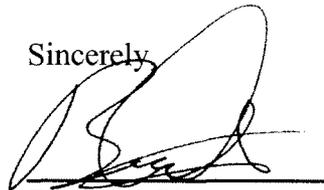
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service (“AMSS”)] proceeding and not here.”¹⁰ It is undisputed, however, that any action to enhance the status of VMES will have direct impact on the interference conditions for AMES licensees. Therefore, it is appropriate for the Commission to address the regulatory status of both services in the same proceeding. Furthermore, although Boeing has demonstrated in its comments and above that the Commission has provided adequate notice to the public to address the licensing of AMES in the context of the VMES proceeding, Boeing also filed its VMES comments and reply comments in the AMSS docket. This was done precisely in case the Commission finds inadequate notice in the VMES proceeding alone, so that the Commission can take joint action through the two proceedings to extend the same technologically-neutral licensing approach to both ground-based and aeronautical platforms. MTN does not deny the Commission’s authority to take this approach. Since both dockets remain open, the Commission can take such action without delaying the commercial availability of terrestrial or aeronautical-based VMES services.

In light of the continued and growing support for the proposal to adopt rules for AMES that mirror those proposed for VMES, and noting that the only objection was one on procedural grounds addressed above, the Commission should take expeditious action in the above-referenced proceeding to establish concurrent licensing rules for both vehicle and aircraft mounted earth stations.

Thank you for your attention to this matter. Please let us know if you have any questions.

Sincerely,



Bruce A. Olcott
Joshua T. Guyan

¹⁰ MTN Reply Comments, at 8. The Commission should also note that in its VMES reply comments MTN argued for eliminating data logging requirements for earth stations on vessels. *See id.* at 4-5.