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January 24, 2013

VIA ELECTRONIC FILING

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

Re: Promoting Expanded Opportunities for Radio Experimentation and Market Trials Under Part 5 of the Commission’s Rules and Streamlining Other Related Rules, ET Docket 10-236

2006 Biennial Review of Telecommunications Regulations – Part 2 Administered by the Office of Engineering and Technology, ET Docket 06-155

Permitted Oral *Ex Parte* Presentation

Dear Ms. Dortch:

On January 22 and 23, 2013, representatives of The Boeing Company (“Boeing”) met in separate meetings with representatives of the Commission staff to discuss the above-captioned proceeding on creating increased opportunities for the use of wireless spectrum for experiments and innovation. On January 22, meetings were held with Commissioner Mignon Clyburn and her legal advisor, Louis Peraertz, and intern, Brian Indovina; and with Renee Gregory, legal advisor to Chairman Genachowski. On January 23, meetings were held with Commissioner Jessica Rosenworcel and her legal advisor, David Goldman; with Commissioner Ajit Pai and his legal advisor, Courtney Reinhard; with Erin McGrath, legal advisor to Commissioner McDowell; with Julius Knapp, Chief of the Office of Engineering and Technology, and with Bruce Romano, Associate Chief (Legal) for OET. Attending each of the meetings on behalf of Boeing were Audrey Allison, Joseph Cramer and the undersigned. The attached talking points were distributed during the meetings.

Most of the discussion was focused on reducing the incidence in which coordination and consent conditions are imposed on experimental licenses issued by OET. Section 5.85(e) of the Commission’s rules instructs that OET “may, at its discretion” impose coordination requirements on experimental licenses.¹ In recent years, however, coordination requirements

¹ 47 C.F.R. § 5.85(e).

have not been employed with discretion, but instead are routinely imposed on the experimental use of numerous spectrum bands regardless of whether coordination is warranted by the nature of the experimental operations. In part because of this, Recommendation 7.7 of the National Broadband Plan advocates permitting experimental use of spectrum “without individual coordination of frequencies, conditioned on not causing harmful interference.”²

The Boeing representatives also discussed the Commission’s proposed creation of a Program Experimental License, which would permit researchers to conduct wireless experiments over an extended period in an identified location. Boeing urged that the identification of the location applicable to such Program Experimental Licenses remains flexible so that OET, working with license applicants, can define geographic limits to such licenses (such as university or corporate campuses) that provide licensees with sufficient flexibility while adequately constraining the geographic reach of the experimental operations.

If the Commission does create a Program Experimental License, this new class of license should be available for research and experimentation in all spectrum bands. The Commission should not notch out heavily used spectrum bands, such as CMRS spectrum particularly given the significant amount of research and innovation that is conducted on new and experimental services in CMRS spectrum. Obviously, OET may need to impose additional operating restrictions on Program Experimental Licenses authorizing the use of certain especially sensitive spectrum bands, such as the Commission’s Restricted Bands, but conditions for the use of such spectrum by Program Experimental Licensees can be developed by OET on an individual basis in the same manner that such conditions are developed today for traditional experimental licenses.

Boeing’s discussion also focused on the Commission’s proposal to place non-confidential information regarding pending applications for Program Experimental Licenses on a public web portal for review by potentially interested parties. Boeing believes that any automatic review period before which such applications could be granted should be relatively short and in no event longer than ten days. Further, any party that has a potential concern about the possibility of harmful interference regarding a specific Program Experimental License application should be required to raise specific and substantive concerns about the application within the ten day period. In the unlikely event that an interested party is unable to provide a substantive response within the ten day period, the party should be permitted to request additional time from OET, which should not be routinely granted. In the event that a substantive concern is raised regarding a specific application, the parties should be given a brief period to resolve the concerns and, if they are unable to do so, OET staff should be delegated to reach a decision on the issue, most likely by placing specific conditions or operational requirements, if deemed necessary, on the Program Experimental License that is issued.

In considering the use of a public web portal for Program Experimental License applications, the Commission should note the fact that a substantial percentage of experimental operations are necessarily confidential, either because they involve proprietary research or technology, or because they involve classified or ITAR controlled activities often undertaken on

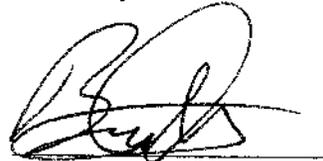
² *Connecting America: The National Broadband Plan*, Federal Communications Commission, Recommendation 7.7, March 2010 (“*National Broadband Plan*”) (available at <http://www.broadband.gov/download-plan/>).

behalf of the U.S. Government. For this reason, the information made available on the public web portal should be limited to the anticipated propagation characteristics of the tests (i.e., frequencies, power levels, emission types, duty cycles, etc.) and the geographic location of the testing.

Finally, the Commission should reject any efforts by licensees to extract monetary payments from applicants for Program Experimental Licenses, including payments that are purported to reimburse licensees for their time and effort in reviewing the web portal and in assessing Program Experimental License applications. In this regard, at least one major wireless licensee has been attempting to charge relatively substantial fees for reviewing and approving experimental coordination requests. Such fees, if widely imposed by wireless licensees, would rapidly escalate the cost of wireless experimentation beyond the capabilities of many research organizations, invariably stifling innovation. Even for those organizations that could absorb the additional costs, the significantly increased expenses would result in the development of fewer new products and higher prices for consumers for those new wireless products that are developed.

Further, the imposition of fees by licensees for reviewing experimental license applications is incompatible with the underlying obligations of spectrum licensees under the Communications Act. As the Commission has repeatedly concluded, spectrum is a scarce public resource and the right of licensees to use spectrum for commercial purposes is a privilege that carries with it certain obligations, including the obligation to assist where possible in enabling the shared use of spectrum to facilitate research and experimentation that could further the development of innovative and more efficient uses of spectrum to benefit the public.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bruce A. Olcott', written over a horizontal line.

Bruce A. Olcott
Counsel to The Boeing Company

cc: Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Renee Gregory
Louis Peraertz
David Goldman
Courtney Reinhard
Erin McGrath
Julius Knapp
Bruce Romano