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

In the Matter of
FCC Seeks Public Comment on Report on Process Reform
IB Docket No. 14-25

To: The Commission

COMMENTS OF
THE BOEING COMPANY

The Boeing Company (“Boeing”), by its attorneys, provides the following comments in support of the Commission’s efforts to reform and streamline its processes.1 Boeing is a world leader in the development and deployment of next generation satellites systems. Consequently, Boeing strongly supports Recommendation 5.8 of the Commission’s Process Reform Report (“Report”), which urges the Commission to improve the Commission’s ITU notification process for space networks by facilitating ITU notifications prior to the publication of a full space station application. Such early notification could reduce the risk that U.S. applicants could be preempted by applicants seeking the same orbital slot through other notifying administrations.

Boeing also supports Recommendation 5.29, which recommends that the Commission examine ways to streamline its Part 25 information filing requirements. Boeing urges the Commission to take this opportunity to reaffirm that independent manufacturer affidavits are one source of highly probative evidence indicating that an applicant has satisfied the Critical Design Review (“CDR”) milestone rules. Reducing the frequency with which applicants are required to

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submit highly sensitive and proprietary spacecraft CDR documentation would reduce the risk of disclosure and could increase the likelihood that applicants will pursue licensing through the Commission. The proposed rule changes would improve the efficiency of the Commission’s Part 25 review processes and reduce administrative burdens without impairing the Commission’s ability to fully evaluate satellite applications, and Boeing strongly recommends they be adopted.

I. RECOMMENDATION 5.8: THE COMMISSION SHOULD FACILITATE CONFIDENTIAL ITU NOTIFICATION PRIOR TO SUBMITTING A FULL SPACE STATION APPLICATION TO THE COMMISSION

Recommendation 5.8 of the Report is that the Commission should “explore a process for allowing satellite companies the flexibility of starting the ITU notification process prior to submitting a full space station application with the FCC.”\(^2\) Under the Commission’s current satellite space station application process, applications are immediately posted to the Commission’s website, potentially long before ITU notification can be submitted to the ITU for the satellite network. As a result, applicants are exposed to the significant risk that another party may be able to apply for the desired orbital slot through another administration and receive a higher priority. Boeing therefore urges the Commission to adopt Recommendation 5.8 to mitigate this risk to U.S. satellite operators.

Other administrations have adopted solutions to this problem. The UK communications regulator, Ofcom, has long used a confidential “first come, first served” system in which a satellite operator applies to Ofcom for registration, Ofcom assesses the proposal for technical compatibility and against the due diligence criteria and, if satisfied, submits the application to the

\(^2\) Report at 65.
ITU. Although Ofcom has considered adopting a process more similar to the Commission’s current approach, it noted the serious concern that “the need to publish details of applications might deter applications to Ofcom.” SIA has likewise noted that an Ofcom-style early notification procedure of “streamlining technical requirements and providing expedient notifications to the ITU would encourage satellite operators to utilize the Commission’s licensing process” as well as “help[ing] to prevent other administrations from leapfrogging ahead of U.S. applicants.”

The adoption by the FCC of procedures to initiate the ITU notification and coordination process in advance of submission and publication of a full application will not substantially change the existing application process. Applicants are already required to submit the information required for Advance Publication, Coordination, and Notification of frequency assignment filings as part of their application materials. The Commission need only conduct an initial review of the applicant’s technical and legal qualifications prior to publication of the full application. This minor modification to the existing process would maintain the integrity of the Commission’s review process while also mitigating the risk to applicants. Boeing therefore recommends that the Commission adopt its Recommendation 5.8 and take steps to facilitate advance ITU notification.

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4 Id. at 8.

5 Comments of SIA, IB Docket Nos. 02-34, 00-248, at 19 (June 3, 2002).

6 47 CFR 25.111(b).
II. RECOMMENDATION 5.29: THE COMMISSION SHOULD ACCEPT A WIDER VARIETY OF EVIDENTIARY SHOWINGS TO DEMONSTRATE A SATELLITE LICENSEE’S COMPLIANCE WITH THE CDR MILESTONE

Boeing strongly supports Recommendation 5.29 of the Report, which states that “the Commission should consider the possibility of replacing some or all of the current technical showing requirements for demonstrating compliance with the construction milestones with legally binding certification requirements by a senior executive with appropriate responsibility in the company.”7 This recommendation is consistent with comments filed by several parties, including Boeing, urging the Commission to reaffirm its original flexible criteria for assessing a space station licensee’s compliance with its CDR milestone.8 Permitting a broader range of evidentiary showings would reduce the administrative burden for the Commission and for licensees, and would better protect the confidentiality of sensitive spacecraft design information without compromising the Commission’s ability to fully evaluate the technical merits of an application.

A. Recent Commission Practice Has Changed Significantly from the Original CDR Milestone Evidentiary Showing

As the Commission explained in its initial report on space station licensing reform, evidence of CDR milestone compliance could take different forms, potentially including:

7 Report at 73.

1. evidence of a large payment of money, required by most construction contracts at the time of the spacecraft CDR;

2. affidavits from independent manufacturers; and

3. evidence that the licensee has ordered all the long lead items needed to begin physical construction of the spacecraft.9

In providing these criteria, the Commission cautioned that “on occasion” it may be necessary or appropriate to supplement the record by requiring licensees “to provide further information, or to conduct physical inspections.”10

In practice, however, the Commission staff now routinely requires most, if not all, space station licensees to disclose an entire copy of the CDR documentation to the Commission for its review. By moving from an occasional necessity to a matter-of-course submission, the Commission has unnecessarily increased the risk to applicants as well the administrative burden on Commission staff. Unfortunately, rather than reverse this trend, the Commission’s recent comprehensive review of its satellite rules (“Part 25 Order”) appears to suggest that one of the specific factors that the Commission originally identified as appropriate to demonstrate CDR milestone compliance – affidavits from independent manufacturers – may no longer be considered probative. As Boeing explained in its recent Petition for Reconsideration11 and reiterates here, the Commission has no basis for such a suggestion and Boeing therefore urges the Commission to withdraw or clarify this statement.

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10 Id.

11 Boeing Petition for Reconsideration at 5-9.
B. The Commission Should Reaffirm That Affidavits From Independent Manufacturers Provide Highly Probative Evidence That a Satellite Licensee’s CDR Has Been Completed.

As noted in the previous section, in establishing its CDR milestone rule, the Commission originally identified affidavits from independent manufacturers as one form of evidence that could be used to demonstrate compliance with CDR milestone requirements. The Commission routinely employs such legally binding certifications or affidavits to ensure compliance with Commission requirements and to verify the factual circumstances of complex situations. The Report cites Section 64.5001(c), which employs a certification from a company officer to verify the Universal Service Fund contribution and reporting requirements of prepaid calling card providers. Likewise, Section 73.3555 of the rules provides that applicants for a “failing station” waiver may submit an affidavit from an independent broker to affirm that active and serious efforts have been made to sell the station, and that no reasonable offer from an entity outside the market has been received. Such affidavits are administratively efficient for both licensees and the Commission, and are a valuable tool for establishing complex facts.

Indeed, Boeing’s recommendation is less sweeping than the proposal in the Process Reform Report. Although the Report recommends “replacing” some or all of the current technical requirements with certifications requirements by a company executive, Boeing reiterates that it has not sought to “replace evidentiary showings with certifications or affidavits,”

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12 See Space Station Licensing Reform Order, ¶ 191.
13 Report at 73.
15 Report at 73.
as indicated in the Part 25 Order.\textsuperscript{16} Instead, Boeing is one of several parties urging the Commission to reaffirm that affidavits from independent manufacturers may be used as one type of evidentiary showing that would be sufficient in most cases to demonstrate compliance with a CDR milestone.

Importantly, in accepting certifications or affidavits as one form of evidence, the Commission retains the ability to seek further information in appropriate cases. This resolves the apparent concern that “allowing licensees to file certifications or affidavits in lieu of concrete evidence could allow a licensee not making sufficient progress to continue to hold spectrum to the exclusion of others willing and able to proceed.”\textsuperscript{17} Boeing recognizes that the Commission has concerns that a licensee’s self-certification may on rare occasions be inaccurate and insufficient assurance that a licensee had in fact met the spacecraft CDR milestone.\textsuperscript{18} In contrast to self-certification, however, affidavits from independent manufactures are a very reliable indicator of whether the manufacturer has completed the milestone. The completion of a spacecraft CDR is usually coupled with contractual requirements for significant payments by the licensee to the manufacturer. An independent manufacturer therefore has no incentive to assert in an affidavit that a spacecraft CDR has been completed unless this is actually the case.

The Commission has provided no reason in its Part 25 Order why affidavits from independent manufacturers should not be acceptable in most cases to demonstrate compliance with the CDR milestone requirement. Indeed, the Commission’s own Process Reform Report recommends more sweeping changes than Boeing advocates here. Therefore, the Commission

\textsuperscript{16} Part 25 Order, ¶ 47.

\textsuperscript{17} Id.

\textsuperscript{18} Id.
should reaffirm its original position that affidavits from independent manufacturers should be acceptable in most cases to resolve a CDR compliance inquiry.

III. CONCLUSION

For the reasons discussed herein, Boeing urges the Commission to streamline its processes with regard to ITU notification and CDR showings. Facilitating ITU notifications prior to the publication of a full application would reduce the risk that U.S. applicants could be preempted by applicants seeking the same orbital slot through other notifying administrations. Reaffirming independent manufacturer affidavits as probative evidence that a space station license applicant has satisfied the CDR milestone rules would reduce the frequency with which applicants are required to submit highly sensitive and proprietary spacecraft CDR documentation. The proposed rule changes would improve the efficiency of the Commission’s Part 25 review processes and reduce administrative burdens without impairing the Commission’s ability to fully evaluate satellite applications, and Boeing strongly recommends they be adopted.

Respectfully submitted,

THE BOEING COMPANY

By: ___________________

Audrey L. Allison
Director, Frequency Management Services
The Boeing Company
1200 Wilson Boulevard
Arlington, VA 22209
(703) 465-3215

Bruce A. Olcott
Preston N. Thomas
Jones Day
51 Louisiana Ave. NW
Washington, D.C. 20001
(202) 879-3630

Its Attorneys

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