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March 7, 2003

Mr. J. Robert Kramer, II
Chief, Litigation II Section
Antitrust Division
U.S. Department of Justice
1401 H Street, NW., Suite 3000
Washington, D.C. 20530

Dear Mr. Kramer:

We appreciate the opportunity to comment on the interim consent decree regarding Northrop Grumman's acquisition of TRW. Boeing is pleased the Government has issued this interim decree to ensure competition and sourcing choices continue for reconnaissance satellite systems. Our comments follow.

Definition of Payload to cover Signal Intelligence ("SIGINT") capabilities.

It's almost unquestioned that TRW is considered a "national resource" for its payloads that perform missions gathering information about the origin, nature and content of radio signal transmissions or emanations. Collectively these capabilities are called signal intelligence or "SIGINT." The U.S. Government has spent billions helping TRW develop SIGINT capabilities and these are now a key element of modern orbital satellite reconnaissance. Some of these SIGINT capabilities are highly classified.

There is some question about whether the Consent Decree's definition of "payload" clearly covers this crucial SIGINT technology. Definition H of the Final Judgment defines "Payload" as satellite assemblies "using electro-optical technology, infrared technology or radar technology, [to] enable a satellite to perform a specific mission." This definition "expressly excludes those payloads whose primary mission is communications."

While Boeing concurs with the exclusion of payloads whose primary mission is communications, we do not believe it was intended nor is it prudent to exclude those satellite payloads whose primary mission is signal intelligence reconnaissance. Electronic signal intelligence technology should be added to electro-optic, IR and radar technologies. We believe the decree must ensure that TRW SIGINT payloads continue to be available on a nondiscriminatory basis to all potential primes who wish to bid future covered procurements featuring SIGINT systems.

Unless these clarifications are made, the following scenario could occur: A heritage Northrop Grumman ("NOC") division could decide to bid as a prime for a multi-mission satellite that combines NOC radar capabilities and TRW SIGINT technology. While the consent decree requires it to offer use of NOC radar systems on a non-discriminatory basis to other potential competitors, NOC could "lock up" the TRW SIGINT payload for the NOC prime bid. This would deprive other potential primes from using TRW's unique and critical SIGINT capabilities in their own bids for future multi-mission reconnaissance satellite platforms. This is not just a matter of data rights, which the government probably already has as "unlimited" because of its extensive funding of TRW SIGINT technology, but it affects access to cleared personnel with highly specialized knowledge in these areas, facilities and equipment. Boeing expects that increasingly government customers will be seeking multi-mission systems as part of their network centric warfare initiatives.