collection is estimated to be 1,280 hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: May 19, 2003.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 03–12927 Filed 5–22–03; 8:45 am]

BILLING CODE 7410–20–M

DEPARTMENT OF JUSTICE

Antitrust Division

Responses to Public Comments on Proposed Final Judgment in United States v. Northrop Grumman Corporation and TRW Inc.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes the four public comments on the proposed Final Judgment in *United States* v. *Northrop Grumman Corporation and TRW Inc.,* Civil No. 1:02CV02432, filed in the United States District Court for the District of Columbia, together with the responses of the United States to the comments.

On December 11, 2002, the United States filed a Complaint alleging that Northrop Grumman Corporation's proposed acquisition of TRW Inc. would lessen competition substantially in the development, production, and sale of radar reconnaissance satellite systems and electro-optical/infrared reconnaissance satellite systems, and the payloads for those systems, in the United States, in violation of section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires the defendant Northrop to act in a non-discriminatory manner in making teaming and purchase decisions on programs in which, by virtue of the acquisition of TRW, it will be able to compete as both a prime contractor and the supplier of the payloads for the program.

Public comment was invited within the statutory 60-day comment period. The public comments and the responses of the United States thereto are hereby published in the **Federal Register,** and shortly thereafter these documents will be attached to a Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act and filed with the Court, together with a motion urging the Court to enter the proposed Judgment. Copies of the Complaint, the proposed Final Judgment, and the Competitive Impact Statement are currently available for inspection in Room 200 of the Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2481) and at the Clerk's Office, United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. (The United States's Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act will be made available at the same locations shortly after they are filed with the Court.) Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

BILLING CODE 4410–11–M

U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

May 5, 2003

Roger F. Roberts
Senior Vice President
Space & Intelligence Systems
The Boeing Company
2800 Westminster Boulevard MC SZ-84
Seal Beach, CA 90740-2089

Re: Comment on Proposed Final Judgment in *United States v. Northrop Grumman Corporation and TRW Inc.*, No. 1:02CV02432, filed December 11, 2002

Dear Mr. Roberts:

This letter responds to your March 10 letter, commenting on the proposed Final Judgment submitted for entry in the captioned case. The government's Complaint in the case charged that the proposed acquisition of TRW Inc. ("TRW") by Northrop Grumman Corp. ("Northrop") would combine one of the only two suppliers of radar and EO/IR payloads for reconnaissance satellite systems sold to the U.S. Government (Northrop) with one of the few companies able to act as prime contractor on U.S. reconnaissance satellite programs that use these payloads (TRW). The Complaint alleges that as a result of this combination, Northrop would have the incentive and ability to lessen competition by favoring its own payload and/or prime contractor capabilities to the detriment or foreclosure of competitors, and would harm the U.S. Government by posing an immediate danger to competition in two current or future programs, the Space-Based Radar and Space Based InfraRed System-Low programs (the latter program is now called the Space Tracking and Surveillance System).

Your letter requests that two modifications be made to the Final Judgment. The first, and most substantive, request is that the definition of "Payload" be expanded to explicitly include signal intelligence ("SIGINT") technology, as well as the electro-optical, infrared, and radar technology that is now contained in the definition in the Final Judgment. You state that you believe signal intelligence payloads, which prior to the merger were made only by TRW, and not by Northrop, were probably intended to be included, and that their inclusion must be made explicit to "ensure that TRW SIGINT payloads continue to be made available on a non-discriminatory basis to all potential primes who wish to bid future covered procurements featuring SIGINT systems." A specific concern raised in your letter is the impact of the acquisition on future programs that involve multi-mission satellites combining both SIGINT and radar capabilities.

The scope of the proposed consent decree is limited to remedying the anticompetitive effects arising from this transaction. These effects result from the combination of Northrop's payload

capability with TRW's satellite prime capabilities. Your letter states that TRW already possesses SIGINT payload capability. In such event, the combination of this payload capability with TRW's satellite prime capability was pre-existing and did not arise from the merger. Therefore, it is not addressed in the proposed consent decree.

The second request in your letter is that the Compliance Officer be expressly empowered to sponsor potential competitors for access to classified information that might be needed to compete for a given program. Access to classified information is a sensitive issue in any classified program, and detailed procedures have been developed by the appropriate agencies to deal with questions that may arise regarding such access. The United States does not believe that the Final Judgment should be used to modify government procedures, but instead is directed at modifying private anticompetitive conduct. If internal U.S. Government classification procedures restrict the number of potential competitors for a project, it is always in the discretion of the affected agency, after carefully balancing that problem against the need to protect classified technologies, to modify its own procedures.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II
Chief
Litigation II Section

U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

May 5, 2003

Raymond A. Jacobsen, Jr., Esquire
McDermott, Will & Emery
600 Thirteenth St., NW
Washington, DC 20005-3096

Re: Comment on Proposed Final Judgment in *United States v. Northrop Grumman Corporation and TRW Inc.*, No. 1:02CV02432, filed December 11, 2002

Dear Mr. Jacobsen:

This letter responds to your March 17 letter, commenting on the proposed Final Judgment submitted for entry in the captioned case. The government's Complaint in the case charged that the proposed acquisition of TRW Inc. ("TRW") by Northrop Grumman Corp. ("Northrop") would combine one of the only two suppliers of radar and EO/IR payloads for reconnaissance satellite systems sold to the U.S. Government (Northrop) with one of the few companies able to act as prime contractor on U.S. reconnaissance satellite programs that use these payloads (TRW). The Complaint alleges that as a result of this combination, Northrop would have the incentive and ability to lessen competition by favoring its own payload and/or prime contractor capabilities to the detriment or foreclosure of competitors, and would harm the U.S. Government by posing an immediate danger to competition in two current or future programs, the Space-Based Radar and Space Based InfraRed System-Low programs (the latter program is now called the Space Tracking and Surveillance System).

In your letter, you note that Lockheed "fully supports" the non-discrimination principles set forth in the Final Judgment, and specifically endorses many of the provisions in that Final Judgment, including both the non-discrimination requirements themselves and the provisions that enforce the requirements and incentivize Northrop to comply with those requirements voluntarily. However, you also assert that these provisions will not be fully effective unless the Final Judgment is modified in several specific ways.

Section IV.B.(1)(b) of the Final Judgment requires that Northrop negotiate in good faith to enter into teaming agreements with prime contractors who wish to use Northrop electro-optical, infrared, or radar payloads to compete for satellite programs. Lockheed proposes that this provision be modified to include a specific requirement that Northrop negotiate such teaming agreements "on a timely basis," and that the Judgment state explicitly that that "generally means not later than thirty (30) days after the competing prime expresses desire for such Agreement." The United States does not believe that such a provision is either necessary or effective to achieve the objective sought by

Lockheed. "Good faith" necessarily requires that negotiations take place in a timely manner. Northrop could not be considered to have acted in good faith if it unreasonably delayed negotiations in order to give its own team an advantage in a particular competition. I also note that your proposal does not state whether negotiations must be started, or finished, within the requisite 30-day period; if it is the former, that would not protect Lockheed from delays during the negotiations themselves, and if it is the latter there will always still be questions as to which party was responsible for there being no final agreement in the allotted time. In either case, Lockheed's protection will come from the broad duties imposed on Northrop and the enforcement provisions already endorsed by Lockheed.

Your letter next requests that Section IV.B(3) be stricken or modified. That section limits Northrop's obligation to provide payloads to all satellite system primes in the event that the number of primes seeking the payload, or the burden of working with each of them, becomes unreasonably large. This section recognizes that Northrop's resources, including facilities and human capital, are not unlimited. Given the scarcity of human capital in highly demanding technical fields, as well as budgetary constraints at the Department of Defense (DoD), forcing Northrop to form teams with every company that seeks its services, under any and all circumstances, could result in inferior products, and may not be in the best interests of DoD. In such an event, the decree provides that the Secretary of the Air Force shall determine Northrop's teaming arrangements. You propose that the circumstances in which the provision may be invoked be listed in the decree. We believe, however, that it would be unwise to attempt to predict all of the circumstances that could arise in future competitions. The decree provides the Compliance Officer with the necessary flexibility to make this determination when and if it becomes necessary. You also propose that prime contractors be notified if the provision is being invoked. We see no reason to selectively create a separate notice requirement for this particular provision, since prime contractors should know if Northrop is refusing to enter into teaming negotiations with them and will have the opportunity to bring that fact to the attention of the Compliance Officer, who will be reviewing Northrop's actions, and interacting with industry, on a continuing basis.

The next concern in your letter relates to the term "discriminate." Definition N of the Final Judgment provides in part that "'[d]iscriminate' means to choose or advantage Northrop, or to reject or disadvantage a Northrop Prime or Payload competitor, in the procurement process for any reason other than the competitive merits." You state that the use of the phrase "other than the competitive merits" creates a loophole that will permit Northrop to evade its responsibility not to discriminate. This claim misunderstands the purpose and effect of this provision. The purpose of the clause is to permit Northrop to continue to choose its teammates in an efficient and procompetitive manner, while preventing it from engaging in anticompetitive conduct. Prior to the acquisition, Northrop and TRW chose their teammates based in part on considerations such as which teammates offered the best terms and provided the greatest likelihood of ultimately winning the contract. The Final Judgment is not intended to radically change the manner in which such teaming decisions have been made in the past, but to preserve the existing teaming dynamics, by preventing Northrop from basing its decisions on the opportunity to

disadvantage companies that are now competing primes. The use of the term "competitive merits" simply recognizes that Northrop is permitted to continue to act in this rational manner. Therefore, Northrop need not offer precisely the same terms to all teammates. Northrop may take into account, among other things, the terms proposed by that teammate and the likelihood of ultimately winning a contract with that teammate. The Final Judgment provides the Compliance Officer with the flexibility to determine whether any particular teammate has been discriminated against in a manner which violates the Final Judgment.

Finally, Lockheed urges that the required time periods for certain actions to be taken by the Compliance Officer and the Secretary of the Air Force be increased from 5 days to 10 days, [g]iven the importance of this matter, and the demands on the Compliance Officer and Air Force Secretary." The time periods in the Final Judgment must take into account both the need for careful consideration and the need for prompt resolution of disputes. An increase in the time for consideration also increases the time of uncertainty, and as Lockheed has emphasized elsewhere in its comments, timeliness is a significant factor, and tight time frames may be required at critical junctures. Furthermore, as noted above, we anticipate that the Compliance Officer will be overseeing Northrop's conduct on a continuing basis, and will be advised of potential issues well before the time periods actually become effective.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II
Chief
Litigation II Section

U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

May 5, 2003

Barbara A. Pollack, Esquire
Vice President, Legal and General Counsel
Space and Airborne Systems
Raytheon Company
2000 East El Segundo Boulevard
Building E1
Mail Station A114
El Segundo, CA 90245

Re: Comment on Proposed Final Judgment in *United States v. Northrop Grumman Corporation and TRW Inc.*, No. 1:02CV02432, filed December 11, 2002

Dear Ms. Pollack:

This letter responds to your March 12 letter, commenting on the proposed Final Judgment submitted for entry in the captioned case. The government's Complaint in the case charged that the proposed acquisition of TRW Inc. ("TRW") by Northrop Grumman Corp. ("Northrop") would combine one of the only two suppliers of radar and EO/IR payloads for reconnaissance satellite systems sold to the U.S. Government (Northrop) with one of the few companies able to act as prime contractor on U.S. reconnaissance satellite programs that use these payloads (TRW). The Complaint alleges that as a result of this combination, Northrop would have the incentive and ability to lessen competition by favoring its own payload and/or prime contractor capabilities to the detriment or foreclosure of competitors, and would harm the U.S. Government by posing an immediate danger to competition in two current or future programs, the Space-Based Radar and Space Based InfraRed System-Low programs (the latter program is now called the Space Tracking and Surveillance System).

In your letter, you state that the proposed Final Judgment lacks clarity in three areas, and you propose specific modifications to the Final Judgment that you believe will provide that clarity. The first issue you raise concerns the definition of Payload and the Northrop Payload business, which under the terms of the decree must be kept separate from the TRW Space & Electronics Satellite Systems business. You request that the Final Judgment be modified to clarify that the definition of Payload includes signal intelligence (SIGINT) technology, millimeter wave technologies, all frequencies of radar, space and ground mission data processing, payload system integration, and algorithms. We do not believe that such modifications are necessary or advisable. The Final Judgment is designed to remedy only those potential foreclosures of Northrop's competitors that are

made possible by the acquisition of TRW. Those foreclosures are in radar, electro-optical, and infrared technologies, and thus the Complaint filed in this case, and Final Judgment, are targeted at Northrop's conduct with relation to those payloads.

As for the other technologies Raytheon wishes to specify in the definition of Payload, the definition already covers "the assembly or assemblies on a Satellite that ... enable a Satellite to perform a specific mission," and specifically includes "all related components, software, interfaces, any other items within the assembly or assemblies that enable the Payload to perform its contemplated function, and all related technical data and information customarily provided by a Payload supplier to a Prime Contractor ...." The definition was made as broad as possible to ensure that Northrop's responsibilities are not simply to provide a sensor package, but a functioning, usable payload. The requirement that Northrop provide payloads does not, however, include an obligation that Northrop provide pieces or components of those payloads separate from the payload itself. To the extent that your concern is that Northrop as a prime contractor could migrate certain work traditionally done by the payload provider into the prime contractor responsibilities, such trade-offs could exist whether or not Northrop purchased TRW, and the required separation between the prime and payload businesses at Northrop may inhibit this from occurring. Further, the Compliance Officer should have the authority to resolve any disputes that arise in this regard, which may depend in large part on how the Department of Defense wants to run the program.

Raytheon's second point is that, under the Final Judgment, Northrop could refuse to separately sell its satellites to other potential prime contractors, including Raytheon, if it were to choose to compete as a prime. As noted above, the Complaint and Final Judgment target the possible anticompetitive effects created by the combination of Northrop's payload capabilities and TRW's prime contractor capabilities, and are not designed to force Northrop to make available selected components of either the payload or prime capabilities. This would include the provision of satellites as a separate product, as opposed to Northrop's making itself available to a payload competitor as a prime contractor.

Finally, you argue that Paragraph IV. C. of the Final Judgment, which protects from disclosure the "products and/or other results of ... joint investment or development activity" when the two Northrop businesses are teamed on a given project, should be modified to require Northrop to make available to competing teams all results of innovation by the Satellite Prime Business that are funded by the Satellite Prime Business, and all results of innovation by the Payload Business that are funded by the Payload Business. Thus, the protections of IV.C. would not apply to any investment or development to which both the Payload and Satellite Prime businesses contribute, even in a teaming context. Such a rule would strip away from Northrop basic intellectual property protections that Raytheon itself recognizes as important to protect. Raytheon's proposal would make funding source the sole criterion for determining whether a project is a joint undertaking, and this is far too narrow a definition. Teammates are often expected to invest their own funds to further the competitive abilities of a team, and that would be no less the case in a team including the two Northrop businesses. The language you propose

could thus reduce the incentive for Northrop's Payload and Satellite Prime businesses to team with each other, even if the formation of such teams would be in the best interests of DoD. Rather than creating an inflexible rule, the Final Judgment permits the Compliance Officer to take all relevant factors into account in deciding whether the withholding of any given investment or development result constitutes the discrimination forbidden by the Final Judgment.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II
Chief
Litigation II Section

U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

May 5, 2003

Mr. Neil F. Keehn
2603 Third Street
Santa Monica, CA 90405

Re: Comment on Proposed Final Judgment in *United States v. Northrop Grumman Corporation and TRW Inc.*, No. 1:02CV02432, filed December 11, 2002

Dear Mr. Keehn:

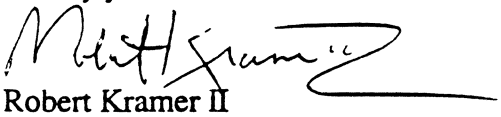
This letter responds to your January 7, 2003 letter, commenting on the proposed Final Judgment submitted for entry in the captioned case. The government's Complaint in the case charged that the proposed acquisition of TRW Inc. ("TRW") by Northrop Grumman Corp. ("Northrop") would combine one of the only two suppliers of radar and EO/IR payloads for reconnaissance satellite systems sold to the U.S. Government (Northrop) with one of the few companies able to act as prime contractor on U.S. reconnaissance satellite programs that use these payloads (TRW). The Complaint alleges that as a result of this combination, Northrop would have the incentive and ability to lessen competition by favoring its own payload and/or prime contractor capabilities to the detriment or foreclosure of competitors, and would harm the U.S. Government by posing an immediate danger to competition in two current or future programs, the Space-Based Radar and Space Based InfraRed System-Low programs (the latter program is now called the Space Tracking and Surveillance System).

Your letter relates exclusively to matters that are not in any way directly related to either the acquisition of TRW by Northrop or the proposed relief. Specifically, you claim that there have been unfair allegations that you were involved in illegal activities during a past employment by TRW. Your letter includes proposed modifications to the Final Judgment, which also relate specifically to your personal claims and not to the subject acquisition or efforts to remedy any competitive problems that it may cause.

The purpose of the proposed Final Judgment, and the Complaint on which it is based, is to address the potential lessening of competition that may result from the acquisition of TRW by Northrop. The Final Judgment cannot serve as a vehicle for addressing totally unrelated issues. For this reason, the United States cannot adopt the proposed modifications you have requested.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court. However, we will not publish or file the extensive materials that you included with your comment, which do not relate to the issues of this lawsuit.

Sincerely yours,



J. Robert Kramer II
Chief
Litigation II Section

Roger F. Roberts, Ph.D
Senior Vice President
Space and Intelligence Systems
Integrated Defense Systems

The Bo. _ Company
2600 Westminster Boulevard MC SZ-84
Seal Beach, CA 90740-2089

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.

Accordingly, to preserve potential competition for multi-mission reconnaissance satellites forecast for the future, we recommend that coverage for signal intelligence capability be added to the definition of "Payload" in Definition H of the Final Judgment. The clarified definition would read that "Payload means the assembly or assemblies on a Satellite that use electro-optical technology, infrared technology, electronic signal intelligence technology or radar technology... ." The last sentence of Definition H should be modified to read, "Payload expressly excludes those payloads whose primary mission is communications, but includes those payloads whose primary mission is to gather intelligence through signal interception.

Classified Systems.

Many of the systems covered are likely to be highly classified. If NOC/TRW positions itself for a sole source award, Government agencies may be reluctant to provide security billets to other potentially competing contractors. We would like to see the Compliance Officer specifically empowered by the Final Judgment to sponsor potential competitors for security access to covered programs.

Thank you for considering our comments. Please contact my focal point on this matter, Jeffrey Rohm at 562-797-1143, if you have any questions.

Sincerely,

Roger Roberts

Roger F. Roberts
Senior Vice President
Space & Intelligence Systems

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McDERMOTT, WILL & EMERY

March 17, 2003

BY HAND DELIVERY

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

Re: U.S. v. Northrop Grumman Corporation and TRW, Inc. - Proposed Consent Order

Dear Mr. Kramer:

Lockheed Martin Corporation ("Lockheed Martin") respectfully submits the following comments concerning the proposed Consent Order in the captioned matter. Lockheed Martin fully supports the "non-discrimination" principles set forth in Section IV.B. of the proposed Consent Order. (See Part I. infra.) However, for the reasons set forth in Part II infra., certain provisions of the proposed Consent Order need to be deleted or revised to insure that the "non-discrimination" objectives of the Order are achieved.

I. Lockheed Martin Fully Supports the Non-Discrimination Principles Set Forth in Section IV.B. of the Consent Order

As the Competitive Impact Statement ("CIS") reflects, Northrop Grumman is one of two leading suppliers of radar and electro-optical/infrared ("EO/IR") payloads for reconnaissance satellites. 68 Fed. Reg. 1862 (January 14, 2003). Therefore, it is essential that other prime contractors competing with Northrop Grumman to sell satellite systems to the U.S. Government have non-discriminatory access to Northrop Grumman payload capability. Otherwise, as the CIS reflects, Northrop Grumman would have the ability and incentive to foreclose prime contractor competitors "by denying them the Northrop [Grumman] payload or by making personnel, investment, design, and other payload-related decisions that disadvantage those competitors." Id. Absent non-discriminatory access to payloads, the U.S. Government would be harmed because innovation in radar and EO/IR satellite programs

would be lessened and the Government would be less likely to obtain satellite systems that take advantage of both the best prime contractor and the best payload provider. Id.

Lockheed Martin is one of the nation's major suppliers of military satellite systems, with substantial expertise in designing, manufacturing, selling and integrating satellite systems using radar and/or EO/IR payloads. However, Lockheed Martin does not produce radar or EO/IR payloads for military satellites; rather, it is dependent on others to supply those payloads. Therefore, these comments focus on those parts of the proposed Order - particularly Section IV.B. - which are intended to protect competition in procurements where Northrop Grumman would be supplying payloads to other primes and also competing with those primes for the prime contract.

Lockheed Martin endorses many of the key provisions of the proposed Consent Order. In particular (subject to comments below), Lockheed Martin endorses those provisions which:

(1) require that Northrop Grumman supply competing prime contractors Northrop Grumman payloads "in a manner that does not discriminate in favor of its in-house proposal team against any other Prime Contractor on any basis" (see §IV.B.(1)(a));

(2) require that Northrop Grumman negotiate in good faith with prime contractors to enter into commercially reasonable teaming agreements and contracts for the purpose of bidding on satellite competitions and similar activities which shall not discriminate in favor of its in-house proposal team against any other prime contractor on any basis (see §IV.B.(1)(b));

(3) require that Northrop Grumman, on a non-discriminatory basis, provide information regarding its payload to its in-house proposal team(s) and to any prime contractor that has notified Northrop Grumman of a desire to obtain the Northrop Grumman payload or which has teamed with Northrop Grumman to obtain the payload (see §IV.B.(1)(d)); and

(4) require that Northrop Grumman "make all personnel, resource allocation and design decisions regarding its satellite payload capabilities on a non-discriminatory basis" (see §IV.B.(1)(e)).

These key "non-discrimination" requirements should assist in preserving competition/innovation on satellite programs involving radar and/or EO/IR payloads. Accordingly, subject to its comments below, Lockheed Martin also endorses those Consent Order provisions that would enforce these "non-discrimination" requirements and those that should incentivize Northrop Grumman to comply with the "non-discrimination" requirements. In particular, Lockheed Martin endorses the Consent Order provisions which:

(1) provide for appointment of a Compliance Officer to oversee compliance with the Order (see §V);

(2) require that Northrop Grumman maintain the former TRW Space & Electronics Satellite Systems businesses separate and apart from the Northrop Grumman payload business (see §IV.F);

(3) provide for substantial civil penalties for each violation of the Consent Order (see §VII);

(4) provide that the Consent Order's term shall be at least seven (7) years and can be extended for an additional three (3) years upon motion of the Justice Department[1] (see §X); and

(5) provide for continued Justice Department oversight of defendant's compliance with the Order (see §VI.).

II. Revisions Needed To Insure That the Purposes of the Consent Order Are Fulfilled

A. Northrop Grumman Should be Required To Negotiate Teaming Agreements "On a Timely Basis"

As the CIS acknowledges, prime contractors and payload providers "must work together at an early stage to develop an integrated system" that can perform the particular satellite mission. Therefore, it is important that Lockheed Martin (and other potential prime contractors) know early in the development of a satellite system that they will have non-discriminatory access to the particular Northrop Grumman payload capabilities. Any delay by Northrop Grumman in actively negotiating appropriate teaming agreements required by §IV.B.(1)(b) would jeopardize the competing prime contractor's ability to work with Northrop Grumman to develop the integrated system needed by the Government customer. Were that to happen, the U.S. Government would be denied effective competition for the satellite program.

To insure that Northrop Grumman enters into Teaming Agreements with Lockheed Martin and other prime contractors on a timely basis, and thus insure effective compliance with §IV.B.(2)(b), we urge that that Section be modified to make clear that Northrop Grumman is required to negotiate Teaming Agreements with other prime contractors "on a timely basis." Although this may vary depending on circumstances, the Consent Agreement should specify that "on a timely basis" generally means not later than thirty (30) days after the competing prime expresses desire for such Agreement.

[1] Depending on the schedules of several anticipated satellite programs, it may well be necessary to extend the Consent Order for an additional three years.

B. The Exemption in Section IV B.(3) Should Be Stricken or at Least Modified

Section IV.B.(3) permits Northrop Grumman to "refuse to supply a Payload to any Satellite System Prime if the number and/or burden of Satellite System Primes seeking the benefit of this Section becomes unreasonably large." If Northrop Grumman invokes this provision, it is to notify the Compliance Officer, who makes a recommendation to the Air Force Secretary, who "shall have the sole discretion to decide with whom, and on what terms, Northrop enters into such teaming agreements."

We know of no legal basis to exempt Northrop Grumman from its non-discriminatory payload supply requirements simply because of the number of potential prime contractors. If, as the CIS acknowledges, Northrop Grumman is one of few suppliers of radar and EO/IR payloads, competition will be lessened on satellite products unless Northrop Grumman is obligated to supply that payload to competing primes. (An entity which is deemed an "essential facility" is obligated to serve all potential customers, regardless of their number.)[2]

The Consent Order should be revised to (1) make clear the precise (and we believe very limited) circumstances in which it may be applicable; and (2) provide Lockheed Martin and other prime contractors notice whenever it is being invoked, to afford us/them the opportunity to be heard by the Compliance Officer.

C. The Definition of "Discriminate" Should Be Stricken or Clarified

Lockheed Martin submits that the definition of "discriminate" set forth in Section II. N. of the Consent Order is unnecessary - at least as applied to §IV.B. - and could create "loopholes" that would enable Northrop Grumman to evade the key requirements of the Order.[3]

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[2] See MCI Communications Corp. v. AT&T, 708 F.2d 1081 (7th Cir.) cert denied, 464 U.S. 891 (1983).

[3] As a potentially competing prime, Lockheed Martin's comments focus on Section IV.B. of the Order (and not on Section IV.A., which applies to procurements where Northrop Grumman has already been selected as the prime.) For the reasons discussed herein, the phrase "for any reason other than the competitive merits" should not appear in any definition of "Discriminate" as that term is used in Section IV.B. Lockheed Martin takes no position with respect to whether the term "Discriminate" needs to be defined with respect to Section IV.A. and, if so, whether the proposed definition of that term is appropriate as applied to that Section.

As the CIS acknowledges, the "central provisions" of the Consent Order are the non-discrimination rules. Lockheed Martin believes that the basic requirements of those provisions, by their terms, are clear: Northrop Grumman must, inter alia: (1) supply competing prime contractors its payload "in a manner that does not discriminate in favor of its in-house proposal team against any other Prime Contractor on any basis;" (2) negotiate in good faith with competing prime contractors to enter into commercially reasonable teaming agreements that "shall not discriminate in favor of its in-house proposal team against any other Prime Contractor on any basis;" (3) provide information regarding its payload to its in-house proposal team and to any competing prime contractor; and (4) "make all personnel, resource allocation and design decisions regarding the payload on a non-discriminatory basis." See §IV.B.(1)(a), (b), (d), (e).

The scope of the "non-discrimination" rules is also made clear by the terms of these substantive provisions. Northrop Grumman must not discriminate "on any basis including but not limited to, price, schedule, quality, data, personnel, investment (including but not limited to, independent research and development), technology, innovations, design and risk." See §IV.B.(1)(a), (b).

Lockheed Martin submits that these "non-discrimination" rules as set forth in the substantive provisions of Section IV.B. of the Consent Order are clear and unambiguous and that there is no need to define the term "discriminate" as that term is used in Section IV.B. (We note that Congress saw no need to define the term "discriminate" in either the Robinson-Patman Act, 15 U.S.C. §13a, which prohibits certain price discrimination, or in statutes prohibiting discrimination by common carriers, see, e.g. 46 U.S.C. §1709.)

If the term "discriminate" is to be defined as it is used in Section IV.B., it should be clear and unambiguous, so as not to create confusion, and not create potential "loopholes," when read in conjunction with the substantive provisions (described above). In this regard, if it is deemed necessary to define the term at all we suggest "discriminate" be defined as: "to treat Northrop Grumman's in-house proposal team more favorably than any other competing prime contractor on any basis." Such definition would, we believe, be clear, but essentially duplicative of the substantive provisions (hence, our preference would be to omit any definition of "discriminate" entirely).

The existing definition of "discriminate" (in Section II.N.) creates confusion and potential "loopholes" and should not be made applicable to Section IV.B. or, in the alternative, should be modified in the manner suggested above. Specifically, we are concerned that Northrop Grumman could use the existing definition to favor itself in the supply of

payloads by arguing that such favoritism is permitted if done for "the competitive merits."[4] Such a reading would be completely contrary to the key substantive provisions of the Order - which prohibit Northrop Grumman from favoring itself "on any basis" (see §IV.B.(1)(a), (b), emphasis added). Moreover, the term "competitive merits" is ambiguous and nowhere explained in the Consent Order or in the CIS. Therefore, the entire phrase "for any reason other than the competitive merits" must be stricken from definition N (at least as applied to Section IV.B.) as both contrary to the key substantive non-discrimination rules of the Order and as ambiguous. Given that the non-discrimination provisions are the "central" provisions of the Order, no phrase should be allowed in any definition that could give Northrop Grumman opportunity to evade those "central" requirements.

D. Additional Time Should Be Provided For Teaming Agreement Reviews

The proposed Order provides that teaming agreements between Northrop Grumman and competing primes are to be submitted for approval to a Compliance Officer who shall have five (5) business days to review them. If the Compliance Officer does not approve a given teaming agreement, the matter will be submitted to the Secretary of the Air Force who shall have five (5) business days to determine the terms on which Northrop Grumman shall enter into teaming agreements. See §IV.B.(1)(c).

If the Compliance Officer determines that Northrop Grumman has discriminated in favor of its in-house proposal team, failed to negotiate a teaming agreement in good faith or refused to enter into a teaming agreement, the Compliance Officer shall refer the matter to the Secretary of the Air Force, who shall have five (5) business days to decide with whom and on what terms Northrop Grumman enters into teaming relationships. See §IV.B.(2).

We urge that the time periods described above be doubled to provide the Compliance Officer ten (10) business days to review teaming agreements and provide the Secretary of the Air Force ten (10) business days to review any recommendation of the Compliance Officer. Given the importance of this matter, and the demands on the Compliance Officer and Air Force Secretary, we believe this additional time is warranted.

[4] Definition N states, inter alia, that "Discriminate" "means to choose or advantage Northrop, or to reject or disadvantage a Northrop Prime or Payload Competitor, in the procurement process for any reason other than the competitive merits" (emphasis added).

Conclusion

For the foregoing reasons, we urge that the proposed Consent Order be revised at least in the following respects: (1) that Section IV.B.(1)(b) be modified in the manner suggested in II.A. above to require that teaming agreements be entered into "on a timely basis;" (2) that Section IV.B.(3) be stricken or modified in the manner suggested in II.B. above so that the exemption in that Section is substantially narrowed; (3) that the definition of "Discriminate" stated in Section II.N. be stricken at least as it pertains to Section IV.B. or modified in the manner suggested in II.C. above; and (4) that the periods allowed for teaming agreement review by the Compliance Officer and Secretary of the Air Force be modified in the manner suggested in II.D. above.

Respectfully submitted,

Raymond A. Jacobsen, Jr.

cc: Kathy A. Brown, Esq.
Kevin C. Quin, Esq.
Stephen E. Smith, Esq.
Robert W. Wilder, Esq.

Raytheon

Barbara A. Pollack
Vice President, Legal
310 647 9146
310 647 3394

Space & Airborne Systems

March 12, 2003

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

Dear Mr. Kramer:

Raytheon Company respectfully submits the following comments on the Proposed Final Judgment in United States v. Northrop Grumman Corp. and TRW, Inc., Civil No. 1:02 CV 02432 (GK), 68 Fed. Reg. 1861 (1/14/03) (hereafter referred to as the "Consent Decree"). As a competitor to Northrop Grumman in the development, production, and sale of radar, electro-optic, and infrared payloads for reconnaissance satellite systems used in highly complex US Government space systems, Raytheon uniquely appreciates the need for the Consent Decree and for clear guidance regarding the boundaries of permissible conduct under the Decree. As discussed more fully below, the Consent Decree lacks clarity in three key areas. First, the Consent Decree fails to identify the existing Northrop Grumman businesses that fall within the definition of the Northrop Grumman Payload Business, a critical term used throughout the Consent Decree. Second, the Consent Decree does not squarely address how the remedy will apply if Northrop or a competitor decides to bid as a prime contractor for a reconnaissance satellite system through its Payload Business rather than through its satellite business. Finally, Raytheon believes the Consent Decree should be modified to clarify the extent to which the results of internally funded research and development may be reserved solely for a Northrop Grumman Payload/Satellite team.

There are two competitions addressed explicitly in the Competitive Impact Statement: the Space Based Radar Program and SBIRS-Low (now referred to as the Space Tracking & Surveillance System (STSS) Program). If lack of clarity in the scope of the Consent Decree leads to inappropriate disclosure of information between Northrop Grumman's Satellite Business (formerly TRW) and Northrop Grumman's Payload Business, it is unlikely the Government can obtain an effective remedy on those programs. Raytheon similarly would suffer irreparable damage from a less robust competitive opportunity. We submit, therefore, that the parties should clarify the requirements of the Consent Decree to eliminate potential loopholes rather than leave the issues addressed below to a trial and error process.

DEFINITION OF NORTHROP PAYLOAD BUSINESS:

The Consent Decree defines the term "Northrop Satellite Prime Business" by reference to the acquired TRW business and the term "Payload" by reference to technologies and capabilities. Payload includes radar, electro-optical and infrared assemblies on a Satellite and assemblies and all related components, software, interfaces, and the like that enable the payload to perform its contemplated function, whether or not on the Satellite. Consent Decree Section II.H.

There are a number of technologies and capabilities of Northrop Grumman that we believe fall within the definition of Payload. To ensure Northrop maintains the separation between its Payload and Satellite businesses, as required by the Consent Decree, reference to particular business divisions of Northrop as well as technologies is appropriate. Raytheon requests modification of Section II.H. of the Consent Decree to make the inclusion of those technologies, capabilities, and businesses explicit.

The technologies and capabilities we believe fall within the definition of Payload that should be specifically identified are: Signals Intelligence, often referred to as SIGINT, millimeter wave technologies, radar technologies regardless of frequency (e.g. 20 MHz to 28 GHz), space and ground mission data processing, payload systems integration, and algorithms.

Space and ground mission data processing, payload systems integration, and algorithms do not fit as neatly into the definition of Payload as hardware components or radar frequencies but these tasks and capabilities are integral to the competitiveness of payload designs. The question is where to draw the boundary between permissible vertical integration and competitive procurement opportunities.

Although space and ground mission data processing may be procured separately from the payload, it is an integral part of the payload business. Payload providers routinely make trades between the payload and ground. The tasking and control of the payload and the subsequent processing of the collected data are integral elements of the payload design optimization process. The scope of the space and ground mission data processing, therefore, materially impacts the design of the payload. With the continued evolution of high speed processors, the data processing function, historically done on the ground, is migrating into the space payload. These trades between payload and ground need to be procured competitively. Northrop recognizes this relationship in their organization; the existing Northrop ground mission data processing capability is part of their Space Systems Payload Business.

The space and ground mission data processing responsibility is a key part of payload systems integration since it involves the ability to efficiently parse the data processing function between space and ground. The Program Research and Development Agreement (PRDA) for the Space Based Radar Program provides a useful description of payload systems integration.[1] We submit the Court should adopt this definition for inclusion in the definition of Payload. The Space Based Radar PRDA states that the radar payload systems integrator shall be responsible for providing key interfaces and requirements data to the prime systems integrator. For example, on the Space Based Radar program the establishment of interface parameters across the Electronically Scanned Array, Radar Electronics Unit, Front End Processor, Back End Processor, Mass Data Storage, Communications,[2] and Data Handling subsystems, with the spacecraft bus are the responsibility of

[1] Since the PRDA represents the government customer's view of the role of a payload provider, with specificity regarding the tasks to be performed by a payload provider, Raytheon submits the Court should use the PRDA as a guide to what capabilities and technologies should be deemed part of the Northrop Grumman Payload Business, which must be segregated from Northrop's Satellite Prime Business.

[2] The Consent Decree explicitly excludes those payloads whose primary mission is communications from the definition of Payload. Raytheon included communications here because it is included in the PRDA for the Space Based Radar program but does not by doing so object to this limited consent Decree exclusion.

the payload contractor, including electrical, mechanical, and software specifications. Final integration/test and delivery of the complete Radar payload to the prime systems integrator is also the responsibility of the radar payload contractor.

There are few competitions in payloads for reconnaissance satellite systems. Should Northrop's satellite business have responsibility for payload systems integration, they would impact payload providers in a substantive and material way, relegating the payload provider to a parts supplier role. Should Northrop Grumman combine its payload integration capability and its prime satellite system integration capability, the combination will be difficult if not impossible to undo after the fact for the upcoming competitions. Such combination of the two capabilities would undermine the purpose of the Consent Decree and cause the very anti-competitive harm the Consent Decree is intended to prevent.

Raytheon also requests explicit confirmation that the Northrop Grumman Space Systems Division ("NGSSD") is part of the Northrop Grumman Payload Business under the Consent Decree. This business, formerly the Electronics and Information Systems Group of Aerojet-General, provided "sensing solutions" for SBIRS High, among other programs. NG Press Release dated October 22, 2001 (copy attached). See also NG Press Release dated April 9, 2001, in which Northrop stated that the EO sensor (FPA) for SBIRS High was delivered to Aerojet's production facility in Azusa, Calif., where it was to be integrated into the overall *payload* for SBIRS High (copy attached).[3]

NGSSD, the former Electronic and Information Systems Group of Aerojet-General is now part of Northrop's Electronic Systems sector, the sector that also contains Northrop's Baltimore payload operations. Prior to Northrop's acquisition of the former EIS Group of Aerojet, Raytheon entered into a teaming agreement with the business to seek opportunities jointly for payload business from then-TRW. In its efforts to obtain approval of that acquisition, Northrop committed to take specific actions to protect Raytheon's proprietary and competitively sensitive information. In doing so, Northrop recognized the important payload roles of the former Aerojet business.[4]

MERCHANT SUPPLIER OF SATELLITES:

The Consent Decree mandates a separation between the Northrop Satellite Prime Business and the Northrop Payload Business, Consent Decree Section IV.F., and requires that the Northrop Payload Business offer its payload to other satellite prime contractors on a non-discriminatory basis. Consent Decree Section IV.B. This is necessary to ensure a fair competitive process for prime contracts. The assumption that the satellite manufacturer will serve as prime contractor is consistent with prior practice in this market, where satellite manufacturers typically bid programs as prime and team with or competitively select payload providers. This approach is not required by the terms of the Government's Requests for Proposals and may not continue to be the norm in the future, however.

[3] Other examples of payload competitive activity by NGSSD include: (1) GOES payload trade studies; (2) Advanced Technology Microwave Sounder program for NOAA; (4) Advanced Microwave Sounding Unit; and (5) Defense Support Program.

[4] Notwithstanding an exclusive arrangement between Raytheon and Aerojet, now NGSSD, NGSSD recently informed Raytheon it would not respond to a Request for Information to pursue a Payload opportunity on the STSS Program but intends to work with Northrop's payload business in an offering competitive with Raytheon's offering.

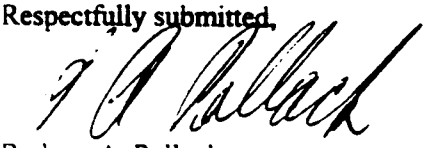
This is not a hypothetical issue. Raytheon and other payload providers bid as prime contractors on programs for other customers and procure the platforms. For example, Raytheon bid as a prime contractor against traditional satellite providers for the MUOS Program. The Government selected Raytheon as one of two contractors to continue to the next phase. Should Raytheon elect to bid as prime in the reconnaissance satellite systems opportunities addressed in the Consent Decree, Northrop could withhold access to its Satellite Business -- including access to satellites, space vehicle integration and test, and support and associated services -- and effectively hamper such competition. Raytheon submits, therefore, that Section IV.B of the Consent Decree should be modified to apply to the Northrop Satellite Prime Business in the same fashion as they apply to the Northrop Payload Business to the extent a competitor of Northrop intends to submit a proposal as a Prime contractor on a US Government Satellite program, bidding through a competitor payload business. Further, the Consent Decree should be modified to apply in like fashion whether Northrop chooses to bid a program as prime through its Satellite Business or through its Payload Business.

RESEARCH AND DEVELOPMENT:

Raytheon recognizes the need to protect from disclosure to other parties joint investments between payload providers and their Satellite Prime Business partners. Section IV.C. of the Consent Decree should be modified, however, to state more clearly that Northrop may withhold from other parties the results of innovation funded by its Satellite Prime Business and executed by its Payload Business or vice versa, but not those innovations funded by the part of the Business that conducts the research. So, for example, Northrop could not treat as "joint investment" advances achieved by its Payload Business through Payload Business-funded research just because the Payload Business is teamed with its Satellite Business for a particular opportunity. Rather, as would be the case if the Payload Business teamed with an external Satellite prime, Northrop may and should withhold Payload Business research funded by the Satellite prime but make available to other Satellite primes research funded by the Payload Business. Similarly, the Satellite Prime Business cannot withhold from external payload providers research funded by the Satellite Business just because it also is teamed with the Northrop Payload Business.

Suggested language for the Consent Decree is attached as Attachment A. Raytheon will be available to answer questions or elaborate on any of the points raised above should the Government or Court deem such additional information appropriate.

Respectfully submitted,



Barbara A. Pollack
Vice President, Legal and
General Counsel, Space and Airborne Systems
RAYTHEON COMPANY

NORTHROP GRUMMAN NEWS RELEASE

Northrop Grumman Delivers Infrared Focal Plane Assembly for SBIRS High

BALTIMORE, April 9, 2001 -- Northrop Grumman Corporation's (NYSE:NOC) Electronic Sensors and Systems Sector (ES3) has delivered the first qualification focal plane assembly (FPA) for integration in the U.S. Air Force's Space-Based Infrared Systems High (SBIRS High) program.

The FPA is the primary infrared sensor for the SBIRS High system. It is the key component that allows SBIRS High to detect and track missile launches around the world.

The FPA was delivered to Aerojet's production facility in Azusa, Calif., where it will be integrated into the overall payload for SBIRS High as it is prepared for the system integration and test phase in 2001.

Northrop Grumman supplies the FPA, the optical telescope assembly and the thermal control subsystem to the SBIRS High Payload team led by Aerojet. Lockheed Martin Corporation is the prime contractor for the SBIRS High Program.

"This delivery represents the culmination of three years of development work on the primary IR sensors for the SBIRS High mission," said Tom Reid, Northrop Grumman's FPA program manager. "Northrop Grumman relied upon its extensive background and expertise in infrared sensor programs such as Orbview 3, Warfighter and Advanced Landsat Focal Plane to successfully develop and deliver this critical system component."

SBIRS High is a series of high Earth orbiting satellites whose sensitive IR sensors can detect the launch of strategic and theater ballistic missiles from space and pass the time and location of launch to battlefield commanders.

SBIRS High works in conjunction with SBIRS Low, together forming a system of missile tracking satellites supporting missile defense by providing missile tracking, technical intelligence and battlespace characterization. Northrop Grumman is partnered with Spectrum Astro for SBIRS Low and is providing the overall sensor payload and ground station data processing and integration for the program definition and risk reduction phase.

For more than 30 years, Northrop Grumman Space Systems, a business unit of ES3 in Baltimore, has supplied the sensors for scores of space-based missions, including the Gemini rendezvous radar, the cloud imager for the Defense Meteorological Satellite Program and the multispectral/hyperspectral cameras for the Orbview 3 and 4 commercial remote sensing programs.

Northrop Grumman's ES3, headquartered in Baltimore, is a leading designer, systems integrator and manufacturer of defense electronics and systems, airspace management systems, marine systems, precision weapons, space systems, logistics systems, and automation and information systems.

Northrop Grumman Corporation is a $15 billion, global aerospace and defense company with its worldwide headquarters in Los Angeles. Northrop Grumman provides technologically advanced, innovative products, services and solutions in defense and commercial electronics, systems integration, information technology and non-nuclear shipbuilding and systems. With 80,000 employees and operations in 44 states and 25 countries, Northrop Grumman serves U.S. and international military, government and commercial customers.

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NORTHROP GRUMMAN NEWS RELEASE

Northrop Grumman Completes Acquisition of Aerojet-General's Electronics Group

Creates New $400 Million Space Systems Division

LOS ANGELES, Oct. 22, 2001 -- Northrop Grumman Corporation (NYSE:NOC) announced today that it has completed the acquisition of the Electronics and Information Systems (EIS) Group of Aerojet-General Corporation for $315 million in cash after securing necessary regulatory approvals. Aerojet-General is a wholly owned subsidiary of GenCorp Inc. (NYSE:GY).

The EIS business unit provides space-borne sensing for early warning systems, weather and ground systems that process C4ISR data from space-based platforms, and smart weapons technology for high-priority U.S. government national security programs. This unit had 2000 revenues of $323 million and has approximately 1,200 employees.

This operation is now part of Northrop Grumman's Electronic Systems sector's newly formed Space Systems Division, with approximately 1,600 employees and more than $400 million in annual revenues. The new division includes several ongoing space-based programs such as Space-Based Infrared Systems (SBIRS) High and SBIRS Low Defense Support Program, the Defense Meteorological Satellite Program and the National Polar Orbiting Operational Environmental Satellite System.

"This acquisition significantly enhances Northrop Grumman's capabilities in space-based systems and missile defense systems," said Robert P. Iorizzo, corporate vice president and president of the company's Electronic Systems sector. "The EIS business complements our cyberspace and information warfare efforts, sharpens our focus on advanced battlefield management and strengthens our company's capabilities in the growing space arena."

Carl Fischer, former president of Aerojet-General, has been named vice president and general manager of the new Space Systems Division, reporting to Mr. Iorizzo. Based in Baltimore, the new division also has facilities in Azusa, Calif.; Bethpage, N.Y.; Boulder, Colo.; and Colorado Springs, Colo.

Northrop Grumman Corporation is a $15 billion, global aerospace and defense company with its worldwide headquarters in Los Angeles. Northrop Grumman provides technologically advanced, innovative products, services and solutions in defense and commercial electronics, systems integration, information technology and non-nuclear shipbuilding and systems. With 80,000 employees and operations in 44 states and 25 countries, Northrop Grumman serves U.S. and international military, government and commercial customers.

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CONTACT: Northrop Grumman Corporation, Los Angeles
Frank Moore
(310) 201-3335

Attachment A
Letter to J. Robert Kramer, II
Ref: United States v. Northrop Grumman Corp. and TRW, Inc.,
Civil No. 1:02 CV 02432 (GK)

Consent Decree Suggested Changes:

Definitions:
IV.G. "Prime" or "Prime Contractor" means any entity engaged in the research, development, manufacture, sale and/or integration of Satellite Systems or Payloads that sells or competes to sell Satellite Systems directly to the United States government.[1]
II. H. "Payload" means the assembly or assemblies on a Satellite that, using electro-optical technology, infrared technology, or radar technology, including without limitation Signals Intelligence, millimeter wave technologies, and radar technologies regardless of frequency (e.g. 20 MHz to 28 GHz), enable a Satellite to perform a specific mission. Payload also shall include, with the assembly or assemblies, all related components, software, interfaces, electrical, mechanical and software specifications and any other items within the assembly or assemblies that enable the Payload to perform its contemplated function, space and ground mission data processing, payload systems integration, algorithms and all related technical data and information customarily provided by a Payload supplier to a Prime Contractor prior to entering into, or in the course of working pursuant to, a teaming agreement or contract. Data and information customarily provided includes the types of data and information provided by Northrop to its in-house Prime contract proposal team. Payload expressly excludes those payloads whose primary mission is communications.
II. K. "Northrop Payload Business" means that portion of Northrop engaged in the research, development, manufacture, or sale of Payloads, including the former Electronic and Information Systems Group of Aerojet-General, now part of Northrop's Electronic Systems sector but excluding TRW Payload entities.

Merchant Supplier of Satellites:
New IV.C. When Northrop is a competitor (or for potential future Programs, when Northrop has the capability to compete and has taken steps in anticipation of potentially competing) to be the Prime Contractor on a United States Government Satellite Program in which Northrop has the opportunity to offer its own Payload, the following is required:

(1) Northrop shall:

(a) For each Program or potential future Program for which a competitor of the Northrop Payload Business notifies Northrop that it potentially desires to compete to be the Prime Contractor and have Northrop supply the Satellite, space vehicle integration and test, or associated services, supply such Prime Contractor its Satellite, space vehicle integration and test, or associated services in a manner that does not discriminate in favor

[1] The use of the term "Prime Contractor" in Section IV.F.(4) will need to be changed to accommodate this modification. Substitution of the term "Satellite Provider" for the term "Prime Contractor" in Section IV.F.(4) should adequately clarify the permissible uses of non-public information.

Attachment A
Letter to J. Robert Kramer, II
Ref: United States v. Northrop Grumman Corp. and TRW, Inc.,
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of its in-house proposal team against any other Prime Contractor on any basis, including but not limited to, price, schedule, quality, data, personnel, investment (including but not limited to, independent research and development), technology, innovations, design, and risk;

(b) For each Program or potential future Program for which a competitor of the Northrop Payload Business notifies Northrop of a bona fide potential desire to have Northrop supply the Satellite, space vehicle integration and test, or associated services, negotiate in good faith with such Prime Contractor to enter into commercially reasonable nonexclusive teaming agreements and contracts for the purpose of bidding on Satellite competitions and similar activities; such agreements and contracts shall not discriminate in favor of its in-house proposal team against any other Prime Contractor on any basis, including but not limited to, price, schedule, quality, data, personnel, investment (including but not limited to, independent research and development) technology, innovations design, and risk;

(c) Prior to entering into any such teaming agreements and contracts, provide to the Compliance Officer copies of such agreements for his approval. The Compliance Officer shall not unreasonably withhold approval of such agreements and contracts, and shall approve or reject the agreements and contracts within five (5) business days of receipt of the agreement or contract. If the Compliance Officer does not approve of the terms of an agreement or contract, the Compliance Officer shall refer the matter to the Secretary of the Air Force, and Northrop shall enter into teaming agreements and contracts on specific terms as required by the Secretary of the Air Force, in his sole discretion, such decision to be made within five (5) days of the decision of the Compliance Officer;

(d) On a non-discriminatory basis, provide information, as set forth in Definition J, regarding its Satellite, space vehicle integration and test, and associated services to its in-house proposal team(s) and to any Prime Contractor that has notified Northrop of a bona fide potential desire to have Northrop supply its Satellite, space vehicle integration and test, or associated services or with which Northrop has teamed to supply its Satellite, space vehicle integration and test, or associated services; and

(e) Make all personnel, resource allocation, and design decisions regarding the Satellite, space vehicle integration and test, or associated services on a non-discriminatory basis between its in-house proposal team(s) and any Prime Contractor with which Northrop has teamed.

(2) If the Compliance Officer concludes that Northrop has discriminated in favor of its in-house proposal team, failed to negotiate a teaming agreement or contract in good faith, or refused to enter into a commercially reasonable teaming agreement or contract, the Compliance Officer shall refer the matter to the Secretary of the Air Force who shall have the sole discretion to decide with whom, and on what terms Northrop enters into such teaming relationship, such decision to be made within five (5) business days of the decision of the Compliance Officer.

(3) Notwithstanding any provisions of this Section IV.C., Northrop may refuse to supply a Satellite, space vehicle integration and test, or associated services to any Prime Contractor if the number and/or burden of Primes Contractors seeking the benefit of this

Attachment A
Letter to J. Robert Kramer, II
Ref: United States v. Northrop Grumman Corp. and TRW, Inc.,
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Section becomes unreasonably large. In such event, Northrop shall notify the Compliance Officer, who shall review the decision and make a recommendation to the Secretary of the Air Force within ten (10) business days. The Secretary of the Air Force shall have the sole discretion to decide with whom, and on what terms, Northrop enters into such teaming relationships, such decision to be made within ten (10) business days of the decision of the Compliance Officer.

(4) In the event that Northrop notifies the Compliance Officer in writing that: (i) the Northrop Payload business elects not to supply its Payload to the Northrop Satellite Prime Business and not to bid as Prime Contractor through the Northrop Payload Business; or (ii) Northrop elects not to compete at either the Prime or Payload level, Northrop need not comply with the requirements of Section IV.C. after such notice.

Existing IV.C. through IV.I. renumbered to IV.D. through IV.J.

Research and Development:

Existing IV.C (to be renumbered IV.D.) and replaced with the following: When the Northrop Payload Business enters into teaming agreements or contracts or similar intra-company arrangements that function as teaming agreements with the Northrop Satellite Prime Business, the provisions in this Final Judgment requiring non-discriminatory behavior shall not require that Northrop disclose to any other team for the Program or potential future Program the products and/or other results of investments or developments achieved by the Northrop Payload Business to the extent funded exclusively by the Northrop Satellite Prime Business. When the Northrop Satellite Prime Business enters into teaming agreements or contracts or similar intra-company arrangements that function as teaming agreements with the Northrop Payload Business, the provisions in this Final Judgment requiring non-discriminatory behavior shall not require that Northrop disclose to any other team for the Program or potential future Program the products and/or other results of investments or developments achieved by the Northrop Satellite Prime Business to the extent funded exclusively by the Northrop Payload Business. When the Northrop Payload Business or the Northrop Satellite Prime Business enters into teaming agreements or contracts with any unrelated Company to compete for any Program or potential future Program, and the team engages in joint investment or development activity for that Program, the provisions in this Final Judgment requiring non-discriminatory behavior shall not require that Northrop disclose the products and/or other results of such joint investments or developments of that team to any other team for the Program or potential future Program.

NEIL F. KEEHN
2603 THIRD STREET ■ SANTA MONICA, CA 90405
(310) 396-0622 ■ neilkeehn@yahoo.com

January 7, 2003

J. Robert Kramer II
Antitrust Division
1401 H Street, NW. Suite 3000
Washington, D.C. 20530

RE: Proposed Addenda to Northrop Grumman Consent Decree

Dear Mr. Kramer,

This correspondence is for the purpose of submitting proposed addenda, which are included as **Exhibit A**, to the above referenced consent decree.

In July 2002, I sent a package to Secretary of Defense Rumsfeld as well as to Attorney General Ashcroft. The package sent to Attorney General Ashcroft, received by DoJ on 7/18 via certified mail, is included herein as **Exhibit B, and addresses allegations that the former TRW illegally sold a satellite reconnaissance system to the People's Republic of China in which I was allegedly the program manager.** The Department of Defense addressed this issue in a competent and professional manner. As a part of its response, DoD informed me that I was perfectly correct in bring this issue to the attention of the Department of Justice. However, I have never received a response of any kind from the DoJ, and several attempts to speak to someone at DoJ about the status of my inquiry resulted in my calls being transferred to the mailroom. Finally, I asked to speak with Attorney General Ashcroft's correspondence secretary. I twice left her a detailed message as per her voice mail instruction. Said voice mail promised to return my call, but I never received any call from anyone at the DoJ.

As a result of my on-going efforts to clear my name as well as to learn as much as possible about the alleged use of my name in what people high in the intelligence community have labeled as treason, I wish to submit the addenda in Exhibit A. If the consent decree's Compliance Officer finds evidence of the aforereferenced sale to the PRC and my name is found in any documentation associated with that sale, I want to be so informed. I also understand that the names of several other people who had nothing to do with this alleged transaction were also included in the program's documentation. Further information is included in my sworn declaration in Exhibit B.

I hope that you will take seriously my proposed addenda to the consent decree, and that, as a result, I might begin to find justice in a system that to date has proven to be anything but just.

Respectfully submitted,

Neil F. Keehn

PROPOSED ADDENDA TO THE FINAL JUDGMENT

IV.J. Northrop shall not in any way have contact with any government (other than the U.S. Government), company, organization, individual nor any other type of entity for the purpose of selling reconnaissance satellite systems, in whole or in part, without the explicit, written permission of the Secretary of Defense.

V.G. If, in the course of his duties, the Compliance Officer finds evidence that the former TRW sold, provided, donated or in any manner was involved in the transfer of reconnaissance satellite systems, in whole or in part, at any time in its history, to any government (other than the U.S. Government), company, organization or individual, he shall provide notice of such evidence to the Secretary of Defense within ten (10) business days.

(1) If the Secretary of Defense finds that such a program was likely to have been the result of an illegal transfer, the Compliance Officer shall:

(a) prepare a list of all names found to be associated with any such sale;

(b) notify all individuals whose names appear on this list that their names have been found associated with a program that may have been illegal;

(c) provide these individuals the opportunity to review the nature of their alleged involvement in the program(s) in which their names were found in program documentation, memos, etc. that are associated with the program.

V.H. If, in the course of his duties, the Compliance Officer finds evidence that any documentation of any kind of any transactions by the former TRW that conforms to the types of transactions identified in Section V.G., has been destroyed, he shall notify the Secretary of Defense of said discovery within ten (10) business days.

[FR Doc. 03–13028 Filed 5–22–03; 8:45 am]
BILLING CODE 4410–11–C

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request; Correction

AGENCY: Employment and Training Administration, USDOL.

ACTION: Correction.

SUMMARY: In notice document 03–12248 beginning on Page 26654 in the issue of Friday, May 16, 2003, make the following correction:

On page 26654 in the first column in the fourth paragraph, the contact official was previously listed as Darrin King. This should be changed to read Stephanie Curtis. Ms. Curtis can be reached at (202) 693–3353 or via e-mail at *curtis.stephanie@dol.gov*.

Dated: May 19, 2003.

Shirley M. Smith,

Administrator.

[FR Doc. 03–12996 Filed 5–22–03; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provision of the Davis-Bacon Act of March 23, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statues. constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made apart of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.