

Before the  
**Federal Communications Commission**  
Washington DC 20554

In the Matter of )  
 ) ET Docket 01-278  
Review of Part 15 and Other Parts ) RM-9375  
of the Commission's Rules ) RM-10051

**PETITION FOR PARTIAL RECONSIDERATION**

Mitchell Lazarus  
FLETCHER, HEALD & HILDRETH, P.L.C.  
1300 North 17th Street, 11th Floor  
Arlington, VA 22209  
703-812-0440  
Counsel for RADAR Members

July 26, 2002

**TABLE OF CONTENTS**

A. Summary ..... 1

B. The Commission's Implementation Schedule Is Not Achievable. .... 3

1. *Manufacture* ..... 4

2. *Import* ..... 7

3. *Marketing* ..... 7

C. This Request Is in the Public Interest. .... 11

1. *Minimizing interfering units.* ..... 11

2. *Encouraging responsible behavior.* ..... 11

3. *No economic harm.* ..... 12

CONCLUSION ..... 12

Before the  
**Federal Communications Commission**  
Washington DC 20554

|                                   |   |                  |
|-----------------------------------|---|------------------|
| In the Matter of                  | ) |                  |
|                                   | ) | ET Docket 01-278 |
| Review of Part 15 and Other Parts | ) | RM-9375          |
| of the Commission's Rules         | ) | RM-10051         |

**PETITION FOR PARTIAL RECONSIDERATION**

Pursuant to Section 1.429(a) of the Commission's Rules, the following members of RADAR submit this Petition for Partial Reconsideration of the First Report and Order in this proceeding:<sup>1</sup> BG Tech America, Inc.; Bel-Tronics; Cobra Electronics Corp.; Escort Inc.; SK Global America, Inc.; and The Whistler Group.

***Motion for Stay.*** Simultaneously with this Petition, RADAR Members are filing a Motion for Stay of the rules as to which we seek reconsideration. The stay is essential to preserving RADAR's right to reconsideration. Without it, this Petition will become moot long before it can be decided.<sup>2</sup>

**A. Summary**

The First Report and Order requires radar detectors manufactured domestically or imported into the United States to comply with new technical rules beginning 30 days after

---

<sup>1</sup> *Review of Part 15 and Other Parts of the Commission's Rules*, ET Docket 01-278, First Report and Order, FCC 02-211 (released July 19, 2002). RADAR (Radio Association Defending Airwave Rights, Inc.) is a nonprofit organization that seeks to protect motorists' rights to own and use radar/laser detectors, educates the public about police traffic radar/laser and radar/laser detectors, and promotes use of the 24.1 GHz safety radar technology.

<sup>2</sup> In the interest of a prompt resolution, we have served this Petition and the accompanying Motion on the satellite interests listed in Appendix B of the First Report and Order.

publication in the Federal Register.<sup>3</sup> All radar detectors marketed in the United States, including those sold at retail, must comply beginning 30 days later.<sup>4</sup>

RADAR Members support the technical rules. But the schedule for implementing them is infeasible, unprecedented, and unnecessary. We propose instead that manufacture and import be required to comply by December 31, 2002, and that the distribution pipeline be left to empty at its own speed. Alternatively, if the Commission requires a date certain for retail compliance, we propose July 1, 2003.

The radar detector industry began voluntary implementation of the Commission's technical standards last February, while this proceeding was still in its comment phase. By last month, 73% of product being shipped was in compliance. We expect full compliance by December 31, 2002. But redesign, retooling, and parts acquisition take time, and we cannot go faster. Nor can the retail pipeline meet the Commission's schedule. Rather than sort through their retail inventory to identify units they can lawfully sell, stores are far more likely to ship their entire stock back to the manufacturers. This will almost certainly shut down some manufacturers, and possibly the industry as a whole.

We cannot find a prior case where the Commission required a consumer industry to come into compliance so quickly. For example, when it first regulated personal computers for emissions and scanner radios for cell phone privacy, the Commission gave manufacturers 12

---

<sup>3</sup> First Report and Order at para. 15.

<sup>4</sup> *Id.* The Commission will permit retroactive exterior labeling of certified product for a limited time. First Report and Order at 17.

months to comply, and did not regulate retail sales at all. Even interfering CB receivers had 12 months for manufacture and 17 months for retail -- far longer than we request here.

Ironically, the slower schedule we request will actually *reduce* the number of potentially interfering units in service. That is because most radar detector sales are upgrades. Even today, most upgrades take out noncomplying units and replace them with ones that comply. If the Commission's schedule disrupts the distribution chain (as it certainly will), users will simply hang on to their older units, with a consequent higher risk of interference.

An unworkable schedule will also have adverse economic fallout. Some manufacturers may not survive the First Report and Order, and the industry as a whole is at risk. The closing of a company affects the entire community -- a consequence most local economies today cannot afford.

Finally, it is plain the Commission could not have considered the present schedule unless the industry were already well on the way to compliance, on a voluntary basis. In effect, that schedule now penalizes the industry for taking affirmative steps on its own to resolve the problem. The industry should not be put under impossible demands because it did the right thing.

**B. The Commission's Implementation Schedule Is Not Achievable.**

The First Report and Order requires radar detectors to meet Class B limits in the 11.7-12.2 GHz band, and to certify products prior to marketing. RADAR Members do not contest these provisions.

The implementation schedule, however, is not realistic. The First Report and Order requires radar detectors manufactured domestically or imported into the United States to comply with the new rules beginning 30 days after publication in the Federal Register.<sup>5</sup> Publication will probably occur early in August 2002, which places the manufacture and import cut-off in early September. All radar detectors marketed in the United States, including those sold at retail, must comply beginning 30 days later, probably in early October.<sup>6</sup> These dates cannot be achieved.

### ***1. Manufacture***

Last February, RADAR Members unilaterally committed to meeting Class B limits in the 11.7-12.2 GHz band for all units manufactured after June 1, 2003.<sup>7</sup> We explained the delay until then was needed for manufacturers to redesign, retool, and empty the production pipeline.<sup>8</sup>

Last month, on June 10, we notified the Commission that the changeover was running ahead of schedule: 73% of product then being shipped complied with our commitment, and 100% compliance would be reached by January 2003, five months earlier than planned.<sup>9</sup>

At meetings with Commission staff earlier this month, we explained the industry is proceeding as quickly as possible, but that ongoing redesign, retooling, and parts purchases --

---

<sup>5</sup> First Report and Order at para. 15.

<sup>6</sup> *Id.*

<sup>7</sup> Comments of RADAR Members at 5 (filed Feb. 12, 2002).

<sup>8</sup> *Id.*

<sup>9</sup> Letter from Mitchell Lazarus to Marlene H. Dortch, Secretary, FCC (filed June 11, 2002), Attachment at 1.

typically different for each model -- make 100% compliance impossible before December 31, 2002.<sup>10</sup>

That statement remains true. A cut-off before the end of 2002 will cause extended delays in shipment and severe financial harm to manufacturers.

We can find no precedent for phasing in new rules so quickly. When the Commission overhauled the Part 15 rules in 1989, it allowed a *ten year* transition for newly regulated receivers,<sup>11</sup> and five years for other devices.<sup>12</sup>

We have found only one other case in which the Commission imposed new rules on a previously lawful receiver to address specific interference allegations. In 1976, the Commission tightened the rules on CB receivers to eliminate interference to land mobile private radio and other services.<sup>13</sup> But it allowed a much longer transition period:<sup>14</sup>

---

<sup>10</sup> Letter from Mitchell Lazarus to Marlene H. Dortch, Secretary, FCC (filed July 11, 2002).

<sup>11</sup> *Part 15 of the Rules Regarding the Operation of Radio Frequency Devices Without an Individual License*, 4 FCC Rcd 3493 at para. 146 (1989).

<sup>12</sup> *Id.* at para. 149.

<sup>13</sup> *Revision of Part 15 to Extend the Receiver Certification Program, to Revise the Technical Specifications for Receivers, and to Make Other Changes*, 60 F.C.C.2d 687 (1976), *clarified*, 62 F.C.C.2d 623 (1976).

<sup>14</sup> *Id.*, 60 F.C.C.2d at 693.

|                 |   |
|-----------------|---|
| August 4, 1976  | order released  |
| January 1, 1977 | new rules apply to products first manufactured after this date    |
| August 1, 1977  | non-complying manufacture begun before January 1, 1977 must cease |
| January 1, 1978 | marketing of non-complying product must cease                     |

Manufacturers thus had five months to tool up for new product, and a year to discontinue production already being manufactured -- or whose manufacture began during the five months after release. A full seventeen months was allowed to empty the distribution pipeline. (And yet, as we discuss below, even this schedule may have fatally damaged the CB industry.)

The First Report and Order was the radar detector industry's first notice of the specific technical rules it would have to meet.<sup>15</sup> A requirement to complete the manufacturing transition less than 60 days later, and a marketing transition 30 days thereafter, is neither preceded nor attainable.

RADAR Members urgently request that the deadline for manufacture be revised to December 31, 2002, for both newly manufactured devices and those already in production. The schedule we request still represents a far faster transition than any ever ordered by the Commission for a lawful product. And RADAR Members will continue their best commercial efforts to minimize the number of noncompliant units actually shipped between now and December 31.

---

<sup>15</sup> The Notice of Proposed Rule Making raised the issue of radar detector interference into VSATs only in general terms, and did not propose specific rules. *See Review of Part 15 and other Part of the Commission's Rules*, 16 FCC Rcd 18205 at para. 14 (2001).

## 2. *Import*

Import consists of manufacture plus shipment. Imported radar detectors come from Asia and are carried by sea, with shipment times typically running several weeks. Foreign manufacture takes as long to retool and resupply as domestic manufacture, so that compliance for imports ordinarily takes longer than for domestic manufacture.

A transition period for imports of 30 days after publication simply makes no sense. There may have been products already in transit when the First Report and Order was released that will arrive after the deadline. Other product, now in production overseas, cannot possibly be made compliant in time to be imported before the deadline.

To reflect these realities, we request the deadline for imports be set at December 31, 2002, the same as for domestic manufacture. This is a very tight schedule for our overseas partners. But we acknowledge the Commission's apparent preference to set the same cut-off date for manufacture and import, and we do not wish to delay the domestic compliance date unnecessarily.

## 3. *Marketing*

The First Report and Order requires all radar detectors marketed in the United States to comply with the new rules beginning 60 days after publication.<sup>16</sup> According to the Commission, "This plan will provide a reasonable amount of time for manufacturers, wholesalers and retailers to be notified of the rule changes so they can cease marketing non-compliant units."<sup>17</sup>

---

<sup>16</sup> First Report and Order at para. 15.

<sup>17</sup> *Id.*

Unfortunately this reasoning does not square with the realities of modern electronic consumer marketing. A retail outlet such as Walmart, Best Buy, or Circuit City carries several makes and models of radar detectors, often a dozen or more. In early August, let us say, shortly after Federal Register publication, the manufacturers will notify their distributors that certain models of radar detectors cannot lawfully be sold after a certain date in early October. And we will assume the distributors promptly relay the word to the tens of thousands of U.S. retail stores that sell radar detectors. The Commission apparently expects that store personnel will then sort through their inventory, identifying noncompliant units for removal from store shelves by the deadline. But that is unlikely to happen. Typically no one in the store has the necessary time, interest, and expertise with the stock. Instead, we expect most stores will simply remove the entire inventory of radar detectors -- compliant or not -- and return all of it to the manufacturers, with an invitation to ship back the units that comply. This will almost certainly shut down some manufacturers, and possibly the industry as a whole.<sup>18</sup>

The Commission tried something similar in the 1970s, with disastrous results. On July 29, 1976, the Commission expanded CB radios from 23 to 40 channels.<sup>19</sup> A few months later it

---

<sup>18</sup> The Commission's introduction of retroactive exterior labeling of certified products is a welcome innovation, and we expect it to prove helpful in manufacturing and importation facilities, where product is still under the control of the manufacturer or importer. See First Report and Order at para. 17. But we doubt it will be useful for product either in transit or in the hands of distributors and retailers, who are extremely unlikely to take the time and trouble to identify the right products and apply the labels. Again, they will find it simpler just to return everything.

<sup>19</sup> *Revision of Operating Rules for Class D Stations in the Citizens Radio Service*, 60 F.C.C.2d 762, 764 (1976). As mentioned above, a companion order also made receiver requirements more stringent. See *Revision of Part 15*, 60 F.C.C.2d 687 (1976), *clarified*, 62 F.C.C.2d 623 (1976).

banned the manufacture of 23-channel radios after August 1, 1977, and banned their marketing as of January 1, 1978.<sup>20</sup> Even though the marketing deadline came 17 months after release of the requirement, dozens of petitions complained it was too short. The Commission denied those,<sup>21</sup> and the marketing rule took effect on January 1, 1978. Chaos resulted. Although other factors doubtless contributed to the collapse of the market for CB radios, many industry observers put at least part of the blame on confusion caused by the new regulations.

The outcome with radar detectors promises to be worse. For one thing, retailers of CB radios had 17 months' notice, far longer than the three months (or less) for radar detectors. For another, a CB retailer could tell by glancing at the carton whether a radio complied with the new rules (40 channels or 23), while a radar detector retailer will have to work through manufacturer-provided lists of makes, models, and possibly serial numbers. Where retail compliance was difficult for CB radios, it will be impossible for radar detectors.

When other consumer products became newly subject to regulation, the Commission gave longer lead times and refrained from imposing deadlines at the retail level, with much better results. The initial regulation of personal computers, for example, went far more smoothly than

---

<sup>20</sup> *Revision of Operating Rules for Class D stations in the Citizens Radio Service*, 62 F.C.C.2d 646, 657 (1976).

<sup>21</sup> *Petitions to Extend the January 1, 1978 Sales Cut-off Date for 23-channel CB Radios and CB Receiver/Converters*, 66 F.C.C.2d 1021, 1023 (1977). The Commission similarly refused an extension for the sale of *used* 23 channel radios, 68 F.C.C.2d 89 (1978), *recon. denied*, 69 F.C.C.2d 1132 (1978), although it ultimately relented for eight months as to walkie-talkies. 66 F.C.C.2d 139, 141 (1977).

did CB radios. PC manufacturers had over 14 months' notice, and there was no cut-off for retail sales.<sup>22</sup> That industry crossed the threshold into regulation with minimal disruption.

Similarly, when the Commission first regulated scanning receivers to protect the privacy of cellular calls, it allowed manufacturers and importers over a year to come into compliance, and put no time limit on other distribution.<sup>23</sup> And again, when the Commission subsequently tightened those rules, it still accepted certification applications under the old rules for more than three months, permitted continuing manufacture of noncomplying equipment for more than six months, and forbore from regulating elsewhere in the distribution chain.<sup>24</sup>

To avoid a repetition of the CB radio collapse, RADAR Members asks the Commission to proceed much as it did with personal computers and scanning radios: to regulate radar detectors only as to sale and importation, and let the distribution pipeline empty at its own speed.<sup>25</sup>

---

<sup>22</sup> *Amendment of Part 15 to Redefine and Clarify the Rules Governing Restricted Radiation Devices and Low Power Communication Devices*, 79 F.C.C.2d 67, 90 (1980), *modifying* 79 F.C.C.2d 28, 56 (1979) ("There is no prohibition against the sale and resale after July 1, 1980 [the manufacturing cut-off date] of equipment manufactured prior to July 1, 1980 subject only to the non-interference requirement of Sec. 15.3.") The cut-off date was later extended to January 1, 1981. *Id.*, 79 F.C.C.2d 28 at 90. Other types of digital equipment were treated even more leniently. *Id.*

<sup>23</sup> *Amendment of Parts 2 and 15 to Prohibit Marketing of Radio Scanners Capable of Intercepting Cellular Telephone Conversations*, 8 FCC Rcd 2911, 2913 (1993), *recon. denied*, 9 FCC Rcd 3386 (1994).

<sup>24</sup> *Amendment of Parts 2 and 15 to Further Ensure That Scanning Receivers Do Not Receive Cellular Radio Signals*, 14 FCC Rcd 5390, 5403 (1999), *recon. on other grounds*, 16 FCC Rcd 11373 (2001).

<sup>25</sup> See Letter from Mitchell Lazarus to Marlene H. Dortch, Secretary, FCC at 1 (filed July 11, 2002).

In the alternative, if the Commission requires a date certain for retail compliance, we propose July 1, 2003. Although the pipeline to the large chain stores typically averages about 2-4 months from manufacture (longer for imports), we must also accommodate smaller outlets whose stock moves more slowly. The large majority of product sold at retail will be compliant long before that date, even under our proposed cut-off dates for manufacture and import. And this schedule is still far more stringent than any the Commission has applied in the past.

**C. This Request Is in the Public Interest.**

This reconsideration request is in the public interest, in several respects

1. ***Minimizing interfering units.*** It may not be obvious at first glance, but our proposed slower schedule will actually *reduce* the number of noncomplying units in service. Well over half of radar detectors sold are upgrades that replace units already in service. Even today, most of the upgrades take out noncomplying units and replace them with ones that comply. The Christmas selling season should see an especially sharp drop in noncompliant units. On the other hand, the Commission's present schedule is likely to disrupt stores' handling even of compliant units -- and worse, jeopardize manufacturers' ability to provide compliant product -- shortly before the Christmas rush. Users will then hang on to their older units, with a consequent risk of continuing interference. Our requested schedule yields a significant reduction in potential interference.

2. ***Encouraging responsible behavior.*** The Commission could not possibly have considered the schedule in the First Report and Order if the industry were not already well on the way to compliance. The industry undertook those changes on its own, as a responsible member of the spectrum community. For the Commission now to impose an unworkable

schedule, in reliance on the industry's own efforts, amounts to penalizing the industry for taking affirmative steps to resolve the problem. The Commission should reward cooperative behavior, not turn it against the industry. Otherwise, parties accused of interference in the future will find it more advantageous to dig in and oppose remedies, rather than begin work to eliminate the interference, as we did.<sup>26</sup>

3. ***No economic harm.*** Finally, an unworkable schedule will have adverse economic fallout. Just now the United States badly needs all the economic activity it can muster, particularly in the technology sector. We noted above that some manufacturers may not survive the First Report and Order in its present form. Indeed, the industry as a whole is at risk. The closing of a company sends ripples through the economy, not only disappointing stockholders and stranding workers, but harming the community where those workers live and shop. These economic consequences must be part of the Commission's public interest calculation.

### CONCLUSION

Radar detector manufacturers not only agree with the Commission's technical approach to resolving VSAT interference, but began implementing the same solution months before the Commission could have acted. We will continue doing so. But we cannot comply with the implementation schedule in the First Report and Order. Manufacturers cannot finish the redesign, retooling, and acquisition of parts for all makes and models in less than 60 days.

---

<sup>26</sup> Some have suggested that *any* lead time is a generous concession, as the Commission has authority to shut down the industry without notice under Section 15.5(c). We disagree. That rule authorizes the Commission to eliminate operation of a "device [that] is causing harmful interference." 47 C.F.R. Sec. 15.5(c). The rule has no effect on the vast majority of radar detectors in use that do not cause any interference. And it has no conceivable effect on lawful devices in the distribution pipeline that have never been turned on.

Retailers are unlikely to take on the job of sorting out compliant and noncompliant product, and are far more likely simply to return all of their inventories to the manufacturers. The industry may not survive that.

The Commission's schedule is not only unachievable, but unprecedented. We cannot find a case where the Commission has ever asked any industry to come into compliance as quickly as it does here. Moreover, the one time the Commission tried to regulate a popular consumer product at retail, the market for that product promptly collapsed.

The schedule we request -- December 31, 2002, for manufacture and import, with no regulation of other marketing -- is manageable for the industry, and completely reasonable in light of the precedents. It should also be better for VSAT operators. Thanks to users' strong interest in upgrading their radar detectors, adoption of our schedule will significantly reduce the number of potentially interfering units in service.

Finally, we ask the Commission not to unfairly exploit the industry's successful efforts to address an interference problem early. The task we have set ourselves is difficult, but we are making excellent progress. The Commission's schedule would be unthinkable without the steps we have already taken. The industry should not be penalized for doing the right thing.

Respectfully submitted,

Mitchell Lazarus  
FLETCHER, HEALD & HILDRETH, P.L.C.  
1300 North 17th Street, 11th Floor  
Arlington, VA 22209  
703-812-0440  
Counsel for RADAR Members

July 26, 2002

**CERTIFICATE OF SERVICE**

I certify that I have caused copies of the foregoing "Petition for Partial Reconsideration" to be transmitted by U.S. mail to the persons shown on the attached Service List, except that persons marked with an asterisk were served by email and hand delivery.

Mitchell Lazarus  
Fletcher, Heald & Hildreth, PLC

## SERVICE LIST

- \* Chairman Michael Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554
- \* Edmond J. Thomas, Chief, OET  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554
- \* Commissioner Kathleen Q. Abernathy  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554
- \* Julius P. Knapp, Deputy Chief, OET  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554
- \* Commissioner Michael J. Copps  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554
- \* Bruce A. Franca, Deputy Chief, OET  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554
- \* Commissioner Kevin J. Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554
- \* Michael J. Marcus  
Associate Chief (Technology), OET  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554
- \* Peter A. Tenhula  
Office of Chairman Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554
- \* Alan J. Scrim, Chief  
Policy and Rules Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554
- \* Bryan Tramont  
Office of Commissioner Abernathy  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554
- \* Lisa A. Gaisford, Chief of Staff, OET  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554
- \* Paul Margie, Office of Commissioner Copps  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554
- \* Geraldine A. Matisse, Deputy Chief  
Policy and Rules Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554
- \* Sam Feder, Office of Commissioner Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554
- \* Ira R. Keltz, Deputy Chief  
Policy and Rules Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

\* Karen E. Rackley, Chief  
Technical Rules Branch  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Phillip L. Spector  
Paul, Weiss, Rifkind, Wharton & Garrison  
1615 L Street, N.W. Suite 1300  
Washington, DC 20036  
Counsel for SES Americom, Inc.

\* Hugh L. Van Tuyl  
Senior Electronic Engineer  
Technical Rules Branch  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Lester F. Polisky  
Comsearch  
19700 Janelia Farm Boulevard  
Ashburn, VA 20147

John Stern  
Deputy General Counsel  
Loral Space & Communications Ltd.  
1755 Jefferson Davis Hwy, Suite 1007  
Arlington, VA 22202

Rosalind K. Allen  
Arnold & Porter  
555 Twelfth Street, NW  
Washington, DC 20004-1206  
Counsel for Spacenet Inc. and StarBand  
Communications, Inc

John P. Janka  
Latham & Watkins  
555 11th Street, NW Suite 100 Washington,  
DC 20004 -1304  
Counsel for Hughes Network Systems, Inc.

Joseph A. Godles  
Goldberg, Godles, Wiener & Wright  
1229 Nineteenth Street, N.W.  
Washington, DC 20036  
Counsel for PanAmSat Corporation

Richard DalBello  
Satellite Industry Association  
225 Reinekers Lane, Suite 600  
Alexandria, VA 22314