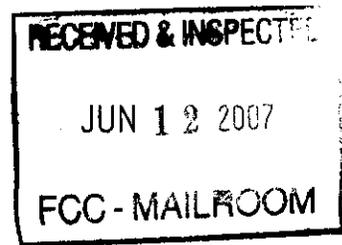


LAW OFFICES OF
JEFFREY A. SARROW, P.A.
300 South Pine Island Road, Suite 304
Plantation, Florida 33324



(954) 475-3188
Telefax (954) 474-4416

June 7, 2007

DOCKET FILE COPY ORIGINAL

Federal Express Airbill No. 8586 8895 3732

Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

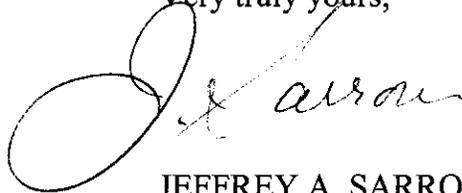
re: CELLANTENNA CORP. - Petition for Rulemaking

Dear Ladies and Gentlemen:

Enclosed please find an original and four copies of a Petition for Rulemaking filed by CellAntenna Corp. pursuant to applicable Commission Rules. Please advise my office by e-mail (jsarrowpa@aol.com) of the docket number as soon as possible.

Please be advised that the identical Petition with appropriate copies was delivered to the FCC office at 9300 East Hampton Drive, Capital Heights, MD 20743 by Federal Express today, June 7, 2007.

Very truly yours,



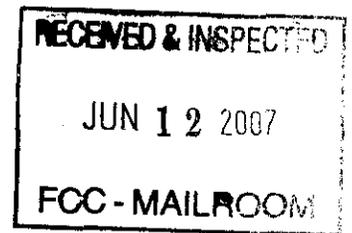
JEFFREY A. SARROW

Enclosures

JAS:scs

No. of Copies rec'd 014
List ABCDE
PSHSB 07-32

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



In The Matter of:

Amendment of Section 2.807 of the Commission's)
Rules (47 CFR §2.807) to Allow the Use of Radio)
Frequency Jamming Equipment by Local and State)
Law Enforcement Agencies and Emergency Response)
Providers)

RM-_____

PETITION FOR RULEMAKING

CELLANTENNA CORP.

Jeffrey A. Sarrow, Esq.

Jeffrey A. Sarrow, P.A.
300 South Pine Island Road
Suite 304
Plantation, Florida 33324
(954) 475-3188

Its Attorney

Howard Melamed
President
CELLANTENNA CORP.
12453 NW 44TH ST.
CORAL SPRINGS FL 33065
(954) 340-9085

June 5, 2007

TABLE OF CONTENTS

SUMMARY	ii
I. INTRODUCTION	1
II DISCUSSION	4
A The Commission's Prohibition Against The Sale of RF Jamming Devices to State and Local Law Enforcement Agencies and First Responders Is In Derogation, and Conflicts With The Intent of Congress As Expressed In the Homeland Security Act of 2002	4
B Permitting The Sale of Radio Frequency And Cellular Jammers to State and Local Law Enforcement Agencies Will Serve The Public Interest And Cure Constitutional Infirmities Presented By The Application And Enforcement Of Commission Rules 2.803 and 2.807.	8
III CONCLUSION	10

SUMMARY

By this Petition, CELLANTENNA CORP. requests that the Commission issue a Notice of Proposed Rule Making to amend Section 2.807 of the Commission's rules to allow radio frequency jamming equipment be sold to, and utilized by emergency response providers as defined by The Homeland Security Act of 2002, 6 USCA §101(6). Presently, the sale of such RF jamming equipment to such state and local law enforcement agencies is prohibited by Commission Rule 2.803 and 47 USCA §303.

There is an immediate and compelling need for the rule amendment requested herein. Radio Frequency (RF) jamming devices can be utilized to disable remote controlled explosive devices cable of being detonated by a triggering signal emanating from a cellular telephone. However, Commission Rule 2.803 prohibits state and local law enforcement agencies and other emergency first responders from acquiring such technology to assist them in combatting threats to public safety and national security.

Presently, Commission Rule 2.807 provides for certain exceptions to the prohibitions against the use of RF jamming equipment as expressed in 47 USCA §303 and Rule 2.803 by permitting such technology to be acquired by agencies of the Federal government. Inexplicably, there is no corresponding exception granted to state or local law enforcement agencies.

The application and enforcement of Commission Rule 2.803 to prohibit emergency first responders from obtaining antiterrorist technology in the form of radio frequency jammers directly contradicts the intent of Congress as clearly expressed in The Homeland Security Act 2002. By this legislation, Congress unequivocally mandated that the Department of Homeland Security take all necessary steps to empower state and local law enforcement agencies and emergency first responders

with the tools and technology available to prevent terrorist attacks within the United States. By amending Commission Rule 2.807 to permit emergency first responders to have access to this critical technology, the Commission would further the will of Congress and greatly enhance national security. The Petitioner's proposed amendment to Rule 2.807, which expands the statutory exception to include emergency first responders as defined in 6 USCA §101 (6) is attached hereto.

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

In The Matter of:

Amendment of Section 2.807 of the Commission's)
Rules (47 CFR §2.807) to Allow the Use of Radio)
Frequency Jamming Equipment by Local and State) RM- _____
Law Enforcement Agencies and Emergency Response)
Providers)

PETITION FOR RULEMAKING

CELLANTENNA CORP. ("CELLANTENNA") by its undersigned attorneys and pursuant to Section 1.401 of the Commission's Rules, 47 CFR §1.401, hereby requests that the Commission issue a Notice of Proposed Rulemaking ("NPRM) to amend Section 2.807 of the Commission's Rules to expand the stated exceptions to 47 CFR §2.803 so as to allow the use of radio frequency jamming equipment by State and local law enforcement agencies and emergency response providers as defined in Article 1 of The Homeland Security Act of 2002 (HSA), and the marketing and sale of such equipment to such agencies.¹ CELLANTENNA's specific proposed revisions to the text of Section 2.807 are provided in Exhibit "A" attached hereto.

I. INTRODUCTION

CELLANTENNA CORP. is a Florida corporation engaged in the business of selling and distributing radio frequency communication equipment. Included among the products which it

¹ "(6) The term "emergency response providers" includes Federal, State, and local governmental and nongovernmental emergency public safety, fire, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities." 6 U.S.C.A. §101 (6)

distributes are devices which cause radio frequency interference, and which are commonly called "Radio Frequency (RF) Jammers". These devices, including "Cellular Jammers", are designed to deliberately jam or disrupt wireless communications. Section 333 of The Communication Act of 1934, as amended, (the "Act"), 47 USC §333 makes it unlawful to wilfully or maliciously interfere with, or cause interference to radio communications. Causing such interference is precisely what cellular and RF jamming devices do.

As will be more fully discussed, it is well known that radio frequency jamming equipment may be effectively utilized to disarm and disable remotely controlled improvised explosive devices (RCIED). In other words, RF jamming equipment can disable a bomb designed to be detonated by the use of a remote cellular telephone. Recognizing that the responsible use of RF jamming devices is an effective tool in the fight against Terrorism, several state and local law enforcement agencies have contacted the Petitioner to explore the purchase of RF jamming devices for law enforcement purposes.

Sections 302(a) and (b) of the Act, 42 USC §302 (a) and (b), authorize the Commission to adopt regulations that govern the manufacture, sale, offer for sale, shipment and import of devices which cause *harmful interference to radio communications*. In the exercise of its rulemaking power, the Commission promulgated Section 2.803, of The Commissions Rules; 47 CFR §2.803, which required that before equipment having an interference potential is put on the market, the equipment must meet the Commission's technical standards, which are designed to ensure that the electromagnetic energy emitted by these devices does not cause harmful interference to radio and cellular reception. See Report No. 1276, 90th Cong., 2d Sess. 1968, 1968 U.S.C.C.A.N. 2486-87. Since RF jamming devices have an "interference potential", they do not meet the certification

requirements of Rule 2.803, and accordingly may not be domestically distributed unless otherwise *excepted*.

However, notwithstanding the foregoing, 47 USC §302 (c) does provide for certain exceptions, among them, RF and cellular jamming devices used by the Federal Government, stating in relevant part as follows:

“(c) Exceptions

The provisions of this section shall not be applicable....to devices....manufactured.....for use by the Government of the United States or any agency thereof.”

Moreover, FCC Rule 2.807(d); 47 C.F.R. §2.807 (d) reiterates the federal exemption as follows:

“§2.807(d) Statutory exceptions.

As provided by Section 302(c) of the Communications Act of 1934,

as amended, §2.803 shall not be applicable to:

(d) Radio frequency devices for use by the Government of the United States or any agency thereof; Provided, however, that this exception shall not be applicable to any device after it has been disposed of by such Government or agency.”

Significantly, although sales of RF jamming devices to the United States Government and its agencies, as well as public utilities, are exempt from the provisions of the Act and the referenced regulations, neither the Act nor the FCC’s rules contain any corresponding exemption for the sale of cellular or RF jamming devices to state and/or local governments.

By this Petition, CELLANTENNA CORP. seeks to have the Commission amend Rule 2.807 (d) so as to expand the exception to permit RF jamming devices to be sold to, and used by emergency response providers.

The RF jamming devices which Plaintiff seeks to distribute to state and local law enforcement agencies meet all technical and other material specifications and/or requirements for certification under applicable FCC Rules. However, the RF jamming devices which Plaintiff offers for sale have not been certified by the FEDERAL COMMUNICATIONS COMMISSION because such devices are not offered for sale to private entities within the United States. Nevertheless, Plaintiff does sell RF jamming devices to agencies and/or departments of the United States Government, and therefore such devices are exempt from certification by application of 47 C.F.R. §2.807 (d).

II. DISCUSSION

A. **The Commission's Prohibition Against The Sale of RF Jamming Devices to State and Local Law Enforcement Agencies and First Responders Is In Derogation, and Conflicts With The Intent of Congress As Expressed In the Homeland Security Act of 2002.**

In response to the tragedy of September 11, 2001, and in recognition of the danger to the Nation posed by terrorist elements, the United States Congress enacted The Homeland Security Act of 2002, 6 USC §101 et seq. (the "HSA"). The legislative intent of the Congress, and the legitimate governmental interest and public policy considerations expressed in the HSA, are in stark conflict with §§ 2.803 and 2.807 of The Commission's Rules. Whereas the Commission through Section 2.803 prohibits the sale of radio frequency and cellular jammers to State or local police departments,

the HSA consistently and repeatedly directs The Department of Homeland Security to take whatever measures are necessary to **empower** these same local law enforcement agencies and first responders in the fight against global terrorism. Specifically, but not necessarily by way of limitation, Section 162 of the HSA, 6 U.S.C. §162 sets forth the mission of the Office of Homeland Security and its duties; stating as follows:

“Sec.162 Mission of Office; duties.

(a) Mission

The mission of the Office shall be ..

- (1) to serve as the national focal point for work on law enforcement technology, and
- (2) to carry out programs that, through the provisions of equipment, training and technical assistance, **improve the safety and effectiveness of law enforcement technology and improve access to such technology by Federal, State, and local law enforcement agencies.** (Emphasis Supplied)

.....

(b) Duties:

In carrying out its mission, the office shall have the following duties:

.....

- (4) To establish and maintain a program to certify, validate, and mark or otherwise recognize law enforcement technology products that conform the standards established and maintained by the Office in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104-113). The program may, at the discretion of the Office, allow for supplier’s declaration of conformity with such standards.

.....

- (6) To carry out research, development, testing, evaluation, and cost-benefit analyses in fields that would improve the safety, effectiveness, and efficiency of law enforcement technologies used by Federal, State, and local law enforcement agencies, including but not limited to.....

.....

(G) equipment for particular use in counterterrorism, including devices and technologies to disable terrorist devices. (Emphasis Supplied)

.....

(9) To develop, and disseminate to State and local law enforcement agencies, technical assistance and training material for law enforcement personnel, including prosecution.”

Moreover, Section 102 of the HSA directs the Secretary of Homeland Security to coordinate its anti-terrorism efforts with state and local governmental agencies. In this regard, 6 U.S.C. §102(c)(1) provides as follows:

“(c) Coordination with Non-Federal Entities: With respect to homeland security, the Secretary shall coordinate through the Office of State and Local Coordination (established under section 801) (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, including by -

(1) coordinating with State and local government personnel, agencies and authorities, and with the private sector, to ensure adequate planning, equipment, training and exercise activities;”

Additionally, 6 U.S.C. §302 imposes upon the Secretary additional responsibility for the development of countermeasures to terrorist threats in partnership with state and local governments.

Section 302 provides in relevant part as follows:

“Sec. 302, Responsibilities and Authorities of the Under Secretary For Science and Technology.

The Secretary, acting through the Under Secretary for Science and Technology, shall have the responsibility for -

.....

(2) developing, in consultation with other appropriate executive agencies, a national policy and strategic plan for identifying priorities, goals, objectives and policies for, and coordinating the Federal Government's civilian efforts to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including the development of comprehensive, research-based definable goals for such efforts and development of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts;

(6) **establishing a system for transferring homeland security development or technologies to Federal, State, local government, and private sector entities;**" (Emphasis Supplied)

Finally, Section 801 establishes within the Office of the Secretary of Homeland Security an office for state and local government coordination to "oversee and coordinate departmental programs for, and relationships with, state and local governments". 6 U.S.C. 801 (b) (1). Indeed, the Office is required, pursuant to 6 U.S.C. §801 (b) (2) and (3) to:

"Sec. 801. Office for State and Local Government Coordination.

(b) **Responsibilities.** - The Office established under subsection (a) shall-

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) **provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland.**" (Emphasis Supplied)

The primary and overriding governmental objective of the United States of America, and indeed all sovereign nations, is the protection of its citizenry. In addressing and identifying this paramount governmental interest, and in consideration of the new realities present in the post 9-11 world, Congress sought to insure that ALL governmental agencies, state, local and federal, have

access to the necessary tools and technology to protect the general public from terrorist attacks. As *specifically set forth in the HSA, Congress clearly intended for state and local law enforcement agencies and first responders to have ready access to advanced technical equipment for use in securing the homeland and defending the nation against terrorism.*

RF and cellular jamming devices, such as those now sold by the Plaintiff to Federal agencies, are precisely the type of technology which has been requested by, and is needed by State and local law enforcement agencies to neutralize the killing potential of deadly remote controlled improvised explosive devices. When reviewed in the context of the public policy statements and specific legislative directives which permeate the HSA, it is abundantly clear that conflicting Commission rules which restrict or prohibit nonfederal emergency first responders from obtaining such technology are repugnant to the will of Congress and run counter to the central governmental objective, which is the protection of the health, safety and welfare of the populace. Indeed, CELLANTENNA respectfully contends that the regulatory power of the Commission over antiterrorism weapons and technology, such as RF jammers, has been supplanted by the Department of Homeland Security pursuant to the direct mandate of the United States Congress.

B. Permitting The Sale of Radio Frequency And Cellular Jammers to State and Local Law Enforcement Agencies Will Serve The Public Interest And Cure Constitutional Infirmities Presented By The Application And Enforcement Of Commission Rules 2.803 and 2.807.

It can be safely stated without contradiction that access to anti-terrorism technology by nonfederal law enforcement agencies and first responders serves the public interest. The ability of

police departments to use RF or cellular jamming devices to disable a remote controlled bomb can save countless lives. Terrorism is an ever present threat. In recent arrests of suspected terrorists in Canada and England, law enforcement agencies recovered numerous cellular telephones which they believed were to be used as detonating devices. The technology exists to disrupt the triggering signal from a cellular telephone before a bomb explodes. The Petitioner sells this technology, but is restricted from distributing such antiterrorism devices to state and local law enforcement agencies, who, as emergency first responders, when the situation presents itself, have the critical and immediate need to take effective action to avoid great tragedy.

Section 303 of the Act gives the Commission the power to issue rules and regulations “as public convenience, interest and necessity requires”. 47 USCA §303. Moreover, 47 USCA §157, Section 157 of the Act, specifically states that “it shall be the policy of the United States to encourage the provision of new technologies and services to the public. A party (other than the Commission) who opposes a technology or service proposed to be permitted has the burden to demonstrate that such proposal is inconsistent with the public interest. Generally, it can be said that the Commission readily embraces the “public interest” standard.

However, the Commission has created an unconstitutional and unreasonable classification by determining that counterterrorism technology in the form of RF jamming equipment may be acquired only by the Federal government, but cannot be utilized by State or local law enforcement agencies. There is no rational basis for this arbitrary distinction.

Substantive due process challenges under the Fourteenth Amendment to the United States Constitution that do not implicate fundamental rights are reviewed under a deferential rational basis standard. To survive the scrutiny and pass constitutional muster, the challenged provisions need

only be rationally related to a legitimate governmental purpose, and not be arbitrary or discriminatory. U.S. v. Plummer, 221 F.3d 1298, 1308-1309 (11th Cir. 2000). It is evident, given the contemporary realities and the forceful expression of Congressional intent in The Homeland Security Act, that Commission rules which prevent local law enforcement agencies from obtaining anti terrorism technology are not rationally related to legitimate governmental objectives. Indeed, such a prohibition does great violence to the primary objective of any government, the protection and safety of its citizenry. As stated by the United States Supreme Court, "It is obvious and unarguable that no governmental interest is more compelling than the security of the Nation." Haig v. Agee, 453 U.S. 280, 307; 101 S. Ct. 2766 (1981).

When the rules restricting the sale and use of RF jammers were initially promulgated, issues of counterterrorism technology were virtually nonexistent. Today, the world is a different place. By its enactment of The Homeland Security Act of 2002, Congress dramatically addressed the new realities, and the HSA clearly reveals its legislative intent to empower local law enforcement agencies and first responders with antiterrorist technology and equipment. Any FCC Rule which prevents these entities from obtaining antiterrorist technology bears no rational relationship to legitimate governmental interests. Indeed, enforcement by the FCC of §2.803 to prevent local law enforcement agencies from obtaining RF jamming equipment serves to undermine national security, and is abhorrent to the critical objectives and mission statement expressed in the HSA.

CONCLUSION

The essence of this Petition simply seeks to resolve the dramatic conflict between FCC Rule 2.803 and The Homeland Security Act of 2002. The HSA commands the empowerment of local law enforcement agencies and other emergency first responders. Congress recognized the critical

need for such agencies to acquire and utilize counterterrorism technology and weaponry. The application of Rule 2.803 frustrates and discourages the legislative scheme. However, the conflict is easily remedied by amending Commission Rule 2.807 so as to provide that the provisions of Rule 2.803 shall not be applicable to the sale to and use by "emergency response providers" as defined in Title 6, Chapter 1 of The Homeland Security Act of 2002, 6 USCA 101 (6) of devices which are capable of causing interference to radio communications. By amending Rule 2.807, the Commission will harmonize existing Commission rule with the express mandate of the HSA, enhance national security, carry out the will of Congress, and advance to the forefront in the war against terrorism.

Dated this 5 day of June, 2007.

Respectfully submitted,



JEFFREY A. SARROW, P.A.
Attorney for CELLANTENNA CORP.
300 South Pine Island Road
Suite 304
Plantation, FL 33324
(954) 475-3188
Telefax (954) 474-4416
E-mail: jsarrowpa@aol.com

Florida Bar No. 149005

EXHIBIT "A"

Section 2.807 of Title 47 of the Code of Federal Regulations is amended to read as follows:

As provided by Section 302(c) of the Communications Act of 1934, as amended, §2.803 shall not be applicable to:

- (a) Carriers transporting radiofrequency devices without trading in them.
- (b) Radiofrequency devices manufactured solely for export.
- (c) The manufacture, assembly, or installation of radiofrequency devices for its own use by a public utility engaged in providing electric service: *Provided, however,* That no such devise shall ab operated if it causes harmful interference to radio communications.
- (d) Radiofrequency devices for use by the Government of the United State or any agency thereof. *Provided, however,* That this exception shall not be applicable to any devise after it had been disposed of by such Government or agency.
- (e) The sale or lease, offer for sale or lease, or distribution of radiofrequency devices to, or for use by, emergency response providers as defined in Title 6, Chapter 1, of The Homeland Security Act of 2002; 6 U.S.C. 101 (6).