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Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 15

In the Matter of	)	
	)	
SafeView, Inc.	)	
	)	
Request for Waiver of Sections 15.31 and 15.35 of the Commission's Rules to Permit the Deployment of Security Screening Portal Devices that Operate in the 24.25-30 GHz Range	)	ET Docket No. 04-373

ORDER

Adopted: September 2, 2009 **Released: September 2, 2009**

By the Chief, Office of Engineering and Technology:

1. By this Order, we grant the request for extension of waiver filed by L-3 Communications SafeView, Inc. ("L-3 SafeView") on August 1, 2008 to permit the marketing and operation of its ProVision 100 imaging device under Part 15 of the Commission's rules.[1] L-3 Communications SafeView, Inc. was formerly known as SafeView, Inc. and the ProVision 100 imaging device was formerly called SafeScout.[2] For the reasons discussed below, we find that there is good cause to grant L-3 SafeView a two year extension of its existing waiver of Sections 15.31(c) and 15.35(b), until August 3, 2010, to allow it to market a limited number of devices for an additional two-year period.[3]

2. The ProVision 100 is a security portal that uses imaging technology to detect weapons or contraband carried on a person, including non-metallic objects or explosives, which might otherwise require intrusive manual searches or be missed entirely by existing metal detectors. A person is scanned by stepping briefly into a transparent, upright cylinder seven feet high by four feet in diameter. Two vertical antenna masts rotate around the person over a two-second interval. Each antenna element in turn sweeps from 24.25 to 30 GHz, operating for approximately six microseconds per sweep. The device measures reflections of the radio signals from the subject and produces an image that shows hidden objects, if any exist.

3. On August 3, 2006, the Commission adopted an *Order* in ET Docket No. 04-373, waiving the provisions of Section 15.31(c) and Section 15.35(b) of the Commission's rules to permit the marketing and the unlicensed operation of the SafeScout device.[4] Specifically, the Commission granted SafeView a

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[1] *See* Letter of Request to Renew Waiver from L-3 SafeView (L-3 SafeView Waiver Extension Request) filed August 1, 2008.

[2] L-3 SafeView claims that the ProVision 100 device is identical in all pertinent respects to the SafeScout device for which the Commission issued the waiver. *Id.* at 2.

[3] 47 C.F.R. §§ 15.31(c) and 15.35(b).

[4] *See SafeView, Inc. Request for Waiver of Section 15.31 and 15.35 of the Commission's Rules to Permit the Deployment of Security Screening Portal Devices that Operate in the 24.25-30 GHz Range (SafeView Waiver Order)*, ET Docket No. 04-373, DA 06-1589, 21 FCC Rcd 8814 (2006).

waiver of the rules to permit the measurement of the SafeScout device's average radiated emissions with the frequency sweep active (rather than with the sweep stopped, as Section 15.31(c) of the rules requires.) In addition, the Commission waived the requirement of Section 15.35(b), which specifies a limit on peak emissions from unlicensed devices of 20 dB above the corresponding maximum average emission limit specified in Section 15.209.[5]

4. In the *Order*, the Commission also placed specific operational and marketing conditions on the SafeScout device to ensure that licensed users currently operating in the 24.25-30.00 GHz and adjacent frequency bands are not subject to harmful interference.[6] The Commission also limited the number of installations allowed under the waiver to one hundred in the first year following the effective date of the order and to an additional two hundred in the second year, for a total of three hundred devices at the end of the second year. The Commission stated that the limit on the number of devices and their gradual deployment was a cautious approach, so that harmful interference issues can easily be addressed should they occur.[7] It further stated that devices deployed under the terms of the waiver may continue to operate after the end of the two-year deployment period, provided there are no instances of harmful interference to authorized operations.[8]

5. On August 1, 2008, L-3 SafeView submitted a request to extend the waiver for an additional two years with authority to continue installing the ProVision 100 at a maximum rate of 200 units per year.[9] A waiver extension would allow L-3 SafeView to continue to market and deploy additional devices beyond August 3, 2008, which was the conclusion of the two-year period covered by the initial waiver grant. The waiver extension would not affect devices deployed under the initial waiver grant, and these may continue to operate indefinitely provided there are no instances of harmful interference.[10] On June 19, 2009, L-3 SafeView withdrew the above request for authority to continue to install the ProVision 100 at a rate of 200 new installations per year; instead, it asks that unused portions of the original limits from the first two years be "rolled over" into subsequent years.[11]

6. We are authorized to grant a waiver under Section 1.3 of the Commission's rules if the petitioner demonstrates good cause for such action.[12] Good cause, in turn, may be found and a waiver

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[5] 47 C.F.R. § 15.209.

[6] *Order* at ¶29.

[7] Id.

[8] Id.

[9] L-3 SafeView Waiver Extension Request at 2.

[10] L-3 SafeView's extension request was captioned as "Request to Renew Waiver" and cited Section 1.62 of the Commission's Rules, 47 C.F.R. § 1.62, which allows a party to continue operation under an authorization while a timely-filed request for renewal of that authorization is pending. Section 1.62 of the Commission's rules allows for continued operation under a license while a timely-filed request for renewal of that license is pending; this rule does not apply to waivers of the Part 15 rules for unlicensed devices. Applications for extension of waiver of the Part 15 rules should be submitted in advance of the expiration date of the waiver grant in order to allow sufficient time for the Commission to consider and act on the request.

[11] L-3 SafeView Amendment to Request to Renew Waiver, filed June 19, 2009, at 2.

[12] 47 C.F.R. § 1.3. *See also ICO Global Communications (Holdings) Limited v. FCC*, 428 F.3d 264 (D.C. Cir. 2005); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

granted "where particular facts would make strict compliance inconsistent with the public interest."[13] To make this public interest determination, the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule.[14] We are not aware of any reports of harmful interference resulting from the ongoing use of the current systems and L-3 SafeView asserts that it has not received any report of interference due to the operation of its products.[15] We are confident that the underlying purpose of the rules is not contravened by an extension of the waiver, as it is unlikely to lead to the harm that the rule is intended to avoid, *i.e.*, interference to authorized users of the band. Further, an extension of the waiver will serve the public interest because it will continue to help improve security procedures at entry checkpoints by ensuring that any concealed dangerous objects are identified, thereby enhancing national security objectives. Consequently, we conclude that a limited extension of the waiver for an additional two-year period, subject to the same terms and conditions as the initial waiver grant, is warranted.

7. We find that a waiver extension will provide L-3 SafeView with additional time to deploy the 300 units that were permitted under the terms of the initial waiver grant. We note that L-3 SafeView has deployed approximately the number of units permitted for the first year of the waiver, *i.e.*, one hundred units, but has not yet deployed the maximum number of units permitted under the original waiver, *i.e.*, three hundred units.[16] We therefore determine that additional time is warranted to allow the company to deploy the balance of permitted units. If L-3 SafeView finds that its needs will exceed 300 units during the next two years, it may request an increase in the number of units.

8. Accordingly, pursuant to the delegated authority in Sections 0.31 and 0.241 of the Commission's rules, effective immediately upon release of this Order, we extend for two years, until August 3, 2010, the waiver of the requirements of Section 15.31(c) and 15.35(b) of our rules to permit the continued marketing of the ProVision 100 devices. This waiver shall apply to a total number of 300 systems. This waiver is subject to the following conditions:

1). The ProVision 100 imaging device shall be certified by the Commission and must comply with the technical specifications applicable to operation under Part 15 of 47 C.F.R. However, for this particular swept frequency device, compliance with the average power level need not be demonstrated under the requirement of 47 C.F.R. § 15.31(c) and the requirement of §15.35(b) is relaxed to allow a total radiated peak power level up to 41 dB above the maximum permitted average power when measured as specified herein.

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[13] *Northeast Cellular*, 897 F.2d at 1166; *see also ICO Global Communications*, 428 F.3d at 269 (quoting *Northeast Cellular*); *WAIT Radio*, 418 F.2d at 1157-59.

[14] *See, e.g.*, *WAIT Radio*, 418 F.2d at 1157 (stating that even though the overall objectives of a general rule have been adjudged to be in the public interest, it is possible that application of the rule to a specific case may not serve the public interest if an applicant's proposal does not undermine the public interest policy served by the rule); *Northeast Cellular*, 897 F.2d at 1166 (stating that in granting a waiver, an agency must explain why deviation from the general rule better serves the public interest than would strict adherence to the rule).

[15] L-3 SafeView Waiver Extension Request at 1.

[16] *See* Letter from Mitchell Lazarus, Counsel to L-3 SafeView, to Karen Ansari, Office of Engineering and Technology, filed August 8, 2008. *See also,* Letter from Mitchell Lazarus, Counsel to L-3 SafeView, filed June 2, 2009 in response to a conversation with the Commission staff. In these letters, L-3 SafeView requests that the attachments containing the number and location identification of current SafeView deployments be withheld from public inspection on the ground that such disclosure would burden the company with an unfair competitive disadvantage.

2). The intentional emissions generated by the ProVision 100 imaging device must be completely contained within the 24.25 to 30 GHz frequency range.

3). All installations of ProVision 100 imaging devices operated under this waiver shall be restricted to indoor use.

4). L-3 SafeView shall create and maintain a record of installations of all devices operating under this waiver, including the identity of the customer, type of location (*e.g.*, airport or government building), and street address and/or coordinates. This list shall be made available to the Commission and to NTIA upon request.

5). L-3 SafeView shall inform purchasers that ProVision 100 imaging devices may not be resold to third parties for use at another installation in the United States unless appropriate arrangements are made to meet all of the conditions of this waiver.

6). This waiver shall apply to the ProVision 100 imaging device produced by L-3 SafeView as described herein and provided no major changes are made to the transmitter circuitry or to the housing and position of the antenna masts that would increase the devices radiated power or bandwidth.

7). L-3 SafeView shall follow the same measurement procedures for determining the average radiated power and the peak radiated power as specified in the initial waiver grant.[17] These measurement procedures are specific to the ProVision 100 imaging device and are not generally applicable to all swept-frequency transmitting systems.

FEDERAL COMMUNICATIONS COMMISSION

Julius P. Knapp
Chief, Office of Engineering and Technology

[17] *SafeView Waiver Order* at ¶29.