Federal Communications Commission
Washington, D.C. 20554

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DA 10-229

Mr. Mitchell Lazarus
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209

Subject: Request to Modify Conditions on Waiver Granted to SafeView, Inc., ET Docket No. 04-373

Dear Mr. Lazarus:

This is in response to your letters dated January 14 and January 29, 2010, filed on behalf of your client, L-3 Communications Security and Detection Systems, Inc. ("L-3 Communications"), formerly known as L-3 Communications SafeView, Inc., requesting modification of certain conditions of a waiver first granted on August 3, 2006, and renewed September 2, 2009, to L-3 Communications for its ProVision 100 body-scanning security product. You state that the changes are needed to meet urgent homeland security and public safety needs, particularly in response to a recent terrorist attempt against a U.S. commercial aircraft.

The Office of Engineering and Technology ("OET") first waived certain Part 15 rules for this device in 2006. By Order, OET permitted the measurement of radio frequency emissions from the ProVision 100 with the frequency sweeping active (as in its normal operation), rather than with the sweep disabled, as prescribed by Section 15.31(c) of the rules; it also waived the requirement for a limit on peak emissions from unlicensed devices of 20 dB above the corresponding maximum average emission limit specified in Section 15.209.[1] The Order placed several conditions on the waiver, including limiting the number of systems permitted to be installed to 100 during the first year of the waiver, and 200 during the second year. In September 2009, OET modified the waiver to allow an additional 2-year period, *i.e.*, until August 3, 2010, for sale of the 300 units permitted under the original waiver.[2]

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[1] *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); *see also*, 47 C.F.R. §§ 15.31(c) and 15.35(b).

[2] *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 09-1966, 24 FCC Rcd 11550 (2009).

In your letter dated January 14, 2010, you state that in order to meet the requirements of security authorities to foil future terrorist attacks, L-3 Communications requests that sales of ProVision units for installation in U.S. airports not be included in the numerical limits in the waiver and not be subject to the expiration cut-off date in the waiver renewal, *i.e.*, August 3, 2010, for a period of 2 years following that date. Your letter dated January 29, 2010 modified this request with the alternative request to extend the existing waiver for an additional year and to allow the sale of 200 additional units through that date, *i.e.*, 500 units through August 3, 2011. You also state that L-3 Communications has not received any reports of interference caused by the ProVision at any of its installations, and that the company remains committed to swiftly resolve any interference incidents that do arise.

It is a well-established principle that the Commission will waive its rules in specific cases only if it determines, after careful consideration of all pertinent factors, that such a grant would serve the public interest without undermining the policy the rules are intended to serve. *See WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969). Changing the waiver condition to increase the permitted number of ProVision units, under exigent circumstances that impact national security, will serve the public interest by making available the number of whole-body scanning security products needed to promote homeland security objectives and to protect the American public. In addition, granting an extension of the waiver for an additional period of one year will further serve the public interest by providing L-3 Communications with additional time to finalize delivery contracts. The numerical increase and time extension, under these circumstances, will not undermine Commission policy, as all the other waiver conditions continue to apply to the products.

Accordingly, pursuant to authority delegated in sections 0.31 and 0.241 of the Commission's rules, 47 C.F.R. §§ 0.31, 0.241, and section 1.3 of the Commission's rules, 47 C.F.R. §1.3, the waiver issued to L-3 Communications by Orders dated August 3, 2006 and September 2, 2009 is extended to August 3, 2011, to allow the marketing of a total number of 500 ProVision units until that time, effective upon release of this order. 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.

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 Communications 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 the National Telecommunications and Information Administration (NTIA) upon request.

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

If you have any further questions, please contact Anh Wride, Technical Rules Branch, Policy and Rules Division, via e-mail at Anh.Wride@fcc.gov or via phone at (202) 418-0577.

Sincerely,

Julius Knapp
Chief
Office of Engineering and Technology