



Federal Communications Commission
Washington, D.C. 20554

July 21, 2011

DA 11-1207

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

Subject: Request for Permanent Renewal of, and Changes to Conditions on, Waiver Granted to SafeView, Inc., ET Docket No. 04-373

Dear Mr. Lazarus:

In response to your letter dated May 11, 2011, on behalf of your client L-3 Communications Security and Detection Systems, Inc., ("L-3"), formerly known as L-3 Communications SafeView, Inc., the Office of Engineering and Technology (OET) is granting your request to modify a waiver initially granted to L-3 and its predecessor in interest on August 3, 2006,¹ and subsequently renewed for its ProVision 100 body-scanning security device. Specifically, OET is removing the time limitation on the waiver and the limit on the number of units that can be installed.

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.² It also waived the Section 15.209 peak emissions limit of 20 dB above the corresponding maximum average emission limit and instead implemented a 41 dB limit with corresponding changes to the measurement procedure.³ The *Order* placed several conditions on the waiver, including allowing only 100 systems to be installed 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.⁴ On February 22, 2010, the Commission further modified the waiver to allow an additional one year period, *i.e.*, until August 3, 2011, for the sale of 200 additional units, bringing the numerical limit to 500.⁵

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 *Id.* at 8824

³ *Id.*

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 09-1966, 24 FCC Rcd 11550 (2009).

⁵ See *SafeView, Inc. Request for Waiver of Section 15.31 and 15.35 of the Commission's Rules to Permit the*

In your letter dated May 11, 2011, you state that in order to meet the homeland security and public safety needs of its customers, particularly in addressing threats to aviation safety, L-3 requests permanent renewal of the waiver; *i.e.*, with no expiration date that requires further renewals, and elimination of the limit on numbers of units that can be sold under the waiver. Further, L-3 commits to continuing to comply with all other waiver conditions. You acknowledge that OET imposed the time and numerical limits to help control harmful interference, although the risk was very low. You report that L-3 has not received any reports of interference caused by the ProVision 100 at any of its installations and that the company remains committed to swiftly resolving any interference incidents that do arise. L-3 has installed approximately 300 ProVision 100 units, and it expects that the Transportation Security Administration (TSA) will make an additional procurement of the devices later this year.

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.⁶ Good cause, in turn, may be found and a waiver granted “where particular facts would make strict compliance inconsistent with the public interest.”⁷ 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.⁸ We find that eliminating the limit on the number of ProVision 100 devices that may be installed, under exigent circumstances that impact national security, will serve the public interest because it removes any regulatory delay in L-3’s ability to provide the number of whole-body scanning security devices needed to promote homeland security objectives and to protect the American public. We also find that removing the waiver’s time limitations will serve the public interest in the same way and provide L-3 with additional flexibility to deploy these devices as needed.

Our decision to remove the numerical and time imitations, under these circumstances, does not undermine Commission policy that unlicensed devices not cause interference to authorized services, as all the other waiver conditions continue to apply. We continue to believe that the technical and operational requirements imposed in conjunction with this waiver are adequate to protect licensed users within the 24.25-30 GHz band. Our initial determination is substantiated by the fact that we have received no complaints of interference in the years that L-3 has been operating ProVision 100 units, and L-3 asserts they have received no such complaints. As a continued cautionary matter, we

Deployment of Security Screening Portal Devices that Operate in the 24.25-30 GHz Range (SafeView Waiver Order), ET Docket No. 04-373, DA 10-229, 25 FCC Rcd 1269 (2010). In this order, the Commission addressed a petition for reconsideration against the initial waiver grant.

⁶ 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).

⁷ *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.

⁸ *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).

will continue our oversight of these devices to ensure that any interference issues are mitigated expeditiously. Thus, we are adding a new condition to this permanent waiver requiring L-3 to submit a report to this office within one year of the date of this decision to notify us of the number of ProVision 100 devices that have been installed and any incidences of interference and how they were resolved.

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 by Orders dated August 3, 2006, September 2, 2009, and February 22, 2010, is hereby modified to allow the marketing of the ProVision 100 device without any time or numerical limitations, 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 shall create and maintain a record of all installations 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 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 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 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.

8). L-3 shall submit a report due no later than July 20, 2012, to include the following information: the total number of units deployed; any reports of interference; the manner in which the interference was resolved; and the time it took to resolve the interference incidents.

If you should have any further questions, please contact Aole Wilkins, Technical Rules Branch, Policy and Rules Division, via e-mail at Aole.Wilkins@fcc.gov or via phone at (202) 418-2406.

Sincerely,

Julius Knapp
Chief
Office of Engineering and Technology