

April 1, 2013

Ms. Marlene Dortch, Secretary
Office of the Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002

RE: Opposition to Proposed Changes to the Federal Communications Commission's Rules regarding 121.5 MHz Emergency Locator Transmitters (ELTs), WT Docket No. 01-289, FCC 13-2

Dear Ms. Dortch,

The National Air Transportation Association (NATA), the voice of aviation business, is the public policy group representing the interests of aviation businesses before Congress, federal agencies and state governments. NATA's 2,000 member companies own, operate, and service aircraft. These companies provide for the needs of the traveling public by offering services and products to aircraft operators and others such as fuel sales, aircraft maintenance, parts sales, storage, rental, airline servicing, flight training, Part 135 on-demand air charter, fractional aircraft program management and scheduled commuter operations in smaller aircraft. NATA members are a vital link in the aviation industry providing services to the general public, airlines, general aviation, and the military.

With the above rulemaking, the Federal Communications Commission proposes to prohibit the "manufacture, importation, and sale of ELTs that operate only on frequency 121.5 MHz."¹ While the Third Further Notice of Proposed Rulemaking does not specifically propose a prohibition on the further use of ELTs broadcasting on 121.5 MHz, the text of the proposal indicates that the commission continues to consider such a prohibition for possible inclusion in the resultant final rule. During an industry meeting on February 27, 2013,² the FCC staff indicated that a prohibition on use continued to be an issue under consideration in this rulemaking, despite the fact that such a proposal was not included in the text of the proposed rules, and could be included as part of final rules stemming from this proposal.

¹ Proposed § 97.195

² See : Ex Parte Notice: Aviation Communications, Proposed Rules, WT Docket No. 01-289; Office of Advocacy, US Small Business Administration

Comments of the National Air Transportation Association in Opposition to Proposed Changes to the Federal Communications Commission's Rules regarding 121.5 MHz Emergency Locator Transmitters (ELTs), WT Docket No. 01-289, FCC 13-2

April 1, 2013

Page 2 of 7

I. NATA requests the FCC withdraw this rulemaking.

The FCC's proposed rules are irregular and do not appear to represent the agencies actual intent, conflict with federal statutes and Federal Aviation Administration (FAA) policy, have been proposed absent without any evidence of consultation with the FAA, and have been proposed without adequate analysis and support. For these reasons, NATA requests that the FCC withdraw this rulemaking.

The proposed regulatory text does not appear to actually represent the Commission's intention.

Longstanding federal law, rules and precedent have lead to a process where Federal agencies identify a problem, gather data, propose a well-defined solution, receive public comments on the proposal, revise the proposal accordingly and issue a final rule. With this rulemaking, the FCC has stood that process on its head. The Commission has identified an issue, the cessation of satellite monitoring of 121.5 MHz ELTs, and issued a vague rulemaking proposal asking for generalized data while emphasizing that its final objective has been determined, a transition away from 121.5 MHz ELTs.

NATA is concerned by the cryptic nature of this proposed rulemaking. The FCC has specifically promulgated proposed language prohibiting only the manufacture, importation and sale of 121.5 MHz ELTs. Yet, the commission has indicated that its objective is the transition away from 121.5 MHz ELTs through a prohibition on their use.³ Additionally, the FCC has asked for comment on "whether we also should adopt a specific date to prohibit the continued use of 121.5 MHz ELTs."⁴

The proposal also notes that the Commission is not seeking "any prohibition or restriction on the manufacture, sale, or installation of replacement components, such as batteries, for 121.5 MHz ELTs in use",⁵ but then specifically asks for comments on whether the Commission should prohibit the manufacture sale or installation of replacement components.

³ In the February 27, 2013 SBA/Industry meeting with the FCC, staff indicated that a prohibition on the use of 121.5 ELTs is considered to be a part of this rulemaking proposal even though that language was "intentionally" not included in the proposed regulatory text.

⁴ WT Docket No. 01-289, Third Further Notice of Proposed Rulemaking, section 11, page 5

⁵ *Id.* footnote 30

Comments of the National Air Transportation Association in Opposition to Proposed Changes to the Federal Communications Commission's Rules regarding 121.5 MHz Emergency Locator Transmitters (ELTs), WT Docket No. 01-289, FCC 13-2

April 1, 2013

Page 3 of 7

The FCC has drafted a vague proposal that does not clearly identify the limits of the proposed rule and asks for input on topics that are even outside of the loosely defined limits of what the Commission has proposed. NATA is curious as to what the Commission is actually proposing in this rulemaking.

The FCC proposes these rules absent coordination with the FAA and in conflict with statute and FAA Policy.

The FCC's sole justification in pursuing this rulemaking is that it benefits air safety.⁶ Despite assertions that "The FCC gives deference to the FAA on matters of aviation safety",⁷ the record surrounding this air safety rulemaking is absent of any indication of coordination or discussion with the FAA.

The Federal Aviation Administration is the federal agency tasked with the regulation of air safety. Under this tasking, the FAA has promulgated rules requiring ELT installation in civil aircraft.⁸ Existing FAA approvals allow for the installation of 121.5 MHz ELTs as a means to comply with those rules. In 2012, the FAA took action to cancel the order that allowed for the issuance of approvals of new models of 121.5 MHz ELTs. In this action, the FAA noted that "[121.5 MHz] ELTs can continue to be used to meet 14 CFR § 91.207" and that this action did "not impact the continued production of articles with an existing TSO authorization nor impact the sale, installation, or the use of 121.5 MHz ELTs."⁹ The FAA also noted that it did not have any plans to modify its regulations to make 121.5 MHz ELTs non-compliant with §91.207. The FCC's proposed prohibition on the manufacture, sale, importation and use of 121.5 ELTs conflicts directly with the FAA's stated intent regarding the ongoing use and manufacture of 121.5 ELTs.

This rulemaking also conflicts with the intent of Congress. Section 44712(d) of Title 49 of the US Code states:

An aircraft meets the requirement of subsection (a) if it is equipped with an emergency locator transmitter that transmits on the 121.5/243 megahertz frequency or the 406-megahertz frequency or with other equipment approved by the Secretary for meeting the requirement of subsection (a)

⁶ *Id.* Section 6, page 3

⁷ FCC Regulation of Emergency Locator Transmitters, July 2012, Jeffrey Tobias. Retrieved from: http://www.nts.gov/news/events/2012/GA_Search_Rescue/presentations/Tobias.pdf

⁸ 14 CFR 91.207

⁹ 77 FR. at 28668

Comments of the National Air Transportation Association in Opposition to Proposed Changes to the Federal Communications Commission's Rules regarding 121.5 MHz Emergency Locator Transmitters (ELTs), WT Docket No. 01-289, FCC 13-2

April 1, 2013

Page 4 of 7

Congress has clearly expressed its intent that 121.5 ELTs may be used to meet air safety requirements. The FCC's intent and the actual proposals contained within this rulemaking directly conflict with this statute.

The FCC has failed to provide a reasonable justification for this proposed rule.

The FCC has justified this rule by "conclud[ing] that the safety benefits outweigh the compliance cost." However, the Commission has failed to offer even the most basic analysis of the benefits and costs of this rule or support for its conclusion.

The Commission points to statements made in three comments to the Second Further Notice of Proposed Rulemaking as justification of the benefits of transitioning away from 121.5 ELTs. However, each of those statements is no more than anecdotal references to some perceived benefit resulting from a transition away from 121.5 MHz ELTs. Anecdotal public comments should not serve as a substitute for agency analysis of a proposed rule.

In addition to the lack of analysis of the benefits of this rule, the FCC has completely ignored the issue of impact or cost of this rulemaking. The Commission has provided no indication that it has analyzed the costs of this rule. Based upon information contained within the rulemaking docket, it does not even appear that the Commission has attempted to identify the full scope of the parties affected by this rule.

Absent for a clearly defined rationale for pursuing this rulemaking, the FCC has deprived the public of the ability to reasonably or meaningfully participate in this rulemaking process.

Comments of the National Air Transportation Association in Opposition to Proposed Changes to the Federal Communications Commission's Rules regarding 121.5 MHz Emergency Locator Transmitters (ELTs), WT Docket No. 01-289, FCC 13-2

April 1, 2013

Page 5 of 7

II. The FCC has failed to perform a proper Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) requires federal agencies to prepare and publish, concurrent with a proposed rule, an Initial Regulatory Flexibility Analysis containing the following:¹⁰

- (1) A description of the reasons why action by the agency is being considered
- (2) A succinct statement of the objectives of, and legal basis for, the proposed rule
- (3) A description of and...an estimate of the number of small entities to which the proposed rule will apply
- (4) a description of the projected...compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record
- (5) An identification...of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule

The Supplemental Initial Regulatory Flexibility Analysis (SIRFA) provided in appendix B of this rulemaking fails to meet the requirements set forth in items 2-5 above, and therefore is insufficient to support this rulemaking.

¹⁰ 5 USC § 603 (b)

Comments of the National Air Transportation Association in Opposition to Proposed Changes to the Federal Communications Commission's Rules regarding 121.5 MHz Emergency Locator Transmitters (ELTs), WT Docket No. 01-289, FCC 13-2

April 1, 2013

Page 6 of 7

The FCC has not provided a succinct statement of the objectives of this rulemaking.

The proposed regulatory text considers only a prohibition on the manufacture, importation and sale of 121.5 ELTs. Statements made by the Commission staff at the February 27, 2013 SBA/Industry meeting indicate that the Commission believes that a prohibition on use is an integral part of this rulemaking. Additionally, as noted earlier, other areas of this proposal remain unclear.

In order to comply with the RFA, the FCC must clearly define its objectives, proposed regulatory changes and compliance time frames for this rulemaking.

The FCC has incorrectly identified the scope of affected entities.

In its SIRFA the Commission has defined the scope of affected entities as "in the aviation and marine radio services [classification]" and entities that "manufacture aviation radio Equipment."¹¹ The Commission estimates the number of affected aviation and marine radio services entities at 1,383.¹²

NATA believes that the Commission has incorrectly identified the universe of affected parties. Entities affected by this proposed rule would be any business or individual that owns or operates an aircraft utilizing 121.5 MHz ELTs and the manufacturers and resellers of 121.5 ELTs.

Businesses operating these types of aircraft would include (but are not limited to):

- Part 141 Flight Schools¹³
- Part 61 Flight Schools¹⁴
- Part 135 On-Demand Charter operators¹⁵
- Part 91 Corporate aircraft operators

According to the FAA data there are currently 1,214 Part 141 flight schools in the country.¹⁶ It is clear that the FCC has significantly underestimated the universe of affected entities.

¹¹ Add WT Docket No. 01-289, Third Further Notice of Proposed Rulemaking, Appendix B

¹² The reference for this data is a link to a Census Bureau website that is no longer active.

¹³ Flight Schools certificated by the FAA under 14 CFR Part 141

¹⁴ Entities providing flight instruction under 14 CFR Part 61

¹⁵ Entities providing air charter services under an FAA certificate (14 CFR 135)

¹⁶ <http://av-info.faa.gov/PilotSchool.asp>

Comments of the National Air Transportation Association in Opposition to Proposed Changes to the Federal Communications Commission's Rules regarding 121.5 MHz Emergency Locator Transmitters (ELTs), WT Docket No. 01-289, FCC 13-2

April 1, 2013

Page 7 of 7

Under the RFA this rulemaking cannot continue until the FCC properly identifies the scope of affected entities and allows public comment on that analysis.

The FCC has not attempted to define the compliance requirements associated with this rulemaking.

The SIRFA asks the public for information on compliance costs for this rulemaking. Under the RFA, it is the responsibility of the Federal agency to gather this information and make it available as part of the initial regulatory flexibility analysis for public comment.

Having not provided this required information, the FCC cannot proceed with this rulemaking until such data is gathered and published for comment.

The FCC fails to note that this proposal conflicts with Federal statutes and FAA regulation and policy.

As discussed previously, this proposed rulemaking directly conflicts with 49 USC 44712(d) and FAA's regulations and policy regarding 121.5 MHz ELTs.

III. Further Comments

While NATA asserts that this rulemaking is irregular and likely violates provision of the Administrative Procedures Act and RFA, the association is currently collecting data from its membership and intends, as part of its reply comments, to provide data requested by the Commission in this rulemaking.

NATA appreciates the opportunity to comment on this rulemaking on behalf of its membership and remains available to further discuss the issues raised in these comments.

Sincerely,



Michael France
Director, Regulatory Affairs