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February 19, 2003

Edmond J. Thomas
Chief, Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Geophysical Survey Systems, Inc.
Request for Waiver of Section 15.509(a)
FCC ID QF7HANDYSCAN, EA935767 (GPR Device)

Dear Ed:

Pursuant to Section 1.3 of the Commission's Rules, Geophysical Survey Systems, Inc. (GSSI) requests a waiver of Section 15.509(a) to permit the marketing of a GPR device ("Device") whose emissions are below the prescribed limits at all frequencies, but whose UWB bandwidth exceeds 960 MHz.

GSSI has pending a certification application for this Device under FCC ID QF7HANDYSCAN, EA935767.

BACKGROUND

The Device complies in full with the Commission's rules governing emissions at measurement bandwidths of 1 MHz and 1 kHz, and with the provision limiting peak power.¹ The only rule raising any question of compliance is Section 15.509(a), which requires the "UWB bandwidth" of a GPR to lie below 960 MHz.² The UWB bandwidth is defined as "the frequency

¹ 47 C.F.R. Secs. 15.509(d), (e), (f).

² 47 C.F.R. Sec. 15.509(a).

band bounded by the points that are 10 dB below the highest radiated emission."³ In other words, the frequencies at which the emissions fall 10 dB below the maximum must be lower than 960 MHz.

DISCUSSION

The emissions-limit curve for the Device is attached as Figure 1, and the UWB bandwidth curve as Figure 2. As Figure 1 shows, the emissions are under the mask at all frequencies. Figure 2, however, shows that the upper 10 dB point lies at 982 MHz. Although barely above 960 MHz, this datum puts the Device out of compliance.

GSSI respectfully suggests the Device is safe to other spectrum users even though the emissions curve crosses the -10 dB line slightly above 960 MHz. On that basis GSSI asks the Commission to waive Section 15.509(a) and certify the Device on the present record.

Reconsideration granted on this issue. Last week, the Commission announced it had granted partial reconsideration on a petition filed by the Ground Penetrating Radar Industry Coalition, to which GSSI belongs.⁴ We understand this relief includes a repeal of Section 15.509(a). But the repeal cannot take effect until at least 30 days after the Commission's ruling appears in the Federal Register; and that may take several weeks. GSSI is filing this request for relief in the meantime.⁵

The Commission already having made a formal decision that the rule is unnecessary, grant of the requested waiver is entirely consistent with Commission policy. Enforcing the rule after deciding to repeal it simply makes no sense.

³ 47 C.F.R. Sec. 15.503(a).

⁴ *FCC Affirms Rules to Authorize the Deployment of Ultra-Wideband Technology*, News Release (ET Docket No. 98-153, released Feb. 13, 2003).

⁵ For example, the ultra-wideband First Report and Order was adopted on February 14, 2002, but did not take effect until July 15 -- five months later. *Ultra-Wideband Transmission Systems*, 67 Fed. Reg. 34852 (May 16, 2002).

LEGAL BASIS

Long before granting reconsideration on this issue, the Commission had specifically invited waiver requests such as this one.⁶ Moreover, this request complies with the waiver standards set out by the U.S. Court of Appeals for the D.C. Circuit. That court held:

[A] general rule, deemed valid because its overall objectives are in the public interest, may not be in the "public interest" if extended to an applicant who proposes a new service that will not undermine the policy, served by the rule, that has been adjudged in the public interest.⁷

The conditions set out by the court as mandating consideration of a waiver are thoroughly met here. Grant of the requested waiver will increase the availability of devices that provide safety-of-life applications and other important benefits that are plainly in the public interest.⁸ Moreover, in granting reconsideration, the Commission has already decided the rule is unnecessary to protect other services. Thus, a grant poses no threat to any other Commission policy, or to any person.

Accordingly, a waiver is in the public interest, and is amply entitled to the "hard look" mandated by *WAIT Radio* ⁹

⁶ *Ultra-Wideband Transmission Systems*, ET Docket No. 98-153, Order, DA 02-1658 at para. 15 (released July 12, 2002).

⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

⁸ *See* Petition for Partial Reconsideration of the Ground Penetrating Radar Industry Coalition, *supra*, at 3-5.

⁹ *Id.*, 418 F.2d at 1157 ("[A]llegations such as those made by petitioners, stated with clarity and accompanied by supporting data, are not subject to perfunctory treatment, but must be given a 'hard look.'")

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Please do not hesitate to call with any questions about this request.

Respectfully submitted,

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