



Federal Communications Commission
Washington, D.C. 20554

May 13, 2003

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

Dear Mr. Lazarus:

This is in response to your letter of April 3, 2003, filed on behalf of your client, Geophysical Survey Systems, Inc. ("GSSI"), requesting an interpretation of Part 15 of our rules. Specifically, you request an interpretation that the former Section 15.509(f) of our regulations, 47 C.F.R. § 15.509(f), requiring a peak emission measurement, does not apply to ground penetrating radars (GPRs) operating below 960 MHz. To provide the relief you request, we will consider your request as a request for waiver of the current rule, and such a waiver is hereby granted.

You indicate that the Commission eliminated the peak measurement requirement for GPRs operating below 960 MHz in its recent *MO&O*. See *Memorandum Opinion and Order* in ET Docket No. 98-153, FCC 03-33, released March 12, 2003, at para. 36; 47 C.F.R. § 15.509(f). However, the changes to the rules implemented through the recent *MO&O* will not become effective until 30 days after publication in the Federal Register. You argue that it makes no sense to require the expenditure of resources to comply with a rule that the Commission already has indicated is not needed. You also point out that emissions below 960 MHz are subject to measurement using a quasi-peak detector, contending that as a result there is no appreciable benefit from performing a peak measurement. Accordingly, you request that the certification of GPRs operating below 960 MHz be permitted immediately without the requirement for a peak measurement.

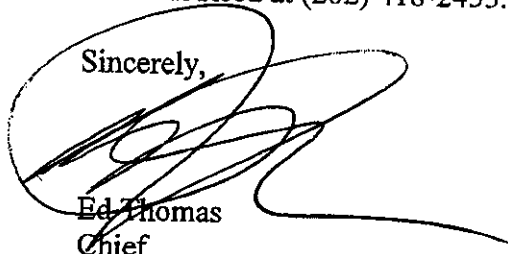
It is a well-established principle that the Commission will waive its rules in specific cases only if it determines, after careful consideration of all pertinent factors, that such a grant would serve the public interest without undermining the policy which the rule in question is intended to serve. See *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969). A waiver of the GPR peak power measurement requirement in rule Section 15.509(f) in this case is consistent with that principle. You are correct that the Commission eliminated the requirement to perform peak measurements on GPRs operating below 960 MHz. As it stated in para. 36 of the *MO&O*, *supra*, the requirement to measure emissions using a quasi-peak detector is sufficient without the need for a separate peak limit. Thus, granting GSSI's waiver request will serve the public interest by making available immediately a product that is employed for safety-of-life applications, as already recognized by the Commission in its *First Report and Order* in ET Docket No. 98-153, and will not undermine Commission policy, since the Commission already has decided to modify the requirement in question, and as a peak measurement, in addition to a quasi-peak measurement, serves no useful purpose in any event.

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Accordingly, under the authority contained in Sections 0.31(i) and 0.241(a) of the Commission's regulations, 47 CFR §§ 0.31 (i) and 0.241 (a), we grant GSSI a waiver of the requirement in Section 15.509(f) to measure the peak output level below 960 MHz.

If you have any further questions, please contact John Reed at (202) 418-2455.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ed Thomas', is written over the word 'Chief' in the typed name block.

Ed Thomas
Chief

Office of Engineering and Technology