

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|---|---|----------------------|
| In the Matter of |) | |
| |) | |
| Review of Part 87 of the Commission's Rules |) | WT Docket No. 01-289 |
| Concerning the Aviation Radio Service |) | |

ORDER

Adopted: January 10, 2011

Released: January 11, 2011

By the Commission:

1. In this *Order*, we stay a rule that was adopted in the *Third Report and Order* in this proceeding.¹ Specifically, we stay the prohibition on the certification, manufacture, importation, sale or use of emergency locator transmitters (ELTs) that transmit distress alerts on frequency 121.5 MHz.² We take this action at the request of the Federal Aviation Administration (FAA).

2. ELTs are radiobeacons that are activated to alert search and rescue personnel that an aircraft has crashed, and to identify the location of the aircraft and any survivors.³ The international Cospas-Sarsat satellite system relays the distress alerts to search and rescue authorities. In 2000, Cospas-Sarsat announced plans to terminate satellite processing of distress signals from 121.5 MHz beacons in 2009, and urged users to switch to the more reliable 406.0-406.1 MHz (406 MHz) beacons, which transmit distress signals on a frequency that Cospas-Sarsat continues to monitor.⁴ Cospas-Sarsat has now stopped monitoring frequency 121.5 MHz; therefore, only the 406 MHz frequency is currently being monitored by satellite.

3. In the *Second Further Notice of Proposed Rule Making* in this proceeding, the Commission requested comment on what actions it should take in light of the scheduled termination of satellite monitoring of frequency 121.5 MHz.⁵ Commenters generally supported a phase-out of 121.5

¹ See Review of Part 87 of the Commission's Rules Concerning the Aviation Radio Service, *Third Report and Order*, WT Docket No. 01-289, 25 FCC Rcd 7610 (2010) (*Third Report and Order*).

² See *id.* at 7620-21 ¶¶ 17-18.

³ See 47 C.F.R. §§ 87.5, 87.193.

⁴ The National Oceanic and Atmospheric Administration (NOAA), the U.S. Coast Guard (USCG), the U.S. Air Force, and the National Aeronautics and Space Administration – which administer the Cospas-Sarsat system in the United States – also advised users to switch to 406 MHz beacons. See, e.g., Termination of 121.5/243 MHz Satellite Alerting, *Notice*, National Oceanic and Atmospheric Administration Docket No. 010501107-1107-01, 66 Fed. Reg. 34912, 34913 (2001).

⁵ See Review of Part 87 of the Commission's Rules Concerning the Aviation Radio Service, *Second Report and Order and Second Further Notice of Proposed Rule Making*, WT Docket No. 01-289, 21 FCC Rcd 11582, 11608-09 ¶ 43 (2006). The Wireless Telecommunications Bureau later reminded aviators that satellite monitoring of frequency 121.5 MHz would soon terminate, and that the Commission was considering a prohibition on the use of 121.5 MHz ELTs. See Wireless Telecommunications Bureau Reminds Aviators and Mariners that Satellite Monitoring of 121.5 MHz Alerts Will End February 1, 2009, *Public Notice*, 24 FCC Rcd 149 (WTB 2009). This *Public Notice* was provided directly to the National Telecommunications and Information Administration (NTIA) and also to the Interdepartment Radio Advisory Committee (IRAC) member agencies, including the FAA.

MHz ELTs and a transition to 406 MHz ELTs.⁶ Accordingly, in the *Third Report and Order*, we amended Section 87.195 of the Commission's Rules⁷ to prohibit any further certification, manufacture, importation, sale or use of 121.5 MHz ELTs,⁸ upon the effective date of the rule amendment.⁹ We reasoned that such a prohibition would "provide safety benefits for search and rescue teams as well as aircraft pilots, crew and passengers, while also preserving search and rescue resources for real emergencies."¹⁰

4. On July 14, 2010, the National Telecommunications and Information Administration forwarded to the Commission a request from the FAA that the Commission not implement this rule amendment.¹¹ The FAA believes that the current supply of 406 MHz ELTs is not sufficient to replace all existing 121.5 MHz ELTs in the short term, so, given that most General Aviation aircraft are required to carry ELTs,¹² a prohibition on 121.5 MHz ELTs would effectively ground most such aircraft.¹³ The FAA further asserts that 121.5 MHz ELTs can continue to provide a beneficial means of locating missing aircraft even without satellite monitoring of frequency 121.5 MHz, because the frequency is still monitored by the search and rescue community, including the Civil Air Patrol.¹⁴ It also is concerned about the cost of equipping aircraft with 406 MHz ELTs.¹⁵

5. Under these circumstances, we believe it would be in the public interest to further consider what actions the Commission should take in light of the termination of satellite monitoring of frequency 121.5 MHz, with the benefit of an augmented record. Toward that end, we will stay that portion of the *Third Report and Order* prohibiting the certification, manufacture, importation, sale or use

⁶ See *Third Report and Order*, 25 FCC Rcd at 7620-21 ¶ 17 & n.71. NOAA and USCG were among the commenters supporting a prohibition on the continued certification, manufacture, importation, sale or use of 121.5 MHz ELTs. The FCC coordinated the *Third Report and Order* with NTIA in November 2009. NTIA provided the draft version of the *Third Report and Order* to those agencies that participate in the IRAC, including the FAA. The FAA raised no issues or objections to the portion pertaining to 121.5 MHz ELTs.

⁷ 47 C.F.R. § 87.195.

⁸ See *Third Report and Order*, 25 FCC Rcd at 7620-21 at ¶¶ 17-18. The prohibition applies to ELTs that transmit a distress signal on frequency 121.5 MHz, and not to the 121.5 MHz homing beacon required in 406 MHz ELTs. See 47 C.F.R. § 87.199(b).

⁹ The rule amendments in the *Third Report and Order* are to take effect sixty days after they are published in the Federal Register. See *Third Report and Order*, 25 FCC Rcd at 7624 ¶ 26. The rule amendments have not yet been forwarded to the Office of the Federal Register.

¹⁰ *Id.* at 7621 ¶ 17.

¹¹ See Letter dated July 14, 2010 from Karl B. Nebbia, Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration, to Julius Knapp, Chief, Office of Engineering and Technology, Federal Communications Commission; Letter dated July 8, 2010 from James T. Eck, Director of Program Operations, Federal Aviation Administration, to Karl B. Nebbia, Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration (FAA Letter).

¹² See 49 U.S.C. § 44712; 14 C.F.R. § 91.207.

¹³ See FAA Letter at 1.

¹⁴ *Id.* at 1-2. The Aircraft Owners and Pilots Association also submitted a letter after the *Third Report and Order* was released, stating that 121.5 MHz ELTs should not be prohibited because, *inter alia*, the frequency is still monitored by ground and aircraft stations. See Letter dated June 24, 2010 from Robert E. Hackman, Vice President, Regulatory Affairs, Aircraft Owners and Pilots Association, to Marlene Dortch, Secretary, Federal Communications Commission at 2 (AOPA Letter).

¹⁵ See FAA Letter at 1; see also AOPA Letter at 1-2.

of 121.5 MHz ELTs.¹⁶ No action will be taken regarding 121.5 MHz ELTs until further notice, following an additional opportunity for interested parties to comment.¹⁷

6. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, that the effectiveness of the amendment of Section 87.195 of the Commission's Rules, 47 C.F.R. § 87.195, adopted in the *Third Report and Order* in WT Docket 01-289, IS STAYED pending further Commission action, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁶ In determining whether to stay the effectiveness of one of its rules, the Commission uses the four-factor test established in *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958), as modified in *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). Under that test, petitioners must demonstrate that: (1) they are likely to succeed on the merits on review; (2) they would suffer irreparable injury absent a stay; (3) a stay would not substantially harm other interested parties; and (4) a stay would serve the public interest. No single factor is dispositive of a petition for stay. The Commission typically balances all four factors, but does not require a showing as to each single factor in every case. See *AT&T Corp. v. Ameritech Corporation*, 13 FCC Rcd. 14508, 14515-16 ¶ 14 (1998).

¹⁷ Specifically, we anticipate that we will issue a *Third Further Notice of Proposed Rule Making* in this proceeding, seeking additional comment on whether the Commission should permit the continued certification, manufacture, importation, sale or use of 121.5 MHz ELTs.