

2037

Federal Communications Commission

DA 98-~~111~~

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

In the matter of

THOMSON-CSF COMMUNICATIONS,

GARMIN INTERNATIONAL, INC.

AND

ALLIED SIGNAL, INC.

Request for Waiver of Section 87.173(b)
of the Commission's Rules Governing
Assignable Carrier Frequencies
in the Aviation Services

ORDER

Adopted: October 6, 1998

Released: October 7, 1998

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau

I. INTRODUCTION

1. Under consideration are requests for waiver filed by Thomson-CSF Communications (Thomson) on July 23, 1998, by Allied Signal, Inc. (Allied) on August 14, 1998, and by Garmin International, Inc. (Garmin) on September 25, 1998. Thomson, Allied and Garmin seek waiver of Section 87.173(b) of the Commission's Rules¹ to permit type acceptance of VHF aircraft transceivers capable of transmitting on both the 25-kHz spaced channels currently authorized pursuant to Section 87.173(b) of the Commission's Rules and on 8.33-kHz spaced channels (dual spacing transceivers) that will be used in certain countries in Europe and in the United Kingdom in 1999.² For the reasons discussed herein, we grant the requested waivers regarding operation of the Thomson, Allied and Garmin transceivers with 25 kHz and 8.33 kHz channel spacing. We note, however, that this *Order* does not authorize aircraft to transmit on 8.33-kHz spaced channels within airspace of the United States, its territories or the Commonwealth of Puerto Rico, but is limited to permitting type acceptance of specified transceivers capable of transmitting on the 8.33-kHz spaced Aeronautical Mobile Service (AMS) channels used in certain other countries.³

¹ 47 C.F.R. § 87.173(b).

² Operation on 8.33-kHz spaced channels is not permitted in U.S. airspace. See 47 C.F.R. § 87.173. Originally, implementation of the 8.33 kHz channel plan in Europe and the United Kingdom was scheduled to begin on January 1, 1999. The implementation has been rescheduled to begin on October 7, 1999. See Allied Waiver Request at 1.

³ The subject channels are used for air-to-ground and ground-to-air voice and data communications.

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II. BACKGROUND

2. In March of 1997, the International Civil Aviation Organization (ICAO), an international body operating under the auspices of the United Nations, amended its International Standards and Recommended Practices to incorporate a channel plan specifying 8.33 kHz channel spacings in the AMS.⁴ The 8.33 kHz channel plan was adopted to alleviate the shortage of VHF Air Traffic Control (ATC) channels experienced in western Europe and in the United Kingdom.⁵ Seven western European countries and the United Kingdom are scheduled to implement the 8.33 kHz channel plan in 1999.⁶ Accordingly, aircraft operating in the airspace of these countries must have the capability of transmitting and receiving on the 8.33-kHz spaced channels.

3. Section 87.39 of the Commission's Rules⁷ requires: (1) that U.S. registered aircraft employ type accepted radios; and (2) that to be type accepted, aircraft radios must meet the technical requirements of Subpart D of Part 87 of the Commission's Rules.⁸ Subpart D of Part 87 contains a list of "assignable carrier frequencies or frequency bands" and includes carrier frequencies in the VHF aircraft band used for ATC communications (117.975 MHz to 136.975 MHz).⁹ The listed frequencies are based on 25 kHz spacing. There is no provision in the Commission's Rules for operating on 8.33-kHz spaced channels as envisioned by the ICAO channel plan. Accordingly, type acceptance of dual spacing transceivers may not be obtained absent a waiver of Section 87.173(b). The Commission granted similar a similar waiver to Rockwell Collins, Inc. on February 11, 1998, and to Honeywell, Inc. on June 17, 1998.¹⁰

⁴ See *International Standards and Recommended Practices, Aeronautical Telecommunications*, Annex 10 to the Convention on Civil Aviation, Vol. V, Aeronautical Radio Frequency Spectrum Utilization, Amendment No. 72, International Civil Aviation Organization, Montreal, 1997 (ISRP). When the ICAO adopts an International Standard and Recommended Practice it is binding on the contracting countries. See Amendment of Part 87 of the Commission's Rules to Establish Technical Standards and Licensing Procedures for Aircraft Earth Stations, *Report and Order*, PR Docket No. 90-315, 7 FCC Red 5895, 5896 n.12 (1992). However, contracting countries are not required to implement 8.33 kHz spacing if their current channel spacing standards provide an adequate number of frequencies. ISRP at 6, para. 4.1.2.1 (note).

⁵ See *Plan for the 8.33 kHz Channel Spacing Implementation in Europe (8.33 kHz Spacing Plan)*, Edition 2.0, European Civil Aviation Conference, Dec. 2, 1996 at 2.

⁶ The implementing countries are Austria, Belgium, France, Germany, Luxembourg, Netherlands, Switzerland and the United Kingdom. *Id.*

⁷ 47 C.F.R. § 87.39.

⁸ See also 47 C.F.R. § 87.145 (requiring, with exceptions not relevant here, that radio equipment installed on air carrier aircraft must be type accepted and must meet FCC and FAA requirements).

⁹ The list of frequencies is contained in the table in Section 87.173(b) of our Rules. See 47 C.F.R. § 87.173(b).

¹⁰ See Rockwell Collins, Inc. Request for Waiver of Section 87.173 of the Commission's Rules Governing Assignable Carrier Frequencies in the Aviation Services, DA 98-275, *Order*, 13 FCC Red 2954 (Wireless Telecom. Bur. 1998) (Rockwell Order); Honeywell, Inc. Commercial Flight Systems Group, Request for Waiver of Section 87.173 of the Commission's Rules Governing Assignable Carrier Frequencies in the Aviation Services, DA 98-1176 (Wireless Telecom. Bur., rel. June 17, 1998) (Honeywell Order).

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III. DISCUSSION

4. Section 1.3 of the Commission's Rules permits waiver of any rule provision for good cause shown.¹¹ We find that the waivers requested by Thomson, Allied and Garmin are warranted. In that connection, Allied and Garmin point out that two industry standard setting organizations, RTCA, Inc. (RTCA) and Aeronautical Radio, Inc. (ARINC), have approved United States VHF transceiver standards that include 8.33 kHz spacing.¹² Moreover, the Federal Aviation Administration (FAA) has issued Technical Standard Orders (TSO) based on these industry standards.¹³ As we noted in the *Rockwell Order*, aircraft must have the capability of communicating reliably with ground stations as directed, and on the frequencies specified, by air traffic controllers.¹⁴ Further, we believe that this capability could be impaired if United States registered aircraft were unable to communicate effectively with ATC facilities in certain European countries on 8.33-kHz spaced channels beginning in 1999.¹⁵ Accordingly, in the interest of air safety and operational efficiency, we issued the *Rockwell Order* and *Honeywell Order* allowing type acceptance of similar dual spacing transceivers. We believe the same factors that warranted waivers in the Rockwell and Honeywell context are present in the instant waiver requests submitted by Thomson, Allied and Garmin. Thus, we conclude that Thomson, Allied and Garmin have shown good cause for waiver of Section 87.173(b) of the Commission's Rules to permit type acceptance of their dual spacing transceivers.

IV. ORDERING CLAUSES

5. Accordingly, IT IS ORDERED, pursuant to the authority of Sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, that the Request for Waiver of Section 87.173(b) filed by Thomson-CSF Communications IS GRANTED.

6. IT IS FURTHER ORDERED that Section 87.173(b) of the Rules, 47 C.F.R. § 87.173(b), IS WAIVED to the extent necessary to permit type acceptance of Thomson-CSF Communications' dual spacing transceiver, FCC Identification Number KVJEVR716.

7. IT IS FURTHER ORDERED, pursuant to the authority of Sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, that the Request for Waiver of Section 87.173(b) filed by Allied Signal, Inc. IS GRANTED.

¹¹ 47 C.F.R. § 1.3. See also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹² See Allied Waiver Request at 3, Garmin Waiver Request at 2, citing *Minimum Performance Standards for Airborne Communications Equipment Operating Within the Frequency Range 117.975 - 137.00 MHz*, RTCA DO-186(a); ARINC Characteristics 566A, 716 and 750.

¹³ See Garmin Waiver Request at 2-3, Allied Waiver Request at 2, citing FAA TSO-C37c, TSO-C37d, TSO-C38c and TSO-C38d.

¹⁴ See *Rockwell Order*, 13 FCC Rcd at 2956.

¹⁵ *Id.*

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8. IT IS FURTHER ORDERED that Section 87.173(b) of the Rules, 47 C.F.R. § 87.173(b), IS WAIVED to the extent necessary to permit type acceptance of Allied Signal Inc.'s dual spacing transceivers, FCC Identification Numbers ASYKY196B and ASYKX165A.

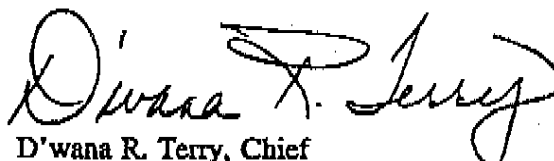
9. IT IS FURTHER ORDERED, pursuant to the authority of Sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), and 303(i), and Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3 that the Request of Wavier of Section 87.173(b) filed by Garmin International, Inc. IS GRANTED

10. IT IS FURTHER ORDERED that Section 87.173(b) of the Rules, 47 C.F.R. § 87.173(b), IS WAIVED to the extent necessary to permit type acceptance of the Garmin International, Inc.'s dual spacing transceiver, FCC Identification Number IPH-0021400.

11. IT IS FURTHER ORDERED that, except for having the capability to transmit on 8.33-kHz spaced channels outside of U.S. airspace, the dual spacing transceivers listed *supra* shall conform in all other respects to applicable provisions of Part 2, Subpart J of the Commission's Rules governing the type acceptance process and to applicable provisions of Part 87 of the Commission's Rules governing aviation services.

12. This action is taken under delegated authority pursuant to Section 0.331 of the Commission's Rules, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION



D'wana R. Terry, Chief
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau