



Federal Communications Commission
Washington, D.C. 20554

January 4, 2005

Ms. Elizabeth R. Sachs
Lukas, Nace, Gutierrez, & Sachs
1650 Tysons Boulevard
Suite 1500
McLean, VA 22102

Dear Ms. Sachs:

This responds to your request for waiver, dated September 14, 2004. Cubic Corporation seeks a waiver of the Commission rules to permit Cubic to sell an HF transmitter that has been modified due to unavailable parts and for use by entities eligible under Part 87 of the Commission's rules to operate such HF transmitter.

You claim that a waiver is warranted because the sale and use of the subject radio will not compromise the Commission's responsibility to protect users of the electromagnetic spectrum from harmful interference, and that this system is used for vital communications purposes for which there is no commercially available alternative.

By this letter, for the reasons stated below, we will waive the requirements of Section 87.139(c) of our rules, so that Cubic will be permitted to receive approval of the modified HF transmitter, despite its *de minimis* noncompliance with the rules.

The radio in question is used for long-range ground-to-air voice communication with test airplanes, pursuant to Subpart J of Part 87 of the Commission's rules. Cubic has held an equipment authorization for this radio since 1998 (FCC ID: NVSCTX-1000). Recently, however, the company that had manufactured the power supply used in the radio discontinued its product. Replacement of the power supply requires approval of the modified radio via the Class II permissive change process in Section 2.1043 of the FCC Rules. After a diligent search, Cubic has located only one alternative source for the power supply, and that power supply causes the radio to deviate from its permitted occupied bandwidth. Moreover, Cubic's customers have been unable to locate an alternate supplier for an FCC-compliant HF radio that meets their needs for aircraft testing. Thus, the need for this waiver is clearly demonstrated.

Testing of the radio demonstrates that the occupied bandwidth extends beyond the emissions mask on only two of its fourteen channels. On one channel the deviation is 0.5 dB or less, well within the margin of measurement error, and on the other channel the deviation is approximately 2 dB beyond the mask, a *de minimis* deviation that should have no discernible impact on the operation of these units or those of adjacent channel systems.

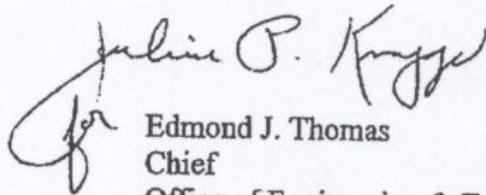
The aircraft testing that the subject radio supports is vital to the development of both military and civilian aircraft, and thus critical to our military security and to civilian air safety. Thus, it is clear that the public interest would be served by grant of the waiver.

Finally, the radios in question have a very limited utility for a specialized purpose, and would be used by knowledgeable operators. They will be few in number, used in locations that pose little threat of interference to other radio operators, and will be in operation sporadically. In the event that one does cause interference, it will be easy to identify the source of such interference and the operator, in order to eliminate this interference. Because the likelihood of interference is negligible and its prompt resolution is virtually assured, grant of this waiver will not undercut the underlying purpose of our equipment certification rules, *i.e.*, to ensure that radio transmitters meet certain standards and to control interference to radio services.

Accordingly, Section 87.139(c) of our rules will be waived to the extent required by the specifications represented in the subject waiver request in order to permit the approval of the modified radios via the Class II permissive change procedure.

The application for this modified radio may be processed by a Telecommunication Certification Body in lieu of the Commission. Please include a copy of this waiver approval letter with any application for the modified radio.

Sincerely,

A handwritten signature in black ink, appearing to read "Edmond J. Thomas". A small, stylized "J" is written to the left of the signature.

Edmond J. Thomas
Chief
Office of Engineering & Technology