



Federal Communications Commission
Washington, D.C. 20554

March 26, 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 March 19, 2003, filed on behalf of your client, Sensors & Software, Inc. ("SSI"), requesting a waiver of Part 15 of our rules. Specifically, you request a waiver of Section 15.509(a) of our regulations, 47 C.F.R. § 15.509(a), that requires the -10 dB bandwidth of the emission from a ground penetrating radar ("GPR") to be below 960 MHz. You request that this waiver apply to SSI's GPR that is pending certification by the Commission under FCC ID QJQ-NOGGIN1000, EA828918.

As indicated in your letter, the -10 dB bandwidth of the emission from SSI's device extends above 960 MHz but otherwise complies in full with all of the Commission's regulations governing emission limits. You argue that granting the waiver is consistent with Commission policy because the Commission, on February 13, 2003, adopted an Order that would modify the -10 dB bandwidth requirement in Section 15.509, such that the subject device will be in compliance with the new rules. *See Memorandum Opinion and Order* in ET Docket No. 98-153, adopted February 13, 2003, released March 12, 2003, FCC 03-33, at para. 35. You request immediate relief from the current regulation, rather than wait for the effective date of this rule change, which will be 30 days after the Order is published in the Federal Register. You argue that grant of the waiver would serve the public interest by increasing the availability of devices, such as SSI's, that provide safety-of-life applications and other important benefits.

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 bandwidth limitation in rule Section 15.509(a) in this case is consistent with that principle. The Commission has decided to modify the -10dB bandwidth requirement to allow emissions from a GPR to be below 10.6 GHz. The emissions from SSI's device meet this new requirement. Granting SSI'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.

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Accordingly, under the authority contained in Sections 0.31(i) and 0.241(a) of the Commission's rules, 47 CFR §§ 0.31 (i) and 0.241 (a), SSI's request for a waiver of the requirement in Section 15.509(a), that the -10 dB bandwidth of the emission must be below 960 MHz, is hereby granted.

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

Sincerely,

A handwritten signature in black ink, appearing to be "Ed Thomas", with a long horizontal line extending to the right.

Ed Thomas
Chief,
Office of Engineering and Technology