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Client: BriarTek, Inc.  
Model: ORCA DSC  
FCC ID: QJYORCADSC  
Standards: Part 80  
Report #: 2009196

## **Appendix A: DA 06-2113 Waiver**

Please refer to the following pages.

In the Matter of )  
BRIARTEK INCORPORATED )  
Request for Waiver to Permit Type Certification )  
of BriarTek ORCA DSC Personal Emergency )  
Position Indicating Radio Beacon (EPIRB) )

## ORDER

**Adopted: October 25, 2006**

**Released: October 25, 2006**

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* On March 16, 2005, BriarTek Incorporated (BriarTek) filed a request for waiver of Section 80.1055 of the Commission's Rules<sup>1</sup> to permit type certification of a new Class B Emergency Position Indicating Radio Beacon (EPIRB), the Ocean Recovery Communication Apparatus (ORCA)<sup>2</sup> Digital Selective Calling (DSC) beacon.<sup>3</sup> For reasons set forth below, we grant BriarTek's request for waiver to the extent described herein.

2. *Background.* EPIRBs are battery-powered transmitters generally used to send a distress signal when a ship is in danger. The distress signal is used both as an alarm to alert others that a ship is in distress and as a beacon to aid in its location by search and rescue personnel. In 2002, the Wireless Telecommunications Bureau's Public Safety and Private Wireless Division<sup>4</sup> granted BriarTek a waiver to permit certification of its ORCA Personal Locator Beacon (ORCA PLB) as a Class B EPIRB, even though the unit did not meet the minimum operational performance standards for EPIRBs operating on 121.5/243 MHz.<sup>5</sup> The waiver was granted because, unlike other EPIRBs, the ORCA PLB was not intended primarily to activate rescue operations from satellites, overflying aircraft, or nearby ships, but instead to alert the home ship of a man overboard occurrence and then provide an accurate and rapid means to locate personnel once a search and rescue operation is underway.<sup>6</sup> Subsequently, in 2004, the Commission decided to phase out Class B EPIRBs, because COSPAS/SARSAT, the international program that operates the satellite processors for EPIRBs, announced that it would turn off its 121.5/243

<sup>1</sup> 47 C.F.R. § 80.1055.

<sup>2</sup> We note that ORCA also is often used as an abbreviation for Ocean Recovery Cuff Assembly.

<sup>3</sup> Letter dated Mar. 16, 2005 from Joseph S. Landa, Corporate Officer, BriarTek Incorporated, to Michael Wilhelm, Chief, Public Safety and Critical Infrastructure Division, Federal Communications Commission (Waiver Request).

<sup>4</sup> The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. See Reorganization of the Wireless Telecommunications Bureau, Order, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

<sup>5</sup> See BriarTek Incorporated, *Order*, 17 FCC Rcd 2204 (WTB PSPWD 2002) (*ORCA PLB Order*). A waiver was required because the ORCA PLB did not meet the emission and power standards or battery requirement for Class B EPIRBs. *See id.* at 2205 ¶ 3.

<sup>6</sup> See *id.* at 2205 ¶ 6.

MHz processors.<sup>7</sup> The Commission stated, however, that the decision was not intended to preclude the continued manufacture and use of equipment certified in accordance with waivers such as was granted to BriarTek, because the use of such equipment did not pose the safety problems that led to the decision to phase out Class B EPIRBs generally.<sup>8</sup>

3. On December 10, 2004, Special Committee No. 119 of the Radio Technical Commission for Maritime Services (RTCM) adopted Recommended Standards for Maritime Survivor Locating Devices (MSLDs).<sup>9</sup> The SC-119 Standards set forth various functional and technical requirements for MSLDs utilizing 156.525 MHz (VHF Channel 70) to transmit DSC alerts, and MSLDs utilizing 121.5 MHz to transmit alerts. The ORCA DSC beacon adds a DSC signaling alert on Channel 70 to the previously approved ORCA PLB, and complies with the SC-119 Standards.<sup>10</sup>

4. Because the Commission's rules prohibit new Class B EPIRBs, the ORCA DSC beacon cannot be certified without a waiver of Section 80.1055. BriarTek contends that such a waiver is appropriate because DSC alerts will provide additional information that will assist in directing the alert signal to the appropriate responders, which will increase the effectiveness of search and rescue operations.<sup>11</sup> On May 2, 2006, we sought comment on BriarTek's waiver request.<sup>12</sup> Four comments were filed supporting the request for waiver.<sup>13</sup>

5. *Discussion.* Section 1.925 of the Commission's Rules provides that we may grant a waiver if it is shown that (a) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (b) in light of unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>14</sup> We find that the waiver requested by Briar Tek is warranted under the circumstances presented. Specifically, we conclude that the underlying purpose of the subject rules would not be served by application to the instant case and grant of the requested waiver would be in the public interest.

6. We note that the ORCA DSC beacon simply adds the DSC transmitting frequency 156.525 MHz to the currently certified ORCA PLB, and offers improvements to current man overboard recovery systems such as interoperability with existing DSC equipment, new location technology, and

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<sup>7</sup> See Amendment of Parts 13 and 80 of the Commission's Rules Concerning Maritime Communications, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 00-48, 17 FCC Rcd 6741, 6761-62 ¶¶ 46-47 (2002) (*R&O*).

<sup>8</sup> See *id.* at 6761-62 n.124.

<sup>9</sup> Version 1.0, RTCM Paper 240-2004/SC119-STD with Amendment 1 (SC-119 Standards).

<sup>10</sup> See Waiver Request at 4.

<sup>11</sup> See *id.* at 5.

<sup>12</sup> Wireless Telecommunications Bureau Seeks Comment on Request for Waiver by BriarTek Incorporated for Type Certification of DSC Personal Emergency Position Indicating Radio Beacon (EPIRB), *Public Notice*, 21 FCC Rcd 5005 (WTB PSCID 2006).

<sup>13</sup> Comments were filed by Capt Robert F. Flannery Jr., President, Metro Pilots; Edward F. Burns, Port Engineer, United New York Sandy Hook Pilots' Association and United New Jersey Sandy Hook Pilots' Association; Capt D.M. Wheeler, President, United New York Sandy Hook Pilots' Benevolent Association & Capt E.F. Sweeney President, United New Jersey Sandy Hook Pilots' Benevolent Association; John H. Olthuis, Director of Training, United New York Sandy Hook Pilots' Benevolent Association and United New Jersey Sandy Hook Pilots' Benevolent Association.

<sup>14</sup> 47 C.F.R. § 1.925(b)(3); see also *WAIT Radio v FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969).

identification of the person overboard.<sup>15</sup> Because the ORCA DSC beacon is primarily intended to alert the home ship of a man overboard occurrence and then provide an accurate and rapid means to locate personnel once a search and rescue operation is underway—rather than to activate rescue operations from aircraft or other ships—we conclude that it is not necessary to require the device to have the technical characteristics of the former Class B EPIRB, such as sufficient transmitter power to alert satellites, aircraft, and other ships; and long battery life. In addition, we conclude that grant of a waiver would not conflict with the Commission’s decision to phase out Class B EPIRBs. Indeed, the Commission specifically stated, with respect to the waivers of the Class B requirements granted for the ORCA PLB and other similar units, that its decision was not “intended either to enlarge the relief granted in those earlier waiver decisions or to preclude modification or termination of the waivers at some later time if such action is justified by changed circumstances, such as the RTCM’s adoption of standards for 121.5 MHz EPIRBs.”<sup>16</sup> We agree with BriarTek that a waiver would serve the public interest because use of the ORCA DSC beacon will facilitate recovery of lost mariners.<sup>17</sup>

7. Finally, we will impose the same conditions on this waiver grant as we imposed on the 2002 grant for BriarTek’s ORCA PLB to address concerns of the U.S. Coast Guard.<sup>18</sup> Specifically, the ORCA DSC beacon must be installed in a Personal Flotation Device (PFD)<sup>19</sup> or otherwise kept with a person, and not be sold as a shipboard EPIRB or used as a personal locating beacon on land. In addition, use of the ORCA DSC beacon will be permitted only on a noninterference basis to the COSPAS/SARSAT satellite system.

8. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission’s Rules, 47 C.F.R. § 1.925, BriarTek’s request for waiver, filed March 16, 2005, IS GRANTED to the extent set forth above.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission’s Rules, 47 C.F.R. §§ 0.131 and 0.331.

#### FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel  
Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>15</sup> See Waiver Request at 4-5.

<sup>16</sup> *R&O*, 17 FCC Rcd at 6761-62 n.124.

<sup>17</sup> See Waiver Request at 4.

<sup>18</sup> See *ORCA PLB Order*, 17 FCC Rcd at 2206 ¶ 8.

<sup>19</sup> Personal Flotation Device is marine terminology for a lifesaving device that is used to provide buoyant support for one person in the water. See generally 33 C.F.R. § 175.13.