

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

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

ORDER

Adopted: June 15, 2000

Released: June 19, 2000

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

I. INTRODUCTION

1. Under consideration is a request for waiver filed by Wulfsberg Electronics Division of the Chelton Group Company (Wulfsberg) on April 5, 2000.¹ Wulfsberg seeks waiver of Section 87.173(b) of the Commission's Rules² to permit type certification 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 the 8.33-kHz spaced channels that are used in certain countries in Europe and in the United Kingdom. For the reasons discussed herein, we grant the requested waiver regarding operation of the Wulfsberg 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 certification of specified transceivers capable of transmitting on both 25-kHz spaced channels in the United States and on the 8.33-kHz spaced Aeronautical Mobile Service (AMS) channels used in certain other countries (dual spacing transceivers).

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.³ The 8.33 kHz

¹ Letter to Mr. James Shaffer, Federal Communications Commission from Robert DeLong, Vice President of Engineering, Wulfsberg Electronic Division, dated April 5, 2000 (*Wulfsberg Letter*).

² 47 C.F.R. § 87.173(b).

³ 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 Rcd 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).

channel plan was adopted to alleviate the shortage of VHF Air Traffic Control (ATC) channels experienced in western Europe and in the United Kingdom.⁴ Seven western European countries and the United Kingdom implemented the 8.33 kHz channel plan in 1999.⁵ 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 Rules requires that (1) U.S.-registered aircraft employ type certified radios; and (2) aircraft radios must meet the technical requirements of Subpart D of Part 87 of the Commission's Rules in order to be type certified under the Commission's Rules.⁶ 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 (namely, 117.975 MHz to 136.975 MHz).⁷ 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 certification of dual spacing transceivers may not be obtained absent a waiver of Section 87.173(b) of the Commission's Rules.

III. DISCUSSION

4. Section 1.3 of the Commission's Rules permits waiver of any rule provision for good cause shown.⁸ We find that the waiver requested by Wulfsberg is warranted. We note, as an initial matter, that we have granted similar waivers regarding dual spacing transceivers.⁹ As we have noted previously, 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.¹⁰ Moreover, the Federal Aviation Administration (FAA) has issued Technical Standard Orders (TSO) based on these industry standards.¹¹ As we noted elsewhere, aircraft must have the capability of communicating reliably with

⁴ 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.

⁵ The implementing countries are Austria, Belgium, France, Germany, Luxembourg, Netherlands, Switzerland and the United Kingdom. *Id.*

⁶ 47 C.F.R. § 87.39; 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).

⁷ 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).

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

⁹ See Thomson-CSF Communications, *Order*, DA 00-660 (WTB PSPWD rel. Mar. 27, 2000) (*Thomson Order*); Thomson-CSF Communications, *Order*, 14 FCC Rcd 3255 (WTB PSPWD 1988) (*Garmin Order*); Honeywell, Inc. Commercial Flight Systems Group, *Order*, 13 FCC Rcd 16785 (WTB PSPWD 1998); Rockwell Collins, Inc., *Order*, 13 FCC Rcd 2954 (WTB PSPWD 1998) (*Rockwell Order*).

¹⁰ See, e.g., *Garmin Order*, 14 FCC Rcd at 3255 ¶ 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).

¹¹ See FAA TSO-C37d, VHF Radio Communications Transmitting Equipment Operating Within the Radio Frequency Range 117.975 to 137.000 Megahertz, (9/23/92); and FAA TSO-C38d/C128, VHF Radio Communications Receiving Equipment Operating Within the Radio Frequency Range 117.975 to 137.000 Megahertz. (Sept. 23, 1992).

ground stations as directed, and on the frequencies specified, by air traffic controllers.¹² 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.¹³ Accordingly, in the interest of air safety and operational efficiency, we have granted previous requests to allow type acceptance (now called type certification) of similar dual spacing transceivers. We believe the same factors that warranted grant of those waivers are present in the instant waiver request submitted by Wulfsberg.¹⁴ Thus, we conclude that Wulfsberg has shown good cause for waiver of Section 87.173(b) of the Commission's Rules to permit type certification of its dual spacing transceiver.

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 Wulfsberg Electronics Division on April 5, 2000, 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 certification of Wulfsberg Electronics Division's dual spacing transceiver, FCC Identification Number FRWVC-401B.

7. 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, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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

¹² See, e.g., *Thomson Order*, ¶ 4 (citing *Rockwell Order*, 13 FCC Rcd at 2956 ¶ 6).

¹³ *Id.*

¹⁴ See *Wulfsberg Letter*.