



Federal Communications Commission  
Washington, D.C. 20554

September 10, 2010

DA 10-1721

Stratophone, LLC  
c/o Mr. Peter W. Moncure  
RadioSoft  
8900 Dicks Hill Parkway  
Toccoa, Georgia 30677

**Re: Request by Stratophone, LLC for Waiver of 47 C.F.R. § 22.815 to Extend the Construction Deadline for General Aviation Air-Ground Station WQKQ290 in Alaska (FCC File No. 0004342696)**

Dear Mr. Moncure:

This letter responds to the request by Stratophone, LLC (“Stratophone”), submitted August 3, 2010, for waiver of section 22.815 of the Commission’s rules<sup>1</sup> regarding construction of the above-referenced station (“Alaska Waiver Request”).<sup>2</sup> The authorization for WQKQ290 was granted on August 10, 2009, specifying a 12-month construction period expiring on August 10, 2010, pursuant to section 22.815.<sup>3</sup> In its Alaska Waiver Request, which is unopposed, Stratophone asks that we extend the construction deadline to January 2, 2013. For the reasons stated below, we grant that Request.

On July 2, 2010, the Wireless Telecommunications Bureau (the “Bureau”) adopted an *Order*<sup>4</sup> waiving certain Part 22, Subpart G air-ground general aviation rules in response to a request jointly filed by Stratophone and SkyTel Spectrum, LLC (“SkyTel” and, collectively with Stratophone, the “Parties”).<sup>5</sup> Specifically, the Bureau granted waivers (to the extent described in the *Order*) of the rules governing distance separation, the timing and number of ground station communication channels that may be licensed in the same service area, and section 22.815.<sup>6</sup> As explained in detail in the *Order*, the Parties are planning to consolidate their existing operations and develop a modern, nationwide air-ground radiotelephone service network for passengers in the general aviation industry.<sup>7</sup>

While the Parties’ 2009 Joint Request was still pending, Stratophone submitted its application for the subject authorization covering six sites in Alaska, and in compliance with the Commission’s rules, limited itself to one channel at each site.<sup>8</sup> The Commission granted that application, as noted above, issuing a license for the Alaska facilities on August 10, 2009, prior to the Bureau’s adoption of the *Order* granting the

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<sup>1</sup> 47 C.F.R. § 22.815.

<sup>2</sup> See Exhibit 1 of Form 601 submitted Aug. 3, 2010 (FCC File No. 0004342696).

<sup>3</sup> The license authorizes operations at 6 sites throughout the state of Alaska, all using the WQKQ290 call sign.

<sup>4</sup> See Joint Request by Stratophone, LLC and SkyTel Spectrum, LLC for Waiver of Certain Air-to-Ground Radiotelephone Service Licensing Rules for General Aviation, *Order*, WT Docket No. 09-44, DA 10-1254 (rel. July 2, 2010), 2010 WL 2663028.

<sup>5</sup> See Waiver Request of Stratophone, LLC and SkyTel Spectrum, LLC, filed Feb. 24, 2009 (“2009 Joint Request”).

<sup>6</sup> See generally *Order*.

<sup>7</sup> See, e.g., *id.* ¶¶ 4-9. In the *Order*, the Bureau stated that applications for any new stations the Parties seek in connection with their planned nationwide network are to be filed no later than January 2, 2011, and that stations authorized pursuant to grant of such applications will be subject to an extended construction deadline of January 2, 2013. See *id.* ¶¶ 18-21.

<sup>8</sup> See Form 601 submitted April 29, 2009 (FCC File No. 0003822942) (requesting one communication channel pair and one signaling channel pair at each of 6 Alaskan locations).

Parties' 2009 Joint Request. Stratophone states in its Alaska Waiver Request that the Parties wish to be able to construct the Alaska facilities as part of their unified plan for the new, nationwide air-ground service network.<sup>9</sup> Stratophone requests a waiver of section 22.815 to extend the construction deadline for WQKQ290 so that it matches the January 2, 2013 deadline prescribed in the *Order* for general aviation air-ground station application to be submitted by January 2, 2011.<sup>10</sup>

According to Stratophone, its Alaska Waiver Request satisfies the criteria for waiver set forth in section 1.925 of the Commission's rules.<sup>11</sup> Pursuant to section 1.925, the Commission may grant a waiver request if it is shown that either (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that grant of the requested waiver would be in the public interest, or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>12</sup> Requiring Stratophone to adhere to the August 10, 2010, deadline for constructing WQKQ290 would, Stratophone argues, "promote substantial inefficiencies" through build-out of a system in Alaska that would not be integrated with the Parties' systems throughout the rest of the nation.<sup>13</sup>

This case presents unusual facts and circumstances, given that we have already granted the Parties a limited waiver of section 22.815 to construct a nationwide, integrated, air-ground radiotelephone service network. WQKQ290 in Alaska is intended to be a part of that same network. Yet, were we to deny the Alaska Waiver Request, Stratophone would be required to build independent ground stations at the six Alaska sites and unable to provide general aviation consumers in the area with its new integrated air-ground communications service.<sup>14</sup> We believe that such a result would be contrary to the public interest. For the same reasons set forth in the *Order*,<sup>15</sup> we find that deviation from the general rule better serves the public interest in the instant case. A limited waiver of section 22.815 is warranted so that Stratophone may construct WQKQ290 in Alaska as an integral part of the Parties' nationwide air-ground communications network, thereby providing enhanced product offerings to general aviation consumers.

Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and sections 0.131, 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331 and 1.925, the Request for Waiver of Section 22.815, 47 C.F.R. § 22.815, to extend the construction period for Station WQKQ290 until January 2, 2013, filed by Stratophone, LLC on August 3, 2010, is HEREBY GRANTED.

Sincerely,

Roger Noel  
Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>9</sup> Alaska Waiver Request at 2.

<sup>10</sup> *See id.* at 2.

<sup>11</sup> *Id.* (citing 47 C.F.R. § 1.925).

<sup>12</sup> 47 C.F.R. § 1.925.

<sup>13</sup> Alaska Waiver Request at 2.

<sup>14</sup> *See, e.g., Order* ¶ 4 (noting, *inter alia*, that current general aviation air-ground stations, which operate independently, require interconnection to the Public Switched Telephone Network at each site and do not accommodate call hand-off).

<sup>15</sup> *See, e.g., Order* ¶¶ 19-21, 27.