



Federal Communications Commission
Washington, D.C. 20554

May 17, 1999

John F. Atwood
Chief, Intellectual Property Rights
Department of the Treasury
U. S. Customs Service
1300 Pennsylvania Avenue, N. W.
Washington, DC 20229

Dear Mr. Atwood:

I am writing in response to your letter of January 15, 1998. In that letter you requested that the FCC reply to a request by Mr. George L. Lyon, Jr., counsel to WSM Corp, that the Customs Service decide whether certain radio frequency devices could legally be imported into the commerce of the United States. The radio transceivers involved are purportedly amateur transceivers. According to information provided by FCC field staff, the device at issue is a Mirage model 2950 or similar transceiver. Because we conclude that the devices at issue are not only amateur radios but can easily be altered for use as Citizens's Band (CB) devices as well, we have concluded that the devices cannot legally be imported for the reasons discussed below.

Devices used in the Amateur Radio Service do not require authorization prior to being imported into the United States, but devices for other services, including the CB service, require Commission approval. The type of device at issue here is designed to operate in the amateur "10-meter band" and is often referred to as a "10-meter" radio. The amateur 10-meter band uses frequencies that are very close to the channels set aside for use in the CB service. Some devices that manufacturers call "10-meter" radios either operate on CB frequencies as manufactured and imported or are designed such that they can readily be activated by a user, a service technician or a dealer to operate on CB frequencies. According to Section 95.603(c) of the Commission's rules, a CB transmitter is a transmitter that operates or is intended to operate at a station authorized for the CB service. 47 C.F.R. § 95.603(c). The Commission's equipment authorization experts in the FCC Laboratory have determined that the Mirage 2950 and other similar models at issue here are intended for use in the CB frequencies as well as in the amateur service because they have built-in capability to operate on CB frequencies and can easily be altered to activate that capability, such as by moving or removing a jumper plug or cutting a single wire. Thus, they fall within the definition of a CB transmitter. See 47 C.F.R. § 95.603(c). A CB transmitter must be certificated by the FCC prior to marketing or importation. 47 C.F.R. §§ 95.603(c); 2.803.

Moreover, dual use CB and amateur radios of the kind at issue here may not be type accepted under the Commission's rules. Section 95.655(a) states: ". . . ([CB] Transmitters with frequency capability for the Amateur Radio Services . . . will not be certificated.)" See also *Amendment of Part 95, Subpart E, Technical Regulations in the Personal Radio Services Rules*, FCC 88-256, 1988 WL 488084 (August 17, 1988). This clarification was added to explicitly foreclose the possibility of certification of dual use CB and amateur radios, *see id.*, and thereby deter use by CB operators of frequencies allocated for amateur radio use.

In addition, the Commission's equipment authorization experts have determined that the devices violate or appear to violate a number of the rules governing CB devices. For example, they emit RF power at a level in excess of the levels permitted in the CB radio service. See 47 C.F.R. § 95.639.

In view of the foregoing, I request that the Customs Service respond to the request for ruling and advise the requestor that the "10-meter" radio at issue is not acceptable for importation into the United States. In cases where importation was accomplished even though it was not in accordance with FCC and Customs regulations, it is appropriate that the Customs Service order re-delivery of the unacceptable products.

Thank you for the opportunity to assist with this matter.

Sincerely,



Christopher J. Wright
General Counsel

cc: Mr. Richard Lee
Mr. Dale Hatfield
Mr. George L. Lyon, Jr.