

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

In the Matter of	)	
	)	
SafeView, Inc.	)	
	)	
Request for Waiver of Sections 15.31 and 15.35 of	)	ET Docket No. 04-373
the Commission's Rules to Permit the Deployment	)	
of Security Screening Portal Devices that Operate	)	
in the 24.25-30 GHz Range	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 14, 2010**

**Released: January 20, 2010**

By the Commission:

**I. INTRODUCTION**

1. By this action, the Commission denies in part and grants in part a petition for reconsideration filed by FiberTower Corporation (FiberTower)<sup>1</sup> of the *Order* in this proceeding.<sup>2</sup> We affirm the decision to permit the certification and subsequent marketing and operation of L-3 Communications SafeView, Inc. (L-3 SafeView)<sup>3</sup> ProVision 100 imaging devices under the terms and conditions of the waiver granted by the *Order* adopted by the Office of Engineering and Technology (OET) under delegated authority.<sup>4</sup> We grant FiberTower's request regarding the maintenance of ProVision 100 installation records by providing clarification that L-3 SafeView must continue to maintain and update a list, available to the Commission and the National Telecommunications and Information Administration (NTIA)<sup>5</sup> upon request, of all installed ProVision 100 devices following changes in device location and/or transfer of ownership to third parties subsequent to an initial sale.

<sup>1</sup> Petition for Reconsideration (petition) by FiberTower (filed September 5, 2006) in ET Docket No. 04-373, DA 06-1589, 21 FCC Rcd 8814 (2006). FiberTower is the successor to First Avenue Networks who was a party to the underlying waiver proceeding.

<sup>2</sup> *In the Matter of SafeView, Inc. Request for Waiver of Section 15.31 and 15.35 of the Commission's Rules to Permit the Deployment of Security Screening Portal Devices that Operate in the 24.25-30 GHz Range, Order* in ET Docket No. 04-373, DA 06-1589, 21 FCC Rcd 8814 (2006).

<sup>3</sup> L-3 Communications SafeView, Inc. was formerly known as SafeView, Inc. prior to an acquisition. The device in question formerly called "SafeScout" has been renamed "ProVision 100." See Letter of Request to Renew Waiver from L-3 SafeView (L-3 SafeView Waiver Extension Request) filed August 1, 2008.

<sup>4</sup> See 47 C.F.R. §§ 0.31 & 0.241.

<sup>5</sup> NTIA is responsible for managing the Government portion of the Table of Frequency Allocations. In bands shared between Federal and non-Federal Government services, the Commission and NTIA operate under a long-standing coordination agreement. See *Manual of Regulations and Procedures for Federal Radio Frequency Management*, May 2005 Revision, Sec. 2.4.1.

## II. BACKGROUND

2. The ProVision 100 is a security portal that uses imaging technology to detect weapons or contraband carried on an individual's person, including non-metallic objects or explosives, which might otherwise require intrusive manual searches or be missed entirely by existing metal detectors. A person to be scanned by the ProVision 100 device steps briefly into a transparent, upright cylinder seven feet high by four feet in diameter. Two vertical antenna masts rotate around the person over a two second interval. Each antenna element in turn sweeps from 24.25 to 30.00 GHz, operating for approximately six microseconds per sweep. The device measures reflections of the radio signals from the subject and calculates an image that shows hidden objects.<sup>6</sup>

3. On August 3, 2006, the Office of Engineering and Technology (OET) issued an *Order* in ET Docket No. 04-373, waiving the provisions of Section 15.31(c) and Section 15.35(b) of the Commission's rules to permit the marketing and unlicensed operation of L-3 SafeView ProVision 100 device. In the *Order*, OET permitted measurement of the ProVision 100 device's average radiated emissions with the frequency sweep active, rather than stopped, as Section 15.31(c) of the rules requires.<sup>7</sup> In addition, OET waived the Section 15.35(b) limit on peak emissions from unlicensed devices of 20 dB above the corresponding maximum average emission limit specified in Section 15.209.<sup>8</sup> ProVision 100 devices therefore may emit a total radiated peak power level up to 41 dB above the maximum permitted average power when measured as specified in the *Order*.

4. In the *Order*, OET also placed specific operational and marketing conditions on the ProVision 100 device to ensure that licensed users operating in the 24.25-30.00 GHz and adjacent frequency bands are not subject to harmful interference. These conditions (1) limit the number of devices that L-3 SafeView may install during the first two years; (2) restrict the use of the devices to indoor installations; (3) require L-3 SafeView to create and maintain a record of all installed devices, available to the Commission and NTIA upon request; and (4) require L-3 SafeView to inform purchasers that devices may not be resold unless arrangements are made for the purchasers to meet the conditions of the *Order*.<sup>9</sup> OET found that a grant of this waiver would not increase the potential for harmful interference to other spectrum users. It further found that a waiver grant is in the public interest in that it will permit the operation of devices capable of furthering homeland security objectives by providing a means for detecting both metallic and non-metallic objects, and other contraband that might be missed when using conventional methods.

5. FiberTower, a licensee of 24 GHz spectrum, provides transport, including backhaul and premise access services, to wireless carriers, enterprises and government agencies. In its petition, FiberTower alleges that the Commission did not conduct its usual diligence in determining whether waiver of the Part 15 rules would adequately protect licensed spectrum users. FiberTower is concerned that the Commission did not properly assess the impact that L-3 SafeView devices will have on FiberTower's operations and that the conditions on the waiver are inadequate to reduce the likelihood of interference.<sup>10</sup> Specifically, FiberTower states that the *Order* did not appropriately balance the interest of

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<sup>6</sup> *Order* at ¶2.

<sup>7</sup> 47 C.F.R. § 15.31(c); *Order* at ¶29.

<sup>8</sup> 47 C.F.R. § 15.35(b); *Order* at ¶29.

<sup>9</sup> *Order* at ¶29.

<sup>10</sup> FiberTower petition at 3.

licensed users against the benefits of allowing the immediate use of L-3 SafeView technology in the 24 GHz band in and around Federal installations and airports. FiberTower further alleges that the *Order* is based on inadequate testing to determine potential harmful interference to licensed users and that the Commission failed to require that L-3 SafeView evaluate other alternatives for its choice of frequency and technology. FiberTower asks that the Commission mandate joint industry testing of the L-3 SafeView devices and licensed 24 GHz operations, so that the Commission can determine whether it has imposed adequate conditions to protect licensed operations.<sup>11</sup> FiberTower also believes that to protect licensed users, additional operating conditions should be placed on L-3 SafeView, including publicly identifying all of its product locations and designating a point of contact to immediately resolve any interference complaints.<sup>12</sup> Reply comments supporting the petition were filed by the Fixed Wireless Communications Coalition (FWCC).<sup>13</sup>

6. In its opposition to the petition, L-3 SafeView argues that FiberTower has presented no evidence that a ProVision 100 device would cause more interference than a Part 15-compliant device simply because the device shows compliance with the average emissions limit with the sweep running, rather than stopped, and exhibits higher peak emissions.<sup>14</sup> L-3 SafeView further contends that FiberTower does not support its assertion that interference testing prior to grant of a waiver is the norm, and presents nothing that would justify requiring it here. L-3 SafeView also states that there is no legal requirement for it to demonstrate that there are no alternatives to the particular details of its operation, such as its choice of frequencies and technology. Finally, L-3 SafeView states that the additional operating conditions asked for by FiberTower would be unrealistic and costly with very little corresponding benefit.<sup>15</sup>

### III. DISCUSSION

7. Reconsideration of a Commission's decision is appropriate when the petitioner demonstrates that the original *Order* contains a material error or omission.<sup>16</sup> Moreover, to the extent the petition relies on additional facts in making his or her case, the petitioner must demonstrate that such facts were not known or did not exist until after the petitioner's last opportunity to present such matters (although the Commission remains free to consider additional facts as the public interest requires).<sup>17</sup> To the extent a petition simply repeats arguments previously that were considered and rejected in the proceeding, the Commission may deny it for the reasons already provided.<sup>18</sup>

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<sup>11</sup> *Id.*, at 5-6; reply comments of FiberTower at 4.

<sup>12</sup> FiberTower petition at 9-10.

<sup>13</sup> See reply comments of the FWCC (filed Sep. 22, 2006). See also opposition of L-3 SafeView (filed Sep. 15, 2006); reply comments of FiberTower (filed Sep. 22, 2006) and L-3 SafeView (filed Sep. 22, 2006); and L-3 SafeView *ex parte* (filed Oct. 10, 2006.)

<sup>14</sup> L-3 SafeView opposition at 4.

<sup>15</sup> *Id.*, at 9.

<sup>16</sup> See, *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub nom; Lorain Journal Co. v. FCC*, 351 F. 2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

<sup>17</sup> 47 C.F.R. § 1.106(c).

<sup>18</sup> See *Bennett Gilbert Gaines*, 8 FCC Rcd 3986 (Rev. Bd. 1993); *Infinity Broadcasting Operations, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 4216 (2004).

8. We are denying FiberTower's petition in most respects. As discussed below, FiberTower has failed to either present new facts or changed circumstances, or to demonstrate error or omission in the Commission's decision. Specifically, we find that FiberTower has not provided any new information regarding actual or potential harmful interference to its operations by the ProVision 100 device that would persuade us to change our decision. As we discuss below, the arguments raised by FiberTower on reconsideration were considered and addressed by OET in the *Order*. We also find that the additional conditions on the operation of ProVision 100 devices sought by FiberTower are unnecessary.

9. *Interference Potential to Licensed Users.* FiberTower states that it remains concerned that the Commission did not properly assess the impact that the L-3 SafeView devices will have on FiberTower's operations and on licensed operations in and around airports, including those of the Federal Aviation Administration (FAA), and whether this waiver of the Part 15 rules would adequately protect primary spectrum users.<sup>19</sup> It also argues that the Commission failed to consider measures to attenuate emissions from the ProVision 100 devices, such as, at a minimum, providing conductive coating on windows. It states that according to the record in this proceeding, a communication antenna at some distance, whose main beam encompasses the airport screening location, could receive interference if a window is the only obstruction to the interfering energy.<sup>20</sup>

10. We disagree with FiberTower that OET did not fully consider 24 GHz licensed users at airports and in or around Federal installations. In the *Order*, OET specifically addressed the issue of potential interference to licensed users, both indoors and outdoors, and described several factors that would prevent such interference.<sup>21</sup> These factors include building attenuation and free space loss in the 24-30 GHz frequency band; the very low duty cycle and fast sweep speeds from the ProVision 100 system; and the high gain and directivity of the LMDS/24 GHz antennas. We also note that NTIA, which represents federal spectrum users such as the Federal Aviation Administration (FAA), participated in the evaluation of the ProVision 100 system waiver grant. In addition, the measurement procedure specified as one of the waiver conditions was a collaborative effort between the Commission and NTIA.<sup>22</sup> The concerns of federal users, if any, were addressed by the low likelihood for interference and the conditions placed on the ProVision 100 in the *Order*.

11. OET specifically addressed shielding as a means to reduce interference potential in the *Order*. Although OET agreed with L-3 SafeView's position that the device's rotating chamber needed to remain unshielded for operational purposes, it noted that shielding outside the device could be used to remediate interference should it occur.<sup>23</sup> Such shielding could include applying conductive coating on the airport windows in the area where the ProVision 100 is located, as FiberTower suggests, or other methods such as placing a shielded partition between its system and other devices,<sup>24</sup> depending on the environment in which the device is being used. We note that L-3 SafeView has the obligation to resolve harmful interference by any reasonable means, including, *inter alia*, shutting down its own operations, as required

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<sup>19</sup> FiberTower petition at 4.

<sup>20</sup> *Id.*, at 8.

<sup>21</sup> *Order* at ¶24.

<sup>22</sup> *Id.*, at ¶29.

<sup>23</sup> *Id.*, at ¶26. FiberTower does not challenge OET's finding that shielding within the device's rotating chamber may be problematic. FiberTower petition at 8.

<sup>24</sup> *Order* at ¶24.

by Part 15 of our rules.<sup>25</sup>

12. FiberTower also alleges that because the Commission waived its rules to allow the L-3 SafeView device to radiate peak emissions that are 41 dB above average emissions—*i.e.*, twice the 20dB limit on peak emissions above average emissions set by the Commission’s rules—the device presents a substantial risk of interference to licensed users.<sup>26</sup> FiberTower argues that, under these circumstances, the Commission should require L-3 SafeView to provide test data that demonstrate that there will be no harmful interference to licensed facilities operating prior to this waiver, and that the Commission has routinely required more testing of devices operating pursuant to waiver of Part 15 of the rules than it did in this instance.<sup>27</sup> FiberTower believes that such testing should be conducted using an L-3 SafeView device and a 24 GHz radio in close proximity to determine the nature of interference that would occur, and should include testing of multiple ProVision 100 devices operating at a single site and testing with the device’s chamber occupied and empty.<sup>28</sup>

13. We find that OET’s approach was sufficient for it to determine that harmful interference was unlikely to occur without replicating complex interference testing. When evaluating a request to waive Part 15 emission limits, the Commission, *inter alia*, considers whether the requested operation would likely result in harmful interference to authorized users. The Commission may employ a variety of means to do so, depending on the circumstances in the specific case. In this case, OET considered in detail the technical analyses from Hughes Network Systems, Inc. (HNS) and from Winstar Communications, LLC (Winstar), both of whom opposed the waiver request, regarding potential interference to communications equipment operating in the 24 GHz, 28 GHz, 29 GHz, and 31 GHz bands,<sup>29</sup> and performed compliance testing of the L-3 SafeView device to measure its emissions and overall compliance with the Commission’s rules. OET concluded that the petitioners’ analysis overestimated the interference potential mainly due to overly conservative assumptions used in the link budget and the operational factors of the L-3 SafeView device that would affect the interference potential, and explained in the *Order* the bases for this conclusion.<sup>30</sup> FiberTower does not allege that there are errors in OET’s findings.<sup>31</sup> OET’s reliance in this case on technical analysis, especially when the technology at issue is

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<sup>25</sup> 47 C.F.R. § 15.5.

<sup>26</sup> FiberTower reply comments at 3.

<sup>27</sup> FiberTower petition at 5 and at footnote 10. In both of the cases cited by FiberTower, test data was not required by the Commission as a condition precedent to granting a waiver of the rules. In the Multi-band OFDM Alliance Special Interest Group (MBOA-SIG) waiver petition cited by FiberTower, the petitioner submitted an interference analysis and some limited test data because it wanted to support the claim that its new UWB system employing multiband orthogonal frequency modulation (MB-OFDM) could be measured in its normal operating mode. *See In the Matter of Petition for Waiver of the Part 15 UWB Regulations Filed by the Multi-band OFDM Alliance Special Interest Group (MBOA-SIG Order)* in ET Docket 04-352, 20 FCC Rcd 5528. In the Remington Arms Waiver petition cited by FiberTower, the petitioner’s primary argument against interference was based on a simple statement that it requested a change in modulation, not an increase in the emission levels already permitted for unlicensed operation. *See In the Matter of Remington Arms Company, Inc. Request for a Waiver of the Part 15 Regulations* (Remington Arms Order) in ET Docket No. 05-183, 20 FCC Rcd 18724.

<sup>28</sup> FiberTower petition at 6-7.

<sup>29</sup> *See Order* at ¶¶10, 14.

<sup>30</sup> *Id.*, at ¶¶23-25.

<sup>31</sup> *Id.*, at ¶23.

well understood as is true here, is consistent with past Commission waiver decisions.<sup>32</sup> Furthermore, OET imposed certain conditions on operation of the L-3 SafeView device to limit the potential for harmful interference, including allowing only fixed indoor use, thereby ensuring that building attenuation and free space loss would significantly limit any power from the device reaching licensed receivers in the vicinity.<sup>33</sup>

14. *Reasonable Alternatives.* FiberTower asserts that in evaluating L-3 SafeView's waiver request, the Commission should have required L-3 SafeView to demonstrate that it had no reasonable alternatives but to operate in the 24.25-30 GHz band under the conditions requested.<sup>34</sup> In particular, FiberTower asks that L-3 SafeView demonstrate that it had examined the use of other frequency bands or the use of similar technology in other bands.<sup>35</sup>

15. FiberTower's assertion that the Commission should have required L-3 SafeView to demonstrate that it had no reasonable alternatives but to operate in the 24.25-30 GHz band under the conditions requested is mistaken. The decisions cited by FiberTower were based on the waiver standard in 47 C.F.R. § 1.925 (b)(3) of the Commission's rules which is applicable to wireless radio services governed under specified rule parts for licensed services rather than to Part 15.<sup>36</sup> OET correctly evaluated L-3 SafeView's Part 15 waiver request under Section 1.3 of the Commission's rules, which does not require that the applicant demonstrate that it has no reasonable alternative but to operate in the requested band. Rather, Section 1.3 requires that the petitioner only demonstrate good cause for such action.<sup>37</sup> Good cause, in turn, may be found and a waiver granted "where particular facts would make strict compliance inconsistent with the public interest."<sup>38</sup> To make this public interest determination, the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule.<sup>39</sup> OET determined that L-3 SafeView's device would serve

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<sup>32</sup> See, e.g., *In the Matter of Multispectral Solutions, Inc. Request for Waiver of Section 15.250 of the Commission's Rules*, Order in ET Docket 06-103, 22 FCC Rcd 9831 (2007); *In the Matter of UltraVision Security Systems, Inc. Request for Interpretation and Waiver of Section 15.511(a) & (b) of the Commission's Rules for Ultra-Wideband Devices*, Order in ET Docket 06-195, 23 FCC Rcd 17632 (2008).

<sup>33</sup> Order at ¶¶24-25.

<sup>34</sup> FiberTower petition at 7, note 12; *Application of Cebridge Acquisition, L.P., for Assignment of Point-to-Point Microwave Authorizations and for Waiver of section 101.701(c) of the Commission's Rules*, Memorandum Opinion and Order, 21 FCC Rcd 3587, 3590-3591 ¶¶6-10 (2006); and *Application of City of Emeryville, Request for Waiver of Section 90.209 of the Commission's Rules*, Order, 19 FCC Rcd 6152, 6152-6153 ¶¶ 4-5 (2004).

<sup>35</sup> FiberTower petition at 7-8. It claims that similar portal security devices operate in the 80 to 100 GHz band, which would limit interference because of "pencil beam" characteristics and link registrations. *Id.*, at 7 and footnote 13.

<sup>36</sup> See 47 C.F.R. § 1.901.

<sup>37</sup> 47 C.F.R. § 1.3. See also *ICO Global Communications (Holdings) Limited v. FCC*, 428 F.3d 264 (D.C. Cir. 2005); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>38</sup> *Northeast Cellular*, 897 F.2d at 1166; see also *ICO Global Communications*, 428 F.3d at 269 (quoting *Northeast Cellular*); *WAIT Radio*, 418 F.2d at 1157-59.

<sup>39</sup> See, e.g., *WAIT Radio*, 418 F.2d at 1157 (stating that even though the overall objectives of a general rule have been adjudged to be in the public interest, it is possible that application of the rule to a specific case may not serve the public interest if an applicant's proposal does not undermine the public interest policy served by the rule);

(continued...)

the public interest by improving security procedures at entry checkpoints and would not undermine the policy served by the rule in question because authorized users of the spectrum would not be subject to harmful interference.<sup>40</sup> In particular, OET found that the ProVision 100 device is capable of furthering an important homeland security objective by providing a means for detecting both metallic and non-metallic objects, such as weapons, explosives and other contraband that might be missed when using conventional methods.<sup>41</sup> OET further found that the ProVision 100 device, when operated in fixed indoor locations would pose very little, if any, potential for harmful interference to licensed operations that are located either outdoors or indoors.<sup>42</sup>

16. *Pre-installation Notification.* FiberTower also requests that L-3 SafeView make the record of all installed units publicly accessible or, at a minimum, notify licensees within close proximity 30 days in advance of the installation of any new, moved, or sold ProVision 100 device.<sup>43</sup> FiberTower believes that licensees' operations could be debilitated during the time that it takes to obtain from the Commission the ProVision 100's location information because the list of all installed units are available only to the National Telecommunications and Information Administration (NTIA) and the Commission.<sup>44</sup> It also requests that L-3 SafeView include, in its sales agreement, a provision that purchasers of its systems notify L-3 SafeView at least 30-days prior to moving or selling the system so that L-3 SafeView can keep the installation locations' list up to date.<sup>45</sup> FiberTower believes that the condition for L-3 SafeView to only "inform purchasers that the ProVision 100 devices may not be resold to third parties unless appropriate arrangements are made to meet all the conditions of the waiver" is inadequate, because L-3 SafeView would not have the obligation to continually track and report the location of its devices.<sup>46</sup>

17. OET imposed several conditions when it granted the waiver to limit the potential for harmful interference while experience was gained in use of the device—namely, limiting the number of devices that could be sold, limiting device operation to fixed indoor locations, limiting the duration of the waiver

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*Northeast Cellular*, 897 F.2d at 1166 (stating that in granting a waiver, an agency must explain why deviation from the general rule better serves the public interest than would strict adherence to the rule).

<sup>40</sup> We note that the Commission's rules allow unlicensed devices to operate in any frequency band except for those few bands where such operations are specifically not permitted under the rules. 47 C.F.R. § 15.205(a). The 24.25-30 GHz band is not a restricted band, and thus is available for use by unlicensed devices. We further note that, although not required to under the applicable waiver standard, OET described in the *Order* the unique characteristics of the technology at issue here and why compliance with the rules was not feasible. *Order* at ¶¶ 2-4. The device measures reflections of multiple radio signals from the human subject and calculates a holographic image that shows hidden objects such as non-metallic objects or explosives that would not be detected by metal detectors. Because the received signal levels are very low, lowering the emissions even more to meet the limits in the rules would prevent the device from resolving the target and projecting an image that allows for reliable detection of contraband. *Id.* (See also *SafeView, Inc. Request for Waiver* at 5-8, 10.)

<sup>41</sup> *Order* at ¶8.

<sup>42</sup> *Id.*, at ¶24.

<sup>43</sup> FiberTower petition at 8-9, reply comments at 5-6.

<sup>44</sup> FiberTower petition at 8.

<sup>45</sup> *Id.*, at 9.

<sup>46</sup> *Id.*

to two years, and maintaining a record of all installations operating under the waiver.<sup>47</sup> These conditions provide for a cautious and conservative approach in introducing these new devices under the waiver. We believe that the requirement that L-3 SafeView maintain a record of all installed systems is appropriate in these conditions to achieve OET's plan for a cautious introduction of the ProVision 100 devices, without requiring prior disclosure of planned installations. The record of installed devices will assist L-3 SafeView, as well as the Commission and NTIA, in determining whether a ProVision 100 device is operating within close proximity to an authorized operation and, in the unlikely circumstance where licensed users experience harmful interference, in identifying ProVision 100 devices in the vicinity to determine if they are the source of interference.<sup>48</sup> As L-3 SafeView points out, a ProVision 100 unit operates in a frequency band where signals do not propagate very far in space, thus a nearby ProVision 100 system can be easily located.<sup>49</sup> Further, a simple on-off test would allow interested parties to determine whether a ProVision device is the source of interference to a licensed operation, allowing any interference complaint to be resolved quickly. Because the purpose of the installation record is to help identify the location of installed devices in the unlikely event that interference occur, we do not believe that it is necessary to impose a minimum time period prior to installation for recording information—the important point is that the information should be recorded before the device is installed.

18. We do clarify that L-3 SafeView must continue to update the list of all installed ProVision 100 devices following subsequent changes in device location and/or transfer of ownership to third parties. OET also required L-3 SafeView to inform purchasers that the device, if resold, must continue to meet all conditions of the waiver, and stated that “[t]his condition will ensure that equipment will continue to be listed in the L-3 SafeView data base even if it is resold.”<sup>50</sup> We decline to require L-3 SafeView to include this provision in its contracts, as FiberTower requests. We find that it is sufficient to require L-3 SafeView to bear the sole responsibility of keeping the installation record up to date.

19. *Response to Interference Complaints.* Finally, FiberTower requests that L-3 SafeView provide contact information via email or telephone to respond to written interference complaints. It asks that L-3 SafeView respond in writing to an interference complaint within a 2-hour time frame, either by a report back to the complainant in writing that the ProVision 100 system is not the cause of the interference or a report in writing the measures taken to address the interference within a 4-hour time frame, and finally, resolve any interference complaint within 24 hours or terminate operations. FiberTower also asserts that in open locations (*i.e.*, stadium or open door locations), it has the presumptive right to require the user of a ProVision 100 system to cease operations until at a minimum, the device is shielded.<sup>51</sup>

20. We decline to impose the additional conditions requested by FiberTower. FiberTower provides no basis to justify a requirement that the ProVision 100 follow procedures for addressing interference complaints that are different than our procedures for addressing interference from other types of unlicensed devices. In this regard, we will continue to subject the ProVision 100 to the procedures of Section 15.5 of the rules—unlicensed devices are not to cause interference to authorized users and must

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<sup>47</sup> *Order* at ¶27.

<sup>48</sup> The installation record is to include, for example, the identity of the customer, the type of installation (*e.g.*, airport or government building), and street address and/or geographical coordinates. *Id.*

<sup>49</sup> L-3 SafeView opposition at 8.

<sup>50</sup> *Order* at ¶27.

<sup>51</sup> FiberTower petition at 10.



cease operating if notified by a Commission representative that the device is causing harmful interference.<sup>52</sup> Parties who believe they are experiencing interference from an unlicensed device should bring the matter to the attention of the operator of the unlicensed device. The ProVision 100 system is a security portal system which is typically operated by security personnel who would normally attend the system, and the attending operator of the system can be readily contacted to alert the owner of the ProVision 100 system and L-3 SafeView. If the interference matter is not resolved, the party may seek intervention by the Commission.

21. *Conclusion.* We find that FiberTower has not persuaded us to change our decision. Accordingly, we are denying FiberTower's petition, except for its request regarding the update of the installation list of ProVision 100 devices. We are, as indicated above, providing clarification that L-3 SafeView must continue to keep up-to-date the record of all installed ProVision 100 devices following changes in device location and/or transfer of ownership to third parties, subsequent to an initial sale.

#### IV. ORDERING CLAUSES

22. Pursuant to Sections 4(i), 302, 303(f), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 4(i), 302, 303(f), 303(r) and 405, and Section 1.106 of the Commission's rules, 47 C.F.R. Section 1.106, IT IS ORDERED that the Petition for Reconsideration from FiberTower Networks, Inc. in response to the Commission's *Order* in ET Docket No. 04-373 IS GRANTED to the extent indicated herein and in all other respects IS DENIED.

23. IT IS FURTHER ORDERED that ET Docket No. 04-373 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>52</sup> 47 C.F.R. § 15.5.