

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

In the Matter of)
)
POTOMAC AVIATION TECHNOLOGY CORP.) WT Docket No. 09-42
)
Request for Waiver of Sections 87.71 and 87.73 of)
the Commission Rules)

ORDER

Adopted: February 23, 2010

Released: February 25, 2010

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* This *Order* grants in part a request for waiver of the requirement that installation, maintenance, and measurement of aviation ground station equipment be performed by a licensed technician. Potomac Aviation Technology Corp. (PATC) requests interpretation or waiver of Sections 87.71 and 87.73 of the Commission's Rules,¹ which require that a holder of a General Radiotelephone Operator License (GROL) supervise and be responsible for all transmitter adjustments, tests, and measurements of land-based Aviation Radio Service stations when the transmitter is installed, maintained, or serviced.² For the reasons set forth below, we grant PATC's request in part.

2. *Background.* Section 87.71 requires that a licensed operator measure the operating frequencies of all land-based Aviation Radio Service stations when the transmitter is installed, when any change or adjustment is made in the transmitter that may affect an operating frequency, or when an operating frequency has shifted beyond tolerance.³ Section 87.73 provides that a GROL holder must directly supervise and be responsible for all transmitter adjustments or tests during installation, servicing, or maintenance of the station.⁴

3. PATC's request pertains to its product VHF Radio Transceiver FCC ID TDOAVIACOM1 (AVIACOM1), which incorporates internal diagnostics to automatically measure frequency, power, modulation, and other technical parameters, and transmit the results to PATC, where the information is monitored and reviewed by personnel holding GROLs.⁵ If circumstances warrant, PATC personnel can remotely shut the transmitter down.⁶ PATC first requests an interpretation that the requirements of Sections 87.71 and 87.73 are satisfied by remote monitoring of the measurement results by licensed technicians.⁷ In the event that the rules are interpreted to require the physical presence of a GROL holder,

¹ 47 C.F.R. §§ 87.71, 87.73.

² See Potomac Aviation Technology Corp., Request for FCC Interpretation, or Waiver to FCC 87.71 and 87.73 (filed July 25, 2008) (Request). PATC also filed comments in WT Docket No. 01-289 seeking amendments to Sections 87.71 and 87.73. Our action herein is without prejudice to any Commission rulemaking proceeding.

³ 47 C.F.R. § 87.71.

⁴ 47 C.F.R. § 87.73.

⁵ See Request at 1. PATC states that the AVIACOM1 is factory-sealed and tamper-proof, with no user-serviceable or -adjustable components. *Id.* at 3.

⁶ *Id.* at 2.

⁷ *Id.* at 1.

PATC requests a waiver of that requirement with respect to any AVIACOM1 used in the United States.⁸

4. The Federal Aviation Administration (FAA), Technical Operations Services, subsequently submitted a letter stating that it supported a waiver of the requirement with respect to maintenance of a transmitter that cannot be adjusted or tested except at the factory, subject to five conditions: (1) there are no field-repairable components; (2) the transceiver is a sealed unit; (3) it transmits over the aviation Unicom frequency; (4) the transmitter is approved by the FAA; and (5) installation into the National Airspace System was done in accordance with Section 87.71.⁹

5. *Discussion.* First, we deny PATC's request for a declaratory ruling that that Sections 87.71 and 87.73 permit installation, maintenance, and measurement to be performed by other than an on-site GROL holder. The requirement in Section 87.71 of a "licensed operator" refers to a holder of the appropriate commercial radio operator license, and not, as PATC suggests, to the station licensee.¹⁰ Moreover, we interpret the requirement in Section 87.73 that the GROL holder "directly supervise" the adjustments and tests to require his or her on-site presence.

6. We turn now to PATC's request for waiver. 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.¹¹ For the reasons set forth below, we conclude that PATC has met the first prong of the waiver standard, and that partial grant of the waiver request is warranted. Specifically, we grant a waiver of the GROL requirement for routine maintenance tests, but not for measurements or tests during installation or servicing.

7. PATC argues that remote monitoring of the AVIACOM1 by licensed PATC personnel serves the rules' purpose, and that requiring the physical presence of a GROL holder imposes an unnecessary and burdensome expense on smaller airports lacking their own personnel holding GROLs.¹² PATC states that granting this waiver request would further the public interest by enabling smaller community airports to conduct routine operations in a safer, more efficient manner, and reduce public-sector costs.¹³

8. We agree with PATC that the physical presence of a GROL holder during maintenance testing of the AVIACOM1 imposes an unnecessary burden on smaller airports. We also conclude that the underlying purposes of Sections 87.71 and 87.73 would not be served or would be frustrated by requiring the physical presence of a licensed technician during routine maintenance testing. Requiring airports to bring an individual with a GROL on-site, when testing is already being performed remotely under PATC supervision by qualified personnel, is duplicative, costly, and redundant. We therefore grant the requested waiver of Sections 87.71 and 87.73 for the AVIACOM1 with respect to routine maintenance tests.

⁸ *Id.* On November 1, 2008, PATC filed a similar request specifically with respect to the AVIACOM1 at Potomac Airfield, Fort Washington, Maryland.

⁹ See Letter, dated December 9, 2008, from Steven B. Zaidman, Vice President, Technical Operations Services, FAA, to Scott Stone, Wireless Telecommunications Bureau, FCC. The Wireless Telecommunications Bureau later sought comment on PATC's request. See Wireless Telecommunications Bureau Seeks Comment on Potomac Aviation Technology Corporation Request for Interpretation or Waiver of Sections 87.71 and 87.73 of the Commission's Rules, *Public Notice*, 24 FCC Rcd 3632 (WTB 2009). Only PATC commented.

¹⁰ See Request at 2.

¹¹ 47 C.F.R. § 1.925(b)(3); see also WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹² See Request at 1.

¹³ *Id.*

9. We will not, however, waive the GROL requirement for measurements or tests during installation or servicing. We agree with FAA that the presence of a licensed technician should be required when the transmitter is first installed into the National Airspace System.¹⁴ Because PATC represents that the AVIACOM1 cannot be repaired or serviced in the field, waiver of the GROL requirement during servicing does not appear to be at issue.

10. *Conclusion.* We conclude that PATC has shown good cause for waiver of Sections 87.71 and 87.73 of the Commission's Rules. Specifically, we grant a waiver of the requirement that routine maintenance tests of the AVIACOM1 be performed by an on-site technician holding a General Radiotelephone Operator License. We deny PATC's request to the extent it seeks a waiver of the GROL requirement for measurements or tests during installation or servicing. We also deny PATC's request for a declaratory ruling that the GROL requirement in Sections 87.71 and 87.73 is satisfied by remote monitoring.

11. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the Request for Waiver filed by Potomac Aviation Technology Corp. on July 25, 2008 IS GRANTED IN PART to the extent specified above.

12. 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

Scot Stone
Deputy Chief, Mobility Division
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¹⁴ The Commission generally defers to the FAA as expert agency for air safety. *See, e.g., Streamlining the Commission's Antenna Structure Clearance Procedure, Memorandum Opinion and Order and Order on Reconsideration*, WT Docket No. 95-5, 15 FCC Rcd 8676, 8679 ¶ 5 (2000).