



Federal Communications Commission
Washington, D.C. 20554

September 1, 2016

DA 16-1004

Ronald E. Quirk, Jr., Esq.
Counsel for Ricoh Americas Corporation
Marashlian & Donahue, PLLC
1420 Spring Hill Road, Suite 401
McLean, VA 22102

RE: Ricoh Americas Corporation, Request for Waiver of Section 15.109 of the
Commission's Rules

Dear Mr. Quirk:

This letter dismisses without prejudice Ricoh Americas Corporation's ("Ricoh") request for waiver of Section 15.109¹ of the Commission's rules submitted on September 4, 2015.² Ricoh requests this waiver so that it may market its Enhanced Binocular Kit NV-10A (NV-10A) to the general public even though the device exceeds the emission limits pertinent to the operation of a Class B Digital Device.³ We conclude that Ricoh has failed to provide sufficient information to demonstrate that requiring strict compliance with the rule is inconsistent with the public interest in this case.

Ricoh states that the Enhanced Binocular Kit NV-10A (NV-10A), which consists of a binocular and battery charger for its lithium-ion battery, uses image stabilization to enable the user to accurately view distant targets under dangerous conditions such as dense fog, rain, snow, smoke, dust storms and nearly pure darkness. Ricoh states that the kit, which is classified as a digital device under Part 15 of the Commission's rules, complies with the FCC requirements for Class A digital devices and it has been marketing the kit solely to businesses and first responders since January 2015.⁴ Subsequently, in April 2015, Ricoh initiated testing pursuant to the Class B

¹ See 47 C.F.R. § 15.109.

² See Ricoh Americas Corporation, Request for Waiver of Section 15.109 of the Commission's Rules (Request) dated September 4, 2015, from Ronald E. Quirk, Jr., Marashlian & Donahue, PLLC. Via letter simultaneously filed with the Request, and subsequently on December 22, 2015, you ask that we take action on this matter without public comment.

³ See Request at 3. Class B digital devices are marketed for use in a residential environment notwithstanding use in commercial, business and industrial environments. Examples of such devices include, but are not limited to, personal computers, calculators, and similar electronic devices that are marketed for use by the general public. See 47 C.F.R. § 15.3(i).

⁴ See Request at 3. Class A digital devices are marketed for use in a commercial, industrial or business environment, exclusive of a device which is marketed for use by the general public or is intended to be used in the home. See 47 C.F.R. § 15.3(h).

requirements so that it could market the NV-10A to the general public.⁵ This testing revealed that the device meets the Class B RF emissions limits at all tested frequencies except for one: radiated emissions measured at 3 meters on 320.4 MHz exceeded the Class B limit in the rules by 5.47 dB μ V/m.⁶ You request that we waive Section 15.109 to permit radiated emissions that do not exceed 51.47 dB μ V/m measured at 3 meters in the range 318 MHz through 324 MHz “to ensure that the device would not violate the emission limits on adjacent frequencies when operated by the public,” thereby allowing Ricoh to market the NV-10A as a Class B digital device without modification.⁷

Ricoh claims that there is no possibility the NV-10A device will cause harmful interference to nearby authorized users of the 235 to 324 MHz band because they operate at “maximum power levels exponentially higher than the NV-10A device”⁸ and that the device has been marketed and operated to date as a Class A device with no interference issues.⁹ Ricoh asserts that the public interest would be served by offering the device to consumers as a new and effective navigational tool that will help prevent serious accidents; and that compliance with the rule would require a complete redesign of the device, resulting in lower quality, higher price, and substantial delay in offering the device for sale to consumers.¹⁰

We are authorized to grant a waiver under Section 1.3 of the Commission’s rules if the petitioner demonstrates good cause for such action.¹¹ Good cause, in turn, may be found and a waiver granted “where particular facts would make strict compliance inconsistent with the public interest.”¹² To make this public interest determination, the waiver cannot undermine the purposes

⁵ See Request at 3-4. Both Class A and Class B digital devices are required to be authorized under the verification process as set forth in Part 2, Subpart J of the Commission’s rules. See 47 C.F.R. § 15.101(a). Thus, such devices must be tested for compliance with the pertinent requirements for unintentional radiators found in Part 15, Subpart B of the Commission’s rules prior to marketing.

⁶ Specifically, testing at frequencies from 122.2 MHz to 652.0 MHz indicated that the device meets the RF emission limits at all frequencies except 320.4 MHz where it measured 51.47 dB μ V/m at 3 meters. See Request at 4-5. Class B digital devices must comply with Section 15.109(a), which specifies that emissions in the frequency range 216-960 MHz must not exceed 200 microvolts/meter (46 dB μ V/m) when measured at 3 meters. Ricoh states that the battery charger has been tested and verified as complying with the Class B emission limits. See Request at 10.

⁷ See Request at 5.

⁸ See Request at 6 (acknowledging the following authorized uses: mobile-satellite systems, aeronautical mobile air-to-ground communications systems, ship-to-shore communications, land mobile and fixed point-to-point communications, aeronautical telemetry, and research and development on airborne, shipborne, or surface platforms).

⁹ See Request at 7.

¹⁰ See Request at i.

¹¹ See 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); and *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

¹² See *Northeast Cellular*, 897 F.2d at 1166; see also *ICO Global Communications*, 428 F.3d at 269 (quoting *Northeast Cellular*); and *WAIT Radio*, 418 F.2d at 1157-59.

of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule.¹³

Ricoh does not offer adequate support to demonstrate that waiving the Class B rule would not undermine its purpose. Class B devices may be marketed for use by the general public, and, unlike Class A devices, there are no restrictions on the type of use. Thus, the Commission requires Class B devices to meet stricter emission limits than Class A devices to reduce the potential for interference regardless of the environment in which they may be used, including in a residential environment. The Request does not demonstrate that granting the waiver would not undermine this purpose. The filing does not include, for example, any measurements or studies in support of the statement that interference to nearby receivers is not a possibility. We also note that, as the frequencies in question are allocated to Federal users, if we were inclined to act favorably on the waiver request, we would be obligated to first coordinate the proposed use with the National Telecommunications and Information Administration.¹⁴ While the waiver suggests that the low power of the NV-10A is not expected to be capable of causing interference to the higher powered operations in the 235 MHz to 324 MHz band, it does not include any specific analysis or calculations related to the actual operations on the affected frequency. Further, Ricoh's assertion that it knows of no interference created as a result of current Class A usage is not persuasive in considering whether to permit marketing of this device to the public. Indeed, the Request asks that the waiver be granted for a wider bandwidth than needed to ensure that the device would not violate the emission limits on adjacent frequencies when operated by the public, which suggests that Ricoh understands that marketing this device to the public could increase the risk of interference to other users.

The Request also fails to make a case that requiring strict compliance with the rule is inconsistent with the public interest. While broadening the market for the NV-10A could allow additional persons to utilize its safety-related functions, it does not justify allowing Ricoh to do so without modifying the device to comply with the technical rules for Class B Digital Devices. While you state that "a complete overhaul could well reduce the functional quality of the device" you do not provide any additional explanation that would support this conclusion. Further, although you assert that complying with the rule would require a substantial redesign of the product, thus raising costs and delaying the introduction to the market, we note that even though a denial of the waiver may limit sales, it does not prevent you from continuing to market the device for Class A commercial, industrial or business use.¹⁵

¹³ 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); and *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).

¹⁴ See FCC and NTIA Memorandum of Understanding on Spectrum Coordination, (last visited March 14, 2015), <https://www.ntia.doc.gov/other-publication/2003/fcc-and-ntia-memorandum-understanding-spectrum-coordination>

¹⁵ The waivers cited as precedent in the Request were based on public interest determinations that are distinguishable from the instant case. The cited waivers did not involve Class B devices and were analyzed based on specific information provided by the petitioners such as types of use of the device, spectrum bands, time/duration of transmission, and different rule sections. See *Second Sight Medical Products, Inc.*, Letter Order, ET Docket 11-123, 26 FCC Rcd 16170 (OET 2011) (involving a waiver for a medical implant system designed to treat blind persons suffering from advanced retinal degenerative diseases to

We therefore conclude that Ricoh has failed to provide sufficient information to demonstrate that granting the waiver request would not undermine the rule nor that requiring strict compliance with the rule is inconsistent with the public interest.

Accordingly, pursuant to the delegated authority in Sections 0.31, 0.241 and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.31, 0.241, 1.3, we dismiss without prejudice Ricoh America's request for waiver of Section 15.109.

Sincerely,

Julius P. Knapp
Chief
Office of Engineering and Technology

exceed emission limits of section 15.209 on frequency 3.156 MHz); *see also Medimetrics*, Letter Order, ET Docket 14-84, 29 FCC Rcd 13903 (OET 2014) (involving a waiver to allow certification of an ingestible medical device with an operational lifetime of 48-72 hours operating in the 433 MHz band with emission limits for intentional radiators that exceeded those in section 15.231(b)); *see also Curtiss-Wright Controls, Inc.*, Order, ET Docket 10-167, 27 FCC Rcd 234 (OET 2012)(involving waiver of sections 15.503(d) and 15.521(d) for the manufacturing and marketing of an ultra-wideband ground penetrating radar, while requiring compliance with operational and technical requirements found in Section 15.509).