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October 8, 2010

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Dr. Rashmi Doshi, Chief
Laboratory Division
Office of Engineering and Technology
Federal Communications Commission
7435 Oakland Mills Road
Columbia MD 21046

**Re: FCC ID UYXRSK2010-01
Correspondence Reference Number 91412**

Dear Dr. Doshi:

On behalf of ReconRobotics, Inc., I respond to the letter of October 4, 2010, sent to you by Christopher D. Imlay, Esq., General Counsel, ARRL ("ARRL Letter").

ARRL challenges the validity of the above-referenced certification. We show below that the challenge is both untimely and substantively mistaken.

The Commission should promptly dismiss Mr. Imlay's letter as procedurally improper or deny it as unfounded.

A. BACKGROUND

The certification at issue covers the Recon Scout® device manufactured by ReconRobotics: a small, remote-controlled, maneuverable surveillance robot that provides the operator with video and potentially

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other needed information. Users are limited to state and local law enforcement and firefighting agencies, and infrastructure security personnel in areas that may be too hazardous for human entry.¹

The certification was issued pursuant to a waiver.² ARRL opposed the waiver during its two-year pendency, as did several individual amateur licensees. (There was no other opposition.) The Commission evaluated the amateurs' position, disagreed with it, and granted the waiver. The Commission did, however, make operation of the Recon Scout secondary to the Amateur Radio Service, along with other licensed users.³

ARRL sought reconsideration of the waiver grant,⁴ as did two individual amateurs. Those petitions are pending.

When ReconRobotics customers began filing their license applications, ARRL and an amateur each interposed more than eighty Petitions to Deny.⁵ Fairly read, these petitions merely restate objections to the waiver and allege discrepancies in the certification. They do not seriously challenge the actual applications against which they are filed.

ARRL is now back yet again, this time alleging errors in the certification. We show below that its challenge is procedurally impermissible, and that the claimed errors do not exist.

The Recon Scout is a lawful device with a proven capability to save first responders' lives. Having met the Commission's requirements, ReconRobotics is entitled to market its product free of ARRL's endless challenges.

¹ The unit is small enough, and strong enough, to be dropped, launched, or thrown to where it is needed. Typical applications include checking a building prior to forced entry, locating hostages, hostiles, officers, and bystanders before a rescue attempt, searching for survivors in a burning building, and inspecting the site of a chemical or nuclear release. For more information, *see* Request for Waiver of ReconRobotics, Inc. in WP Docket 08-63 (filed Jan. 11, 2008).

² *ReconRobotics, Inc., Request for Waiver of Part 90 of the Commission's Rules*, Order, 25 FCC Rcd 1782 (2010) (*Waiver Order*).

³ *Id.* at ¶ 11.

⁴ Petition for Reconsideration of ARRL in WP Docket 08-63 (filed March 24, 2010).

⁵ *See* ULS File Nos. 0004323710 *et al.*

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B. THE ARRL LETTER MUST BE DISMISSED AS UNTIMELY.

The ARRL letter asks the Laboratory Division to “review and set aside” the Recon Scout certification.⁶ This amounts to a request for reconsideration. The Commission allows such petitions,⁷ but requires that they be filed within thirty days of the grant.⁸

The certification here was granted on April 22, 2010. It immediately became available to ARRL on the Commission’s website. Petitions for reconsideration were due thirty days later, on May 24, 2010. In order to consider the ARRL Letter at this late date, the Commission would have to waive the thirty-day deadline. That deadline, however, is statutory⁹ and not readily waived: “The [D.C. Circuit] court has discouraged the Commission from accepting late petitions in the absence of extremely unusual circumstances.”¹⁰ No such circumstances are (or could be) claimed here. Nothing stopped ARRL from raising its objections within the designated thirty-day period.

The absence of the words “Petition for Reconsideration” in the letter is irrelevant. A party cannot evade the 30-day filing deadline by calling its pleading something else. A request that the Commission re-open a matter and re-visit a carefully considered determination is a petition for reconsideration no matter what its caption.¹¹ The Commission has repeatedly so held.¹²

⁶ ARRL Letter at 1.

⁷ 47 C.F.R. § 2.923.

⁸ 47 C.F.R. § 1.106(f), *cited in* 47 C.F.R. § 2.923.

⁹ 47 U.S.C. § 405(a).

¹⁰ *21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192, 199 (D.C. Cir. 2003). *See also Virgin Islands Tel. Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993) (similar); *Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986).

¹¹ *James A. Kay, Jr.*, 25 FCC Rcd 7639 at ¶ 4 (2010).

¹² *E.g., Nevada Ready Mix Corporation*, 24 FCC Rcd 4648 at ¶ 7 (2009) (dismissing pleading as late-filed petition for reconsideration even though captioned otherwise); *Minnesota PCS Limited Partnership*, 17 FCC Rcd 126 at ¶ 4 (2001) (Commission not bound by title that filing party gives pleading).

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Technological entrepreneurs such as ReconRobotics first must surmount the Commission's hurdles to qualify for certification, and having done so, face the risks of the marketplace. They should not also be subject to the risk of ambush by opponents long after the deadlines have passed.

C. THE ARRL LETTER IS SUBSTANTIVELY GROUNDLESS.

ARRL raises several objections to the certification, all of them frivolous. There is no allegation that the Recon Scout operates outside the parameters of the waiver. None of the issues that ARRL raises with great fanfare would increase the threat of interference to amateur radio or anyone else. (To the contrary, two of them reduce any threat.) And none of the alleged discrepancies is supported by the facts.

1. *Bandwidth*

ARRL complains the emissions designator shows a bandwidth of 100 kHz for analog video, while (it says) bandwidths for "this type of device" are "inevitably" on the order of 5.75 MHz.¹³ The certification application reports the bandwidth as measured for this device, not devices in general. We are surprised that ARRL objects to the narrower bandwidth, considering it has alleged a threat of interference from the Recon Scout. The 100 kHz bandwidth reduces the potential for intercept and interference with other communications, relative to the 5.75 MHz bandwidth (that ARRL proposes).

ReconRobotics stands by the bandwidth measurement. We understand the TIA-603 test used (and questioned by ARRL) is the only one approved by the Commission for this purpose. The bandwidth that ARRL finds to be lower than expected appears to result from this model's transmitting only black-and-white video with no audio.¹⁴ Notwithstanding ARRL's wrong analysis, the energy of the Recon Scout emissions falls well inside the assigned 6 MHz channels.¹⁵

ARRL asserts, "the test report claims compliance with Section 90.209 of the Commission's Rules."¹⁶ That is mistaken. The test report references Section 90.209, but does not claim compliance—and indeed

¹³ ARRL Letter at 2.

¹⁴ If the Commission determines that the reported bandwidth is erroneous, ReconRobotics has no objection to correcting it. A good-faith disagreement over the appropriate description, however, is no reason to invalidate the certification, as ARRL suggests.

¹⁵ Attachment to ARRL Letter at 10 (combining reported center frequencies with incorrectly assumed bandwidth of 6 MHz).

¹⁶ ARRL Letter at 2.

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could not, as the Commission waived that section. All of the alleged noncompliances are covered by the waiver.

2. *Power*

ARRL objects that the certified power is less than that permitted in the waiver.¹⁷ Operation at reduced power is entirely consistent with the waiver, and again, only reduces the interference potential.¹⁸

3. *Frequency bands*

Finally, ARRL objects that the *Waiver Order* specifies three 6 MHz frequency bands, at 436-442 MHz, 442-448 MHz, and 430-436 MHz,¹⁹ while the certification lists 433-445 MHz.²⁰ These are consistent. The TCB followed the Commission's Part 15 practice: "List the center frequency of the lowest channel to the center frequency of the highest channel."²¹ The range in the equipment authorization does just that. The TCB likely adopted this procedure because the corresponding provision for licensed transmitters would not work for the Recon Scout: it calls for the bandwidth in the certification to overlap the allowable frequencies in the rules.²² The waiver allows the Recon Scout to use frequencies different from those in the rules, with no overlap. We do not see how the TCB could have listed the frequencies other than it did, consistent with Commission guidance.²³

¹⁷ ARRL Letter at 2.

¹⁸ ARRL takes the odd position that less power is *more* interfering, Attachment to ARRL Letter at 9, but nothing in its discussion supports that view.

¹⁹ *Waiver Order* at ¶ 11. The first unit sold to an entity must operate at 436-442 MHz, the second unit at 442-448 MHz, and the third unit at 430-436 MHz. The sequence is intended to minimize any risk of interference to amateur radio operators. *Id.* at ¶ 9.

²⁰ ARRL Letter at 3.

²¹ *Frequency Range Listings for Certification Grants*, <https://fjallfoss.fcc.gov/kdb/GetAttachment.html?id=23557> at ¶ 3.

²² *Id.* at ¶ a.

²³ ReconRobotics has no objection to a change in the frequency range on the certification, but again, a good-faith disagreement should not invalidate the certification.

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In any event, the point is academic. All of the pending applications for use of the Recon Scout are for the 436-442 MHz band, which even ARRL must admit is covered by both the certification and the waiver.

CONCLUSION

ARRL has sought at every possible stage to impede the sale and use of the Recon Scout. The present letter is just one more attempt to create needless difficulties for ReconRobotics and the public safety agencies it serves.

Being filed four months out of time, the letter must be dismissed as an untimely petition for reconsideration. As it lacks any substantive basis, it must alternatively be denied on the merits.

We ask the Commission to swiftly dispose of the letter and give ReconRobotics the finality it has earned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mitchell Lazarus", written in a cursive style.

Mitchell Lazarus

cc: Office of the Secretary, FCC (original and 4 copies)
Andrew Leimer, FCC
Christopher D. Imlay, Esq., General Counsel, ARRL