

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Review of Part 87 of the Commission’s Rules )  
 )  
Concerning the Aviation Radio Services )                      WT Docket No. 01-289

**COMMENTS OF THE OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION**

The U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) submits the following reply comments on the Federal Communication’s Commission (FCC’s) *Proposed Aviation Communications Rules*.<sup>1</sup> FCC’s proposed rules consider whether the FCC should, among other things, prohibit the manufacture, importation, sale, or use of electronic locator transmitters (ELTs) that operate only on the 121.5 megahertz (MHz) frequency.<sup>2</sup> According to the FCC, the proposed rules are intended to ensure that FCC rules pertaining to aviation communications are up to date, accommodate new technologies, facilitate the efficient and effective use of the aeronautical spectrum, avoid unnecessary regulation, and, above all, enhance flight safety.<sup>3</sup> A more detailed discussion of the rulemaking is provided below.

**Office of Advocacy**

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies, Congress, and the White House. Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of SBA or

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<sup>1</sup> 78 Fed. Reg. 6276 (January 30, 2013).  
<sup>2</sup> See, 78 Fed. Reg. 6278. While FCC uses the term operate “only on” 121.5 MHz, Advocacy believes FCC really means operate “primarily on” 121.5 MHz, since many 121.5 MHz ELTs also operate on the 243 MHz (military) frequency.  
<sup>3</sup> 78 Fed. Reg. 6276

the Administration. The Regulatory Flexibility Act (RFA),<sup>4</sup> as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>5</sup> gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives. Moreover, a recent amendment to the RFA, codified at 5 U.S.C. 604(a)(3), requires the agency to include in any final rule the response of the agency to any comments filed by Advocacy, and a detailed statement of any change made to the proposed rule as a result of the comments.

## **Background**

On January 30, 2013, the FCC published its proposed rules that consider whether to, among other things, prohibit the manufacture, importation, sale, or use of 121.5 MHz ELTs. ELTs are radio-beacons that are activated manually or automatically to alert search and rescue authorities that an aircraft has crashed, and to identify the location of the aircraft and any survivors.<sup>6</sup> The FCC proposes this ban chiefly because the international Cospas-Sarsat satellite system, which relays distress alerts to search and rescue authorities, stopped monitoring the 121.5 MHz frequency in 2009 (in favor of the newer, digital 406 MHz frequency). However, many 121.5 MHz ELTs are still in use and the 121.5 MHz frequency is still monitored by other search and rescue entities.<sup>7</sup>

FCC seeks public comment on several issues, including the costs of purchasing and installing a 406 MHz ELT to replace a 121.5 MHz ELT, the availability of 406 MHz ELTs, and whether

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<sup>4</sup> 5 U.S.C. § 601 et seq.

<sup>5</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

<sup>6</sup> 78 Fed. Reg. 6276.

<sup>7</sup> *Id.*

some general aviation aircraft would be grounded due to an inability to acquire a 406 MHz ELT. FCC also seeks comment on alternatives to the proposed rule that minimize the economic impact on small entities, such as continued use of 121.5 MHz ELTs, grandfathering those currently in use, or providing an extended transition period.<sup>8</sup> It should be noted that the Federal Aviation Administration (FAA), the chief U.S. governmental authority with responsibility for aviation safety, filed comments with the FCC in 2010 asking the FCC not to implement the proposed rules and raising concerns about the costs and availability of replacement ELTs.<sup>9</sup> 121.5 MHz ELTs are still permitted for use by FAA regulations; however, the FAA has withdrawn its technical specification order (i.e., TSO C-91(a)) under which the ELTs are produced, which will effectively phase out 121.5 MHz ELTs over time. FAA has considered but declined to prohibit their use or require their replacement.<sup>10</sup>

### **Advocacy Outreach to Small Business Representatives**

In response to the publication of the FCC's proposed Aviation Communication rules, Advocacy hosted a small business roundtable on February 14, 2013 to discuss the proposed rules and obtain small business input on them. The roundtable included small business aviation stakeholders as well as representatives from the search and rescue community, including the U.S. Coast Guard, Air Force, Department of Transportation, and the National Oceanic and Atmospheric Administration (via telephone). While some representatives from the search and rescue community were supportive of the FCC's proposed rules,<sup>11</sup> the small business aviation

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> ELTs are required by statute for all fixed-wing aircraft. In addition, the statute specifically provides that ELTs that transmit on the 121.5/243 MHz frequency meet the statutory requirement. See, 49 U.S.C. 44712 (a) and (d).

<sup>11</sup> Advocacy notes, however, that the National Headquarters of the Civil Air Patrol (CAP), United States Air Force Auxiliary, filed comments to the FCC docket on March 15, 2013 advising a "slow and cautious transition." CAP states in its comments that only sixty-five percent of its aircraft and none of its ground teams have 406 MHz capability, that rescue squads across the country

stakeholders expressed strong opposition, particularly with respect to the FCC prohibiting the “use” of 121.5 MHz ELTs (which would require retrofitting much of the general aviation fleet), but also to the FCC proceeding with this rulemaking without the full concurrence of FAA.

Advocacy also organized an *ex parte* meeting<sup>12</sup> with FCC staff on February 27, 2013 and a meeting with staff from the Office of General Counsel at the U.S. Department of Transportation on March 21, 2013. Small business aviation stakeholders in attendance at the *ex parte* meeting included representatives from the Aircraft Owners and Pilots Association, National Air Transportation Association, General Aviation Manufacturers Association, Aircraft Electronics Association, and Potomac Aviation Technology. Each of the groups have submitted formal comments to the rulemaking docket that Advocacy has reviewed.<sup>13</sup> The following comments are reflective of the issues raised during the roundtable discussion, in comments, and in subsequent communications with small entity representatives.

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still rely heavily on 121.5 MHz transmission, and that funding to upgrade to be 406 MHz compliant is likely to be limited over the next several years. CAP concludes that: “[t]herefore, it is our position that before the 121.5 MHz beacons are abandoned, we must be certain that the [search and rescue] community has successfully made the transition to 406 MHz. We consider the potential for loss of life, if this transition is not well managed, to be unacceptable.” See, <http://apps.fcc.gov/ecfs/document/view?id=7022133797>.

<sup>12</sup> See, *Ex Parte* Notice from SBA Office of Advocacy (available at <http://apps.fcc.gov/ecfs/document/view?id=7022126079>).

<sup>13</sup> See comments in the FCC docket by Aircraft Owners and Pilots Association (<http://apps.fcc.gov/ecfs/document/view?id=7022136700>), General Aviation Manufacturers Association (<http://apps.fcc.gov/ecfs/document/view?id=7022136804>), National Air Transportation Association, (<http://apps.fcc.gov/ecfs/document/view?id=7022136690>), and Aircraft Electronics Association (<http://apps.fcc.gov/ecfs/document/view?id=7022137026>).

## **Small Business Aviation Stakeholders Have Expressed Opposition to FCC's Proposed Rules.**

Small entity representatives at the roundtable and in comments have stated that they are opposed to FCC's proposed rules for several reasons. First, they noted that the FCC has not identified a spectrum problem or use issue that necessitates the proposed rules, and that FCC is acting solely out of concern for aviation safety - an area the stakeholders believe is the primary domain of FAA. Second, they stated that FAA has already addressed the 121.5 MHz issue by withdrawing the technical specification order (i.e., TSO C-91(a)) under which these units are produced, which will effectively phase out the 121.5 MHz ELTs over time. One stakeholder stated that there is only one manufacturer of a 121.5 MHz-only ELT left. Another stakeholder noted that all new airplanes being delivered in the U.S. are equipped with ELTs that broadcast on 121.5 MHz combined with 406 MHz (dual band) and, in some cases, also on 243 MHz (tri band). Third, the stakeholders especially oppose the FCC prohibiting the "use" of 121.5 MHz ELT's, which would require many aircraft to be retrofitted with a new 406 MHz ELT. One stakeholder stated that such a retrofit requirement could affect up to 180,000 of the roughly 220,000 general aviation fleet at a cost of between \$1,000 and \$2,000 per aircraft (for a total cost of between \$180 million and \$360 million). Stakeholders noted that forcing aircraft owners to retrofit ELTs would divert scarce resources from other safety improvements, such as improved seat belts, shoulder harnesses, or airbags, which offer greater safety benefits. Stakeholders stated that the FCC would have benefited from conducting a cost-benefit analysis of the proposed rules to better inform the agency's decision making. Finally, stakeholders noted that there appears to be

specific Congressional approval for the use of 121.5/243 MHz ELTs<sup>14</sup> and that FAA has considered but declined to prohibit their use or require their replacement.

### **FCC's Initial Regulatory Flexibility Analysis is Deficient**

As indicated above, Advocacy is responsible for representing the views of small entities before federal agencies, Congress, and the White House, and in overseeing federal agency compliance with the Regulatory Flexibility Act (RFA). Advocacy believes that the FCC's Initial Regulatory Flexibility Analysis (IRFA)<sup>15</sup> contained in the proposed rules is deficient, and that the FCC should revise and republish its IRFA for additional public comment before proceeding with this rulemaking. The required contents of an IRFA are established at 5 U.S.C. 603(b) and (c).

Advocacy is concerned that because the IRFA is deficient, the public has not been adequately informed about the possible impact of the proposed rules on small entities, or whether there are significant alternatives to the proposed rules that would meet the statutory objectives in a less costly manner.

First and foremost, the IRFA does not describe and estimate the number of small entities to which the proposed rule would apply. FCC only identifies Wireless Telecommunications Carriers and Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing as regulated small entities.<sup>16</sup> However, the largest impact of the proposed rules would appear to be on small entities in the aviation industry that would be required to replace their existing 121.5 MHz ELTs if the FCC prohibits or phases out their continued use. These entities include aviation flight schools, air charters, and air taxis, many of whom are small

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<sup>14</sup> See, 49 U.S.C. 44712 (a) and (d).

<sup>15</sup> See, 78 Fed. Reg. 6277.

<sup>16</sup> *Id.*

entities. Further, there appear to be thousands of small businesses that operate general aviation aircraft that FCC did not identify. Advocacy recommends that the FCC revise its IRFA to identify all regulated small entities.

Second, the IRFA does not include projected reporting, recordkeeping, and other compliance costs to which small entities would be subject. During the roundtable meeting, one small business aviation stakeholder stated that a prohibition on the continued use of 121.5 MHz ELTs could affect as many as 180,000 general aviation aircraft at a cost of between \$1,000 and \$2,000 per aircraft (for a total cost of between \$180 million and \$360 million). Similarly, in its earlier comments to the docket opposing the FCC's proposed rules, the FAA stated that "the cost of equipping the general aviation aircraft and air taxi fixed-wing aircraft fleet (over 200,000 aircraft) with 406 MHz ELTs approached \$500 million."<sup>17</sup> Advocacy recommends that the FCC revise its IRFA to include all compliance costs for regulated small entities.

Third, the IRFA does not identify all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rules. The FCC's proposed rules to prohibit the continued use of 121.5 MHz ELT appear to overlap and conflict with FAA regulations that require ELTs to be installed on aircraft and provide that a 121.5 MHz ELT is acceptable for compliance.<sup>18</sup>

Advocacy recommends that FCC clearly consider and explain whether its proposed rules would overlap and conflict with FAA and other regulations.

Finally, the IRFA does not contain a description of significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant

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<sup>17</sup> See, WT Docket No. 01-289, Ref. Docs.37896/1, 37973/1, and 37968/1 (available at <http://apps.fcc.gov/ecfs/document/view?id=7022133797>).

<sup>18</sup> See, 14 CFR 91.207.

economic impact of the proposed rule on small entities. Rather, the IRFA seeks basic background information (such as the costs of purchasing and installing a 406 MHz ELT to replace a 121.5 MHz ELT, the availability of 406 MHz ELTs, whether some general aviation aircraft would be grounded due to an inability to acquire a 406 MHz ELT, and whether the FCC should consider allowing the continued use of 121.5 MHz ELTs, grandfathering those currently in use, or providing an extended transition period) that is needed to develop significant alternatives. Advocacy believes that an agency cannot comply with the RFA's mandate to consider significant alternatives to the proposed rules if the agency lacks essential information about which small entities are being regulated and how much it would cost them to comply. Advocacy recommends that the FCC revise its IRFA to identify significant alternatives for small entities.

### **Conclusion**

Advocacy is concerned that the FCC's proposed rules and IRFA lack essential information needed to properly inform the agency's decision making, particularly with respect to which small entities would be impacted, how much it would cost them to comply, whether the proposed rules conflict with FAA regulations, and whether there are significant alternatives to the proposed rules that would meet the statutory objectives in a less burdensome manner (as required by the RFA). Such essential information is typically obtained by agencies through research, stakeholder outreach, or the publication of a request for information or advanced notice of proposed rulemaking, not a proposed rule. For this reason, Advocacy recommends that the FCC revise and republish for public comment a Supplemental IRFA before proceeding with this rulemaking. Advocacy would welcome the opportunity to work with the FCC in the



development of the revised IRFA. Advocacy notes again that FAA has filed comments to the docket asking the FCC not to implement the proposed rules because of concerns about the costs and availability of replacement ELTs, and that FAA has considered but declined to prohibit the installation and use of 121.5 MHz ELTs on aircraft.

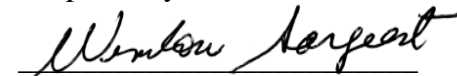
Thank you for the opportunity to comment on the FCC's proposed Aviation Communications rules. One of the primary functions of the Office of Advocacy is to assist federal agencies in understanding the impact of their regulatory programs on small entities. In that regard, we hope these comments are both helpful and constructive to the agency's understanding of the industry and the views of small entities. Please feel free to contact me or Bruce Lundegren at (202) 205-6144 or [bruce.lundegren@sba.gov](mailto:bruce.lundegren@sba.gov) if you have any questions or require additional information.

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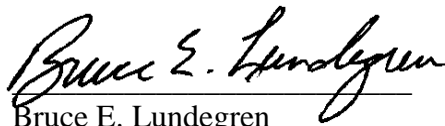
April 24, 2013

*Via electronic filing*

Respectfully submitted,



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