



GAMA 13-15

April 1<sup>st</sup> 2013

Ms. Marlene Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
236 Massachusetts Avenue NW, Suite 110  
Washington, DC 20002

Re: *Third Further Notice of Proposed Rule Making* regarding on 121.5MHz aviation emergency locator transmitters (WT Docket Number 01-289)

The General Aviation Manufacturers Association (GAMA) offers the following regarding the FCC's *Third Further Notice of Proposed Rule Making* regarding on 121.5MHz aviation emergency locator transmitters (WT Docket Number 01-289). In this submission GAMA offers comments on the FCC proposal and also information which was shared by the FCC at a noticed ex-parte meeting which was held on February 28th 2013 (attachment 1, Ex Parte Notice: Aviation Communications, Proposed Rules, WT Docket No. 01-289; FCC 13-2).

First and foremost this FCC rulemaking does not address spectrum nor does it assure proper communications, this proposal would increase spectrum use, this proposal is an FCC rulemaking directing specific aviation safety equipment, unfortunately this comes at the expense of more critical non-required safety enhancing equipment which owners and operators will have to forgo. The FCC has demonstrated a low level understanding of aviation safety and the industry over the 12-year history of this rulemaking effort and it continues to lack significant understanding at the time of this latest proposal. GAMA doesn't make this statement lightly but the FCC must understand it is mixing rules into an environment where carefully crafted regulations and policies are managed by the FAA to assure the safest transportation system on the globe, this is no place for a partially aware regulator to practice.

GAMA is also concerned with the misleading nature of this FCC proposal which masks the most significant proposal (outlawing the "use" of aviation ELTs which broadcast only on 121.5MHz) in discussion while misdirecting public attention to draft rule text which conveniently lacks the "use" prohibition. During an ex parte meeting with the FCC on this proposal, the FCC clarified that it believes this rulemaking proposes to outlaw use, though it decided to intentionally leave this aspect out of the draft rule text until after it collects comments and makes a final decision on all provisions. GAMA believes this is a violation of APA and the FCC should re-issue any further actions in this "use" area for broader comment in a forthcoming manner consistent with the APA if the FCC decides to proceed.

The cost benefit analysis performed by the FCC is completely lacking information on the impact this proposal would have on the general aviation community. Similarly lacking is accounting of the benefit that this proposed rule is purported to create. Whether this poor analysis is due to a partial interest in the issue by the FCC over the last 12-years or a lack of rulemaking discipline, APA requires the regulator to have an adequate understanding of the options it is considering. In this case the FCC has demonstrated it lacks even a rudimentary understanding of the aviation landscape and how the proposed rules would impact aviation. It is the responsibility of the FCC to

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conduct a reasonable cost benefit review and in this case the FCC doesn't list the primary affected parties, owners and operators of airplanes, nor does it address the safety consequences of forcing the equipage of a multi-frequency ELT as compared to another safety device that can yield significantly more safety. GAMA requests that the FCC put forth a proper cost benefit analysis for review and comment prior to proceeding with this activity.

The continued attempts by the FCC to mandate specific aviation safety equipment, despite formal notice and cautions from the FAA and the aviation industry, is unfortunate. This specific equipment proposal doesn't provide a level of safety appropriate for the cost burden and mandating its use comes at the expense of other more important safety equipment. During times where critical government resources are strained to capacity and furloughs are put in place at safety agencies like the FAA, GAMA questions how the FCC has the extra resources to take the lead in an aviation safety issue despite so many cautions against doing so for such a long time. GAMA requests that the FCC stop spending its efforts on issues involving aviation safety unless they directly involve spectrum or communications conflicts and the FCC issue a final rule that rescinds the previous stayed rule related to 121.5MHz aviation ELTs. GAMA offers the following specific comments regarding this proposal by the FCC to mandate additional aviation safety equipment.

#### Current State of Aviation ELTs:

GAMA is primarily concerned with this proposed rulemaking because the FCC appears to be regarding the state of ELT equipage and what the impact of the various proposals it has crafted over the last 12-years would yield. The FCC has expressed its rulemaking intent to mandate that aviation ELTs will broadcast on 121.5MHz and an additional frequency by controlling the certification, manufacture, import, sale and use of aviation ELT's. In this section, GAMA would like to provide information regarding the current state of new airplane equipage and ELT certification.

Since 2006, new type-certified general aviation airplanes have been delivered with ELTs which operate on 121.5MHz and 406MHz (dual band ELTs) and some airplanes have delivered with tri-band ELTs which also include 243MHz broadcast as well. Further, in 2012, the FAA canceled its Technical Standard Order (TSO) C91a which permitted the certification and manufacture of ELTs that broadcast on 121.5MHz and 243MHz in favor of TSO-C126a which requires a 406MHz broadcast to be included in aviation ELTs. This change effectively eliminated the certification of ELTs which broadcast on only 121.5MHz as the FCC is looking to mandate. Since one must hold a TSO to manufacture these devices, the few holders of the old TSO will soon find this approval obsolete due to the availability of the electronic components which were included in these earlier designs, driving any remaining manufacturers to update their certification and therefore include a 406MHz transmitter in the device.

Because the FAA has already put into place the changes that eliminate future certification of 121.5MHz only aviation ELTs and soon this change will eliminate future manufacture, the FCC's proposal provides no benefit but since it is a regulatory mandate, it does need to account for cost. GAMA suggests the FCC provisions regulating the certification and manufacture of aviation ELTs is not beneficial to safety as it has been overcome by events and the FCC should cease this activity.

#### Aviation Safety:

This FCC rulemaking would require all airplanes to broadcast on multiple frequencies in the event of an emergency rather than just on 121.5MHz. This rule would not free up spectrum and it would not resolve communications conflict but it would allow the FCC to mandate specific airplane functionality. The FCC

goes so far as to acknowledge this effort is intended to address aviation safety the introductory paragraph of the Federal Register notice associated with this rulemaking.

GAMA does not argue that the FCC can expend resources to make rules which are in the area of aviation safety, nor must the FCC defer to the FAA on matters of aviation safety. The FCC can expend its resources as the commission sees fit. GAMA is quite concerned at the negative safety consequences the FCC's actions may have on in service airplanes and additionally we are concerned at the FCC's lack of deference to the FAA. Over the last 55-years, the FAA has created the global standard for aviation safety and in this particular case the FAA has cautioned the commission against the rulemaking the FCC has continued to error over the last 12-years.

The FCC lacks the day-to-day involvement and participation in aviation safety to understand things such as the GA Safety Strategy, the work of the GA Joint Steering Committee, the Part 23 Reorganization Aviation Rulemaking Committee all of which are initiatives which are carefully conceived to assure they have a positive effect on aviation safety. The FCC is ignorant to many aspects of aviation safety and it seems inappropriate for the FCC to staff up this expertise to the required levels for the commission to be as informed as the FAA in these matters. The FCC attempting to regulate aviation with less understanding and expertise than the FAA seems equally inappropriate. It is for this reason that the FCC should choose to defer aviation safety regulation to the FAA.

To drive this point home, the FCC has made significant safety errors in its proposed aviation ELT regulations over the last 12-years and it continues to do so today. In the 2010 rulemaking activity the FCC proposed the outlaw of aviation ELTs that would broadcast on 121.5MHz, not for any spectrum purpose, this frequency was still going to be reserved for emergency voice use, the FCC made this proposal out of a lack of understanding of aviation safety. Under that rulemaking stakeholders from the search and rescue community to the aviation safety industry illustrated the mistake the FCC was making. The FCC made the proposal without understanding that aviation ELTs broadcast on 121.5MHz for many reasons beyond satellite monitoring including Civil Air Patrol monitoring, monitoring by adjacent aircraft that may be called in by FAA Air Traffic Control to name a few. Even in the current proposed rule text the FCC persists in making a number of errors. First, the agency argues that aviation ELTs must be recognized by satellite but many 121.5MHz ELTs broadcast on 243MHz in addition to 121.5MHz. These ELTs would meet the letter of the law but would not fulfill the FCC's goal of being satellite monitored. This iterative cycle of rulemaking over the past 12-years is indicative of an agency attempting to regulate in an area it lacks an understanding in. While the FCC can make yet another adjustment to the current proposal, the lack of agency understanding and expertise in this area is more than evident. GAMA pleads with the FCC to understand that aviation safety regulation isn't something to be done on a part-time or casual basis when extra time and budget permit extraneous activities. Please heed the direction from the key aviation safety regulator the FAA.

We ask the FCC to take note that the negative impacts on aviation safety this rulemaking proposal would cause are not theoretical but mandates for equipment in areas of lesser safety force owners and operators to sacrifice equipment that can prevent accidents such as angle of attack indicators (loss of control is by far the leading cause of fatalities in GA), terrain and weather information and even traffic systems such as ADS-B in.

We know the FCC can create regulations in areas beyond communications, GAMA asks the commission, should you try to regulate aviation safety? At this point, the FCC has been cautioned, warned and advised

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ad nauseam. Should the FCC determine it will move forward with aviation safety regulations despite warnings from the key regulator and across the industry, GAMA requests the opportunity to brief FCC staff on pertinent aviation safety matters related to the safety trade-offs the FCC could force as a result of this undertaking. GAMA requests that the FCC stop spending resources trying to regulate aviation safety.

#### FCC Use of Resources and Unnecessary Budget:

The FCC continues to work on the issue of 121.5MHz aviation ELTs despite the FAA providing formal documentation which indicates this is not the appropriate direction for aviation safety. As aviation safety is not the primary mission of the FCC, as it is for the FAA, it appears the FCC has more than sufficient resources to fulfill its primary mission of regulating communications and still capacity to challenge the expertise of the FAA in matters of aviation safety. During times such as this where FAA resources are stretched so thin and sequestration threatens to affect the agency even more, perhaps a more effective use of the FCC's extra resources would be to request a budget cut and recommend this unnecessary FCC budget be provided to the FAA for matters where the FCC believes areas of aviation safety must be addressed. GAMA requests that the FCC provide public comment with respect to the amount of extra resources it has which could be used to assist the FAA in the areas of aviation safety so those resources could be used in an efficient manner in the areas where the greatest safety benefit could occur.

#### Ex Parte Information:

On February 28th 2013 an ex parte meeting was held in which the FCC provided additional clarification and elaboration about the commission's plans to implement regulations which aren't immediately apparent based upon this Third Further Notice of Proposed Rule Making. In this meeting GAMA provided additional information to the FCC and this information was captured documented in accordance with the FCC's ex parte provisions (see appendix 1). In this meeting the FCC clarified that it plans to take 3-actions based upon this notice:

- 1 – Stop further certification of aviation ELT's which broadcast only on 121.5MHz as of the effective date of the rule.
- 2 – Stop the further manufacture, import and sale of AVIATION ELT's which broadcast only on 121.5MHz some period of time following the effective date of the rule (potentially 12-months).
- 3 – Stop the use of aviation ELT's which broadcast only on 121.5MHz some period of time following the effective date of the rule (potentially 24-months).

From the draft rule text included in the Third Further Notice of Proposed Rule Making one can easily understand that the agency plans to limit the future certification, manufacture, import and sale of aviation ELTs which only broadcast on 121.5MHz. As the FCC has not included proposed rule text outlawing the use of 121.5MHz only aviation ELTs, it is not as apparent that the FCC would do so through this rulemaking proposal. The FCC should have either not included any draft rule text or should have included the most significant aspect of the proposal in rule making text. As the current proposal stands, GAMA believes it is highly misleading and it does not provide the level of public clarity required under the APA. This concern isn't purely administrative in nature, because of this omission, the public is unaware of the FCC's intentions to outlaw use and therefore the public will not provide a commensurate level of comments.

GAMA believes the partial draft rule text has misled the public. By illustrating the less controversial rule making provisions and not including the most impactful text it is easy to believe the FCC didn't intend to outlaw use under this rulemaking. GAMA believes it is incumbent upon the FCC to provide adequate notice and comment on any provision which might outlaw the use of 121.5MHz aviation ELTs in the future and that the agency has not fulfilled its basic obligations to APA in this area under this rule making activity.

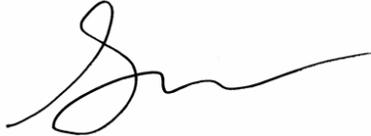
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Conclusion:

In closing, GAMA believes that efforts by the FCC to mandate aviation safety are misguided and the agency is partially informed. GAMA is concerned that the FCC's activities in this direction can have negative aviation safety consequences and we therefore ask that the FCC defer to the FAA in these areas. Should the FCC decide to proceed with this rulemaking despite all cautions to the contrary, GAMA believes the FCC must at a minimum perform an adequate cost benefit analysis and properly illustrate provisions which would mandate the retrofit of aviation safety equipment on the existing fleet.

Respectfully,



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Director, Engineering & Manufacturing  
General Aviation Manufacturers Association (GAMA)

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*Advocacy: the voice of small business in government*

February 28, 2013

*Via Electronic Filing*

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: *Ex Parte* Notice: Aviation Communications, Proposed Rules, WT Docket No. 01–289; FCC 13–2

Dear Ms. Dortch:

On February 27, 2013, Bruce Lundegren and Jamie Saloom of the U.S. Small Business Administration's Office of Advocacy (Advocacy) met with Jeffery Tobias, James Shaffer, and Scot Stone of the Federal Communications Commission to discuss the FCC's recently proposed rules in the above-referenced docket. The proposed rules seek to update the FCC's regulations on 121.5 MHz emergency locator transmitters (ELTs). Also in attendance were a group of small business aviation stakeholders (stakeholders), including Robert Hackman of the Aircraft Owners and Pilots Association, Mike France and Jacqueline Rosser (via telephone) of the National Air Transportation Association, Greg Bowles of the General Aviation Manufacturers Association, Rick Peri and Paula Derks of the Aircraft Electronics Association, and David Wartofsky of Potomac Airfield.

Advocacy informed the FCC staff of the role that Advocacy plays in representing small entities before federal agencies, Congress, and the White House, and in overseeing federal agency compliance with the Regulatory Flexibility Act (RFA). Advocacy also informed FCC staff that it had hosted a small business roundtable on February 14, 2013 to discuss the FCC's proposed rules. The roundtable included small business aviation stakeholders as well as representatives of the U.S. Coast Guard, Air Force, Department of Transportation, and the National Oceanic and Atmospheric Administration (via telephone). Advocacy shared the concerns of small business representatives that the proposed rules could have a significant economic impact on small entities, especially if the FCC prohibited the use of existing ELTs that operate solely on 121.5 MHz. Advocacy noted that small businesses have also raised concerns about the FCC's effort to regulate in an area where the Federal Aviation Administration (FAA) has already acted to phase out these 121.5 MHz ELTs over time. Additionally, Advocacy expressed concerns about the lack of cost data provided in the FCC's Initial Regulatory Flexibility Analysis (IRFA), particularly costs that would be incurred if the FCC prohibited the use of existing 121.5 MHz ELTs.

Small business aviation stakeholders asked FCC staff to clarify the intent of the proposed rules and noted that no cost-benefit analysis has been provided as part of the rulemaking record. Stakeholders specifically asked for further clarification about the benefits of the proposed rules and whether the FCC intends to prohibit the continued use of these 121.5 MHz ELTs. Stakeholders noted that there appears to be specific Congressional approval for the use of 121.5 MHz ELTs. FCC clarified that prohibiting the use of existing 121.5 MHz ELTs is still an issue under consideration and that a final rule could contain language that would prohibit the use of 121.5 MHz ELTs.

Stakeholders noted that the FCC has not identified a spectrum issue or need with the 121.5 MHz frequency, and that the FCC appears to be acting solely to enhance aviation safety. Stakeholders highlighted their continued view that FAA, not the FCC, should make decisions that affect aviation safety. One stakeholder stated 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).

Finally, following discussion, FCC staff indicated that the agency would likely act to extend the initial and reply comment periods by thirty days each in response to the stakeholders' recent written request.

Pursuant to the Commission's rules, this letter is being submitted for inclusion in the public record of the above-referenced proceeding.

Sincerely,

A handwritten signature in black ink that reads "Bruce E. Lundegren". The signature is written in a cursive, flowing style.

Bruce E. Lundegren  
Assistant Chief Counsel for Advocacy

Copy to: Jeffery Tobias, Federal Communications Commission