

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

In the matter of )  
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)  
AIRCELL, INC. )  
)  
Petition, Pursuant to Section 7 of the Act, for a )  
Waiver of the Airborne Cellular Rule, or, in the )  
Alternative, for a Declaratory Ruling )  
)

ORDER

Adopted: October 7, 2002

Released: October 8, 2002

By the Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. On August 29, 2002, AT&T Wireless Services, Inc., Cingular Wireless LLC, and Verizon Wireless (petitioners) filed an Emergency Petition for a Declaratory Ruling in which they allege that AirCell, Inc. (AirCell) is in violation of the terms of its waiver and of its experimental authorization.<sup>1</sup> Pursuant to a waiver of section 22.925 of the Commission’s rules, AirCell’s cellular licensee partners operate a system using cellular telephone equipment specially designed to provide service to customers on board aircraft without causing harmful interference to terrestrial cellular systems. AirCell also holds an experimental license allowing it to test enhancements to that system. The petitioners’ allegations are based upon a presentation AirCell made before an airline industry group. According to the petitioners, AirCell claimed in its presentation that it had developed technology which would allow the use of unmodified cellular handsets aboard aircraft through the use of airborne repeater/translator stations which may employ jamming of certain channels. The petitioners request expedited action to declare that AirCell is violating the terms of its waiver and experimental authorization, the Commission’s rules, and the Communications Act, and ask that the matter be referred to the Enforcement Bureau.

2. In its response, AirCell states that the presentation relied upon by the petitioners was merely an exploration of possible future technologies that might be employed to expand the communications services available to passengers and crew on commercial airlines.<sup>2</sup> According to AirCell, it has not deployed, nor tested outside of a laboratory setting, any of the technologies mentioned in the presentation or the petition. AirCell further states that it will seek authorization from the

<sup>1</sup> See In the Matter of AirCell, Inc., Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or, in the Alternative, for a Declaratory Ruling, *Emergency Petition for a Declaratory Ruling*, filed by AT&T Wireless Services, Inc., Cingular Wireless LLC, and Verizon Wireless, August 29, 2002. See also In the Matter of AirCell, Inc. Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or, in the Alternative, for a Declaratory Ruling, *Reply to Response to Emergency Petition for a Declaratory Ruling*, filed by petitioners, September 16, 2002.

<sup>2</sup> See In the Matter of AirCell, Inc. Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or, in the Alternative, for a Declaratory Ruling, *Response to Emergency Petition for Declaratory Ruling*, filed by AirCell, Inc., September 9, 2002 (*AirCell Response*).

Commission before undertaking any such deployment or testing that is not already permitted under the Commission's rules and the terms of AirCell's waiver and experimental authorization.

3. The petitioners present no evidence beyond materials from one presentation given by AirCell. Even if the petitioners' construction of the AirCell presentation is accurate, the giving of the presentation is not in itself a violation of the Commission's rules or the terms of AirCell's waiver or experimental authorization. Moreover, the presentation does not contain any evidence that AirCell has sought to operate the technology that is the subject of its presentation, or that such operation is imminent. In addition, AirCell has clarified to our satisfaction that it has neither tested nor deployed any devices in a manner which would violate its waiver or experimental authorization.<sup>3</sup> We are satisfied that the use of the terms "blocking" and "jamming" in the AirCell presentation, as well as any reference to the use of unmodified handsets, pertain to AirCell's exploration in the laboratory of potential engineering solutions to airborne service issues, solutions which AirCell may or may not pursue and deployment of which AirCell understands is not permitted under the terms of AirCell's current waiver authorization. In these circumstances, therefore, we find neither a need for a declaratory ruling nor a basis for any enforcement action.<sup>4</sup> If in future we are presented with additional evidence pertaining to this matter, we will consider it at that time.

4. We take this opportunity to emphasize that intentional jamming or interfering with other radio signals would constitute a violation of the Communications Act.<sup>5</sup> We also emphasize that AirCell's current waiver authorization explicitly requires that AirCell and its cellular licensee partners employ specially modified mobile units, not unmodified or "regular" handsets, in connection with the AirCell system.<sup>6</sup>

5. For the above reasons, IT IS ORDERED, pursuant to section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that the Emergency Petition for a Declaratory Ruling filed by AT&T Wireless Services, Inc., Cingular Wireless LLC, and Verizon Wireless IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William W. Kunze, Chief  
Commercial Wireless Division,  
Wireless Telecommunications Bureau

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<sup>3</sup> See AirCell Response, Appendix at 2, 4.

<sup>4</sup> For similar reasons, we decline to act on similar allegations made by AirCell against one of the petitioners. See Letter from Bill Gordon, V.P. Federal Regulatory Affairs, AirCell, Inc., filed September 18, 2002. See also response of petitioners, Letter from L. Andrew Tollin, Wilkinson Barker Knauer, LLP, filed September 23, 2002.

<sup>5</sup> See 47 U.S.C. § 333; see also 47 U.S.C. §§ 301, 302(a), 47 C.F.R. §§ 2.803, 2.1203, 22.377, <http://wireless.fcc.gov/services/cellular/operations/blockingjamming.html>.

<sup>6</sup> See In the Matter of AirCell, Inc., Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or, in the Alternative, for a Declaratory Ruling, *Order*, 14 FCC Rcd. 806 (WTB 1998), recon. granted in part, denied in part, DA 99-1522 (WTB 1999), *app. for rev. Denied* 15 FCC Rcd. 9622 (2000). The specific conditions of the waiver are contained in appendices A and B.