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The Honorable Marlene Dortch,
Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE, Suite 110
Washington DC, 20002

RE: Opposition to Proposed Changes to the Federal Communications Commission's Rules to Ban 121.5 MHz Emergency Locator Transmitters (ELTs), WT Docket No. 01-289, FCC 13-2

Dear Secretary Dortch,

The Aircraft Owners and Pilots Association (AOPA), on behalf of approximately 400,000 general aviation pilots and members nationwide, offers the following comments to the Federal Communications Commission (FCC) on its Review of Part 87 of the Rules Concerning the Aviation Radio Service. AOPA is the largest aviation association in the world. AOPA represents the general aviation industry – which is all aviation operations, pilots, owners, and manufacturers, other than scheduled commercial airlines and military aircraft. We are providing copies of these comments to the appropriate officials at the Department of Transportation, Federal Aviation Administration, National Telecommunications and Information Administration, Small Business Administration Office of Advocacy and interested Congressional Offices.

AOPA opposes the FCC's inappropriate interference with the FAA's regulation of emergency locator transmitters

AOPA opposes the FCC's proposed prohibition on the certification, manufacture, importation, sale or use of 121.5 MHz ELTs. The FCC should immediately abandon its proposed rule changes and continue to defer to the Federal Aviation Administration (FAA) on matters of aviation safety. The FCC's proposed ban on 121.5 MHz transmitters will have a negative impact on aviation safety, imposes unjustified costs of $500 million on general aviation aircraft owners and operators, and conflicts with federal aviation safety laws and regulations in that ELTs which transmit on 121.5 MHz are specifically authorized by law.

Set forth below, the FCC's notice is procedurally defective in both form and substance and is accordingly open to legal challenge.

First, the omission of a cost-benefit analysis and any discussion of potential safety benefits are arbitrary, capricious and inconsistent with established norms of the rulemaking process.

Second, the notice upon which the FCC is requesting comments is procedurally improper because it does not reflect the FCC's actual intent regarding their plan to ban the use of 121.5 MHz ELTs. It therefore

fails to provide meaningful notice of, and an opportunity to comment on, the FCC's timeline to ban the use of 121.5 MHz ELTs. We believe the aviation community is entitled to, and must be provided the opportunity to comment on the FCC's actual proposal to ban the use of 121.5 MHz ELTs.

Third, the FCC's proposal cannot properly be finalized without Congressional action or it would clearly conflict with federal law, 49 U.S.C. § 44712, and FAA's implementing regulations, 14 C.F.R. § 91.207. Implementation of the FCC's proposal would clearly conflict with current laws which provide that 121.5 MHz ELTs meet the national safety requirement to have a functional ELT installed in an aircraft.

Fourth, the FCC fails to comply with regulatory flexibility requirements, to the detriment of small businesses.

The FCC Intends to Ban 121.5 MHz ELTs

Although in the past, written opposition from the FAA and AOPA dissuaded the FCC from interfering in this area, on January 8, 2013, the FCC invited new public comments on whether it should ban the certification, manufacture, importation, sale or use of 121.5 MHz ELTs, and, if so, under what timetable. Subsequent docketed discussions—contrary to the proposed language of the FCC's published notice—indicate that the FCC has already decided to ban 121.5 MHz ELTs, regardless of the effect on aviation safety or of the costs on individual pilots and small businesses—and that the FCC further has already selected a ban date which it will neither disclose nor allow public comment on.

Background on Emergency Locator Transmitters

Emergency locator transmitters (ELTs) are carried aboard general aviation aircraft in the U.S. In the event of an aircraft accident, these devices transmit a distress signal on a radio frequency to alert air traffic control and other nearby aircraft to the location of the distressed aircraft. By statute, an ELT must be installed in virtually every U.S.-registered civil aircraft.

Congress first mandated ELTs in 1973, at which time ELTs transmitted distress signals on the 121.5 MHz radio frequency. In 1982 a satellite-based monitoring system was implemented (COSPAS-SARSAT) to provide a better receiving source for these signals. On February 1, 2009, the international COSPAS-SARSAT satellite system discontinued satellite-based monitoring of 121.5 MHz ELTs, instead only monitoring newer models of ELTs that transmit on the 406 MHz frequency. However, even though SARSAT refuses to monitor 121.5 MHz ELTs by satellite, 121.5 MHz ELTS still serve their original function of locating distressed aircraft by radio. These residual, radio-based safety benefits have resulted in Congress and the FAA's long-standing policy of allowing the continued use of 121.5 MHz ELTs even in the absence of satellite monitoring.

The search and rescue community seeks to Ban 121.5 MHz ELTs and in doing so, is attempting to force approximately 200,000 aircraft owners to replace 121.5 MHz ELTs with new 406 MHz ELTs—at a cost of $500 million. Because the FAA rightly opposes banning a safety device permitted by law and already installed in virtually every aircraft in the U.S., the Search and Rescue community has turned to the FCC.

The FCC should defer to FAA safety policy permitting continued use of 121.5 MHz ELTs

The FAA is the primary agency to determine federal policy on any matter affecting aviation safety, including the safety advantages of various ELTs and the means by which to encourage pilots to adopt the appropriate type of ELT or other emergency device. By its specialization and by its insight gained through long experience with aviation, the FAA is infinitely better equipped to resolve these complex issues than the FCC.

The FAA is comprised of subject-matter experts intimately familiar with ELTs and the operations of the aviation industry. Consideration of ELTs requires resolution of numerous policy and aviation safety issues which, under Congress's regulatory scheme, have been placed within the special competence of the FAA. A discussion surrounding the continued and future installation and use of emergency locating equipment comprises a number of technical aviation questions and an understanding of FAA's policies —issues that are primarily within FAA's arena of specialized expertise.

Furthermore, while the FCC may have narrow authority under 47 U.S.C. § 302 over equipment that transmits radio signals, such as ELTs, the FCC has no such charge over aviation safety. In fact, the FCC has historically deferred to the FAA on matters of aviation safety and has given great weight to the comments submitted by the FAA. For example, in 2010, the FCC prudently stayed its rules in deference to the FAA's expertise and knowledge of ELTs. AOPA strongly encourages the FCC to continue to defer to the FAA and to give heed to FAA's July 8, 2010 comments, which asked the FCC not to interfere with the regulation of ELTs. Allowing FAA to resolve this issue will ensure uniformity and consistency in the federal regulation of aviation safety.

The FCC's proposed rules conflict with federal aviation safety laws and policies

The FCC's proposal creates a conflict with 49 U.S.C. § 44712 and FAA regulation 14 C.F.R. § 91.207. Under 49 U.S.C. § 44712, ELTs that transmit on 121.5 MHz specifically meet the national statutory requirement to have a functional ELT installed in an aircraft. That is why the FAA officially stated in its prior comments that it would need to seek further authority from Congress in order to prohibit the use of 121.5 MHz ELTs. The FAA accordingly has refrained from banning 121.5 MHz ELTs and it has felt itself bound statutorily not to make any rules holding that 121.5 MHz ELTs do not fulfill the requirement to have an ELT. Likewise, at a minimum, the terms of 49 U.S.C. § 44712 make clear that this Commission cannot issue a rule stating that 121.5 MHz ELTs do not satisfy the requirement to have an ELT.

From a legal perspective, it makes no sense that the FCC could claim authority to ban the use of 121.5 MHz ELTs when the FAA and congressional statutes *allow* 121.5 MHz ELTs. Such rules by the FCC are likely to conflict not only with the FAA but also with the other coordinate branches of government. And the FCC's rulemaking authority is circumscribed by the Administrative Procedure Act, 5 U.S.C. §551 *et seq.*, which allows federal courts to "hold unlawful and set aside" any FCC "action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," such as acts "in excess of statutory limitations." 5 U.S.C. § 706.

Additionally, forcing aircraft owners and operators to spend money on upgrading an ELT means that they will not spend money on better safety enhancements or may have to sacrifice preventative maintenance to afford a 406 MHz ELT. These are points understood by the FAA, which understands the entire realm of aviation. There are a host of upgrades and equipment additions that are much better investments that have a proven benefit to safety. These include:

- Shoulder harnesses
- Seatbelt mounted airbags
- GPS/Moving Maps (portable or installed)
- Equipment and services that provide weather and or/traffic information in the cock-pit
- Engine monitors/analyzers
- Angle-Of-Attack/Envelope Protection Devices

Equipping with any model of ELT provides only a marginal safety benefit compared to the new installation of other, more critical safety technology. A study has never been conducted that has shown that requiring the general aviation industry to spend $500 million on new ELTs will have a greater safety benefit then voluntarily equipping with other technology more conducive to aviation safety.

Mandating 406 MHz ELTs will stunt the development of future emergency technology

The FCC's proposed rules will freeze and stunt the development of future emergency technology. By mandating one particular product, with set specifications, the FCC will preclude and disincentive new technology. In lieu of mandating specific equipment that will grow outdated as technology progresses, the federal government should take a performance-based approach that allows and promotes multiple technology options that meet set criteria.

Mandating specific equipment sets up the trap of forcing consumers to purchase new equipment each time the technology is updated or new technology is developed. It also precludes and disincentivizes pilots and owners from using new technologies—even though the technology may be better suited to their flight operations—simply because it doesn't meet the "regulatory requirement". As well, technology manufacturers are likely not to invest in the research and development of new and more efficient technologies when federal law mandates the use of older technology. In the interest of safety, the Search and Rescue community should use all available signals, not just one, and it should encourage pilots' use of alternative, affordable technology. This is best accomplished by allowing the use of any alternate technology so long as it meets certain performance-based standards—not by mandating the use of one, already-aging product. Safety is not advanced by promoting reliance on one system to the exclusion of all possible helpful technologies.

As well, safety is better served by encouraging pilots to adopt new safety technology rather than simply replace an already-installed ELT—particularly when ELTs of any model are much less likely to save lives than other new emergency devices. There has never been an in-depth analysis of the actual number of times that an ELT (121.5 or 406) has made a life or death difference after an aircraft crash. General

aviation aircraft crash infrequently and rarely rely on ELTs to be located. Additionally, situations involving downed aircraft that also include an incapacitated pilot are also rare. Frequently, pilots carry alternative technology that assists in locating and facilitating rescue. An ELT will rarely play into the life or death of a pilot. Nevertheless, because Congress mandated that each aircraft have an ELT, all planes are already more-than-adequately equipped for this remote contingency.

In contrast, other technology is far more useful for locating aircraft in the types of emergencies that actually occur - such as cell phones or Personal Locator Beacons. This fact is demonstrated in the review of the 13 incidents listed by the SARSAT community as "saves" in 2012. In reading the textual reports provided, eight of the thirteen "saves" are actually directly attributable to Personal Locator Beacons carried voluntarily by pilots. And given the superior and superseding technologies available or soon to hit the market, such as NextGen ADS-B, the FCC's debate over which frequencies ELTs should transmit over is flawed from the start.

The FCC neither provides notice nor allows comment on its real proposed end date for 121.5 MH ELTs

FCC's rulemaking process is also highly irregular because it does not give meaningful notice of its intended proposed changes. To maintain the integrity of the rulemaking process, it is universally accepted administrative law and practice that an agency puts forth a proposed rule and then seeks comment on it -- not the other way around. But the FCC is intending to move forward with a timeline to end the "use of 121.5 MHz ELTs" even though there is no such proposal in the "proposed rules" portions of the Federal Register notice or the "Third Further Notice of Proposed Rule Making" published January 8, 2013.

The FCC has failed to give adequate public notice of its real intentions

Initially, as part of its regulatory flexibility analysis, the FCC requested comments on the appropriate timing for ending the use of 121.5 MHz ELTs and whether a separate timetable is possible for small entities. The notice did not contain any specific proposed language on the timeline for ending use of 121.5 MHz ELTs. Subsequently, in a docketed discussion with FCC staff, AOPA and others, it was disclosed that the FCC has already made up its mind on this issue – it is planning to ban 121.5 MHz ELTs, the question is only when. We are concerned that in doing so, the FCC will disregard any cost-benefit data and it will implement a final phase-out deadline immediately after the current comments are received—without first allowing the public to comment on a concrete, proposed deadline.

Nothing in the FCC's notice or proposed rule mentioned that this was FCC's intention. The notice did not indicate that banning the total use of 121.5 MHz ELTS at the conclusion of the rulemaking, and without further notice and comment on an end date was on the table. The notice, at most, requested information about continuing ELTs and if it was possible to set an end date. Such roundabout discussions are not intended to put the public on clear notice. Only in discussions was it revealed that the FCC intends to ban all 121.5 MHz ELTs soon and without public comment on a proposed end date.

The FCC's Lack of Notice could Ground Planes and is Unlawful

The FCC's tactics are procedurally improper and counter to long-standing good practices of federal rulemaking. Good rulemaking practice requires seeking general information, then developing and proposing specific rules, and then seeking comments on the proposal, before adopting a final rule. Here, the FCC is trying to jump from seeking general information to adopting a final rule. No one will see the final rule before it is published.

Lack of notice and comment can have serious effects on aviation. One purpose of notice and comment is to ensure that the FCC's proposals would be technically feasible, such as by ensuring that manufacturers can produce enough units to install on planes in time. Failure to have comment on the feasibility of a proposed end date risks grounding planes who cannot re-equip in time.

In addition, failure to provide meaningful notice and consider public comment is a serious procedural error that could lead to a court overturning any final rules in order to vindicate the public interest participating in the rulemaking process.[1] Section 706 of the Administrative Procedure Act instructs reviewing courts to "hold unlawful and set aside agency action, findings and conclusions" that are "without observance of procedure required by law." 5 U.S.C. § 706(2)(D). The rulemaking provisions of the Act require that agencies provide notice of a proposed rule, invite and consider public comments, and adopt a final rule that includes a statement of basis and purpose. 5 U.S.C. § 553(b), (c). This obligation includes actually considering objections to proposed rules.[2] Section 553(b) (B) of the Administrative Procedure Act allows agencies to avoid public notice and comment *only* if such procedures would be "impracticable, unnecessary, or contrary to the public interest." This is a difficult and high standard to meet.[3] There is no emergency compelling the FCC to issue a final rule off of an

[1] *See, e.g.*, *North Carolina Growers' Ass'n, Inc. v. United Farm Workers*, 702 F.3d 755, 770 (4th Cir. 2012) ("because the Department did not provide a meaningful opportunity for comment, and did not solicit or receive relevant comments regarding the substance or merits of either set of regulations, we have no difficulty in" rejecting the agency's rule); *State of Ohio Dept. of Human Services v. U.S. Dept. of Health & Human Services, Health Care Financing Admin.*, 862 F.2d 1228, 1236 (6th Cir. 1988) ("If, as we have concluded, the [rule change] was not implicit in the regulation from the beginning, it could not be imposed later on without compliance with the notice and comment requirements of the Administrative Procedure Act.").

[2] *See, e.g.*, *San Luis Valley Ecosystem Counsel v. U.S. Forest Service,* Civil Action No. 04-cv-01071-MSK, 2007 WL 1463855 L 1463855, *10 -11 (D. Colo. 2007) ("Finally, and most troubling, is the correspondence in the record that suggests that the approval decision and Finding of No Significant Impact were **predetermined**, and therefore **unaffected by** either **the public comment** or the EA.") (emphasis added).

[3] *See, e.g.*, *South Carolina ex rel. Patrick v. Block*, 558 F.Supp. 1004, 1018 (D.S.C. 1983) ("Any notion that it is contrary to the public interest to allow notice and comment for those who will be affected, perhaps very seriously affected, by a . . . major program is unsound. This argument ignores the importance of public participation in administrative procedures and the clear mandate of the Administrative Procedure Act.").

ANPRM-like notice such as this or constituting good cause for doing so. Accordingly, the FCC's lack of notice of a concrete proposal and its apparent intention to disregard any objections may lead to legal challenges setting aside any final rule.

The FCC's Irregular Process Threatens to Repeat its LightSquared Debacle

The FCC should not create timetables for ending the use of 121.5 MHz ELTs at all—but especially not without openly soliciting and considering public comment on a concrete proposed final rule. AOPA is deeply concerned that the FCC will collect many comments on general topics and then issue a final rule banning the use of 121.5 MHz ELTs on a fixed and early date. Despite the tone and substance of the notice, this intention is not made clear. If the FCC's intention is to ban 121.5 MHz ELTs at an early date, the public is entitled to have the real proposal on which to submit its comments. As it is now, every commenter is merely guessing what the FCC will propose and implement to skirt the requirement to seek actual comments. Not publishing the FCC's full intent to publish a date to ban the use of 121.5 MHz ELTs in the proposal makes the opportunity to comment meaningless—and perhaps, deliberately so.

AOPA has been left with the unavoidable conclusion that the FCC was deliberately hiding the ball in order to slip unlawful and improper rules by the public. This is a blatant example of disregard for good rulemaking practices—as if the FCC is intent on repeating its recent LightSquared debacle.

The FCC should not Ban 121.5 MHz ELTs on Any Fixed Date

In addition, banning the use of 121.5 MHZ ELTs under a hard deadline is a bad policy decision that will harm aviation safety. In light of the gross disparity between the costs and benefits of a mandatory transition, AOPA believes that the FCC should allow the continued use of all 121.5 MHz ELTs already in use for the rest of their useful lives, rather than establish a grandfathering period or arbitrarily creating special rules for different classes of owners. The best course of action is therefore to let the FAA decide this issue in at least the next twenty years, taking into account the many facets of aviation safety. This period is based on the life cycle of an ELT and other issues such as the ADS-B mandate in 2020. After the FAA has the opportunity to determine the need for ELTs in light of ten-plus years of ADS experience, and twenty years of voluntary 406 MHz ELT equipage, then the issue of the future of ELTs should be revisited by the FAA, not the FCC.

Banning 121.5 MHz ELTs is economically unjustified under a cost-benefit analysis

Rigorous cost-benefit and regulatory-flexibility analyses apply to the FCC's proposed rules.

Furthermore, it is important to ensure that the proposed rules meet the standards governing the FCC's decision-making. In its Notice, the FCC has asked for comments about the costs and benefits of any new ELT requirements. This is an important and welcome inquiry, given that the FCC has **never** conducted

either a cost-benefit analysis of a ban on the manufacture, importation, sale or use of 121.5 MHz beacons or a cost-benefit analysis of a mandate of 406 MHz beacons.

Simply put, a thorough cost-benefit analysis should be done prior to any regulatory action, especially here where an agency seeks to regulate a matter outside its area of expertise. A rigorous cost-benefit analysis ensures that the FCC will (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs, (2) tailor regulations to impose the least burden on society, (3) select regulatory approaches that maximize net benefits, and (4) use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. See Executive Order 12866 (Sept. 30, 1993). In the past, the FCC has heeded Executive Branch policy and conducted cost-benefit analyses according to the same standards that other federal agencies must follow. See Exec. Order No. 13579, § 1 (July 11, 2011) (advising that independent agencies' regulatory decisions "should be made only after consideration of their costs and benefits").

Nevertheless, the FCC did not actually supply data and show its cost-benefit analysis, in order to allow public comment on it. Instead, as indicated by this proposal, the FCC appears to have already decided that such an analysis favors the Search and Rescue community. This lack of analysis is putting the cart before the horse. Indeed, the FCC's gross disregard for the cost-benefit reality of aviation safety is so arbitrary and capricious that it will open the FCC to legal action.

The FCC's proposed rules impose costs of $500 million on aircraft owners.

It is highly likely that under any properly-conducted cost-benefit analysis and regulatory flexibility analysis, the costs of the FCC's proposed rules far outweigh any benefits.

Changing the national fleet to 406 MHz ELTS will cost $500 million—a substantial sum to be born entirely by aircraft owners. The majority of general aviation aircraft are currently equipped with a 121.5 MHz ELT in order to comply with 49 U.S.C. § 44712 and 14 C.F.R. § 91.207, which require general aviation aircraft to carry a fixed ELT, of which 121.5 MHz ELTs are one approved model.

The economic impact to the aviation industry of a transition to 406 MHz ELTS is significant. In fact, an FAA study estimated it would take $500 million to equip the more than 200,000 aircraft that would need the new ELTs. In its 2010 letter to the National Transportation Safety Board (NTSB) addressing the Board's recommendation to require 406 MHz ELTs, the FAA Administrator highlighted the cost burden:

> "Before pursing authority from Congress to require the installation of 406 MHz ELTs, we completed a cost-benefit study based on data from the years 1990-2005. The study addressed the issue of safety and cost association with the termination of satellite monitoring of 121.5 MHz ELTs. Based upon the analysis, the FAA finds that the cost of equipping the general aviation aircraft and air taxi fixed-wing aircraft fleet approaches $500 million."

The Administrator noted, however, that aircraft owners have recognized the value of these devices and have voluntarily equipped more than 38,000 aircraft. More than 9,000 pilots now carry emergency position-indicating radio beacons in their aircraft, further enhancing their safety. And although the chief benefits of the FCC's proposals will be marginally beneficial to the Search and Rescue (SAR) community, all of these substantial costs will be borne by aircraft owners and operators. SAR has never come forward to say, however, how much money it will save by forcing aircraft owners to spend $500 million.

The FCC has not identified any data on whether the limited benefits to the Search and Rescue community justify this massive expense to general aviation. There is no way to tell if the Search and Rescue community will save any amount of money close to the costs it will impose on aircraft owners and operators.

No Measureable and Identified Safety Benefits will come from mandating the use of 406 MHz ELTs before 2020

No identified or significant safety benefit will come from mandating 406 MHz ELTs. Finding downed aircraft is rarely a problem or the difference between life and death. There has never been an in-depth analysis of the actual number of times that an ELT (121.5 or 406) has actually made a life or death difference after an aircraft crash. With the advent of ADS-B in 2020, any benefit from and ELT could be universally obsolete. The FCC has not shown or discussed any demonstrable or appreciable impacts on safety in its notice of a ban.

However, as the FAA knows, other safety technologies can prevent a crash and better protect pilots in an emergency—and regulators should prioritize encouraging voluntary equipage of all these technologies.

Voluntary equipage is a better way to replace 121.5 MHz ELTs

According to the FAA, to date, approximately 38,000 406 MHz ELTs have been installed so far, a number that will only increase due to normal life cycle replacements. The increasing amount of voluntary installations, coupled with the continued reduction in price of 406 MHz beacons, and the consideration that almost all new aircraft are now delivered with 406 MHz technologies (as reported by the General Aviation Manufacturers Association) makes this rulemaking unnecessary. In time, without any action from the FCC, 121.5 MHz ELTs will naturally decrease in use without any regulatory intervention at all.

NextGen Will Nullify Any Safety Benefits from 406 MHz ELTs before 2020

Yet, as the FAA transitions the national fleet to the Next Generation Air Traffic Control System (NextGen) and to Automatic Dependent Surveillance – Broadcast (ADS-B), the benefits of mandating an across-the-board use of 406 MHz ELTs will be nullified. ADS-B is already in use in portions of the United States and will provide improved flight tracking service for aircraft. In addition to providing updated flight tracking information every second, ADS-B also provides the aircraft registration number to air traffic control

(ATC). In the event of an emergency, ATC would be able to provide the last known aircraft position, to within one second, to rescuers; an area that, depending on the aircraft's speed, may be much smaller than the current search area provided by a 406 MHz unit. The FAA has mandated equipage of ADS-B with an expected compliance date of 2020. It is anticipated that ADS-B would be mandated for airspace that currently requires a Mode C transponder, which would result in an equipage rate of over 85 percent of U.S. aircraft.

As such, the FCC's attempt to mandate an alternate technology during the same time frame is simply unnecessary from a safety perspective. The chief aviation safety benefits of the FCC's proposed rules will disappear by 2020, if not sooner.

The sensitive policy concerns surrounding ELTs and the timing and means of the transition of the fleet to ADS-B are peculiarly within the comprehensive competence of the FAA. The transition has been subject to extensive debate and compromise in the policy-making spheres. Should the FCC interfere with the modernization of ways to track aircraft, it will conflict with an alternate, intricate regulatory schedule of transition and will create confusion for pilots and regulators alike. These issues strike at the core of FAA policy and its regulatory scheme and should not be interfered with.

The benefits of 406 MHz ELTs are already duplicative of other safety systems

Even in the short term, the availability and widespread use of alternate emergency technology means that mandating the use of 406 MHz ELTs is not likely to have a significant impact on aviation safety.

A variety of alternate technologies on the market help locate aircraft in emergencies. For instance, pilots are taking advantage of 406 MHz Personal Locator Beacons (PLBs), cell phones with GPS tracking, and commercial services such as SPOT and Spidertracks. Many of these products provide the same or superior tracking in an emergency as 406 MHz ELTs and more technology is emerging every day. It is therefore clear that an across-the-board mandate will force thousands of pilots to incur substantial costs without any measureable increase in their personal safety.

The FCC should not sacrifice aviation safety for the concerns of the Search and Rescue community

Ultimately, the FCC's proposed prohibition of 121.5 MHz ELTs is intended to provide benefits to the Search and Rescue community at the cost of $500 million to aircraft owners. Although SARSAT monitoring has ended, the FAA allows aviators to continue to use 121.5 MHz ELTs because 121.5 MHz ELTs still have important safety benefits. In effect, the FCC's ban on 121.5 MH ELTs would have the general aviation community conform to the wishes of the SARSAT community and forego these residual safety benefits. But, in fact, the FCC should examine how the SARSAT community can change to meet the needs of the general aviation community by accommodating a variety of systems that benefit consumers and maximize aviation safety.

In Alaska, there is an excellent example of a joint effort that enhances safety and promotes the use of new technology and reliance on more than one alerting system. The FAA's Flight Service is offering a new service to Alaskan Pilots—the ability to directly receive distress signals from satellite tracking devices while on a VFR Flight Plan. AOPA and the Alaska Airmen's Association have worked with the Flight Service for almost two years to support development of this new service. After a test program with users in different parts of the state, the FAA is now opening this service up to anyone who would like to participate.

The FCC's notice does not satisfy the regulatory-flexibility requirements in place to protect small businesses from unnecessary regulation.

In addition to a cost-benefit analysis, the proposed rules are subject to a separate but similar regulatory flexibility analysis for their impact on small business. 5 U.S.C. § 6003. The regulatory flexibility framework requires the FCC to describe and estimate (1) the number of small entities to which the proposed rule will apply, (2) all recordkeeping burdens, (3) all federal rules which may overlap or conflict with the proposed rule, and (4) any significant alternatives to the proposed rule that minimize any significant economic impact on small entities, including alternate timetables and the use of performance standards instead of design standards.

Here, the FCC's regulatory flexibility analysis fails on at least three significant grounds.

First, its notice failed to conduct any analysis of significant alternatives to its rules including the use of performance standards rather than design standards. As discussed above, it is clear that in lieu of mandating specific equipment that may grow outdated as technology progresses, the federal government should take a performance-based approach that allows and promotes multiple technology options that meet set criteria.

Second, as discussed above, the FCC's proposal creates a conflict with 49 U.S.C. § 44712 and FAA regulation 14 C.F.R. § 91.207, which is an independent basis for failing the regulatory-flexibility analysis.

Third, the FCC's notice inadequately describes the number and type of small business impacted by the proposed rules and does not seriously address the burdens of the proposed rules in any detail. The proposed rules will impact small businesses that design, manufacture, and install both ELTs and alternate technologies, as well as small businesses engaged in aviation that rely on aircraft that use ELTs. Given that many general aviation owners are small businesses and individual commercial or recreational pilots, these regulations are poised to have a substantial impact on small entities. Small manufacturers may lose their ability to design new products or manufacture existing products, and all small-entity aviators will lose the ability to continue to use existing products in which they have already invested substantial amounts. The proposed analysis does very little to identify, categorize, or quantify this impact and the statute requires more.

Accordingly, before issuing the proposed rules and proposed regulatory flexibility analysis, the FCC should have conducted a detailed study to determine the number of affected small entities, their sales

and revenue levels, and the financial impact of such regulations on their value as going concerns. Because the FCC did not first seek comments regarding the impact of the proposed rules on small entities, it must now withdraw the current proposed rules. This data, if it had been collected as required by statute, would have supported an inevitable conclusion: that requiring a fleet of 200,000 aircraft to remove old equipment and install new equipment (and then do so again by 2020) will create a logistical nightmare for small businesses—a headache completely unwarranted by any safety benefits.

The Proposal is counter to the FCC's stated goals.

The FCC's stated goals in regulating 121.5 MHz ELTs are (1) to ensure that its rules remain up-to-date, (2) to accommodate new technologies, (3) to facilitate the efficient and effective use of the aeronautical spectrum, (4) to avoid unnecessary regulation, and, above all, (5) to enhance the safety of flight. None of these goals will be advanced by the FCC's proposed regulations.

Rules remain up-to-date: To ensure that the FCC's rules remain up-to-date, the FCC should promote the use of alternate technologies that meet certain performance-based standards. Such a standards-based approach will accommodate new technologies and will allow pilots the flexibility to select among multiple options for meeting the standards. Because the FAA is the proper agency to set performance standards, the FCC should desist from altering its currently-permissive rules at this time.

Accommodating new technologies: If enacted, this proposal would effectively mandate the use of one technology, which is contrary to the goal of accommodating changing technologies. Additionally, it would effectively freeze the entire aviation industry with 2013 technology, thus making it impossible from a market standpoint to introduce new technology without mandating a further switch.

Facilitating the efficient and effective use of the aeronautical spectrum: The proposal does not discuss any issues relating to the efficient and effective use of aeronautical spectrum. It is difficult to understand or discuss why the FCC feels this effort would have a positive effect since the 121.5 MHz frequency will remain the emergency frequency.

Avoiding unnecessary regulation: This proposal is unnecessary regulation. To date, there has never been any data produced that indicates an ELT of any kind has significantly improved safety so much that it warrants massive costs to the industry. The only reference to a study of this kind was in the FAA's response to the National Transportation Safety Board, which states that an FAA study of approximately 16 years' worth of accidents indicated that ELTs did not play a role in a sufficient number of accidents to successfully pass a cost-benefit analysis. Based on the cost of mandatory equipage with 406 MHz ELTs, the rate of voluntary equipage, and the use of new technology such as EPIRBs, PLBs and commercial services, the FAA chose neither to seek authority from Congress nor to require the installation and maintenance of 406 MHz ELTs. It is similarly unnecessary for the FCC to mandate an across-the-board transition.

Enhancing the safety of flight: Unlike the FAA, the FCC is not responsible for aviation safety nor is it in a position to fully comprehend aviation safety. This proposal lacks any data to prove that the proposed

changes to ELTs would make a significant difference and provide sufficient new safety benefits to warrant such a considerable cost. Safety enhancing technologies like ADS-B, inflatable restraints, weather in the cockpit, and GPS would have a greater "safety bang" for the money spent. Additionally, an action that effectively promotes the reliance on one system and device for locating downed aircraft is contrary to aviation safety, which is best promoted by a redundant approach.

The FCC should support education in lieu of mandates.

AOPA strongly supports and is taking an active role in educating the pilot community on the benefits and limits of 121.5 and 406 MHz ELTs. AOPA is also educating pilots and aircraft owners on other technology such as personal locator beacons and cell phones equipped with global positioning system receivers, both of which provide a locator signal that can be tracked. AOPA has been directly involved in providing education to the pilot community on this topic through *AOPA Pilot Magazine*, aviation trade shows and work with the SARSAT community. The association will continue to remain actively engaged in providing information to aircraft owners and operators so they can make an informed decision as to which form of ELT is best for them.

AOPA is confident that its educational efforts have played a major role in the recent voluntary of equipage of thousands of pilots with 406 MHz ELTs and other technology such as personal locator beacons.

Conclusion

The FCC should immediately withdraw its proposed rules and defer entirely to the FAA on the proper regulation of ELTs. The FCC's proposed actions are unlawful, procedurally irregular, conflicting with FAA safety policy and laws, economically unjustified under a cost-benefit analysis, and will freeze and stunt the development of future emergency technology.

Should the FCC take actions to discourage or ban the manufacture or use of 121.5 MHz ELTs, it would create a conflict with 49 U.S.C. § 4471214 and 14 C.F.R. § 91.207, which permit pilots to use 121.5 MHz ELTs. These provisions were adopted as the result of considered deliberation by the foremost federal regulatory experts on aviation safety. Given pilots' obvious need for uniformity of federal policy on ELTs, the FCC should defer to the FAA, avoid a conflict with laws governing aviation safety, and desist from issuing any rules discouraging the use of 121.5 MHz ELTs.

Substantial costs (but fleeting benefits) will accompany any mandate requiring aircraft owners to replace their existing ELTs with 406 MHz ELTs. Switching from a 121.5 MHz ELT to a 406 MHz ELT imposes an aggregate cost of $500 million on aircraft owners. In most cases, these costs will far outweigh the safety benefits of a new ELT. The decision of which ELT to select should therefore be left in the hands of individual aircraft owners and operators who are best positioned to evaluate their unique flight profiles and existing equipment and determine which ELT, or alternative services and devices, offer the appropriate amount of protection. In particular, the proposal does not take in to account emerging tracking technology nor the future capabilities of ADS-B, all of which technologies can

achieve the same safety benefits of the FCC's proposal. A rigorous, up-to-date cost-benefit analysis of the means of encouraging the use of advanced ELTs, as well as a regulatory flexibility analysis, will show that the costs of the proposed rules far outweigh any benefits.

In lieu of mandating specific equipment, federal policy should take a performance-based approach to aircraft emergency alerting. An approach that allows and promotes multiple options or combinations of options such as the use of Personal Locator Beacons or other portable devices and commercial services for alerting is better than requiring one specific technology that may grow outdated as technology progresses. As it has in the past, AOPA will continue in the future to actively educate the general aviation community on the benefits and limitations of all technologies, increasing the ability of pilots and aircraft owners to select the options best suited to their needs.

The FCC accordingly should desist from adopting any new rules governing ELTs.

Respectfully Submitted,

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