

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

In the Matter of)
BREITLING U.S.A., INC.)
Request for Waiver to Permit Type Certification)
of Breitling Emergency Watch Emergency)
Locator Transmitter)

ORDER

Adopted: October 15, 2001

Released: October 18, 2001

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. Introduction. On April 30, 2001, Breitling U.S.A., Inc. (Breitling) requested that we permanently extend and modify the conditional waiver of Sections 87.141(i), 87.143(d)(4), 87.147(a) & (b), and 87.193 of the Commission's Rules, granted on July 19, 2000, to permit equipment authorization for the Breitling Emergency Watch (the "Emergency"). For the reasons set forth below, we grant Breitling's request for waiver to the extent described herein.

2. Background. The Emergency is a back-up safety device designed to supplement conventional 121.5 MHz Emergency Locator Transmitters (ELTs). It is our understanding that the Emergency is intended to be used by survivors of an aviation distress incident to facilitate being located by search and rescue (SAR) personnel. The device is worn on a person's wrist, and activated by breaking a cap and uncoiling an antenna from the watch case.

3. Under Sections 87.131-87.147 of the Commission's Rules, aviation ELT stations must meet certain technical requirements. Absent a waiver of these standards, Breitling's Emergency could not be certified for operation under Part 87 of the Commission's Rules. On July 2, 1999, Breitling requested a waiver to permit certification of the Emergency. Breitling's waiver request was coordinated with the Interdepartmental Radio Advisory Committee (IRAC), which had no objection to the FCC granting the requested waiver to Breitling, provided that the following conditions were satisfied: (1) that the Emergency be sold only to licensed pilots; (2) that the device be operated only in aviation emergency situations; (3) that the device be sold and operated on a one-year trial basis, with the condition that the FCC would immediately terminate the waiver at the request of the Federal Aviation Administration (FAA) because of reported interference to the National Airspace System; and (4) that Breitling provide records of all purchases, including pilot license number, to the FAA every month during the one-year test period, and make the records available to the Federal Government upon request. On July 19, 2000, we

1 47 C.F.R. §§ 87.141(i), 87.143(d)(4), 87.147(a),(b), 87.193.

2 Letter to D'wana R. Terry, Chief, Public Safety and Private Wireless Division, Federal Communications Commission from Aaron M. Panner, counsel for Breitling, dated April 30, 2001 (Permanent Waiver Request).

3 Id. at 1.

4 Id.

5 See 47 C.F.R. §§ 87.131-87.147.

6 Request for Waiver to Permit Equipment Authorization for the Breitling Emergency, dated July 2, 1999.

granted Breitling's request for waiver, subject to the IRAC conditions, for a one-year trial basis.⁷ We noted that a permanent waiver would be considered following the trial period if, in the opinion of the FAA, no significant problems to the Air Traffic Control (ATC) operations occurred.⁸

4. On April 30, 2001, Breitling requested a permanent waiver. It states it will continue to meet the conditions of the original waiver, except that it asks that the condition restricting sale of the Emergency to licensed pilots be eliminated.⁹ On July 16, 2001, we sought comment on Breitling's permanent waiver request.¹⁰ Three parties filed comments supporting Breitling's request for waiver.¹¹

5. *Discussion.* Section 1.925 of the Commission's Rules provides that we may grant a waiver if it is shown that (a) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (b) in light of unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹² We find that the waiver requested by Breitling is warranted under the circumstances presented. Specifically, we conclude that the underlying purpose of the subject rules would not be served by application to the instant case and grant of the requested waiver would be in the public interest.

6. We agree with Breitling and the commenters that Breitling should be granted a permanent waiver. Breitling notes that specific measures it has taken to reduce the risk of misuse of the Emergency, such as the design for a single use and manual activation, and a requirement for purchasers to register with Breitling and receive information about the function and usage restriction of the device, have proven to be effective.¹³ AOPA, which represents over 375,000 general aviation pilots, supports the permanent waiver and notes that Breitling is committed to long-term activities that reduce the risk of misuse and enhance the effectiveness of the device by requiring dealer training and maintaining an owner information database.¹⁴ DiPaolo and Sturdevant, experienced SAR personnel, agree and state that the Emergency is a positive step toward enhancing the effectiveness of search and rescue operations for survivors of downed aircraft.¹⁵ FAA also supports granting a permanent waiver.¹⁶

⁷ Letter to Breitling U.S.A., Inc. from D'wana R. Terry, Chief, Public Safety and Private Wireless Division, Federal Communications Commission, dated July 9, 2000.

⁸ *Id.* at 3.

⁹ *Permanent Waiver Request* at 2.

¹⁰ Wireless Telecommunication Bureau Seeks Comment on Request for Waiver By Breitling U.S.A., Inc. for Type Certification of Breitling Emergency Watch Emergency Locator Transmitter, *Public Notice*, 16 FCC Rcd 13874 (WTB PSPWD 2001).

¹¹ Comments were filed by the Aircraft Owners and Pilots Association (AOPA), Carl DiPaolo and Kenton Sturdevant (DiPaolo and Sturdevant), and the FAA. No reply comments or *ex parte* submissions were filed.

¹² 47 C.F.R. § 1.925(b)(3). *See also WAIT Radio v FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969).

¹³ *Id.* at 2-3.

¹⁴ AOPA Comments at 1.

¹⁵ DiPaolo and Sturdevant Comments at 6.

¹⁶ FAA Comments at 1. We note that the FAA also suggests that a notice of proposed rule making be initiated to allow personal locator beacons to be sold to the general public. *See id.* We conclude that such a proceeding would be premature, because the record does not demonstrate a need to amend our rules at this time. However, we also note that the Commission recently initiated a comprehensive review the rules governing the Aviation Radio Service, in which it proposes to amend Part 87 to reflect recent technological advances, and seeks comment on additional related rule changes that would be in the public interest. *See In the Matter of Review of Part 87 of the*

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7. We also agree with Breitling and the commenters that the pilot-only restriction should be eliminated. Breitling believes that permitting sale of the Emergency to non-pilots will enhance aviation safety.¹⁷ Further, it notes that there are no restrictions on purchasing the Emergency outside the United States, and there have been no misuse or problems to ATC or SAR operations reported.¹⁸ AOPA notes that in some aircraft accidents only passengers survive, and that these survivors should not be precluded from receiving the same enhanced safety of life benefits as those afforded pilots.¹⁹ DiPaolo and Sturdevant also agree that there is no merit in withholding the opportunity to supplement the safety of non-pilots.²⁰

8. In light of the record in this proceeding and our analysis thereof, we believe that a waiver of Sections 87.141(i), 87.143(d)(4), 87.147(a)(b), and 87.193 of the Commission's Rules would further the purpose of the Commission's ELT rules. These rules allow ELTs to be used to alert others of a distress situation and assist SAR personnel in locating those in distress.²¹ Given that the purpose of the Emergency is not intended primarily to activate rescue operations, but instead as an accurate and rapid means to locate personnel once a SAR operation is underway, we conclude that is not necessary to require the power characteristics that Section 87.141(i) require in order to enhance detection of the device's signal by satellite receivers.²² Further, because it is a one-time use device with a 48-hour operating life and can be disabled by cutting the antenna or wrapping it around the body of the watch, we believe that it is not necessary for the Emergency to satisfy the transmitter control requirements of 47 C.F.R. § 87.143(d)(4).²³ We also believe that it would be appropriate to permit the higher operating temperature of -10° to +55° Celsius instead of -20° to +50° Celsius (as set forth in Section 87.147(a)), and to waive the battery labeling requirements of Section 87.147(b).²⁴ In this connection, we note that compliance with the operating temperature required by Section 87.147(a) would require a larger, heavier battery which would appear to be unnecessary given the limited ELT purpose of the device. Further, the labeling requirement required by Section 87.147(b) provides information concerning satellite detection and is based on output power characteristics which we have concluded are not necessary in this context. Finally, because the Emergency is designed to be worn on a person's wrist and intended to be used to rescue personnel in close proximity of a aircraft quickly, we believe that it is not necessary to be operated as part of an aircraft station or survival craft station as required by Section 87.193.²⁵ Thus, we conclude that grant of the requested waiver is warranted under the circumstances presented.

9. Additionally, we believe that it is in the public interest for the grant of such waiver to continue to be subject to the following conditions:

- 1) The product is operated only in aviation emergency situations.

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Commission's Rules Concerning the Aviation Radio Service, *Notice of Proposed Rule Making*, WT Docket No. 01-289, FCC 01-303 (rel. Oct. 16, 2001).

¹⁷ *Permanent Waiver Request* at 2.

¹⁸ *Id.* at 2-3.

¹⁹ AOPA Comments at 1.

²⁰ DiPaolo and Sturdevant Comments at 4-5.

²¹ *See* 47 C.F.R. § 87.193

²² *See* 47 C.F.R. § 87.141(i).

²³ *See* 47 C.F.R. § 87.143(d)(4).

²⁴ *See* 47 C.F.R. § 87.147(a),(b).

²⁵ *See* 47 C.F.R. § 87.193.

- 2) The product's manufacturer:
 - i) will keep records of all purchases, including pilot license number (when applicable);
 - ii) provide records every month to the FAA; and
 - iii) make the records available to the Federal Government upon request.

10. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, Breitling's request for waiver of Sections 87.141(i), 87.143(d)(4), 87.147(a)(b), and 87.193 of the Commission's Rules, 47 C.F.R. §§ 87.141(i), 87.143(d)(4), 87.147(a)(b), and 87.193, filed April 30, 2001, IS GRANTED subject to the conditions stated herein.

11. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau