

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

In the Matter of)
OMNITRONICS, LLC)
Request for Waiver)

ORDER ON RECONSIDERATION

Adopted: November 3, 2003

Released: November 6, 2003

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

1. Introduction. On January 16, 2003, Omnitronics, LLC (Omnitronics) filed a petition for reconsideration of the December 19, 2002, action by the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division (Division), denying Omnitronics' request for waiver of Section 95.419(a) of the Commission's Rules. For the reasons stated below, we deny Omnitronics' Petition.

2. Background. On December 10, 2001, Omnitronics submitted a request for waiver of Section 95.419(a) of the Commission's Rules, which prohibits the operation of a CB station transmitter by radio remote control. Omnitronics, a manufacturer of accessories to be used in the Citizens Band (CB) Radio Service, stated that it sought to bring to market a new product that would use 900 MHz spread spectrum cordless telephone technology to allow wireless hands-free operation of a CB radio transmitter. The product would consist of an earphone and microphone connected to a belt pack, and a relay to be connected to a separately sold CB radio. Omnitronics states that "the chance of an interfering signal keying the CB radio is virtually impossible," and that the CB radio will be remotely keyed only when four conditions were met: (1) correct spread spectrum PN codes; (2) correct scrambling seed; (3) correct unique 22 bit user I.D. number; and (4) correct 8 bit code that is transmitted when the belt pack VOX circuit has detected radio.

1 Petition for Reconsideration by Omnitronics, LLC (filed Jan. 16, 2003) (Petition). Omnitronics supplemented its petition on April 8, 2003. Letter dated April 3, 2003 from Martin O. Risso, Omnitronics, LLC to Marlene H. Dortch, Secretary, Federal Communications Commission (filed April 8, 2003) (Supplement).

2 Letter dated December 19, 2002 from D'wana R. Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau to Martin Risso, Omnitronics, LLC (Division Letter).

3 47 C.F.R. § 95.419(a). Remote control means operation of a CB transmitter from any place other than the location of the CB transmitter. 47 C.F.R. § 95.419(c).

4 Letter dated December 10, 2001 from Martin Risso, Senior Design Engineer, Omnitronics, LLC to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (Request for Waiver).

5 Id. at 1.

6 Id.

7 Id.

3. On December 19, 2002, the Division denied Omnitronics' request. The Division gave two reasons for its decision. First, the Division noted that Section 95.607 of the Commission Rules⁸ specifically provides that only the holder of the grant of authorization of the particular certified CB transmitter may make modifications to the transmitter, including the addition of any accessory or device not specified in the certification, or the addition of any switch, control, or external connection.⁹ Because Omnitronics is not the holder of the grants of authorization for the CB transmitters to which Omnitronics' product would be attached, the Division concluded that Omnitronics was not eligible to seek a waiver of Section 95.419(a) for Omnitronics' proposed product.¹⁰ In addition, the Division held that grant of a waiver of the rule at this time could circumvent the Commission's rulemaking process by inviting numerous similar requests, and would undermine the purpose of Section 95.419, which is to ensure that adequate means are available to the operator to render the transmitter inoperative should improper operation occur.¹¹ On January 16, 2003, Omnitronics filed the Petition seeking reconsideration of the Division's decision.

4. *Discussion.* First, Omnitronics argues that Section 95.607 does not apply to accessories or devices that connect to existing connectors on the CB transmitter and does not enable new functions that were not covered in the original grant of authorization.¹² For example, Omnitronics contends that Section 95.420 of the Commission's Rules¹³ allows the connection of a phone patch to a CB transmitter.¹⁴ Omnitronics argues that the technical specifications of Sections 95.637(d) and 95.669 of the Commission's Rules¹⁵ guarantee that accessories or devices connected to existing connectors will not cause improper operation of the CB transmitter, and states that the product it proposes to market would connect to the same existing connectors on a CB transmitter to which a phone patch would connect.¹⁶ Omnitronics argues that the Part 95 rules imply that accessories may be used with a CB station transmitter provided that the accessories only connect to existing external connectors on the CB transmitter, the accessory or device does not increase the radio frequency output of the CB transmitter, and the accessory or device does not cause the CB transmitter to operate on any radio frequency that is not specified in CB Rule 7.¹⁷

⁸ See 47 C.F.R. § 95.607(a), (b). See also Amendment of Parts 2 and 95 of the Commission's Rules to Require Type Acceptance of Transmitters Used by Class B and Class D Stations in the Citizens Radio Service, *Report and Order*, Docket No. 17196, 43 FCC 2d (1973) ("no additional accessory device, switch, or external control may be provided," except by the manufacturer).

⁹ *Division Letter* at 1.

¹⁰ *Id.*

¹¹ *Id.* at 1-2.

¹² Petition at 1; Supplement at 1.

¹³ 47 C.F.R. § 95.420.

¹⁴ Petition at 1; Supplement at 2-3.

¹⁵ 47 C.F.R. §§ 95.637(d), 95.669.

¹⁶ Petition at 1-2.

¹⁷ Supplement at 3-4. CB Rule 7 is Section 95.407 of the Commission's Rules, 47 C.F.R. § 95.407.

5. We disagree with Omnitronics' analysis of the CB rules. While the Rules may not expressly define the terms "device or accessory," we see no reason not to afford these terms their plain meaning, which would clearly encompass Omnitronics' proposed product. We also note that Omnitronics, in its original request, describes itself as "a manufacturer of accessories to be used in the Citizens Radio Service"¹⁸ Nor do we find Omnitronics' analysis of the Rules, maintaining that there is a distinction between internal and external connectors to CB transmitters, to be persuasive. We further note that though Section 95.420 permits connection of a CB station transmitter to a telephone by means of a phone patch device which has been registered with the Commission,¹⁹ the rule does not permit remote operation.²⁰ Thus, pursuant to Section 95.607, because Omnitronics is not the holder of the grant of authorization for the CB transmitters to which Omnitronics' product would be attached, Omnitronics is ineligible to seek a waiver of Section 95.419(a) for the product.

6. Moreover, even if Omnitronics' interpretation of Section 95.607 is correct, we continue to believe that granting a waiver of Section 95.419(a) under these circumstances would undermine the rule or circumvent the rulemaking process. Omnitronics argues that the Commission has granted a similar waiver request of the Family Radio Service (FRS) rules on the proviso that a rulemaking proposal be submitted, and states that it will submit a rulemaking proposal in a timely manner should the instant waiver request be granted.²¹ In the case cited by Omnitronics, the Division denied the petitioner's initial waiver request.²² A subsequent request for temporary waiver was granted.²³ In that case, however, the petitioner provided more detail and more safeguards than Omnitronics currently offers, and the petitioner sought waiver for an explicit limited duration. Similarly, in seeking a waiver of Section 90.20(e)(6) of the Public Safety Radio Pool rules,²⁴ LoJack Corporation sought its waiver pending resolution of LoJack's simultaneously filed rulemaking petition.²⁵ While Omnitronics offers to submit a rulemaking proposal at an unspecified time, Omnitronics is currently seeking an open-ended waiver. Thus, we believe that the precedent cited by Omnitronics is distinguishable.

¹⁸ Request for Waiver at 1.

¹⁹ 47 C.F.R. § 95.420(c).

²⁰ 47 C.F.R. § 95.420(a)(1).

²¹ Petition at 2 (citing GARMIN International, Inc., *Order on Reconsideration*, 16 FCC Rcd 7753 (WTB PSPWD 2001)).

²² See Letter dated February 28, 2000 from D'wana R. Terry, Chief, Public Safety and Private Wireless Division, to Andrew R. Etkind, General Counsel, GARMIN International, Inc.

²³ GARMIN International, Inc. *Order*, 15 FCC Rcd 19143 (WTB PSPWD 2000). This temporary waiver was extended for the duration of the associated rulemaking proceeding. GARMIN International, Inc., *Order on Reconsideration*, 16 FCC Rcd 7753 (WTB PSPWD 2001); GARMIN International, Inc., *Order*, 17 FCC Rcd 16108 (WTB PSPWD 2002).

²⁴ 47 C.F.R. § 90.20(e)(6).

²⁵ LoJack Corporation, *Order*, 15 FCC Rcd 18939 (WTB PSPWD 2000).

7. Accordingly IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by Omnitronics, LLC on January 16, 2003 IS DENIED.

8. 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, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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