

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

In the Matter of)
)
GARMIN INTERNATIONAL, INC.)
)
Request for Waiver of Sections 95.29(f)(1),)
95.119(a)(1), 95.181(a), 95.183(a)(4), and)
95.631(a) and (f) of the Commission's Rules to)
Authorize Manufacture, Sale, and Use of GPS)
Transmission Enhanced GMRS Units)

ORDER

Adopted: October 7, 2004

Released: October 27, 2004

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

I. INTRODUCTION

1. On May 15, 2003, Garmin International, Inc. (Garmin) filed a request for waiver of the General Mobile Radio Service (GMRS) rules.¹ Specifically, Garmin seeks waiver of Sections 95.29(f)(1), 95.119(a)(1), 95.181(a), 95.183(a)(4), and 95.631(a) and (f) of the Commission's Rules² in order to receive FCC certification for a GMRS transceiver that is capable of transmitting F2D emissions to transmit location information derived from the Global Position System (GPS) and user-generated text messages.³ For the reasons stated below, Garmin's request for waiver of the Commission's Rules is granted.

II. BACKGROUND

2. The GMRS, originally the Class A Citizens Band Radio Service, was established

¹ Letter dated May 15, 2003 from Garmin International, Inc. to D'wana Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission (Waiver Request). The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. *See* Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

² *See* 47 C.F.R. §§ 95.29 (f)(1), 95.119 (a)(1), 95.181(a), 95.183(a)(4), and 95.631(a) and (f). Garmin seeks waiver of the GMRS rules that require every GMRS transmission to be followed by station identification information, that allow only voice type emissions to be transmitted, that relate to permissible communications in the GMRS generally, that limit the types of emissions and data a GMRS transmitter is permitted to transmit, and that prohibit coded messages.

³ Waiver Request at 1.

over fifty years ago.⁴ It is a short-distance, two-way land mobile radio service available for communications that facilitate personal or business activities of licensees and their immediate family members.⁵

3. In 1996, the Commission established the Family Radio Service (FRS) as a very short range, two-way voice personal radio service to provide an affordable and convenient means of communications among small groups of persons, including families, with minimal regulation.⁶ The FRS shares frequencies in the 462 and 467 MHz bands with the GMRS.⁷

4. On June 22, 2000, Garmin, a designer and manufacturer of consumer electronic devices for the marine, aviation, automotive, and recreational markets, sought a waiver of Sections 95.193(a) and (b), and 95.631(d), of the Commission's Rules to allow it to manufacture and market transceivers capable of transmitting GPS location information on FRS channels.⁸ The Public Safety and Private Wireless Division (Division) of the Wireless Telecommunications Bureau granted the request on September 29, 2000, on the grounds that the technology would be useful for personal and public safety applications.⁹ Under its waiver grant, the Division permitted Garmin to receive FCC certification of a FRS unit that would permit users to transmit GPS location information using emission type F2D in a digital data burst of not more than one second.¹⁰

5. Subsequently, Garmin filed a petition for rulemaking seeking to amend the Commission's rules essentially to codify the terms of the waiver.¹¹ On December 20, 2001, the Commission issued a *Notice of Proposed Rulemaking* in which it proposed amending Sections 95.193(a) and (b), and 95.631(d), to revise the scope of permissible communications and emission types for FRS units.¹² The Commission subsequently amended its rules in a *Report and Order* released on February 10, 2003, to permit FRS transceivers to transmit GPS location information (including automatic responses to interrogation -- polling -- from other units) and

⁴ Amendment of Subparts A and E of Part 95 to Improve the General Mobile Radio Service (GMRS), *Report and Order*, PR Docket No. 87-265, 3 FCC Rcd 6554, 6554 ¶ 3 (1988).

⁵ See 47 CFR §§ 95.1, 95.181.

⁶ See Amendment of Part 95 of the Commission's Rules to Establish a Very Short Distance Two-way Radio Service, *Report and Order*, WT Docket No. 95-102, 11 FCC Rcd 12977, 12977 ¶ 2, 12983 ¶ 17 (1996).

⁷ Specifically, FRS channels 1-7 are also GMRS frequencies and FRS channels 8-14 are offset from GMRS frequencies. Compare 47 C.F.R. § 96.621 (GMRS frequencies) with 47 C.F.R. § 95.627 (FRS frequencies).

⁸ Letter dated Aug. 28, 2000 from Garmin International, Inc. to D'wana Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission.

⁹ Garmin International, Inc., *Order*, 15 FCC Rcd 19143, 19147 ¶ 10 (WTB PSPWD 2000).

¹⁰ *Id.* at 19147-48 ¶ 10.

¹¹ See Garmin International, Inc., Petition for Rulemaking, RM-10070 (filed Dec. 26, 2000).

¹² Garmin International, Inc., Amendment of Sections 95.193(a) and 95.631(d) to Authorize Manufacture, Sale and Use of GPS Transmission Enhanced Family Radio Service Units, and Amendment of Sections 95.193(a), 95.193(b), and 95.631(d) of the Commission's Rules in the Family Radio Service, *Notice of Proposed Rulemaking*, WT Docket No. 01-339, 16 FCC Rcd 22876 (2001).

user-generated text messages.¹³

6. On May 15, 2003, Garmin filed the current waiver request.¹⁴ As noted above, Garmin seeks waiver of Sections 95.29(f)(1), 95.119(a)(1), 95.181(a), 95.183(a)(4), and 95.631(a) and (f) of the Commission's Rules. Garmin states that it seeks to extend to GMRS licensees the public safety benefits of the location positioning technology that FRS users already enjoy.¹⁵ Like the FRS radios that Garmin manufactures, the proposed units would allow GMRS users to transmit text or location data to other GMRS users by manual action or command, and would automatically transmit GPS-derived location when polled by another unit, with the location of the transmitting unit displayed on the map of the receiving unit.¹⁶ Garmin asserts that here, as in the Division's FRS decision, grant of a rule waiver would serve the public interest.¹⁷

7. The waiver request was placed on public notice on August 18, 2003.¹⁸ We received comments from Douglas M. Smith (Smith) on behalf of Popular Wireless Magazines and from the Personal Radio Steering Group, Inc. (PRSG). Garmin filed a reply to the comments.

III. DISCUSSION

8. We may grant a waiver if the underlying purpose of the rules would not be served or would be frustrated by application to the instant case, and waiver would be in the public interest; or, if in view of unique or unusual factual circumstances, application of the rules would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁹ For the reasons set forth below, we conclude that application of the rules to the instant case would frustrate the underlying purpose of the rules and that a waiver would be in the public interest. Accordingly, we grant Garmin's waiver request to the extent indicated below.

9. As mentioned above, in the *FRS Report and Order*, the Commission found that the ability to transmit both voice and data would enhance the capabilities of that offering and provide the needed flexibility for the service to better serve the needs of the public.²⁰ As Garmin states in its waiver request, the public benefits recognized in the *FRS Report and Order* are at least as true with respect to GMRS units, because GMRS units operate at higher power and thus cover a wider

¹³ Garmin International, Inc., Amendment of Sections 95.193(a) and 95.631(d) to Authorize Manufacture, Sale and Use of GPS Transmission Enhanced Family Radio Service Units, and Amendment of Sections 95.193(a), 95.193(b), and 95.631(d) of the Commission's Rules in the Family Radio Service, *Report and Order*, 18 FCC Rcd 2349 (2003) (*FRS Report and Order*).

¹⁴ Garmin also filed a petition for rulemaking. See Garmin International, Inc., Petition for Rulemaking, RM-10762 (filed July 22, 2003). The rulemaking petition will be addressed in a separate proceeding.

¹⁵ Waiver Request at 2.

¹⁶ *Id.*

¹⁷ *Id.* at 1-2 citing *FRS Report and Order*, 18 FCC Rcd 2349.

¹⁸ Wireless Telecommunications Bureau Seeks Comment on Garmin International, Inc., Request for Waiver to Authorize General Mobile Radio Service Mobile Units Capable of Transmitting Global Positioning System Information, *Public Notice*, 18 FCC Rcd 16536 (WTB PSPWD 2003).

¹⁹ See 47 C.F.R. § 1.925(b)(3).

²⁰ See *FRS Report and Order*, 18 FCC Rcd at 2353-54 ¶¶ 8-11.

area.²¹ We find that the public safety applications of allowing transmissions of GPS location information and user-generated text messages would serve the public interest. The public safety benefits of allowing the transmission of GPS between these units will significantly enhance the ability of family or group members to locate lost group members, and enhance the usefulness of the GMRS to the public. We also conclude that the purpose of the GMRS rules would be frustrated by their strict application in this instance.

10. Two issues raised by the commenters warrant further discussion to ensure that this waiver is crafted to provide the relief necessary, without resulting in a departure from the basic nature of the GMRS:

11. *Station Identification.* The commenters expressed concern that granting the waiver request would, in essence, eliminate the requirement that GMRS licensees identify themselves by call sign after any transmission or communication.²² The commenters noted that the call sign identification requirement²³ serves as an important tool in identifying and resolving interference on GMRS frequencies.²⁴ In consideration of these comments, Garmin modified its waiver request.²⁵ Garmin generally agrees with the commenters that GMRS users transmitting data or text should be held to the same station identification requirements as other GMRS users.²⁶ It now seeks a waiver of the station identification requirement only with respect to those instances where the data is an automatic response to an interrogation for location information.²⁷ We find that Garmin's modification adequately addresses the concerns raised by PRSG and Smith. We agree with Garmin that this exception is warranted because the life of an incapacitated user could be at stake and the user may not be able to respond to a location inquiry by manual action or command or to comply with station identification requirements.²⁸ In addition, we note that the user that initiated the polling would have complied with the station identification requirement, so the identity of the polled unit could be obtained from that user if need be.

12. *Monitoring.* PRSG stresses the importance of maintaining the Commission's rules that require users to share channels cooperatively and to monitor frequencies before initiating a communications exchange and between transmissions during such an exchange.²⁹ Garmin agrees that a user should be required to monitor prior to taking affirmative action to transmit text or location data, and does not seek a waiver of the monitoring requirement for such transmissions.³⁰ It seeks a waiver only with respect to those instances where the data is an automatic response to an interrogation for location information, because the responding radio will not be capable of pre-

²¹ Waiver Request at 2, 6.

²² Smith Comments at 6; PRSG Comments at 3.

²³ See 47 C.F.R. § 95.119.

²⁴ Smith Comments at 6; PRSG Comments at 3.

²⁵ Garmin Supplemental Comments at 6.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ PRSG Comments at 3.

³⁰ Garmin Supplemental Comments at 6.

transmission monitoring.³¹ We agree with Garmin that such a waiver is reasonable and will not undermine the purpose of the monitoring requirement, given that the responding radio's transmission will occur immediately following the interrogation (prior to which the polling user monitored the channel to confirm that it was vacant), so it will be highly unlikely that other radios will be using the same channel during that brief time period.³²

IV. CONCLUSION AND ORDERING CLAUSES

13. We conclude that application of the rules to the instant case would frustrate the underlying purpose of the rules, which is to allow greater flexibility in its uses for personal communications. We also conclude that a waiver would serve the public interest because it could result in the GMRS being used for additional personal and public safety applications. Accordingly, we grant a two-year waiver to Garmin to permit it to manufacture and market GMRS transceivers capable of transmitting GPS location information on GMRS channels, subject to all of the conditions for transmitting location data and text in the FRS³³ and the following additional conditions and requirements:

--Garmin must design the units it proposes to manufacture such that the mobile units capable of transmitting text and GPS location data have integrated (*i.e.*, non-detachable) antennas.

--Garmin must design the units it proposes to manufacture such that transmission of text and GPS location data is limited to 462 MHz GMRS channels, as specified in Section 95.29(a) and (f); which channels are not repeater input frequencies.

--Garmin must design the units it proposes to manufacture such that transmission of text and GPS location data is limited to an authorized bandwidth of no more than 12.5 kHz.

--Garmin must design the units it proposes to manufacture such that a unit cannot automatically (*i.e.*, without manual action or command) poll other units to determine their location based on GPS-derived location information.

--Grant of this waiver is subject to the resolution of Garmin's pending petition for rulemaking, RM-10762.

--We may immediately terminate the waiver if harmful interference³⁴ is reported to the Commission.

14. Accordingly, IT IS ORDERED that pursuant to Sections 4(f) and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(f), 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the waiver request filed by Garmin International, Inc. on June 22, 2000, IS GRANTED IN PART to the extent indicated herein for TWO YEARS from the release date of this *Order*.

15. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331

³¹ *Id.*

³² *Id.*

³³ *See* 47 C.F.R. § 95.193(b)(2).

³⁴ Harmful interference for purposes of this waiver will be considered interference which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs or repeatedly interrupts another radiocommunication service operating in accordance with the Commission's Rules or the international *Radio Regulations*.

of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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