



Federal Communications Commission
Washington, D.C. 20554

January 6, 2016

DA 16-9

Mr. David A. Behar
P.O. Box 40204
Spokane, WA 99220

Re: Petition for rulemaking filed May 31, 2015

Dear Mr. Behar:

This is in response to the petition for rulemaking that you filed on May 31, 2015.¹ You assert that the Commission in its Experimental Radio Service *Report and Order*² added Section 2.805 to its Rules to permit the operation of a radio frequency (RF) device prior to equipment authorization under certain specific conditions, and that this rule section conflicts with other Commission rules for various wireless services which appear to prohibit operation under Section 2.805. You further state that, in response to an e-mail inquiry you made of Commission staff, you were told that Section 2.805 did not take precedence over the equipment authorization requirements for the various services.³ You state that your interest in this matter is your desire to conduct “an evaluation trial of a transceiver which meets the Commission’s technical requirements for its intended service, but for which equipment authorization under the Commission’s rules has not yet been applied.”⁴ You therefore request that the Commission amend its rules for those services to clarify that Section 2.805 takes precedence over wireless service rules that require the use of authorized equipment. You claim that the “contradictory language apparently prohibiting such operation [...] in some Rule Parts and Subparts pertaining to individual services” essentially renders operation of equipment under Section 2.805 moot.⁵ For the reasons set forth below, we dismiss the Petition.

The Commission’s general rule is that stations in the wireless radio services must be used and operated only in accordance with the rules applicable to their particular rule part and service and with a valid authorization granted by the Commission.⁶ The rules you have cited as requiring amendments are service-specific and require the use of certificated equipment when

¹ Petition for Rulemaking, Amendment of the Commission’s Rules to Remove Ambiguity in the Implementation of the Report and Order on Significant Changes to Experimental Rules (filed May 31, 2015) (Petition).

² See Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission’s Rules and Streamlining Other Related Rules, ET Docket No. 10-236; 2006 Biennial Review of Telecommunications Regulations – Part 2 Administered by the Office of Engineering and Technology (OET), ET Docket No. 06-155, *Report and Order*, 28 FCC Rcd 758 (2013); *Erratum*, 28 FCC Rcd 3096 (2013).

³ Petition at 1, n.4.

⁴ Petition at 2.

⁵ Petition at 1-2. Rules cited as containing contradictory language include 47 C.F.R. §§ 80.203, 90.203, 95.603, 95.129, 95.194, 95.209, 95.409, 95.851 and 95.1109. Petition at n.3.

⁶ 47 C.F.R. § 1.903(a). This rule applies to wireless radio services in Parts 13, 20, 22, 24, 26, 27, 74, 80, 90, 95, 97 and 101, and it governs if there is any conflict with the rules set forth in the various Parts listed. 47 C.F.R. § 1.902.

providing service under each rule part.⁷ Thus, you cannot operate an RF device to provide service under Parts 80, 90, or 95 unless you are using certificated equipment.

Section 2.805 was adopted in the Experimental Radio Service *Report and Order* to clarify and provide some flexibility for operating RF devices prior to equipment authorization under certain specific conditions, such as for experimentation, testing, and demonstration purposes.⁸ In contrast, the various service rules you cite require that only certificated devices be used to provide service under each rule part.⁹ Equipment operating under Section 2.805 is not operating under the various service rules, even though that section requires that devices operated under its authority prior to equipment authorization operate “in compliance with existing Commission rules.”¹⁰ Thus, a person operating an RF device under Section 2.805 is not to provide service using an uncertified device.

The service rules you cite do not render Section 2.805 moot, as you allege, because operation under that section serves a different purpose (experimentation, testing, and demonstration) than operation of certificated equipment under each of the service rule parts (providing authorized service). Therefore, we find that Section 2.805 does not conflict with the rule sections that you cite, and your petition to commence a Rulemaking proceeding to add language such as “except for operation under the provisions of §2.805 of the Commission’s Rules” for “each service-specific equipment authorization requirement”¹¹ plainly does not warrant consideration.

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 Sections 0.31(i), 0.241(e) and 1.401(e) of the Commission’s Rules, 47 C.F.R. §§ 0.31(i), 0.241(e) and 1.401(e), the petition for rulemaking filed by David A. Behar on May 31, 2015 IS DISMISSED WITHOUT PREJUDICE.

FEDERAL COMMUNICATIONS COMMISSION

Julius P. Knapp
Chief, Office of Engineering and Technology

⁷ See, e.g., 47 C.F.R. § 95.129 referenced in your petition. Petition at n.4. That rule states in part, “Every station in a GMRS system must use transmitters the FCC has certificated for use in the GMRS.”

⁸ The majority of the newly adopted Section 2.805 is identical to the prior provisions of Section 2.803(e) which had been in force since 1997. See In the Matter of Revision of Part 2 of the Commission's Rules Relating to the Marketing and Authorization of Radio Frequency Devices, ET Docket No. 94-45, *Report and Order*, 12 FCC Rcd 4533 (1997).

⁹ See, e.g., 47 C.F.R. § 90.203(a) which states that with limited exception, “. . . each transmitter utilized for operation under this part and each transmitter marketed as set forth in § 2.803 of this chapter must be of a type which has been certificated for use under this part.”

¹⁰ See 47 C.F.R. §§ 2.805(d)(1) and 2.805(e)(1).

¹¹ Petition at 2.