

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

In the Matter of
GARMIN INTERNATIONAL, INC.
Request for Declaratory Ruling, or in the
alternative, Waiver of Section 95.2761(c) of the
Commission's Rules
WT Docket No. 20-115

ORDER

Adopted: September 21, 2020

Released: September 21, 2020

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. Introduction. This Order addresses a request filed by Garmin International, Inc. (Garmin) for Declaratory Ruling, or in the alternative, Waiver of section 95.2761(c) of the Commission's Rules. Garmin seeks relief from section 95.2761(c) in order to obtain authorization for a hand-held device that will combine a low-power, terrestrial Multi-Use Radio Service (MURS) transmitter and an emergency satellite communications module in the same unit. Section 95.2761(c) provides that "[a] grant of equipment certification will not be issued for MURS transmitters capable of operating under both this subpart (MURS) and under any other subparts of this chapter (except part 15)." For the reasons stated below, we deny Garmin's request for a declaratory ruling, but find that it is in the public interest to grant Garmin's waiver request, subject to the conditions outlined in this Order.

2. Background. MURS is defined in part 95, subpart J, as "[a] two-way, short distance voice or data communication service for facilitating personal or business activities of the general public." The Commission established MURS in 2000 when reallocating the service from part 90 to part 95 to eliminate the individual licensing requirements for certain radio services. Garmin intends to manufacture a single unit handheld device with two transmitters: a low-power, terrestrial part 95 MURS transmitter to be used for two-way, short distance data terrestrial communication services and a previously certified part 25 module that will allow SOS emergency communications via the Iridium satellite system under a blanket

1 See Request for Declaratory Ruling or, in the Alternative, Waiver of Section 95.2761(c) of the Commission's Rules by Garmin International, Inc. (filed April 22, 2020) (https://ecfsapi.fcc.gov/file/1042456803042/Amended%20Garmin%20PDR%20or%20Waiver%20(4-24-20).pdf); Amended Request For Declaratory Ruling Or, In The Alternative, Waiver Of Section 95.2761(C) of the FCC's Rules, Waiver - Expedited Action Requested by Garmin International, Inc. (filed April 24, 2020) (https://ecfsapi.fcc.gov/file/1042456803042/Amended%20Garmin%20PDR%20or%20Waiver%20(4-24-20).pdf) (Amended Waiver Request).

2 Part 95, subpart J.

3 Amended Waiver Request at 1.

4 47 CFR § 95.2761(c).

5 47 CFR § 95.2703.

6 1998 Biennial Regulatory Review - 47 C.F.R. Part 90 - Private Land Mobile Radio Services, WT Docket No. 91-182, Report and Order and Further Notice of Proposed Rule Making, 15 FCC Rcd 16673 (2000).

license held by Iridium, provided the end user subscribes to the Iridium service.⁷ On April 24, 2020, Garmin requested that the Commission issue a declaratory ruling that section 95.2761(c) does not apply to its proposed, dual capacity handheld device, or in the alternative, that the Commission waive section 95.2761(c) of its Rules so that Garmin may obtain equipment certification for its device, despite its dual transmitting capability and the fact that it combines a licensed-by-rule service, i.e., MURS with a licensed satellite service.

3. *Discussion.* The purpose of a declaratory ruling is to terminate a controversy or remove uncertainty, and no such controversy or uncertainty exists here.⁸ Garmin argues that section 95.2761(c) “is inapposite to its proposed product” because “it is not meant to prohibit combining into a single unit a certified part 25 module used for emergency satellite communications and a MURS transmitter.”⁹ We disagree. As an initial matter, section 95.2761(c) governs Garmin’s proposed device. The provision is clear on its face and does not provide an exception for part 25 modules that do not require separate licensing.¹⁰ It precludes the combination of transmitting equipment, i.e., MURS end products capable of operating under other licensed or licensed-by-rule radio services. The rule states that “[a] grant of equipment certification will not be issued for MURS transmitters capable of operating under both this subpart (MURS) *and under any other subparts of this chapter* (except part 15).”¹¹ Garmin’s proposed handheld device possesses the kind of dual capability broadly proscribed by section 95.2761(c). As such, we find that it would not be appropriate to issue a declaratory judgment exempting the device entirely, and we deny Garmin’s request for declaratory relief.

4. We find, however, that it is in the public interest to waive section 95.2761(c) so that Garmin may nevertheless obtain authorization to produce its proposed combination handheld device. 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

5. We find here that Garmin’s proposed device contains an important public safety feature, which would not be brought to market if we were to strictly enforce the rule in this case. “The certified Part 25 module in the MURS unit would allow emergency communications to the outside world at the push of a button.”¹³ Second, while Garmin’s device, in fact, combines MURS capability with satellite communications capability, therefore triggering section 95.2761(c), we do not expect it to produce the harm the rule was intended to prevent due to its specific design and operational parameters.

6. Section 95.2761(c), previously 95.655(d),¹⁴ is prophylactic in nature and is intended to prevent abuse. “All new equipment manufactured to operate exclusively on MURS frequencies must be certified under Part 95, and no new equipment will be authorized which operates on both MURS

⁷ Amended Waiver Request at 2.

⁸ See 47 CFR § 1.2(a).

⁹ Amended Waiver Request at 4.

¹⁰ See 47 CFR § 95.2761(c).

¹¹ *Id.* (emphasis added).

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

¹³ Amended Waiver Request at 5.

¹⁴ See 47 CFR § 95.655(d) (2002) (“No transmitter will be certified for use in MURS if it is equipped with a frequency capability not listed in § 95.632 [MURS transmitter frequencies].”).

frequencies and Part 90 frequencies.”¹⁵ When the Commission enacted the equipment certification restriction in the context of prohibiting devices that combined MURS frequencies and part 90 frequencies, it reasoned that since “any benefits resulting from interoperability are outweighed by the potential for abuse and consequently, we will not permit a single radio unit to combine both MURS frequencies and FRS frequencies.”¹⁶ The Commission explained that abuse could occur when “the combination of MURS frequencies and FRS frequencies in a single unit [...] lead to operations on FRS frequencies which are incompatible with the intent of FRS.”¹⁷ The Commission later restructured the rules related to part 95 Personal Radio Services, reasoning in part that the continued restriction on combination devices was necessary to minimize consumer confusion regarding licensing obligations.¹⁸

7. We agree with Garmin that its device’s intended use does not flout the purpose of section 95.2761(c). Garmin maintains that the part 95 MURS transmitter and the part 25 module operate on different frequencies and will not operate simultaneously.¹⁹ Provided the device is constructed in this manner, we are persuaded that its dual purposes will be well segregated. Garmin further maintains that its customers will not be able to activate the part 25 satellite feature without a subscription.²⁰ Rather, Iridium and Garmin control the activation. Because the device is designed so that the MURS and part 25 satellite frequencies cannot be accessed simultaneously, the potential abuse the Commission envisioned when it adopted the restriction in 2002, namely, that combining MURS functionality with the functionality of a different spectrum band that could lead to incompatible operations in either frequency, is precluded in the instant case. Finally, neither the part 95 MURS transmitter nor the part 25 satellite transmitter requires the end-user to obtain an individual license.²¹ This feature effectively mitigates the danger that consumers will be confused as to whether they must secure a license for their specific device.

8. Therefore, we find that granting the requested waiver meets the first prong of section 1.925’s test insofar as it does not frustrate the underlying purpose of section 95.2761(c)—preventing abuse and/or consumer confusion—due to the device’s proposed design. Accordingly, we find that it is in the public interest to waive the application of section 95.2761(c) with respect to Garmin’s proposed handheld device.

9. *Conditions.* Nevertheless, we find it necessary to condition the relief granted herein in order to ensure transparency and prevent customer confusion. Failure to comply with these conditions will

¹⁵ *1998 Biennial Regulatory Review – 47 C.F.R. Part 90 – Private Land Mobile Services*, WT Docket No. 98-182, Memorandum Opinion and Second Report and Order, 17 FCC Rcd 9830, 9837-38, at ¶ 37 (2002) (MURS MO&O).

¹⁶ *Id.* at ¶ 38.

¹⁷ *Id.*

¹⁸ *See generally Review of the Commission’s Part 95 Personal Radio Services Rules*, WT Docket No. 10-119, Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration, 25 FCC Rcd 7651 (2010) (“PRS NPRM”); *Review of the Commission’s Part 95 Personal Radio Service Rules*, WT Docket No 10-119, Report and Order, 32 FCC Rcd 4292, 4312-4314 (2017) (“PRS R&O”) (addressing, among other things, the failure of then current users of General Mobile Radio Service (GMRS)/Family Radio Service (FRS) combination radios to obtain licenses for the GMRS component.) In the 2017 PRS R&O, the Commission recognized that “[m]uch of this problem likely arises as a result of the mass consumer marketing of combination devices for sale to the public in large quantities to users who do not know about or do not understand the licensing requirements attached to such radios and obligations associated with operating in the GMRS...” The Commission further noted that its decision to no longer certify combination radios “removes the confusion of whether a purchaser needs a license to operate devices in this band because they will be classified as either FRS or GMRS, not under both services.” *PRS R&O*, 32 FCC Rcd at 4314.

¹⁹ Amended Waiver Request at 2.

²⁰ *See id.*

²¹ *See id.*

result in automatic termination of the waiver with respect to Garmin's handheld device. Specifically:

- (1) Garmin must ensure that the part 25 component of its combination part 95 MURS/part 25 satellite handheld device is a provisioned service that requires each end user to first obtain authorization before accessing the satellite service.
- (2) Garmin must include a printed disclosure with its combination part 95 MURS/part 25 satellite handheld device indicating that the part 25 transmission capability of the device is provided by a third-party service provider and must be activated through affirmative action by the consumer.
- (3) Notwithstanding today's Order granting Garmin's waiver request, Iridium must continue to comply with the conditions of its license, including any limitations on the number of end user terminals or subscriber units.

10. *Conclusion.* Subject to the above conditions, we conclude that it is in the public interest to waive section 95.2761(c) of the Commission's Rules as it relates to Garmin's combination part 95 MURS/part 25 satellite handheld device described herein.

11. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and section 1.2 of the Commission's Rules, 47 CFR § 1.2, that the Request for Declaratory Ruling filed by Garmin International, Inc. on April 24, 2020, IS DENIED.

12. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and section 1.925 of the Commission's rules, 47 CFR § 1.925, that the Request for Waiver filed by Garmin International, Inc. on April 24, 2020, IS CONDITIONALLY GRANTED TO THE EXTENT PROVIDED ABOVE.

13. 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

Roger Noel
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