

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

In the Matter of	)	
	)	
Review of the Commission's Part 95 Personal Radio Services Rules	)	WT Docket No. 10-119
	)	
1998 Biennial Regulatory Review - 47 C.F.R. Part 90 - Private Land Mobile Radio Services	)	WT Docket No. 98-182 RM-9222
	)	
Petition for Rulemaking of Garmin International, Inc.	)	RM-10762
	)	
Petition for Rulemaking of Omnitronics, L.L.C.	)	RM-10844

**COMMENTS**

The Notice of Proposed Rulemaking in WT Docket 10-119 (NPRM or the Notice) would reduce spectrum flexibility, eviscerate privately owned infrastructure and complicate self-regulation in the General Mobile Radio Service.

Any changes to GMRS must be consistent with established FCC policy that this service is for the use of licensed private individuals.

**FCC Outreach Has Been Negligible**

No Notice of Inquiry, FCC workshop, meeting with the user community or even FCC blog entry preceded the issuance of this watershed NPRM. The FCC adopted it on circulation, not at an Open Meeting that could have allowed Commissioners to question staff proponents on the public record.

The Consumer Help Center, with "all the information [consumers] want from the FCC,"<sup>1</sup> has no information about the Notice and its drastic proposals. Unlike most other NPRMs, the agency has not even troubled itself to issue a News Release about the Notice. Only a small minority of affected citizens are likely to learn of it and express their views to the Commission.

**High License Fee is Unjustified**

Until the 1990s, GMRS was largely usurped by entities eligible in other radio services. PR Docket 87-265 addressed the problem by limiting GMRS eligibility to real persons and not other entities.<sup>2</sup>

That welcome decision made station location, frequency selection and operation traceable to individuals. It promoted the private resolution of problems without Commission involvement.

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<sup>1</sup> [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2010/db0727/DOC-300333A1.txt](http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db0727/DOC-300333A1.txt)

<sup>2</sup> In 1988, the Commission amended the GMRS rules to provide flexibility to the individual user and limit eligibility for new GMRS licenses to individuals. *See* 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 .

The policy collided, however, with the FCC's unrealistic fee, which is based on its earlier data collection practice before all-channel licensing.

The FCC has offered little if any evidence that the fee is derived from the costs of processing the denuded license or in enforcing the GMRS rules.

The cost of a GMRS license "may be larger than the price of the GMRS device," the FCC has conceded. "In addition, other individual radio devices, such as the Family Radio Service, do not pay such fees. These issues may contribute to the low rate of compliance with our licensing requirements for GMRS."<sup>3</sup>

MD Docket 08-65 proposed to reduce the GMRS fees but never did so. A later Order said that "comprehensive regulatory fee revision issues ... remain outstanding at this time" and will be "decided at a later time in a separate Report and Order."<sup>4</sup>

That Report and Order has never arrived. The indefensible GMRS license fee remains on the books, and if users needed another excuse to ignore the license requirement, the next development provided it.

### **Conflation of GMRS and FRS**

The FCC's authorization of GMRS and the Family Radio Service in the same radio finds its grim apotheosis in this Notice which would essentially merge the two services via license-by-rule.

It is already clear that purchasers of radios that conflate GMRS and FRS are unlikely to apply for licenses or familiarize themselves with the GMRS rules.

Today, suppliers of GMRS/FRS units offer only perfunctory mention that a license is required. In tiny print on the bottom of the radio package, or buried in the back of the manual, the warning seems designed to be disregarded. It can be a cognitive challenge even if the user detects it.<sup>5</sup>

The required license pertains to GMRS frequencies, not FRS, but the user can unwittingly select either service in the same unit and make unlicensed GMRS transmissions. This deviation from accepted interaction design principles<sup>6</sup> exposes the purchaser to legal liability.<sup>7</sup>

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3 Report and Order and Further Notice of Proposed Rulemaking, MD Docket 08-65, August 8, 2008 at 57.

4 Report and Order, MD Dockets 08-65 & 09-65, July 31, 2009, footnote 10.

5 "A user must be licensed prior to operating on Channels 1 through 7 on high power or 15 through 22... [A] 15 Channel GMRS model would need to be tuned to Channel 11 in order to communicate with a 22 Channel GMRS [*sic*] tuned to Channel 15." Owner's Manual, PR5000DX, Cobra Electronics, Chicago, IL.

6 A system should be designed such that users cannot make serious errors. Schneiderman, B. & Plaisant, C. (2005). *Designing the user interface: strategies for effective human-computer interaction* (4th ed.). Boston: Pearson Addison-Wesley, p. 76.

7 Unlicensed operation of a radio transmitter is one of the most serious violations under the Communications Act. Robert J. Hartman, 9 FCC Rcd 2057 (FOB 1994), citing Mebane Home Telephone Co., 51 Radio Reg. 2d (P&F) 926 (CCB 1982). Section 503 (b)(2)(C) of the Act provides for a forfeiture in an amount not to exceed \$11,000 for each day of a continuing violation not to exceed \$82,500 for any single act or failure to act. 47 U.S.C. 503(b)(2)(C).

The FCC should not authorize radios that conflate licensed with license-by-rule services. It must demonstrate the fortitude to address this longstanding issue, particularly as against the inevitable pleadings, testimonials and pressure from radio suppliers. No further showing of harm is needed.<sup>8</sup>

### **PR 87-265 Still Mandates Licensing**

The Notice proposes to eliminate individual GMRS licensing and asks, “If we license GMRS by rule, should we maintain the eligibility requirement that only individuals are permitted to operate GMRS or should we remove the prohibition on business use of GMRS devices?”<sup>9</sup>

The GMRS rules do not prohibit business use. They merely prohibit non-individuals — not just business entities, but organizations and institutions — from holding GMRS licenses.<sup>10</sup>

Abrogating this bedrock policy would require the FCC to *expressly vacate* its “new regulatory framework based upon responsibility for one's own communications as an individual GMRS system licensee.”<sup>11</sup>

There is no way to maintain this framework in a license-by-rule service, and the Notice offers no justification for dropping the eligibility requirement.

Without licensing, GMRS would face increased use by non-individuals and unidentified stations with uncertified equipment<sup>12</sup> at unknown locations. Such operators have had no Commission contact and are under no threat of license revocation.<sup>13</sup> They have little motivation to cooperate with unfamiliar persons or comply with rules they are unaware of or may reject on principle.<sup>14</sup>

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8 The FCC has already found that “In licensed services, the Commission can limit inappropriate or improper use by permissible communication rules and the associated range of sanctions for violation of such rules. For services licensed by rule, experience has shown that permissible communication restrictions are difficult to enforce, and such limitations tend to be more effective if they are imposed at the equipment certification stage rather than if they require user compliance.” Notice at 46.

9 Notice at 27.

10 Rule 95.181(a), 95.5(a)-(c).

11 Report and Order, PR Docket No. 87-265 at 15.

12 A newly delicensed service is an invitation to disregard equipment authorization requirements. As one manufacturer of uncertified radios told this commenter, “the FCC is just not a factor here in Montana.”

13 Where a license is not required, the FCC could void a user's authority to operate a station. It seldom does so and the Notice does not promise stepped-up enforcement. Moreover, it would entail contact with unlicensed consumers. The FCC's authority to inspect non-licensees has recently come under intense scrutiny. Some commenters advocate armed response to Commission investigators. See FCC's Warrantless Household Searches Alarm Experts, Wired.com, May 21, 2009, <http://www.wired.com/threatlevel/2009/05/fcc-raid/> and FOIA: FCC Warrantless Searches, Electronic Frontier Foundation, August 4, 2009, <http://www.eff.org/foia/fcc-warrantless-searches>.

14 Rule 95.7(a) requires all station operators and GMRS system licensees to cooperate in the selection and use of channels to reduce interference. Rule 95.7(b) requires licensees of GMRS systems suffering or causing harmful interference to cooperate and resolve the problem by mutually satisfactory arrangements.

Today, most consumer retail “bubble pack” GMRS/FRS radios do not include 467 MHz repeater input frequencies. But without licensing, market forces would likely push suppliers to offer “enhanced” models with these frequencies — pushing a new wave of non-licensees into repeater receivers.

### **Retain Repeaters and Base Stations**

The Notice seeks comment on whether repeaters and base stations are needed in GMRS given the availability of commercial services that allow for “more efficient use of the spectrum.”<sup>15</sup>

Without repeaters and base stations, evolution toward a more spectrum-efficient service would be hindered. The Notice unfortunately suggests that these vital GMRS components are technologically inferior and should be delicensed or closed.

One would be hard pressed to imagine a less-efficient regime than forcing private individuals, families and public-service volunteers to pay commercial wireless carriers in lieu of direct personal use of publicly owned spectrum, especially in emergencies when the carriers are unavailable, where their services are unnecessary or unsuitable, or in geographic areas unserved by such carriers.

### **Support Digital Emissions and Reuse**

If it wants to encourage spectrum-efficient technology in the GMRS, the Commission should signal its support for digital voice emissions and even cellular frequency reuse in GMRS.<sup>16</sup>

The FCC need not address specific digital rules in the current proceeding. It can remind licensees that digital voice is not permitted in GMRS until further notice. To promote innovation, however, it should state *in this proceeding* that it is not inclined to construe prospective digital emissions as prohibited signal obfuscation.

The Notice observed that GMRS and FRS analog radios “have been certified” with voice scrambling features. In fact, the Commission itself knowingly authorized radios that it believes are “inappropriate” and could “thwart” channel sharing and emergency communications.<sup>17</sup> The FCC should discontinue such authorizations.

Respectfully submitted,

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<sup>15</sup> Notice at 34.

<sup>16</sup> Cellular frequency reuse does not imply spectrum sharing between GMRS and Part 22 or Part 24 systems.

<sup>17</sup> Notice at 20.