

In the Matter of)
)
GARMIN INTERNATIONAL, INC.)
)
Request for Waiver of Section 87.173(b))
of the Commission's Rules Governing)
Assignable Carrier Frequencies)
in the Aviation Services)

³ See *International Standards and Recommended Practices, Aeronautical Telecommunications*, Annex 10 to the Convention on Civil Aviation, Vol. V, Aeronautical Radio Frequency Spectrum Utilization, Amendment No. 72, International Civil Aviation Organization, Montreal, 1997 (ISRP). When the ICAO adopts an International Standard and Recommended Practice, it is binding on the contracting countries. See Amendment of Part 87 of the Commission's Rules to Establish Technical Standards and Licensing Procedures for Aircraft Earth Stations, *Report* (continued....)

channel plan was adopted to alleviate the shortage of VHF Air Traffic Control (ATC) channels experienced in western Europe and in the United Kingdom.⁴ Seven western European countries and the United Kingdom implemented the 8.33 kHz channel plan in 1999.⁵ Accordingly, aircraft operating in the airspace of these countries must have the capability of transmitting and receiving on the 8.33 kHz spaced channels.

3. Section 87.39 of the Commission's Rules requires that (1) U.S.-registered aircraft employ type certified radios; and (2) aircraft radios must meet the technical requirements of Subpart D of Part 87 of the Commission's Rules in order to be type certified under the Commission's Rules.⁶ Subpart D of Part 87 contains a list of "assignable carrier frequencies or frequency bands" and includes carrier frequencies in the VHF aircraft band used for ATC communications (namely, 117.975 MHz to 136.975 MHz).⁷ The listed frequencies are based on 25 kHz spacing. There is no provision in the Commission's Rules for operating on 8.33 kHz spaced channels as envisioned by the ICAO channel plan. Accordingly, type certification of dual spacing transceivers may not be obtained absent a waiver of Section 87.173(b) of the Commission's Rules. However, the Commission has released a *Notice of Proposed Rule Making* to review the Aviation Radio Service rules and seeks comment on whether to permit the certification of dual spacing transceivers for aircraft also operating in countries which employ 8.33 kHz channel spacing.⁸

III. DISCUSSION

4. 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.⁹ We find that the waiver requested by Garmin is warranted under the circumstances presented. Specifically, we conclude that the underlying purpose of the subject rules would not be served by application to the instant case and grant of the requested waiver would be in the public interest. We note, as an initial matter, that we have granted similar waivers regarding dual spacing transceivers.¹⁰ As we have noted previously, two industry standard setting

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and Order, PR Docket No. 90-315, 7 FCC Rcd 5895, 5896 n.12 (1992). However, contracting countries are not required to implement 8.33 kHz spacing if their current channel spacing standards provide an adequate number of frequencies. ISRP at 6, para. 4.1.2.1 (note).

⁴ See *Plan for the 8.33 kHz Channel Spacing Implementation in Europe* (8.33 kHz Spacing Plan), Edition 2.0, European Civil Aviation Conference, Dec. 2, 1996 at 2.

⁵ The implementing countries are Austria, Belgium, France, Germany, Luxembourg, Netherlands, Switzerland and the United Kingdom. *Id.*

⁶ 47 C.F.R. § 87.39; see also 47 C.F.R. § 87.145 (requiring, with exceptions not relevant here, that radio equipment installed on air carrier aircraft must be type accepted and must meet FCC and FAA requirements).

⁷ The list of frequencies is contained in the table in Section 87.173(b) of our Rules. See 47 C.F.R. § 87.173(b).

⁸ See Review of Part 87 of the Commission's Rules Concerning the Aviation Radio Service, *Notice of Proposed Rule Making*, WT Docket No. 01-289, 16 FCC Rcd 19005, 19016 ¶ 24 (2001) (*Part 87 NPRM*). Comments are due March 14, 2002; reply comments are due April 15, 2002. See 66 Fed. Reg. 64785 (2001).

⁹ 47 C.F.R. § 1.925(b)(3). See also *WAIT Radio v FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969).

¹⁰ See Wulfsberg Electronics Division, Order, 15 FCC Rcd 10992 (WTB PSPWD 2000); Thomson-CSF Communications, Order, 15 FCC Rcd 10048 (WTB PSPWD 2000) (*Thomson Order*); Thomson-CSF Communications, Order, 14 FCC Rcd 3255 (WTB PSPWD 1988) (*Garmin Order*); Honeywell, Inc. Commercial (continued....)

organizations, RTCA, Inc. (RTCA) and Aeronautical Radio, Inc. (ARINC), have approved United States VHF transceiver standards that include 8.33 kHz spacing.¹¹ Moreover, the Federal Aviation Administration (FAA) has issued Technical Standard Orders (TSO) based on these industry standards.¹² As we noted elsewhere, aircraft must have the capability of communicating reliably with ground stations as directed, and on the frequencies specified, by air traffic controllers.¹³ Further, we believe that this capability could be impaired if United States-registered aircraft were unable to communicate effectively with ATC facilities in certain European countries on 8.33 kHz spaced channels.¹⁴ Accordingly, in the interest of air safety and operational efficiency, we have granted previous requests to allow type acceptance (now called type certification) of similar dual spacing transceivers. We believe the same factors that warranted grant of those waivers are present in the instant waiver requests submitted by Garmin.¹⁵ Thus, we conclude that Garmin has shown good cause for waiver of Section 87.173(b) of the Commission's Rules to permit type certification of its dual spacing transceivers. Therefore, we will grant the waiver requests, conditioned on the resolution of the *Notice of Proposed Rule Making*.

IV. ORDERING CLAUSES

5. Accordingly, IT IS ORDERED, pursuant to the authority of 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 C.F.R. § 1.925, that the Request for Waiver of Section 87.173(b) filed by GARMIN International, Inc. on December 4, 2001, IS GRANTED, subject to the resolution of the *Notice of Proposed Rule Making* in WT Docket No. 01-289.

6. IT IS FURTHER ORDERED that Section 87.173(b) of the Rules, 47 C.F.R. § 87.173(b), IS WAIVED to the extent necessary to permit type certification of GARMIN International, Inc.'s dual spacing transceiver, FCC Identification Number IPH-00661100.

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Flight Systems Group, *Order*, 13 FCC Rcd 16785 (WTB PSPWD 1998); and Rockwell Collins, Inc., *Order*, 13 FCC Rcd 2954 (WTB PSPWD 1998) (*Rockwell Order*).

¹¹ See, e.g., *Garmin Order*, 14 FCC Rcd at 3255 ¶ 2 (citing *Minimum Performance Standards for Airborne Communications Equipment Operating Within the Frequency Range 117.975 - 137.00 MHz*, RTCA DO-186(a); ARINC Characteristics 566A, 716 and 750).

¹² See FAA TSO-C37d, VHF Radio Communications Transmitting Equipment Operating Within the Radio Frequency Range 117.975 to 137.000 Megahertz, (9/23/92); and FAA TSO-C38d/C128, VHF Radio Communications Receiving Equipment Operating Within the Radio Frequency Range 117.975 to 137.000 Megahertz. (Sept. 23, 1992).

¹³ See, e.g., *Thomson Order*, 15 FCC Rcd at 10049 ¶ 4 (citing *Rockwell Order*, 13 FCC Rcd at 2956 ¶ 6).

¹⁴ *Id.*

¹⁵ See *Garmin Letter*.

7. 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

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