



Federal Communications Commission  
Washington, D.C. 20554

June 4, 2019

Northern California GMRS Users Group  
c/o Gregory J. Forrest  
1224 Rockledge #1  
Walnut Creek, CA 94595

Dear Mr. Forrest:

This is in response to the waiver request you filed on May 19, 2019, on behalf of the Northern California GMRS Users Group (NCGUG).<sup>1</sup> NCGUG seeks a waiver of sections 95.1761, 95.1771, and 95.1773 of the Commission's rules<sup>2</sup> to permit operation of equipment using part 90 Digital Mobile Radio (DMR) technology on certain General Mobile Radio Service (GMRS) channels at specified locations in California. For the reasons set forth below, we deny the request.

DMR is a digital mobile radio standard defined by the European Telecommunications Standards Institute and used in commercial products around the world. In 2016, NCGUG was granted an experimental license permitting the use of DMR on two GMRS channel pairs (462/467.600 MHz and 462/467.700 MHz) at two locations in California, for research to determine how modern narrowband digital systems might co-exist with traditional analog FM GMRS systems and whether digital operation in the GMRS would be in the public interest.<sup>3</sup> NCGUG states that the experiment was successful and yielded no apparent impact to the shared channel environment, while increasing the efficiency of GMRS communications.<sup>4</sup> The experimental license expired in 2017.

NCGUG now requests an open-ended waiver to permit the use of DMR on those GMRS frequencies and locations and at three additional locations, with an increased number of mobile units.<sup>5</sup> The Commission will grant a waiver if (a) it is in the public interest and the underlying purpose of the rule(s) would be frustrated or not served by application to the present case, or (b) in view of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable

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<sup>1</sup> Northern California GMRS Users Group, Request for Waiver (filed May 19, 2019) (Request).

<sup>2</sup> 47 CFR §§ 95.1761, 95.1771, 95.1773.

<sup>3</sup> Experimental Call Sign WK9XBL.

<sup>4</sup> See Request at 3-5.

<sup>5</sup> *Id.* at 2.

alternative.<sup>6</sup> NCGUG argues that grant of a waiver is in the public interest because use of DMR would provide the benefits of more modern communications equipment such as improved security and increased capacity, and that the underlying purpose of the rules would be served because the proposed operation would foster the shared-channel environment as it is practiced today without causing additional congestion for analog users.<sup>7</sup> We conclude that a waiver is not warranted.

In 2017, the Commission declined to adopt rules that would permit NCGUG's proposed operations. Specifically, it denied petitions for rulemaking proposing to permit the use of part 90 certified equipment without requiring that it also be certified under part 95, and to permit digital voice modulation techniques including DMR.<sup>8</sup> The Commission noted that comments regarding digital voice were split, and some commenters were concerned about the potential effect on analog communications.<sup>9</sup> Consequently, it declined to take action on those requests at that time because the record before it was insufficient to establish whether and how these changes should be made and their potential impact.<sup>10</sup> The Commission stated that "introducing a new modulation technique that is inconsistent with existing equipment would complicate the shared environment of GMRS channels without a record on how it could be done or whether to limit it to certain channels."<sup>11</sup>

We conclude that it is not in the public interest to grant a waiver to permit operations that the Commission so recently declined to authorize. The waiver process should not be used as a substitute for rulemaking.<sup>12</sup> We are "especially reluctant to grant a waiver when to do so would 'invite numerous other waiver requests which, if granted, would effectively circumvent the Commission's rulemaking function.'"<sup>13</sup> If NCGUG believes that the results of its experimental operations provide a sufficient record to address the concerns that the Commission expressed in 2017, it may pursue a petition for rulemaking, which "has the advantage of a full record covering a wide range of possible solutions, rather than being limited to the specific facts and circumstances presented in this case."<sup>14</sup>

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 section 1.925 of the Commission's rules, 47 CFR

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<sup>6</sup> 47 CFR § 1.925(b)(3).

<sup>7</sup> See Request at 5-7.

<sup>8</sup> See *Review of the Commission's Part 95 Radio Services Rules*, Report and Order, 32 FCC Rcd 4292, 4309, para. 42 (2017), *recon. pending*.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Motorola, Inc.*, Order, 25 FCC Rcd 15892, 15894, para. 8 (WTB MD 2010) (citing *Nextel Communications, Inc.*, Order, 14 FCC Rcd 11678, 11691-92, para. 31 (WTB 1999) (*Nextel*)).

<sup>13</sup> *Nextel*, 14 FCC Rcd at 11691, para. 31 (quoting *Verilink Corp.*, Memorandum Opinion and Order, 10 FCC Rcd 8914, 8916, para. 6 (CCB 1995)).

<sup>14</sup> *Robert D. Augsberg*, Letter Order, 29 FCC Rcd 11287, 11291 (MB AD 2014).

§ 1.925, the request for waiver filed on May 19, 2019, by the Northern California GMRS Users Group IS DENIED.

This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION



Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau