

RECEIVED

MAR 8 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Parts 2 and 15 To) ET Docket No. 93-1
Prohibit Marketing of Radio)
Scanners Capable of Intercepting)
Cellular Telephone Conversations)

REPLY COMMENTS OF
McCaw Cellular Communications, Inc.

McCaw Cellular Communications, Inc. ("McCaw"), by its attorneys, hereby submits reply comments with respect to the Notice of Proposed Rulemaking in the above-captioned proceeding.¹ The Notice "proposes to amend Parts 2 and 15 of its rules to prohibit the manufacture or importation of radio scanners capable of receiving frequencies allocated to the Domestic Public Cellular Radio Telecommunications Service."² This action is required by the Telephone Disclosure and Dispute Resolution Act, Pub. L. 102-556.³

As the Notice points out, the Electronic Communications Privacy Act of 1986 made it illegal intentionally to intercept

¹ FCC 93-1 (Jan. 13, 1993) ("Notice"). Comments were due on February 22, 1993.

² Id. at ¶ 1 (footnote omitted).

³ Id.

No. of Copies rec'd 014
List A B C D E

cellular communications.⁴ Despite this, and as evidenced in many of the opening comments filed in this docket, many scanner users regularly intercept and listen to conversations carried over the cellular frequencies. McCaw supports the efforts of the Commission to limit this illicit activity and to enhance the legitimate privacy expectations of cellular telephone users.

In an effort to help ensure that the Commission's rules do in fact achieve the purposes set forth in the Telephone Disclosure and Dispute Resolution Act, several of the opening comments suggest amendments to the rule sections proposed by the Notice.⁵ McCaw urges the Commission to take all steps possible to minimize evasion of the statutory mandate through the use of altered scanner equipment capable of receiving cellular conversations. At the same time, the Commission should ensure that its rules do not interfere with legitimate devices used by carriers as well as law enforcement personnel.

A number of opening comments were filed by persons who evidently are scanner users and who had access to one or another form letters. Some of these commenters argue, without any legal basis, that they are entitled to listen in on cellular

⁴ See id. at ¶ 3.

⁵ E.g., Cellular Telecommunications Industry Association; GTE Service Corporation; BellSouth Corporation, et al.; Vanguard Cellular Systems, Inc.; Southwestern Bell Mobile Systems, Inc.

frequencies. Others claim that the proposals contained in the Notice exceed the directive of the legislation. Many try to justify their electronic eavesdropping by arguing that cellular carriers should be responsible for ensuring that cellular conversations cannot be intercepted.

These arguments simply ignore the requirements of the Telephone Disclosure and Dispute Resolution Act and the Electronic Communications Privacy Act of 1986. The rules proposed by the Notice seek to implement the policies required by Congress, and to do so in a manner that is equitable to scanner manufacturers. Suggestions that scanner users have some entitlement intentionally to violate the privacy expectations of cellular users simply have no basis in law and infringe on the rights of such users.

For the reasons stated above, McCaw supports Commission efforts to enhance the privacy of cellular communications by adopting equipment certification requirements that limit the

manufacture, importation, and sale of scanner devices capable of monitoring cellular frequencies.

Respectfully submitted,

McCAW CELLULAR COMMUNICATIONS, INC.

By: Cathleen A. Massey By: Katherine M. Holden
Cathleen A. Massey *(initials)* R. Michael Senkowski
McCaw Cellular Communica- Katherine M. Holden
tions, Inc. Wiley, Rein & Fielding
1250 Connecticut Ave., N.W. 1776 K Street, N.W.
Suite 401 Washington, D.C. 20006
Washington, D.C. 20036 202-429-7000
202-223-9222

Its Attorneys

March 8, 1993