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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

**REPLY COMMENTS OF THE CONSUMER ELECTRONICS GROUP
OF THE ELECTRONIC INDUSTRIES ASSOCIATION**

The Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG") hereby replies to comments submitted in response to the above-captioned Notice of Proposed Rulemaking. Certain of those comments require a brief response.

First, the Cellular Telecommunications Industry Association has asked the Commission to expand the rules governing design of scanning receivers. Specifically, CTIA proposes that the Commission require that the capability preventing reception of cellular radio frequencies be incorporated in "the firmware of a microprocessor chip that cannot easily be detached from the circuit board"¹ EIA/CEG believes that this proposal is unduly restrictive.

1/ Comments of Cellular Telecommunications Industry Association, at 4 (Feb. 22, 1993).

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The Commission has already proposed to require that scanning receivers be "incapable of operating (tuning), or readily being altered by the user to operate, within the frequency bands allocated" for cellular service.² This rule would further specify that "[r]eceptors capable of 'readily being altered by the user' include, but are not limited to, those for which the ability to receive transmissions in the restricted bands can be added by clipping the leads of, or installing, a diode, resistor and/or jumper wire, or replacing a plug-in semiconductor chip."³ This language is more than adequate to communicate what is and is not permitted.

The Commission should not prevent manufacturers from developing alternative means of achieving the requisite restriction. They should not, for example, be precluded from relying on an integrated circuit that is not a "microprocessor" to prevent reception of cellular frequencies. Manufacturers should be granted a reasonable amount of discretion to make their own design decisions, so long as they are consistent with the statutory objective. This can be done without jeopardizing the legislative goal.

2/ Notice at Appendix A, proposed § 15.121.

3/ Id.

Second, BellSouth has urged the Commission to alter the proposed transition provisions for compliance of radio scanners with the new rules. In particular, BellSouth asks the Commission (1) not to grant pending equipment authorizations if they do not comply with the rules that go into effect on April 26, 1993, and (2) to revoke equipment authorizations for existing products, and thereby forbid them from being marketed (not just from being manufactured or imported), on April 26, 1994.⁴ EIA/CEG opposes both proposals.

In EIA/CEG's judgment, the transition provisions proposed in the Notice reflect the appropriate balance between the interests of effectuating a prompt transition and of avoiding undue burdens on manufacturers and retailers of radio scanners. Concerning the April 1993 deadline, it is more fair to curtail the filing of new applications, based on the pre-existing rules, than to forbid the issuance of equipment authorizations for products which complied with the pre-existing rules at the time they were designed and submitted for certification.⁵ As for the April 1994

4/ Comments of BellSouth Corporation at 3-6 (Feb. 22, 1993).

5/ It bears emphasis that the design process for new products can take more than a year and that a pending equipment authorization application may relate to a product designed long before the passage of the statute the Commission is now implementing. It also should be noted that even products first authorized after the April 1993 deadline (because the
(Footnote 5 continued on next page)

deadline, it would be utterly unreasonable to forbid the marketing of products, properly authorized under the pre-existing rules, which were lawful when manufactured or imported, merely because they remain in a retailer's inventory at the time an arbitrary date passes. BellSouth's proposal in this regard is inconsistent with the Commission's past practice⁶ and with the express intent of Congress.⁷

Third, at least two parties have proposed to expand the scope of the regulations to forbid reception of services other than cellular telephone service. Southwestern Bell, for example, proposes to forbid radio scanners from receiving frequencies allocated to Personal

(Footnote 5 continued from previous page)
application was already pending beforehand) would not be permitted to be manufactured or imported after April 1994.

6/ See Amendment of Part 15 of the Commission's Rules to Implement the Provisions of the Television Decoder Circuitry Act of 1990, 7 FCC Rcd 2279 (1992)(regulations clarified to ensure that products manufactured before the effective date of new regulations can continue to be sold thereafter).

7/ The statute prescribes that, "[b]eginning 1 year after the effective date of the regulations adopted pursuant to paragraph (1), no receiver having the capabilities described in subparagraph (A), (B), or (C) of paragraph (1), as such capabilities are defined in such regulations, shall be manufactured in the United States or imported for use in the United States." Pub.L. 102-556, § 403(a), 106 Stat. 4195 (§ 302(d)(2) of Communications Act)(emphasis added). As the Commission's proposal properly reflects, the April 1994 deadline applies to manufacturing and importation, not sale, of radio scanners.

Communications Services.⁸ Fleet Call wishes to prevent scanners from tuning frequencies allocated to Specialized Mobile Radio Services.⁹ Such proposals, however, are beyond the scope of the Commission's Notice¹⁰ and beyond the scope of the statute.¹¹

Moreover, whatever the merits or demerits of the six- and 18-month deadlines established by the Congress to change the manufacture of radio scanners, it would be manifestly unfair to introduce additional restrictions when the equipment authorization deadline is only a few weeks away and the manufacturing/importation deadline is just over 12 months away.¹² In any event, the proposals to extend restrictions to additional frequencies raise legal issues (such as whether the Commission has the statutory authority to impose such burdens) and practical problems (insofar as

8/ Comments of Southwestern Bell Mobile Systems, Inc. at 2 (Feb. 22, 1993).

9/ Comments of Fleet Call, Inc. at 4-5 (Feb. 22, 1993).

10/ The Notice applies only to reception of frequencies allocated to the Domestic Public Cellular Radio Telecommunications Service. See Notice at Appendix A, proposed § 15.121.

11/ The statute refers only to "the domestic cellular radio telecommunications service." Pub.L. 102-556, § 403(a), 106 Stat. 4195, (§ 302(d)(1)(A) of Communications Act).

12/ Cf. Comments of GTE Service Corporation at 2 n.1 (Feb. 22, 1993) (restrictions, if any, on reception of PCS frequencies should be addressed in PCS docket).

EIA/CEG is aware, frequencies for PCS have not been allocated) that require further discussion and whose resolution could delay completion of the present proceeding.¹³

Finally, EIA/CEG wishes to express its support for the position taken by Tandy with regard to the appropriate allocation of compliance responsibilities between manufacturers and retailers. Responding to statements in Paragraph 11 of the Notice, Tandy explains that the burden of ensuring that receivers cannot be "readily altered" to receive cellular frequencies should be placed primarily on manufacturers, backstopped by careful review of equipment authorization applications by FCC staff.¹⁴ EIA/CEG agrees.

If a receiver is designed to prevent reception of cellular frequencies and to avoid being readily altered to do so, and the Commission has reviewed the equipment design and granted an equipment authorization based on a determination that the product complies with all applicable requirements, then retailers should be free to sell the product. They cannot reasonably be placed at risk for

^{13/} For similar reasons, the Commission should clarify that its regulations do not preclude the inclusion in radio scanners of the capability of converting any digital transmissions to analog voice audio. It is only the reception and conversion of digital cellular transmissions that should be prohibited.

^{14/} Comments of Tandy Corporation at 3-8 (Feb. 22, 1993).

selling properly approved products, so long as the products conform to the specifications for which an equipment authorization has been issued.

EIA/CEG appreciates the opportunity to offer these comments for consideration by the Commission.

Respectfully submitted,

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March 8, 1993

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Reply Comments of the Consumer Electronics Group of the Electronic Industries Association" was served this 8th day of March, 1993, by first class, postage prepaid mail, to:

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