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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20005

In the Matter of)
)
Amendment of Parts 2 and 15)
to Prohibit Marketing of Radio)
Scanners Capable of)
Intercepting Cellular Telephone)
Conversations)

ET Docket No. 93-1

To: The Commission

REPLY COMMENTS OF FLEET CALL, INC.

FLEET CALL, INC.

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March 8, 1993

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REPLY COMMENTS OF FLEET CALL, INC.

I. INTRODUCTION

Fleet Call, Inc., ("Fleet Call") respectfully submits these Reply Comments on the Federal Communications Commission's (the "Commission") Notice of Proposed Rulemaking (the "Notice") in the above-captioned proceeding.^{1/}

The Notice proposes rules denying equipment authorization for any scanning receiver capable of receiving or readily being altered to receive transmissions on frequencies allocated to the Domestic Public Cellular Radio Telecommunications Service. The proposed rules would also deny equipment authorization to any scanning receiver capable of being equipped with a decoder to convert digital cellular transmissions to analog voice audio. These rules would implement Section 403 of the Telephone Disclosure and Dispute Resolution Act (the "Telephone Disclosure Act").^{2/}

^{1/} FCC 93-1, released January 13, 1993.

^{2/} Public Law 102-556, October 28, 1992.

In its Comments,^{3/} Fleet Call urged the Commission to expeditiously adopt the proposed rules and to expand their applicability to include frequencies allocated to the Specialized Mobile Radio ("SMR") service.^{4/} SMR licensees and users do not intend their communications to be publicly available and have the same privacy expectations, exclusive frequency assignments and privacy rights as users of cellular radio systems and the landline telephone network.^{5/} Fleet Call noted that expanding the proposal to include SMR frequencies -- given their adjacent location -- would place no additional burden on scanner manufacturers if implemented concurrently with cellular frequency scanning restrictions and would not impede legitimate scanner uses.

II. DISCUSSION

A. The Comments Illustrate the Need to Include SMR Frequencies Within the Proposed Rules

The Comments in this proceeding illustrate the importance of including the SMR frequencies within the proposed rules. As a

^{3/} Comments of Fleet Call, Inc., filed February 22, 1993.

^{4/} Frequencies in the 806-821/851-866 MHz and 896-901/935-940 MHz bands are allocated for SMR systems and are immediately adjacent to the cellular frequencies. SMR systems are used by businesses and individuals to dispatch fleets of vehicles, make mobile telephone calls interconnected with the landline telephone network and complete mobile data transfers.

^{5/} In the Electronic Communications Privacy Act of 1986, Congress amended the then-existing wiretap provisions to expand their applicability by, among other things, deleting the requirement that protected communications be transmitted via common carrier. See 18 U.S.C. Section 2510(1). Pursuant to 18 U.S.C. Sections 2511 and 2512, SMR transmissions, particularly those on exclusive use frequencies, are not intended to be readily accessible to the general public and are protected from intentional interception. See also Comments of Fleet Call, Inc. at n. 11.

number of commenters emphasize, the public interest is served by protecting the privacy of communications over frequencies intended for private communications use.^{6/} Southwestern Bell Mobile Systems ("SWB") states that cellular users desire as much privacy as can be reasonably achieved for wireless communications and that future PCS users will expect the same level of privacy.^{7/}

There is no public interest justification for permitting scanner reception of communications over SMR systems. Most SMR users are commercial entities using SMR systems to conduct their business more efficiently, such as dispatching service vehicles or coordinating field personnel.^{8/} The only reason to intercept these communications is to "steal" customers or to otherwise "listen-in" on private business discussions.^{9/} There is no

^{6/} For example, GTE Service Corporation ("GTE") asks the Commission to make clear that the proposed rules apply to the frequencies used in domestic public cellular radio telecommunications, not just traditional "voice cellular service" (noting that the Commission's rules permit cellular licensees to provide auxiliary services and could permit Personal Communications Services ("PCS") on these frequencies).

^{7/} Comments of SWB at p. 2. Both GTE and SWB state that scanner reception of all PCS communications should be precluded. The Commission has defined PCS to include SMR systems, thus scanner reception of SMR frequencies should be prohibited.

^{8/} SMR users also engage in mobile telephone communications interconnected with the wireline network. These communications are essentially similar to conversations over cellular frequencies for purposes of privacy protection.

^{9/} As a recent *Legal Times* article points out, there is "an underground industry of eavesdroppers who use sophisticated technology to garner intelligence of value to a litigant, business competitor or political foe." The article goes on to state that "cellular phones are extremely vulnerable [to espionage] and are often the weakest link in a company's communications network." See (continued...)

enhancement of public safety or other public interest benefit in permitting the general public to use scanners to intercept communications on exclusive use SMR frequencies. Congress has acted to improve cellular privacy; the Commission should expand the applicability of its proposed implementing rules to protect communications with comparable privacy requirements on SMR frequencies.^{10/}

B. Prohibiting Digital Decoders Is In the Public Interest

As Fleet Call discussed in its Comments, it is constructing fully digital Enhanced Specialized Mobile Radio ("ESMR") Systems which will offer significantly increased privacy protection to their customers.^{11/} Commenters recognize that digital systems will offer -- and the public will expect -- added security in using these systems. This would be compromised by scanners or decoders than can unscramble digital signals.^{12/}

Fleet Call will put the first digital ESMR system into operation in Los Angeles later this year. Thus, the Commission has a unique window of opportunity to act while there are no decoder-

^{9/}(...continued)

Legal Times, "Law Office Technology -- Cellular Phones Are Weakest Security Link," January 25, 1993 at p. 27.

^{10/} Of course, pursuant to Section 90.403(e) of the Commission's Rules, this would not apply to an SMR licensee monitoring a transmitting frequency to prevent interference on non-exclusive shared SMR frequencies.

^{11/} Comments of Fleet Call at pp. 6-7.

^{12/} See e.g., Comments of SWB at p. 4. Without a voice decoder, a scanner tuned to a digital transmission will receive only unintelligible noise.

equipped scanners already in use.^{13/} Acting now to prohibit scanners that can be digital decoder-equipped would most effectively safeguard the privacy of communications on ESMR systems. This is consistent with the public policy objectives of Section 403 of the Telephone Disclosure Act and other laws preventing interception of radio communications.^{14/} It would also facilitate the successful introduction of these new advanced digital mobile communications systems, consistent with Sections 7 and 303 of the Communications Act of 1934, as amended, as well as the Commission's desire to authorize additional competitive mobile communications services.

III. CONCLUSION

The Commission should deny equipment authorization to any scanning receiver capable of receiving or readily being altered by the user to receive transmissions on SMR frequencies. It should also deny authorization to any scanning receiver that can be equipped with a voice decoder to convert digital SMR transmissions

^{13/} As some Commenters note, the proposed rules will not prevent continued use of the many scanners capable of receiving cellular frequencies already in use today. The Commission can prevent this from occurring for advanced digital SMR systems (and digital cellular) by banning scanners capable of being equipped with digital decoders. Preventing scanners from receiving SMR frequencies would, of course, be the first line of privacy defense.

^{14/} See 18 U.S.C. Sections 2511, 2512.

to analog voice audio, or to any converter that can tune or be altered to tune SMR frequencies.

Respectfully submitted,

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Dated: March 8, 1993

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of Fleet Call, Inc. has been mailed by United States first class mail, postage prepaid, this 8th day of March 1993, to the following:

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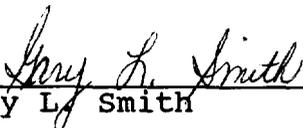
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