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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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| In the Matter of |) | |
| |) | |
| Amendment of Parts 2 and 15 of the |) | ET Docket 98-76 |
| Commission's Rules to Further Ensure |) | RM-9022 |
| That Scanning Receivers Do Not |) | |
| Receive Cellular Radio Signals |) | |

REPLY COMMENTS OF KSI INC.

KSI Inc. ("KSI"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby replies to the comments filed in response to the Notice of Proposed Rule Making ("*NPRM*") which the Commission issued in the above-captioned proceeding on June 3, 1998.¹ In the *NPRM*, the Commission proposes to amend Parts 2 and 15 of its Rules prohibiting scanning receivers from receiving transmissions from the Cellular Radiotelephone Service ("Cellular Service").²

KSI is a growing company engaged in the development and deployment of commercial location systems with facilities in Virginia and Connecticut. KSI has demonstrated successfully its location-finding system, using angle of arrival technology, with results exceeding the FCC's Phase II E911 requirements in CC Docket No. 94-102.³ Our contributions to, and

¹ *In the Matter of Amendment of Parts 2 and 15 of the Commission's Rules to Further Ensure That Scanning Receivers Do Not Receive Cellular Radio Signals*, ET Docket 98-76, RM-9022, Notice of Proposed Rule Making, FCC 98-100 (June 3, 1998) (hereinafter "*NPRM*").

² See 47 C.F.R. § 15.3(v) (defines "scanning receiver").

³ Because of the Commission's concern regarding the inability of wireless customers to benefit from the advanced emergency capabilities of E911 systems that are available to most wireline customers, it has mandated that, by the October 1, 2001, "carriers have the capability to

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proposals in, the FCC's landmark Docket No. 94-102 have been cited many times by the Commission in its *First Report and Order*⁴ and *Reconsideration Order*⁵ in that proceeding. KSI's location-finding system receives signals from mobile transmitters and, with specially-designed receivers and monitors, processes information extracted from the signal to determine a line of bearing from the antenna site where the signal is received. KSI at no time "listens" to or extracts the voice communication from the mobile transmitter.

Like most commenters, KSI supports the Commission's efforts to amend its Rules in order to ensure that devices are not readily available to unlawfully intercept cellular transmissions. KSI cautions, however, that an unduly broad application of the Commission's Rules here may have the unintended effect of restricting design options available to developers of wireless location products, such as KSI. Accordingly, KSI urges the Commission to ensure that any modifications to its current rules governing scanning receivers include an exemption not only for test equipment, which most commenters that addressed the issue generally support,⁶ but also for wireless location products which are not intended for sale to the general public.

identify the latitude and longitude of the mobile units making 911 calls within a radius of no more than 125 meters." *In the Matter of Revisions of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Memorandum Opinion and Order, 12 FCC Rcd 22665, 22670 (1997) ("*E911 Reconsideration Order*").

⁴ See *In the Matter of Revisions of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (1996) ("*E911 First Report and Order*").

⁵ See *E911 Reconsideration Order*, *supra*.

⁶ See Cellular Telecommunications Industry Association ("CTIA") Comment at 7-9 (supports the proposal with a modification); American Radio Relay League ("American Radio") at 14 (same); Uniden America Corporation ("Uniden") Comment at 7 (same); AT&T Wireless Services ("AT& T Wireless") Comment at 7-9 (same), and Tandy Corporation ("Tandy") Comment at 7-9.

THE COMMISSION SHOULD EXEMPT FROM ITS REGULATIONS GOVERNING SCANNING RECEIVERS EQUIPMENT THAT ARE NOT SOLD TO THE GENERAL PUBLIC AND DO NOT PRODUCE AN AUDIO OUTPUT THAT ENABLES THE EAVESDROPPING ON CELLULAR COMMUNICATIONS.

In its CC Docket No. 94-102, the FCC has recognized the critical needs of the public safety community in locating and timely responding to wireless 911 callers.⁷ The Commission, accordingly, has adopted Rules which require covered cellular, PCS and SMR carriers to integrate location capabilities into their networks by October 1, 2001.⁸ In the instant Docket, the Commission is proposing actions designed to further ensure that “scanning receivers” do not receive cellular frequencies. KSI supports the Commission’s efforts in this respect, but cautions that an unduly broad application of the Commission’s cellular scanner Rules may have the unintended effects of restricting design or system options available to developers of wireless location products, like KSI, and/or increasing the costs of the location equipment. KSI, accordingly, urges the Commission to except from its definition of “scanning receivers” equipment that can tune the cellular frequency band but is not intended for sale to the general public and does not extract the voice transmission in order to produce an audio output that enables the eavesdropping on wireless communications.

Creating an exemption for wireless location products from the Commission’s regulations governing scanning receivers is justified because it would promote the development and deployment of equipment used to promote safety of life and property. This is consistent with the Commission’s obligation under the Communications Act to “promot[e] safety of life

⁷ See generally *E911 First Report and Order, supra*; *E911 Reconsideration Order, supra*.

⁸ See note 3, *supra*.

and property through the use of wire and radio communication.”⁹ The absence of an exemption for wireless location products from the Commission’s scanning receivers regulations would limit design and service options available to location companies and impede the continuing development and deployment of location finding technologies needed to implement CC Docket No. 94-102. This proposed exemption is consistent with the Commission’s stated commitment in CC Docket No. 94-102 to ensure that reasonable requirements are in place to facilitate the application and development of location finding technology.¹⁰

The Commission, including the CTIA¹¹, AT&T Wireless¹², and American Radio¹³, Tandy¹⁴, and Uniden¹⁵, have recognized the need for exempting equipment that is used for legitimate purposes.¹⁶ The Commission has specifically exempted scanners and converters

⁹ Section 1 of the Communications Act, 47 U.S.C. § 151.

¹⁰ See *E911 First Report and Order*, 11 FCC Rcd at 18681-82.

¹¹ See CTIA Comment at 7-8 (argues that “a carrier’s legitimate use of scanning receivers as test equipment should be exempted,” but suggests language to be incorporated into the Commission’s definition for “test equipment” that would preclude illegal purchases of scanning equipment by the general public).

¹² See AT&T Wireless Comment at 7-8 (“AWS supports an exemption in the rules for test equipment,” with some modification to the Commission’s proposed definition for “test equipment”).

¹³ See American Radio Comment at 14 (appears to support the Commission’s proposal to exempt test equipment from its rules governing scanning receivers, but argues that “[m]anufacturers should not be limited in their ability to market legitimate test equipment to amateurs”).

¹⁴ See Tandy Comment at 8-9 (supports an exemption for test equipment with modifications the Commission’s proposed definition).

¹⁵ See Uniden Comment at 7 (supports the Commission’s proposal for creating an exemption for test equipment with a modification).

¹⁶ KSI notes that the Commission has also preempted state and local laws that effectively preclude the possession in vehicles or elsewhere of amateur service transceivers by amateur

that are marketed exclusively to law enforcement agencies and cellular system operators.¹⁷ In addition, the Commission, in the *NPRM*, has also recognized the legitimate use of certain professional test equipment, such as spectrum analyzers, field intensity meters and communications service monitors, that are capable of receiving cellular signals.¹⁸ The Commission noted that its rules do not specifically exclude test equipment from the definition of a scanning receiver.¹⁹ The Commission proposes to exempt test equipment from its definition of a scanning receiver, finding that it was not the intent of Congress to ban legitimate test equipment from tuning cellular frequencies.²⁰ Similarly, Congress did not have in mind to ban the legitimate use of wireless location products, especially because of their beneficial effects. Additionally, based on the Commission's proposed definition for "test equipment," the Commission appears to observe that because test equipment are not marketed or sold to the general public, the likelihood that it would be used for eavesdropping is highly unlikely.²¹ The same rationale also applies to wireless location products. The expense and the technical expertise required to purchase and operate these products effectively preclude their sale to the

operators merely on the basis that the transceivers are capable of reception on public safety, special emergency, or other radio service frequencies. *See Federal Preemption of State and Local Laws Concerning Local Laws Concerning Amateur Operator Use of Transceivers Capable of Reception Beyond Amateur Service Frequency Allocations*, Memorandum Opinion and Order, 8 FCC Rcd 6413, 6416 (1993).

¹⁷ See 15.121(b).

¹⁸ *NPRM* at ¶ 17.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* (The Commission proposes to define "test equipment" as "equipment that is not marketed or sold to the general public and is used by professional technical personnel in conjunction with testing of equipment or systems for scientific investigations.").

general public.²² In this respect, KSI currently estimates the expense of fully equipping a cell site to perform location functions (which would include a location receiver) would cost \$30,000.00 to \$50,000.00.

The exemption KSI seeks here would not undermine the Commission's concerns in the instant Docket. It also would not raise concerns expressed by commenters such as Bell Atlantic Mobile that legitimate equipment, such as test equipment, might still be used by individuals for unlawful uses.²³ KSI emphasizes that while wireless location products might be able to tune the cellular frequency, they do not "listen" to the voice communication or produce an audio output that enables the eavesdropping on wireless communications.

Finally, KSI notes that, under existing rules, scanners that are manufactured for wireless carriers are excepted from the application of the Commission's Rules. KSI, indeed, anticipates that many location receivers will be manufactured for use by the carriers. KSI, however, cautions that the scope of this exception, absent further action of the nature requested herein by the Commission, may significantly limit the system deployment options available to wireless location companies and, in turn, dampen the development of truly competitive location markets. To this end, as the location markets emerge, KSI believes that service may be provided

²² Cf. Tandy Comment at 8 ("As a general matter, legitimate test equipment is fairly expensive, and it is not typically purchased by members of the general public.").

²³ Bell Atlantic Mobile, Inc. Comment at 3 (expresses concern that the Commission's proposed definition for "test equipment" is not sufficiently narrow to preclude the purchase of scanners for unlawful use; it suggests that the Commission define test equipment as "equipment that (i) is not advertised, marketed or sold to the public, (ii) is used only by professional technical personnel, and (iii) is used only for testing of equipment or systems or for scientific investigations"). Creating an exemption for wireless location products do not appear to be inconsistent with Bell Atlantic Mobile's definition for test equipment that would warrant an exemption. KSI points out that wireless location products are not sold to the general public, are used by professional technicians, and used for legitimate purposes (*i.e.*, they do not extract voice

by carriers and non-carriers alike. The strong federal interest in supporting the emergency services provided by location systems cannot be fully accomplished unless companies such as KSI are permitted to design and operate wireless location products to the fullest extent, free from unnecessary regulations.

For the reasons set forth herein, KSI strongly urges the Commission to ensure that any modifications to its current rules governing scanning receivers include an exemption for wireless location products which is not intended for sale to the general public, and which does not produce an audio output which enables the eavesdropping on wireless communications.

Respectfully submitted,

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transmissions in order to produce an audio output that enables the eavesdropping on wireless communications).

CERTIFICATE OF SERVICE

I hereby certify that I have on this 27th day of July 1998 sent a copy of the foregoing
Reply Comments of KSI Inc., by first-class U.S. mail, postage prepaid to the following:

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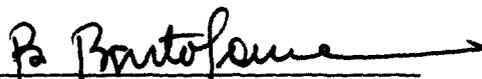
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DATED: July 27, 1998