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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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 NO. 98-76
	)	RM-9022
	)	
	)	

To: The Commission

REPLY COMMENTS

Grove Enterprises, Inc. (*Grove*), a distributor of communications receivers, and publisher of the monthly magazine *Monitoring Times*, offers these Reply Comments in ET Docket 98-76.

1 The NPRM in this proceeding proposes to modify existing provisions of the Commission's rules in a perhaps well-intentioned, but surely misguided, effort to protect the "privacy" of Cellular radiotelephone conversations. This presents a fundamental paradox: one cannot protect that which does not exist. The Federal Government might just as well declare the unicorn an endangered species and block off vast tracts of public land so as to protect the unicorn's habitat. We all know that would be both futile and irrational, because in reality there are no unicorns. It is equally true that there isn't now, nor ever has been, any privacy attached to analog radiotelephone communications. It makes no sense, therefore, to burden the public and to try to place publicly-owned airwaves off limits to the public, all for naught.

2 As the bulk of the Comments filed in this proceeding demonstrate, there are literally millions of cellular-capable receiving devices in the hands of the American people and, even today, legally offered for sale within the United States. Older TV receivers, scanning communications receivers, electronic test

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equipment, cable-television subscriber boxes, and even cellular radiotelephones themselves readily lend themselves to the reception of cellular radiotelephone conversations. In light of the inescapable reality that cellular privacy does not now and never has existed, most especially for analog cellular communications, the NPRM's proposals would place substantial burdens on the manufacturers, vendors, users, and repairers of scanning receivers, for no real benefit. The Commission should therefore abandon its quixotic quest. The Commission should instead put the burden on the cellular Industry: (a) to educate the public about the true state of affairs concerning analog cellular radiotelephones; and (b) to provide telephones with robust encryption so that consumers can make educated decisions about what phones they choose to use and what they choose to say over such phones.

3 While we are hardly Constitutional lawyers, Yaesu's First-Amendment analysis strikes us as right on the mark. The airwaves have always been the common heritage of all the people, and it is fundamentally unAmerican to try to restrict the people's rights to use the airwaves for legitimate purposes. The way to cultivate privacy in wireless communications is to encourage or mandate the use of encryption, not by forbidding people to use what, after all, is public property, for their own private and legitimate purposes. The iron curtain of political oppression and influential favoritism is coming down worldwide, largely because of the communicative power of radio receivers. How can the Commission seek to act against the fundamental rights and privileges of the people, and against the tide of history and enlightened citizens?

4 Regarding the Uniden proposal to require image-rejection ratio of 38 dB with respect to RF energy in the Cellular radiotelephone bands, and regarding the FCC's alternative requiring response to a cellular signal in any band to be no better than 40 μV, these proposals are ineffective, and the Commission should drop them. While perhaps superficially appealing, they are easily circumvented. TV consumers are well aware that weak UHF signals can be made stronger by the simple expedient of adding any of the

widely available, external, and totally legal, "booster" preamplifiers. Does the Commission really intend to prevent the general public from buying UHF TV preamps? That's what it would take for this proposal to even begin to mean anything! Even without a preamp, as Yaesu Musen has correctly pointed out in its Comments, at -38 dB in the cellular radiotelephone bands, modern scanning receivers still have plenty of response to signals in and around cellular radiotelephone service areas.

5 Regarding the proposal to ban manually-tuned receivers capable of cellular frequency reception, again, this is misguided. Television receivers with manual UHF tuners reaching up to Channel 83 were sold for years, and in the millions. Many are still around as evidenced at any weekend flea market where you can find one for $25 or less. And what about cable TV boxes and UHF TV converters?

6 We support the ARRL's opposition to preventing access to tuning and control circuitry as unreasonably preventing the legitimate maintenance, modification, and repair by licensed radio amateurs and other equipment owners. Adopting this proposal would also cause great harm to mom-and-pop radio repair shops. Dealing a body blow to this thriving and legitimate industry would have far-reaching and destructive economic impact on both the small businesses who provide such services and on consumers themselves. We second the points of several electrical engineers and radio hobbyists who point out that this FCC proposal would make radio receivers throwaway devices, and Yaesu's points concerning the increased hazards of environmental pollution and exploding batteries.

7 We oppose the appeal by cellular radiotelephone carriers to exclude cellular radiotelephones from any proposed restrictions. The cellular industry has incorporated "test modes" into cellular radiotelephones for the Industry's own convenience. Those wishing to tune cellular radiotelephone frequencies can exploit such capabilities, just as they can use other scanning receivers to tune such frequencies. Therefore, there is no reason to differentiate between cellular radiotelephones and other

receiving devices.

8 The ARRL and electrical engineer Jacob Brodsky are correct in their opposition to trying to deny cellular-capable test equipment to non-professional users. We oppose any rulemaking which penalizes small business in favor of large corporations. Small service shops, entrepreneurial laboratories, amateur radio licensees, and other talented individuals all contribute to current and future technology and economic productivity. Whether intentional or incidental, such a restriction would clearly give an enormous economic advantage to large corporations. An individual's preference to be corporately employed or self employed should not determine the legitimacy of his or her access to test equipment. We join with the ARRL in opposition to the proposal which would prohibit legitimate amateur equipment and inhibit experimentation in digital communications in the UHF and microwave spectrum.

9 While we support the usage of the couplet phrase "receiving *and* decoding" (italics ours) in the proposed ban on kits as a logical extension of the 1986 Electronic Communications Privacy Act, and 18 USC 18 Section 2512, and Section 705 (formerly 605) of the 1934 Communications Act, we oppose the overly-broad phrase "capable of" (receiving and decoding signals in the Cellular Service frequency bands).

10 We oppose the CTIA proposal to amend Section 15.121(d) to change the definition of "manufacturing" so that it applies to a single act by one person. We feel that this is unduly and unnecessarily restrictive and punitive, and subverts the entire meaning of the term as used and understood both in common speech and industry.

Respectfully submitted,

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