

Before the
Federal Communications Commission
Washington, D.C. 20554

Year 2000 Biennial Regulatory Review)
- Amendment of Part 22 of the)
Commission's Rules to Modify or) WT Docket No. 01-108
Eliminate Outdated Rules Affecting) FCC 01-153
the Cellular Radiotelephone Service)
and other Commercial Mobile Radio)
Services)

**REPLY COMMENTS OF THE
INDEPENDENT CELLULAR SERVICES ASSOCIATION(ICSA)
AND MT COMMUNICATIONS
ON THE NOTICE OF PROPOSED RULEMAKING PART 22**

Mike Heavener
Vice-President
Independent Cellular Services Association
and MT Communications
Box 2171
Gaithersburg, Maryland

301 926-1891 x2
ICSA@Bigfoot.Com

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The Independent Cellular Services Association (“ICSA”)and MT Communications hereby Submits its Reply Comments relative to the proposed rulemaking that was initiated as part of the FCC 2000 Biennial Review of its rules¹.

I. INTRODUCTION AND SUMMARY

ICSA represents a group of small companies that sell and service cellular telephones and was formed in 1995 to petition the Commission on rule changes that had adverse effects on their businesses and customers. Many of the firms had submitted individual petitions but realized

¹ See Biennial Regulatory Review, CC Docket No. 00-175, *Report*, FCC 00-456 (adopted December 29, 2000; released January 17, 2001) (*Biennial Review Report*); Biennial Regulatory Review 2000 Updated Staff Report.

that they were opposed by the large carriers and their trade group CTIA. A group was formed to work together and to present a united position. The original issue was a new 22.919 rule and the supporting comments that went with that rule.

ICSA has carefully review all of the approximately 30 comments filed by the wireless, industry, manufacturers, consumer groups and individuals and is pleased to find that the majority are in agreement with the positions that ICSA took on two of the rule changes. These same positions are similar to those proposed by the Commission in the proposed rulemaking.

The first proposal in this rulemakeing that we originally commented on was the elimination of paragraph 22.919 in Part 22 of the rules which deals with the electronic serial number(ESN). We are pleased to see that all parties that addressed this technical rule agreed to eliminate all or most of the rule because it is blocking innovation and is no longer needed. The only exceptions were two carriers who commented that the ESN is still needed for security and billing. It appears that their attorneys didn't fully understand the rule because an ESN will still be needed and no party is proposing to eliminate it. The issue is being able to move the ESN using a card, bluetooth, or some other means.

The public interest is served by permitting innovation that permits cellular users to have a combination of a portable and a high powered installed car phone that complies with the new driving laws(New York), reduces radiation exposure to the head, and increases call completion rates in suburban and rural areas. Elimination of Part 22.919 will allow multiple devices to use the same MIN, ESN and other data - ICSA supports this proposed rulemaking.

We found two comments of particular interest. First CTIA admitted that part of \$600 million dollar per year in cloning fraud were "passed on to subscribers in the form of increased

usage charges”². The second comment was made by Verizon who stated in their comments that the ESN rule dealing with tampering with the ESN “have never been particularly effective in preventing ESN cloning.”³ In Docket 92-115, we submitted numerous documents that proved that the industry knew that this rule had little or nothing to do with preventing fraud and was requested by the industry to drive the extension phone firms out of business. The carriers knowingly sold phones that did not meet the Commission’s rules and this is the real reason that cloning fraud cost consumers as much as \$2 billion dollars during the mid 90’s.

ICSA has in the past filed comments on a number of other issues such as E911 calling and unsubscribed phones. In this rulemaking the Commission requests information regarding whether to continue the requirement for carriers to operate analog cellular networks. We believe that there are compelling reasons that the analog requirement must be continued for many years. With the exception of several large carriers such as AT&T and Cingular, everyone agreed including CTIA, Verizon, and Sprint that analog cellular was needed for at least 5 more years. Consumer groups and ourselves believe that a much longer period is needed. It appears that the real issue is how long the phase out period should take and should the analog carriers be given spectrum relief. We think the period should be more on the order of 10 to 15 years but setting a specific date is too complex now. We think the Commission should table this issue for another two years.

We found the comments from Alan Dixon, OnStar, John Deere and others relative to the the need for a three watt analog car phone really drove the experience of our members. MT

² Page 12 of CTIA’s paragraph B. “There is no doubt that cloning had serious deleterious effects on the wireless industry, resulting in as much as \$600 million dollars per year in lost revenues. At least some of these fraud related expenses were passed on to subscribers in the form of increased usage charges.”

³ Page 19 of Verizon’s Comments at Paragraph D. “These requirements, designed to ensure the ESN cannot be tampered with and that the mobile transmitter is rendered “inoperative” upon changing the ESN, have never been particularly effective at preventing ESN cloning.”

Communications supplies and maintains two-radio systems for police and other public safety groups in the Washington, D.C. area. The central base of operation is Montgomery County, Maryland and there is a critical need to always have communications with customers and suppliers. All of their vehicles are equipped with 3 watt analog cellular telephones because low power analog/digital handheld are unable to maintain critical calls near Gaithersburg, Md. on any of the four carriers. Part of the problem is that residents have been successful in fighting the construction of towers to fill in the coverage holes that are need to covert from mobiles to handhelds. As much as 25% of the handheld signal is attenuated when the phone is used from inside the vehicles. As Mr. Dixon points out, market forces have not produced a single 3-watt digital phone. These holes in coverage in one of best wireless markets such as Montgomery County points the out the fact that it will be many years before 3 watt analog phones can be eliminated.

II. Elimination of Part 22.919

ICSA fully supports the elimination of Part 22.919 (ESN rule). We are pleased to see that AT&T, Cingular, CTIA, TIA, Ericsson, Century, and Qualcomm all agreed that 22.919 should be eliminated.

Century stated that the ESN is still needed for billing purposes and they went along with the elimination of the rule as long each phone has a valid ESN loaded into it in some manner. We note that the proposed rule change is not intended to eliminate the ESN but rather allow it to be moved around via some method such as a smart card. Verizon, stated that they supported 2 of the 3 paragraphs being eliminated in 22.919. However they wanted to keep (a) which states that each transmitter should have a unique ESN. If the ESN is going move from one phone to another

it is impossible for the phone to have a unique ESN. When Motorola marketed a phone that accepted an ESN from another phone, it contained all zeroes until it was loaded with the traveling

ESN. In the GSM world the phone has no data or “ESN” until the SIM card is inserted. The elimination of 22.919 will permit the phone to take on the ESN, MIN, etc. of the card or device that is connected or inserted. If another card is inserted then the phone will take on its identity. Therefore the phone cannot have a unique ESN so that Verizon proposed change should not be incorporated and entire paragraph 22.919 should be eliminated.

The change or elimination of this rule was the original issue that was of interest to ICOSA. The members of ICOSA were either in the business or were interested in entering the business of creating phones for legitimate customers who wanted two phones with the same number. The common application was for a single user to have a portable phone for out of car use and a three watt installed mobile with hands free features for in car use. All phones calls were paid for. The process of creating an “extension phone” required changing or moving the ESN and the rule change had the effect of putting extension phone companies out of business.

Until the rule was passed, there were an estimated 100,000’s of such legitimate phone combinations created for happy users. The rule impacted cellular manufacturers such as Motorola who had to discontinue producing several models of phones that were a combination of installed car phone and a handheld that shared the same MIN & ESN. While most of our members are now in other businesses and the market and technology have changed dramatically, we are pleased to see the Commission and the industry proposals to eliminate paragraph 22.919 of the rules and we support that change in these reply comments. To repeat our initial comments, the key reasons

that 22.919 should be eliminated from the rules are summarized below:

1. Cloning Fraud is Dead - As the Commission notes in its rules, the alleged original need for 22.919 was to combat cloning fraud. CTIA declared in their 1998 November Fraud Conference(their last) that cloning fraud had been issued a “death certificate” and does not exist. However, as previously stated, CTIA admitted in their initial comments that their members have passed part of the cloning costs to their customers.
2. Part 22.919 has been Ignored - The major manufactures such as Motorola, Audiovox and Ericsson did not comply with 22.919 so why continue a rule that was largely ignored. ICSA met with the FCC Office of Engineering and Technology⁴ on March 6, 1998 and proved conclusively that a number of popular phones such as the Motorola StarTac could have its ESN changed and still it worked which is in direct conflict with 22.919. None of the articles published by CTIA and the cellular industry on cloning fraud reduction have ever given credit to the hardening of the ESN. In our filings and at meetings with the FCC, we have consistently stated that the changes in the rule would not aid in the fight against fraud. CTIA and its members did not mention any benefit from the hardened ESN rule because they know that some of the largest manufacturers have ignored this rule. We are pleased that Verizon in their comments has finally admitted that 22.919 did not prevent cloning.
3. A Consultant has Written/Testified to the Commission that there is no harm to the Network in having two phones with the same data - Following a meeting with Blair Levin(Deputy FCC Head) in July of 1995, there was a “Summit Meeting” held on July 27, 1995 with the FCC Wireless group, CTIA, AT&T, the Justice Antitrust Division, Motorola, Ericsson, TIA, Japan Radio, CellTek, MTC and ICSA. Motorola and TIA supported the elimination or a change in Part 22.919. We believed then that the Commission was going to adopt rules favorable to our petitions. We are glad to see that TIA who supported in 1995 the elimination of 22.919 still supports that position in this rulemaking.

At both of the 1995 meetings, we produced an expert witness, Dr. Richard Levine a renowned cellular expert, who testified that no harm would be inflicted on the cellular network if two phones were used that had the same data. In fact, he testified that our technical solution of reprogramming the phone was a process that better met FCC rules because all phones could roam. Dr. Levine submitted a number of very detailed written reports which are on file⁵ with the FCC. CTIA had no major objections to this report or to Dr. Levine’s testimony. They recognized his outstanding reputation and the power of his arguments.

4. Smart Cards and other New Technology - We agree with the Commission that this obsolete rule prevents innovation such as the use of smart cards produced by firms such as GEMPLUS that could be moved from one cellular telephone to another. This can be done with

⁴ See April 6, 1998 letter filed under Docket 92-115 to David Means, Acting Chief of the FCC Laboratory, documenting makes and models of cellular phones that had their ESN altered which still worked.

⁵ July 30, 1996 Letter from Dr. Levine to Ms. Farquhar regarding 22.919 and filed under Docket 92-115.

the phones used in the GSM markets in the rest of the world. There are other possible methods to move the ESN, MIN, A-Key and directory data including the new "Bluetooth" short-range method of transferring data from one device to another. Motorola used a wired data bus to move the ESN from one phone to another in the mid 1990's but had to withdraw this product because of Part 22.919.

5. New York Law Requiring Hands Free - As we have previously filed under Docket 92-115 and 94-102, many of our customers still ask our firms to sell them a small portable for use when outside their car and a three watt installed car phone for hands free use. Now that New York State has passed a law against handheld use in the car and as many as 30 other States are considering a similar law, the public needs the ability to have an install car phone with the same number as the portable. While ear microphones and handsfree kits are acceptable under some of the laws, many problems such as a tiny keyboard, hard to read display and the need to attach cables that are not reliable make these options unworkable. The current mobiles have a full telephone keyboard and a large display that older and handicapped persons can use. The elimination of Part 22.919 will allow manufacturers to develop safer and innovative products for in car use.
6. Health Risk of Cancer - A second very hot issue in the press today is whether handheld cellular telephones cause cancer. While this question will not be resolved for many years, it is prudent to reduce the handheld use as much as possible. OnStar in their ads and their comments states that 70% of all cellular calls are made from within a vehicle. To reduce SAR exposure, the use of an installed car phones with an outside antenna will greatly reduce the expose to the public. Customers do not want to pay two monthly fees and have two telephone numbers. The Commission proposal to eliminate 22.919 will permit via a smartcard or some other technology the ability to move customer data between two or more phones.
7. Call Completion in Suburban and Rural Areas - In Docket 94-102 rulemaking regarding strongest signal, WCA and ICSA pointed out that important and startling conclusions that as many as 1/3 of all E911 calls will not reach an emergency center because their calls can originate from a low power handheld that is positioned in one of the tens of thousands of holes or dead spots in the US cellular system. In testing many portable phones, ICSA has determined that many only have .2 or .3 watts instead of .6 watts as commonly believed. The use of a high powered 3 watt mobile with an outside antenna can greatly improve 911 call completion because the car body and windows attenuates the signal as does the glass at the new FCC Portals building. Being able to design and use a combination portable and mobile that share the same ESN/MIN etc. can greatly improve public safety. Current car kits that have to plugged in and lack 3-watt capability are not selling well nor are in widespread use.

In conclusion, ICSA is pleased that CTIA, TIA, and the carriers supports the elimination of Rule 22.919. It has taken eight years to obtain this change which will allow manufacturers to create new products that can share the same ESN which will increase

public health and safety.

III. Rule Change to Eliminate Analog Cellular

There are 50 Million Analog Phones in Use and 30 Million that are Surplus – In addition to the 80 million analog only phones, most of the digital phones use analog as a second mode for roaming and/or backup. The 30 million surplus phones are often termed unsubscribed phones and are mostly older analog models. Many of these phones are being recycled into very valuable uses for groups that can't afford a phone. The Notice of Proposed Rulemaking recognizes such groups as the elderly and the battered women's Protect Program. Verizon mentioned in their comments that these type of programs was partial justification for at least 5 years of additional analog service.

Montgomery County School Bus Project – In our initial comments we mentioned a new project just started in Montgomery County Maryland, to recycle old analog phone for use as emergency E911 phone for school buses. The program came from the County Council who got the idea from the battered women's program started by CTIA.

MT Communications has developed a new battery technology that will permit these phones to be stored in School buses for up to 8 years without being repacked and hence beyond the Sprint and Verizon period of 5 years.

ICSA therefore urges the Commission to continue to require carries to offer analog cellular. It may be fair to give, as Sprint suggested, 5 to 10 MHz of additional spectrum caps to offset the burden of the current Part 22 carriers to continue to support analog cellular. ICSA would support some benefit to these carriers to allow them to operate the analog network for at least another 10 years.

III. Conclusions

ICSA agrees with the Commission and virtually all of those that commented that the time has come for Part 22.919 to sunset. Cloning fraud has been declared dead by the industry for years and they have the Cellular Telephone Protection Act to prevent a comeback. ICSA proved to the Commission that three of the largest cellular telephone manufacturers ignored the rule. Verizon in their comments agreed that the rule did not prevent cloning. CTIA stated in their comments that the consumers paid part of the bill for cloning while being denied extension phones. While the old technology of the mid 90's for moving the MIN and ESN will no longer work, eliminating 22.919 will allow smartcards and other new technology to be used to solve such problems as the development of a good portable and mobile combination. This is needed to comply with all of the State Laws being passed to prevent the use of handheld cellular telephones in moving vehicles. This type of product will also reduce the possible health hazards. Therefore, the elimination of Part 22.919 is clearly in the public interest.

We believe that the many uses of the millions of the older analog phones used by the elderly, battered women and now school buses as unsubscribed phones in addition to all of the subscribed uses mean that analog cellular needs to remain for at least 10 years. One of those subscribed uses is the millions of 3 watt analog phones that are need because no firm has produced a digital high powered car phone. We recommend that the Cellular Carriers should be given spectrum cap relief to maintain a national analog footprint. The Commission could revisit the analog issue in two years when the next Biennial Review is conducted.

Respectfully submitted,

M. G. Heavener
Vice President
Independent Cellular Services Association
and for MT Communications
Box 2171
Gaithersburg, Maryland 20886
301 926-1891 x2
ICSA@Bigfoot.Com

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