

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

MEMORANDUM OPINION AND ORDER

Adopted: May 10, 2001

Released: May 22, 2001

By the Commission:

INTRODUCTION

1. By this action, the Commission grants in part the petitions for partial reconsideration filed by Tandy Corporation ("Tandy") and Uniden of America, Inc. ("Uniden") of the Commission's Report and Order ("Order") in this proceeding. We affirm our decision to require manufacturers to make scanning receivers more difficult to modify by making the circuitry inaccessible; relax the warning label requirements for certain devices; and clarify the compliance measurement rules.

BACKGROUND

2. On October 28, 1992, the Telephone Disclosure and Dispute Resolution Act (the "TDDRA") was signed into law. The Commission subsequently adopted rules that satisfy the mandates specified in the TDDRA. These rules prohibit the manufacture and importation of scanning receivers that are capable of receiving, or that can be readily altered to receive, transmissions in the frequencies allocated to the Cellular Radiotelephone Service ("cellular service"). In order to ensure compliance with these regulations, scanning receivers must be authorized (certificated) by the Commission before they may be imported or

1 Petition for Partial Reconsideration filed by Tandy on May 27, 1999; Petition for Partial Reconsideration filed by Uniden on April 27, 1999 and Addendum to Petition for Partial Reconsideration filed by Uniden on May 12, 1999.

2 Report and Order in ET Docket No. 98-76, 14 FCC Rcd 5390 (1999), adopted March 25, 1999 ("Order").

3 Pub. L. 102-556.

4 Report and Order in ET Docket 93-1, 9 FCC Rcd 2911 (1993); Memorandum Opinion and Order in ET Docket 93-1, 9 FCC Rcd 3386 (1994).

5 47 C.F.R. §§ 2.1033, 15.37, and 15.121. The Commission's regulations regarding the Cellular Radiotelephone Service are set forth in Part 22 of the FCC rules, 47 C.F.R. Part 22, Subpart H. Cellular telephones use frequencies in the 824-849 MHz and 869-894 MHz bands to connect mobile users to other cellular system users and to the Public Switched Telephone Network.

marketed.⁶

3. In the *Order* in this proceeding, the Commission adopted rules that require scanning receivers to include adequate filtering so that they do not pick up cellular service transmissions.⁷ In addition, the amended rules require that scanning receivers be designed so that their tuning, control and filtering circuitry are not easily accessible and that any attempts to modify the scanning receiver to receive cellular service transmissions will likely render the scanning receiver inoperable.⁸ Further, the Commission modified the rules to require that a warning label be affixed to scanning receivers to indicate that modification of the receiver to receive cellular service transmissions is a violation of FCC rules and Federal law.⁹ To further ensure that parties do not circumvent these requirements by developing a scanning receiver that tunes the cellular frequencies but automatically switches among only two or three frequencies, the Commission modified the definition of a scanning receiver to include receivers that switch between “two or more” frequencies instead of “four or more” frequencies.¹⁰ The manufacture or importation of scanning receivers and frequency converters designed or marketed for use with scanning receivers that do not comply with these new provisions were required to cease on or before October 25, 1999.

DISCUSSION

4. In their petitions for reconsideration, Tandy and Uniden request that the Commission exempt scanning receivers that are built with the capability to receive only frequencies much lower than those capable of intercepting cellular signals from the circuitry inaccessibility requirement and the warning label requirement.¹¹ Specifically, Tandy and Uniden state that scanners that only operate in the range of 30 MHz to 512 MHz should be exempted. The petitioners state that the inaccessibility requirement is over-burdensome to both manufacturers and consumers because it will likely increase the manufacturing cost and make it impossible to make future repairs for those scanning receivers that do not have a tuning range of concern for intercepting cellular service.¹² Further, Tandy and Uniden request that scanning receivers that tune at or below 512 MHz be exempted from the warning label requirement because it will require additional steps in the manufacturing process or require changes to the tooling equipment, with either option likely to increase production costs.¹³

5. We decline to adopt the requested exemptions of the circuitry inaccessibility requirement and the warning label requirement for scanning receivers that tune at or below 512 MHz. The fact that a

⁶ See 47 C.F.R. § 15.101(a) and § 2.1031 *et seq.*

⁷ *Order*, at 5395-96; 47 C.F.R. § 15.121(b).

⁸ See *Order*, at 5396-97; 47 C.F.R. § 15.121(a)(2).

⁹ See *Order*, at 5399-400; 47 C.F.R. §§ 15.121(f)(1)-(f)(2).

¹⁰ See *Notice of Proposed Rule Making* in ET Docket No. 98-76, 13 FCC Rcd 12937, 12942-12943 (1998) (“*NPRM*”); *Order* at 5392-5393.

¹¹ See Tandy petition for partial reconsideration at 3-4. See also Uniden petition for partial reconsideration at 5.

¹² See Tandy petition for partial reconsideration at 4. See also Uniden petition for partial reconsideration at 5.

¹³ See Tandy petition for partial reconsideration at 5.

scanner is intended to tune only below 512 MHz does not ensure that reception of cellular telephone frequencies will not occur. For example, a superheterodyne receiver is capable of receiving images at frequencies separated from the tuned frequency by twice the first intermediate frequency ("IF") of the receiver. Within a scanner having a first IF frequency of 250 MHz, image reception of the 800 MHz cellular telephone bands could occur when the scanner is tuned in the 300 MHz range. For this reason, some scanners that tune only up to 512 MHz could potentially be modified to receive cellular telephone frequencies. Therefore, we will not exempt scanners from the circuitry inaccessibility and labeling requirements based on the 512 MHz frequency cutoff proposed by the petitioners. With regard to the petitioners' concerns about increased manufacturing costs and the inability to make future repairs, we find no other reasonable alternative to the inaccessibility requirement that will provide the same level of prevention of unlawful modifications. We find that these requirements are the best method available to continue to satisfy the requirement of the *TDDRA* that scanning receivers not be capable of readily being altered by the user to receive cellular service transmissions.¹⁴ We also note that in the *Order*, the Commission allowed flexibility in the ways that a manufacturer may make tuning and control circuitry inaccessible in order to minimize any burdens imposed by the new rules.¹⁵ We also find that the rules imposed for scanners that tune only below 512 MHz are no more burdensome than for other scanners. We therefore reaffirm our finding that the rules adopted in the *Order* represent the most efficient and least restrictive method to accomplish the Commission's policies and objectives and the statutory mandate of Congress.¹⁶

6. Additionally, Tandy and Uniden request that the Commission reword the language contained in the labeling requirement to state that "intentional reception or disclosure of certain radio communications may violate Federal law."¹⁷ Tandy and Uniden believe that this wording would more closely satisfy language contained in a bill that was pending in the House of Representatives at the time the petitions were filed.¹⁸ We note Congress did not pass H.R. 514 or any subsequent bill that would require a change in the warning label wording. Absent specific legislative action, we find that it would be overly burdensome to scanning receiver manufacturers to adopt any additional changes to the warning label at this time. In addition, we are concerned that the language proposed by Tandy and Uniden does not clearly state that modification of the device to receive cellular service transmissions is a violation of FCC rules and Federal law. We therefore decline to adopt the requested changes in the warning label wording.

7. The petitioners further request that the rules be modified to permit the warning label to be placed on the outside of the device packaging material and in the owners manual as is provided for in Section 15.19(b)(3) of the Commission's rules for certain other devices.¹⁹ Tandy and Uniden state that

¹⁴ Pub. L. 102-556 at Section 403(d)(1)(B); Section 302(d)(1)(B) of the Communications Act of 1934, as amended (47 U.S.C. 302a).

¹⁵ *Order* at 5397.

¹⁶ See *Order* at 5409 (Appendix B of *Order*, "Steps taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.")

¹⁷ See Tandy petition for partial reconsideration at 12-15. See also Uniden petition for partial reconsideration at 5-7.

¹⁸ See H.R. 514, 106th Congress (1999).

¹⁹ 47 C.F.R. § 15.19 (b)(3). See Tandy petition for partial reconsideration at 4-7. See also Uniden petition for partial reconsideration at 2-5.

some scanning receivers are so small or compact as to make the inclusion of the full label impossible without significant design modification.²⁰ Uniden states that it would intentionally have to make the casing larger than is otherwise required for the enclosed device, resulting in considerable waste with regard to production materials, and inconvenience for the consumer who must handle and carry a unit larger than necessary. We believe that an exception of the labeling requirement can be made for small devices and are amending the rules accordingly. For devices that are so small that it is not practicable to place the warning label on the device, the warning label shall be placed in a prominent location in the instruction manual or pamphlet supplied to the user, and also on the container in which the device is marketed. The FCC identifier must be displayed on the device.²¹

8. Uniden is concerned that the adoption of a new definition for scanning receivers will require the filing of new applications for equipment authorization for devices that were not previously considered scanning receivers such as a typical weather band scanner.²² The Commission's intention of enacting a new definition of a scanning receiver was to prevent individuals from manufacturing a scanning receiver that scans fewer than four frequencies to circumvent our scanning receiver rules. It was not the intention of the Commission to change the definition of a scanning receiver to encompass receivers that have not been considered scanning receivers in the past. We agree with Uniden that receivers designed solely for the reception of National Oceanic & Atmospheric Administration ("NOAA") broadcast weather band signals should continue to be exempt from the scanning receiver definition. The scanning receiver definition will be modified to include the weather radio exemption. We also note that scanning receivers designed solely for the reception of broadcast signals under Part 73 of our rules or used as part of a licensed service, continue to be exempt from the scanning receiver regulations.²³ In order to further clarify this in the definition, we are replacing the words "licensed station" with "licensed service."

9. We agree with Tandy and Uniden that the wording of the signal rejection ratio rule adopted in the *Order* was not clear. The rule as written in the rules appendix to the *Order*, Section 15.121(b), states that only cellular service signals that are "38 dB or higher" than the receiver sensitivity should be rejected. This was not the Commission's intended meaning for Section 15.121(b). As stated in the *Order*, the Commission adopted the proposal from the *Notice of Proposed Rule Making* in this proceeding, which stated that scanning receivers must reject cellular service signals that are up to 38 dB higher than the minimum receiver sensitivity.²⁴ Therefore, we will amend Section 15.121(b) so that it is clearly understood that scanning receivers must reject cellular service signals that are 38 dB or lower based upon a 12 dB SINAD specification.²⁵

²⁰ See Uniden petition for partial reconsideration at 4.

²¹ See 47 C.F.R. §§ 2.925 and 2.926.

²² See Tandy petition for partial reconsideration at 7-8. See also Uniden petition for partial reconsideration at 5-6.

²³ See 47 C.F.R. § 15.3(v).

²⁴ See *Order* at 5395; *NPRM* at 12950 (Appendix B, Section 15.121(b)).

²⁵ SINAD is a common sensitivity measurement that closely approximates a signal to noise ratio of a receiver. The 12 dB SINAD specification is normally used in industry for this type of receiver.

ORDERING CLAUSES

10. In accordance with the above discussion and pursuant to the authority contained in Sections 4(i), 302, 303(e), 303(f), 303(g), 303(r), and 405 of the Communications Act of 1934, as amended, IT IS ORDERED that the Petitions for Reconsideration filed by Tandy Corporation and Uniden America Corporation, ARE GRANTED in part and DENIED in all other respects.

11. IT IS ORDERED, that Part 15 of the Commission's Rules and Regulations ARE AMENDED as specified in Appendix A, effective 30 days after publication in the Federal Register. Authority for issuance of this Report and Order is contained in Section 4(i), 301, 302, 303(e), 303(f), 303(g), 303(r), 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Section 154(i), 301, 302, 303(e), 303(f), 303(g), 303(r), 304 and 307.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A
FINAL RULES

Part 15 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 15--RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302, 303, 304, 307 and 544A.

* * * * *

Section 15.3 is amended by modifying paragraph (v) to read as follows:

Section 15.3 Definitions.

* * * * *

(v) Scanning receiver. For the purpose of this part, this is a receiver that automatically switches among two or more frequencies in the range of 30 to 960 MHz and that is capable of stopping at and receiving a radio signal detected on a frequency. Receivers designed solely for the reception of the broadcast signals under part 73 of this chapter, for the reception of NOAA broadcast weather band signals, or for operation as part of a licensed service are not included in this definition.

* * * * *

Section 15.121 is amended by modifying paragraph (b) and paragraph (f) to read as follows:

Section 15.121 Scanning receivers and frequency converters used with scanning receivers.

* * * * *

(b) Except as provided in paragraph (c) of this section, scanning receivers shall reject any signals from the Cellular Radiotelephone Service frequency bands that are 38 dB or lower based upon a 12 dB SINAD measurement, which is considered the threshold where a signal can be clearly discerned from any interference that may be present.

* * * * *

(f) Scanning receivers shall have a label permanently affixed to the product, and this label shall be readily visible to the purchaser at the time of purchase. The label shall read as follows:

WARNING: MODIFICATION OF THIS DEVICE TO RECEIVE CELLULAR RADIOTELEPHONE SERVICE SIGNALS IS PROHIBITED UNDER FCC RULES AND FEDERAL LAW.

(1) "Permanently affixed" means that the label is etched, engraved, stamped, silkscreened, indelible printed or otherwise permanently marked on a permanently attached part of the equipment or on a

nameplate of metal, plastic or other material fastened to the equipment by welding, riveting, or permanent adhesive. The label shall be designed to last the expected lifetime of the equipment in the environment in which the equipment may be operated and must not be readily detachable. The label shall not be a stick-on, paper label.

(2) When the device is so small that it is not practicable to place the warning label on it, the information required by this paragraph shall be placed in a prominent location in the instruction manual or pamphlet supplied to the user and shall also be placed on the container in which the device is marketed. However, the FCC identifier must be displayed on the device.

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