

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554
February 15, 1984

G-3
FCC 84-48
34294

Released: February 17, 1984

IN REPLY REFER TO:

Mr. James M. Weitzman
Shrinsky, Weitzman & Eisen, P.C.
Suite 270
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Weitzman:

This is in response to your letter of September 21, 1983, requesting a declaratory ruling on the applicability of Section 605 of the Communications Act of 1934, as amended, 47 U.S.C. § 605, to the manufacture, sale or lease of tunable FM subcarrier (SCA) receivers. The receivers at issue are designed to allow for reception of particular SCA (Subsidiary Communications Authorization) transmissions by authorized subscribers.

Specifically, you state that your client, Dataspeed, Inc., intends to manufacture a hand-held SCA receiver for reception of the local FM station carrying Dataspeed's SCA transmissions. According to your letter, this receiver "cannot, as designed, intercept other aural or digital SCA broadcasts, despite the fact that the receiver is self-tunable." Moreover, you stress that the Dataspeed receiver is designed to deny service to delinquent subscribers. You also explain that after Dataspeed contracts for SCA service with FM broadcast licensees in various cities, it intends to lease or sell Dataspeed SCA receivers to subscribers on a monthly basis.

After careful consideration of the facts presented, we believe that a declaratory ruling is warranted in this instance. Although no Commission rule or regulation prohibits the manufacture, sale or lease of SCA receivers, the Commission has considered the applicability of the controlling federal statute in this area, Section 605 of the Communications Act. 1/ In

1/ The Commission has held that the manufacture, distribution or sale of SCA receivers to the public, without the requisite authorization by the originating FM station, constitutes a violation of Section 605. Such cases, however, are factually distinguishable from the instant case. See FCC News Release # 36067 (August 5, 1969); FCC News Release # 70229 (July 20, 1971).

general, Section 605 prohibits the unauthorized interception and divulgence or beneficial use of a transmission not intended for use by the general public. Clearly, the unauthorized interception and beneficial use of SCA transmissions which are intended for subscribers only would constitute a violation of this statutory provision. Moreover, as your letter correctly acknowledges, a federal court has held that violations of Section 605 can result in civil action against the manufacturers, distributors, sellers and users of equipment capable of intercepting unauthorized SCA transmissions. 2/

In the situation you describe, the Dataspeed service is based on contractual obligations between Dataspeed, the FM broadcast stations or information suppliers and the subscribers to this particular SCA service. These SCA transmissions are addressed signals that can only be received by an authorized subscriber using a Dataspeed receiver. Since Dataspeed's receivers are also designed to deny access to subscribers who fail to fulfill their contractual obligations, the unauthorized interception and beneficial use of these transmissions is prevented. In such case, conflict with Section 605 is avoided.

Based on the facts presented, we find that Section 605 does not proscribe the manufacture, sale or lease of Dataspeed's SCA receiver to authorized subscribers.

BY DIRECTION OF THE COMMISSION

William J. Tricarico
Secretary

2/ See, KMLA Broadcasting Corp. v. Twentieth Century Cigarette Vendors Corp., 264 F. Supp. 35 (C.D. Cal. 1967).