

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 16 as follows:

PART 16—CHEMICAL TESTING

1. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

2. Revise § 16.500 to read as follows:

§ 16.500 Management Information System requirements.

(a) *Data collection.* All marine employers must collect the following drug and alcohol testing program data for each calendar year:

(1) Total number of employees during the calendar year that were subject to the drug testing rules in this part.

(2) Number of employees subject to testing under the anti-drug rules of both the Coast Guard and another DOT agency based on the nature of their assigned duties as identified by each agency.

(3) Number of drug and alcohol tests conducted identified by test type. Drug test types are pre-employment, periodic, random, post-accident, and reasonable cause. Alcohol test types are post-accident and reasonable cause.

(4) Number of positive drug test results verified by a Medical Review Officer (MRO) by test type and types of drug(s). Number of alcohol tests resulting in a blood alcohol concentration weight of .04 percent or more by test type.

(5) Number of negative drug and alcohol test results reported by MRO by test type.

(6) Number of applicants denied employment based on a positive drug test result verified by an MRO.

(7) Number of marine employees with a MRO-verified positive test result who returned to duty in a safety-sensitive position subject to required chemical testing, after meeting the requirements of § 16.370(d) and part 5 of this chapter.

(8) Number of marine employees with positive drug test results verified by a MRO as positive for one drug or a combination of drugs.

(9) Number of employees required under this part to be tested who refused to submit to a drug test.

(10) Number of covered employees and supervisory personnel who received the required initial training.

(b) *Data reporting.* (1) By March 15 of the year following the collection of the data in paragraph (a) of this section, marine employers must submit the data on Form CG-5573 to Commandant (G-MOA), 2100 Second Street, SW, Washington, DC, 20593-0001. Marine

employers must complete all data fields on the form.

(2) Form CG-5573 is reproduced in Appendix B of this part and you may obtain the form from any Marine Inspection Office. You may also download a copy of Form CG-5573 from the U.S. Coast Guard Marine Safety and Environmental Protection web site at <http://www.uscg.mil/hq/g-m.html>.

(3) A consortium or other employer representative may submit data for a marine employer. Reports may contain data for more than one marine employer. Each report, however, must list the marine employers included in the report.

(4) Marine employers must ensure that data submitted by a consortium or other employer representative under paragraph (b)(3) of this section is correct.

(c) After filing 3 consecutive annual MIS reports since January 1, 1996, required by paragraph (b) of this section, marine employers with 10 or fewer covered employees may stop filing the annual report each succeeding year during which they have no more than 10 covered employees.

(d) Marine employers who conduct operations regulated by another Department of Transportation Operating Administration must submit appropriate data to that Operating Administration for employees subject to that Operating Administration's regulations.

Dated: April 18, 1999.

R. C. North,

Assistant Commandant for Marine Safety and Environmental Protection.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 2 and 15

[ET Docket No. 98-76; FCC 99-58]

Rules To Further Ensure That Scanning Receivers Do Not Receive Cellular Radio Signals

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Report and Order* amends the Commission rules to further prevent scanning receivers from receiving cellular radio telephone signals. It also codifies the provisions of section 705(e)(4) of the Communications Act of 1934 into our rules and requires a label on scanning receivers to indicate that modification of the receiver to receive

Cellular Service transmissions is a violation of FCC rules and Federal Law. These requirements will ensure the privacy of communications in the Cellular Service.

DATES: This final rule is effective October 25, 1999.

Compliance Dates: The manufacture or importation of scanning receivers, and frequency converters designed or marketed for use with scanning receivers, that do not comply with the provisions of § 15.121 shall cease on or before October 25, 1999. After July 26, 1999 the Commission will not grant equipment authorization for receivers that do not comply with the provisions of § 15.121. These rules do not prohibit the sale or use of authorized receivers manufactured in the United States, or imported into the United States, prior to October 25, 1999.

FOR FURTHER INFORMATION CONTACT: Rodney P. Conway (202) 418-2904 or via electronic mail: rconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket 98-76, FCC 99-58, adopted March 25, 1999 and released March 31, 1999. A full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room TW-A306), 445 12th Street, SW Washington, DC 20554, and also may be purchased from the Commission's duplication contractor, International Transcription Service, phone (202) 857-3800, facsimile (202) 857-3805, 1231 20th Street, NW Washington DC 20036.

Summary of the Report and Order

1. The *Report and Order* (R&O) amends the rules to modify the definition of a scanning receiver to include scanning receivers that switch among two or more frequencies to deter the manufacture of scanning receivers that automatically scan less than four frequencies to circumvent the Commission's rules.

2. The *R&O* also amends the rules to define test equipment as equipment that is intended primarily for purposes of performing measurements or scientific investigations. The definition is sufficiently clear to prevent individuals from marketing scanning receivers that receive Cellular Service transmissions as test equipment.

3. The *R&O* also amends the rules to require that scanning receivers provide at least 38 dB rejection of Cellular Service signals for any frequency to which the scanning receiver can be tuned. In addition, the *R&O* amends the rules to require that scanning receivers

be designed so that tuning, control and filtering circuitry is inaccessible and the design must be such that any attempt to modify the scanning receiver circuitry to receive Cellular Service transmissions will likely render the scanning receiver inoperable.

4. The *R&O* also amends the rules to clearly prohibit the modification of scanning receivers to receive Cellular Service transmissions, regardless of the date of manufacture of number of units modified. The Commission finds that modifying scanning receivers to receive Cellular Service signals changes its operating characteristics, invalidates the equipment certification, and results in equipment that does not comply with Commission rules.

5. The *R&O* also amends the rules to require a labelling requirement for scanning receivers. The label will contain the following warning: Modification of this device to receive Cellular Service signals is prohibited under FCC Rules and Federal law. The Commission finds that the labelling requirement is an effective deterrent and is an expedient way to distribute information regarding Commission rules and Federal laws.

6. The *R&O* also amends the rules to require that information must be submitted with any application for certification of a scanning receiver to ensure that the proposed rule changes are satisfied. As a result, any application for certification of a scanning receiver must include a detailed showing which: describes the testing method used to determine compliance with the 38 dB rejection ration, contains a statement assessing the vulnerability of the scanning receiver to possible modification, describes the design features that prevent modification of the scanning receiver to receive Cellular Service transmissions, and describes the design steps taken to make tuning, control, and filtering circuitry inaccessible.

7. The *Report and Order* also amends the rules to keep certain portions of applications for equipment authorization for scanning receivers confidential. The Commission finds that any information that would be useful for modification of a scanning receiver to receive Cellular Service transmissions. This information includes schematic diagrams, technical narratives describing equipment operation, and design details taken to prevent modification of scanning receivers to receive Cellular Service frequencies. This will assist in preventing sensitive information regarding the design of scanning receivers from being

distributed to the public via Commission filings.

Final Regulatory Flexibility Analysis

8. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated into the Notice of Proposed Rule Making (Notice), 63 FR 31684, June 10, 1998, in ET Docket No. 98-76. The Commission sought written public comments on the proposals in the *Notice* including the IRFA. The Commission's Final Regulatory Flexibility Analysis ("FRFA") in this Report and Order conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law 104-121, 110 Stat. 847 (1996). See Subtitle II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. 601 *et seq.*

9. Need for and Objective of the Rules. Our objectives are to adopt rules to ensure that scanning receivers do not receive signals from the cellular radiotelephone service frequency bands.

10. Summary of Significant Issues Raised by Public Comments in Response to the IRFAs. No comments were submitted in direct response to the IRFA.

11. Description and Estimates of the Number of Small Entities to Which the Rules Will Apply. For the purposes of this Report and Order, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. See 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. 632). Under the Small Business Act, a "small business concern" is one that: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) meets any additional criteria established by the Small Business Administration (SBA). See 15 U.S.C. 632.

12. The Commission has not developed a definition of small entities applicable to unlicensed communications devices. Therefore, we will utilize the SBA definition applicable to manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA regulations, unlicensed transmitter manufacturers must have 750 or fewer employees in order to qualify as a small business concern. See 13 CFR 121.201, (SIC) Code 3663.

Census Bureau data indicates that there are 858 U.S. companies that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities. See U.S. Dept. of Commerce, 1992 *Census of Transportation, Communications and Utilities* (issued May 1995), SIC category 3663. The Census Bureau category is very broad, and specific figures are not available as to how many of these firms will manufacture unlicensed communications devices. However, we believe that many of them may qualify as small entities.

13. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements. The Commission has adopted rules that require scanning receivers to be manufactured to reduce the possibility of receiving signals from the cellular radiotelephone service frequency bands. The rules will require design details and test measurements to be reported to the Commission as part of the normal equipment authorization process under our certification procedure.

14. Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives. The Commission considered and rejected additional rules that would have significantly increased the costs of manufacturing scanning receivers. The rules adopted in the Report and Order represent the most efficient and least restrictive method to accomplish the Commission's policies and objectives.

15. Report to Congress. The Commission will send a copy of the Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A) and the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 0

Freedom of information.

47 CFR Part 2

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 15

Communications equipment, Labeling, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 2, and 15 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.457 is amended by revising paragraph (d)(1)(ii) to read as follows:

§ 0.457 Records not routinely available for public inspection.

- (d) * * *
- (1) * * *

(ii) Applications for equipment authorizations (type acceptance, type approval, certification, or advance approval of subscription television systems), and materials relating to such applications, are not routinely available for public inspection prior to the effective date of the authorization. The effective date of the authorization will, upon request, be deferred to a date no earlier than that specified by the applicant. Following the effective date of the authorization, the application and related materials (including technical specifications and test measurements) will be made available for inspection upon request (See § 0.460). Portions of applications for equipment certification of scanning receivers and related materials will not be made available for inspection. This information includes that necessary to prevent modification of scanning receivers to receive Cellular Service frequencies, such as schematic diagrams, technical narratives describing equipment operation, and relevant design details.

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS: GENERAL RULES AND REGULATIONS

3. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 307 and 336, unless otherwise noted.

4. Section 2.1033 is amended by revising paragraph (b)(11) to read as follows:

§ 2.1033 Application for certification.

- (b) * * *

(11) Applications for the certification of scanning receivers shall include a statement describing the methods used to comply with the design requirements of all parts of § 15.121 of this chapter. The application must specifically include a statement assessing the vulnerability of the equipment to possible modification and describing the design features that prevent the modification of the equipment by the user to receive transmissions from the Cellular Radiotelephone Service. The application must also demonstrate compliance with the signal rejection requirement of § 15.121 of this chapter, including details on the measurement procedures used to demonstrate compliance.

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PART 15—RADIO FREQUENCY DEVICES

5. The authority citation for part 15 continues to read as follows:

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

6. Section 15.3 is amended by revising paragraph (v) and adding paragraph (dd) to read as follows:

§ 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 or for operation as part of a licensed station are not included in this definition.

* * * * *

(dd) *Test equipment* is defined as equipment that is intended primarily for purposes of performing measurements or scientific investigations. Such equipment includes, but is not limited to, field strength meters, spectrum analyzers, and modulation monitors.

7. Section 15.37 is amended by revising paragraph (f) and adding a new paragraph (h) to read as follows:

§ 15.37 Transition provisions for compliance with the rules.

* * * * *

(f) The manufacture or importation of scanning receivers, and frequency converters designed or marketed for use with scanning receivers, that do not comply with the provisions of § 15.121(a)(1) shall cease on or before April 26, 1994. Effective April 26, 1993, the Commission will not grant

equipment authorization for receivers that do not comply with the provisions of § 15.121(a)(1). These rules do not prohibit the sale or use of authorized receivers manufactured in the United States, or imported into the United States, prior to April 26, 1994.

* * * * *

(h) The manufacture or importation of scanning receivers, and frequency converters designed or marketed for use with scanning receivers, that do not comply with the provisions of § 15.121 shall cease on or before October 25, 1999. Effective July 26, 1999 the Commission will not grant equipment authorization for receivers that do not comply with the provisions of § 15.121. This paragraph does not prohibit the sale or use of authorized receivers manufactured in the United States, or imported into the United States, prior to October 25, 1999.

8. Section 15.121 is revised to read as follows:

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

(a) Except as provided in paragraph (c) of this section, scanning receivers and frequency converters designed or marketed for use with scanning receivers, shall:

(1) Be incapable of operating (tuning), or readily being altered by the user to operate, within the frequency bands allocated to the Cellular Radiotelephone Service in part 22 of this chapter (cellular telephone bands). Scanning receivers capable of "readily being altered by the user" include, but are not limited to, those for which the ability to receive transmissions in the cellular telephone bands can be added by clipping the leads of, or installing, a simple component such as a diode, resistor or jumper wire; replacing a plug-in semiconductor chip; or programming a semiconductor chip using special access codes or an external device, such as a personal computer. Scanning receivers, and frequency converters designed for use with scanning receivers, also shall be incapable of converting digital cellular communication transmissions to analog voice audio.

(2) Be designed so that the tuning, control and filtering circuitry is inaccessible. The design must be such that any attempts to modify the equipment to receive transmissions from the Cellular Radiotelephone Service likely will render the receiver inoperable.

(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 higher 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.

(c) Scanning receivers and frequency converters designed or marketed for use with scanning receivers, are not subject to the requirements of paragraphs (a) and (b) of this section provided that they are manufactured exclusively for, and marketed exclusively to, entities described in 18 U.S.C. 2512(2), or are marketed exclusively as test equipment pursuant to § 15.3(dd).

(d) Modification of a scanning receiver to receive transmissions from Cellular Radiotelephone Service frequency bands will be considered to constitute manufacture of such equipment. This includes any individual, individuals, entity or organization that modifies one or more scanners. Any modification to a scanning receiver to receive transmissions from the Cellular Radiotelephone Service frequency bands voids the certification of the scanning receiver, regardless of the date of manufacture of the original unit. In addition, the provisions of § 15.23 shall not be interpreted as permitting modification of a scanning receiver to receive Cellular Radiotelephone Service transmissions.

(e) Scanning receivers and frequency converters designed for use with scanning receivers shall not be assembled from kits or marketed in kit form unless they comply with the requirements in paragraph (a) through (c) of this section.

(f)(1) 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.

(2) "Permanently affixed" means that the label is etched, engraved, stamped, silkscreened, indelibly 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.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[WT Docket No. 98-229, CC Docket No. 95-116; FCC 99-19]

Cellular Telecommunications Industry Association's Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *Memorandum Opinion and Order*, the Commission grants a petition filed by the Cellular Telecommunications Industry Association (CTIA) requesting that the Commission forbear from imposing service provider local number portability (LNP) requirements on broadband commercial mobile radio service (CMRS) providers until the expiration of the five-year buildout period for broadband personal communications service (PCS) carriers. Accordingly, the *Memorandum Opinion and Order* extends the deadline for CMRS providers to support service provider LNP in the top 100 Metropolitan Statistical Areas (MSAs) until November 24, 2002. The *Memorandum Opinion and Order* finds that extension of the deadline will provide the industry with the flexibility to allocate its immediate resources toward network construction, a goal proven to promote a competitive marketplace.

DATES: Effective May 27, 1999.

FOR FURTHER INFORMATION CONTACT: David Furth at (202) 418-0632 or Joel Taubenblatt at (202) 418-1513 (Wireless Telecommunications Bureau).

SUPPLEMENTARY INFORMATION: This is a summary of the *Memorandum Opinion and Order*, FCC 99-19, adopted February 8, 1999 and released February 9, 1999. The complete text of the *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 1231 20th St.,

N.W., Washington, D.C. 20036. The document is also available via the internet at <http://www.fcc.gov/Bureaus/Wireless/Orders/1999/index.html>.

Introduction

1. In this *Memorandum Opinion and Order*, the Commission grants a petition filed by CTIA seeking forbearance from LNP requirements for CMRS carriers until the completion of the five-year buildout period for broadband PCS carriers. In granting the petition, the Commission extends the deadline for CMRS carriers to implement service provider LNP until November 24, 2002.

Background

2. Under the Commission's prior LNP decisions, broadband CMRS carriers (cellular, broadband PCS, and some specialized mobile radio (SMR) providers) were required to implement LNP in the top 100 MSAs, and to support nationwide roaming, by March 31, 2000. Implementation of LNP by CMRS providers would enable wireless customers to "port" their telephone numbers in the event that they switch from one wireless carrier to another, or from a wireless to a wireline carrier.

Findings

3. In this *Memorandum Opinion and Order*, the Commission finds that extending the deadline is consistent with the statutory standard for granting forbearance under section 10 of the Communications Act of 1934, as amended, 47 U.S.C. 160. The Commission notes that the wireless industry requires additional time to implement LNP in part because, unlike wireline carriers (who are already required to provide LNP in the top 100 MSAs), wireless carriers face certain unique technical issues regarding implementation of LNP in their networks and in supporting roaming by customers with ported numbers. The Commission also states that extending the deadline until November 2002 is consistent with the public interest for competitive reasons because it will give CMRS carriers greater flexibility in that time-frame to complete network buildout, technical upgrades, and other improvements that are likely to have a more immediate impact on enhancing service to the public and promoting competition in the telecommunications marketplace.

4. The Commission emphasizes that its decision in the *Memorandum Opinion and Order* does not relieve CMRS carriers of their underlying obligation to implement LNP. As wireless service rates continue their downward trend and the use of wireless