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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Communications Assistance for Law Enforcement Act	)	CC Docket No. 97-213
	)	DA 98-762
	)	

COMMENTS OF 360° COMMUNICATIONS COMPANY

360° Communications Company ("360°")[1] hereby respectfully submits its comments on the Commission's Public Notice in the above-captioned proceeding.[2] As set forth below, the Commission should extend the October 25, 1998 statutory deadline for complying with the assistance capability requirements of Section 103 of the Communications Assistance For Law Enforcement Act ("CALEA")[3] for all telecommunications carriers until at least two years after the promulgation of a final CALEA standard. Such relief is warranted given the uncertainty surrounding the interim capability standard and the amount of time necessary to develop and deploy compliant equipment once a final standard has been issued.

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1 360° Communications Company is the country's second largest publicly held cellular communications company in the United States. The company offers wireless voice and data services to approximately 2.6 million customers in more than 100 markets throughout 15 states. 360° also provides residential long distance and paging services.

2 Public Notice, Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, DA 98-762 (Apr. 20, 1998) ("Public Notice").

3 47 U.S.C. § 1002.

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I. INTRODUCTION

The Communications Assistance for Law Enforcement Act generally requires telecommunications carriers to ensure that their equipment, facilities and services meet certain assistance capability requirements by October 25, 1998 in order for law enforcement to conduct authorized electronic surveillance. To facilitate compliance, CALEA also establishes a framework by which telecommunications industry standard-setting organizations work with law enforcement interests to develop "CALEA compliant" telecommunications equipment that will be used by telecommunications carriers. However, Congress also provided that if technical requirements are not issued, or if any party believes such standards are deficient, that party may petition the FCC to establish such requirements or standards.

The development and adoption of a final technical standard to implement the assistance capability requirements of CALEA has not yet been realized and the Commission has been asked by several parties to intervene on CALEA compliance issues. In particular, the FBI and the Department of Justice in a joint filing[4] and the

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[4] The FBI and the Department of Justice ("DOJ") filed a petition for expedited rulemaking under Section 107(b) on March 27, 1998 requesting that the FCC "develop technical requirements and standards that implement the assistance capability requirements of Section 103." *See Establishment of Technical Requirements and Standards for Telecommunications Carrier Assistance Capabilities Under the Communications Assistance for Law Enforcement Act*, Joint Petition For Expedited Rulemaking of the FBI and DOJ at 1 (filed Mar. 27, 1998) ("FBI/DOJ Petition"). In their Petition the FBI and DOJ stated that such action was necessary because, in their opinion, "the industry's interim standard [J-STD-025] is not adequate to ensure that law enforcement will receive all of the communications content and call-identifying information that carriers are obligated to deliver under Section 103 and the applicable electronic surveillance statutes." *Id.* at 2.

Center for Democracy and Technology[5] have filed separate petitions with the Commission asking the agency to address deficiencies in the recently-adopted interim industry standard (J-STD-025). Responding to the issues raised in these petitions and concerned about the uncertainty surrounding the interim standard, the Telecommunications Industry Association ("TIA"), the Cellular Telecommunications Industry Association, Personal Communications Industry Association, and United States Telephone Association ("CTIA *et al.*") in a joint filing, and a number of other interested parties also have requested that the Commission intervene in the implementation of CALEA and, among other things, extend the deadline for compliance with the assistance requirements.[6] Now, consistent with its obligations under CALEA, the FCC must establish by rule, on the record and with public comment, the technical

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[5] The Center for Democracy and Technology on March 26, 1998 asked the FCC to commence a rulemaking, claiming that, "[u]nder unremitting pressure from the FBI, the telecommunications industry has already agreed to build surveillance features that go beyond the narrow mandate of CALEA and violate the intent of Congress." *See Petition for Rulemaking under Sections 107 and 109 of the Communications Assistance for Law Enforcement Act*, Center for Democracy and Technology at i (filed Mar. 26, 1998) ("CDT Petition").

[6] *See Petition For Rulemaking*, Telecommunications Industry Association (filed Apr. 2, 1998) ("TIA Petition"); *Response to Petition for Rulemaking,* Cellular Telecommunications Industry Association, Personal Communications Industry Association, and United States Telephone Association (filed Apr. 9, 1998) ("CTIA *et al.* Petition"); *Petition for Extension of Compliance Date*, AT&T Wireless Systems, Inc., Lucent Technologies Inc. and Ericsson, Inc. (filed Mar. 30, 1998) ("AT&T Wireless Petition"); *Petition for Extension of Compliance Date*, United States Telephone Association (filed Apr. 24, 1998) ("USTA Petition").

requirements or standards necessary to implement the assistance capability requirements.[7]

In its Public Notice, the Commission requests comment on the issues raised by these petitions as they relate to issues concerning the standard for assistance capability requirements and the October 25, 1998 compliance deadline. Regarding the deadline for CALEA compliance, the Commission asks for comment on whether and how it should extend the statutory deadline and the most efficient way for doing so.[8] In particular, comment is sought on "all possible actions the Commission might take, including the issuance of an extension order that applies to all carriers subject to the compliance deadline" to ensure that the statutory objectives and obligations of CALEA would be met in a timely manner.[9]

II. THE COMMISSION SHOULD EXTEND THE CALEA COMPLIANCE DATE UNTIL AT LEAST TWO YEARS FOLLOWING ADOPTION OF A FINAL STANDARD

360° supports the suggestion of TIA, CTIA *et al.*, and others that the Commission extend the CALEA assistance capability compliance deadline for all telecommunications carriers until at least two years after adoption of a final standard. As noted in the various Petitions and set forth below, this approach is necessary given that CALEA-compliant equipment solutions are not presently available and that the

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7 47 U.S.C. § 1006(b).

8 Public Notice at 4.

9 *Id.*

uncertainty surrounding the interim standard will only serve to further discourage deployment of such equipment. In addition, a two-year extension of the deadline from the adoption of a final standard is reasonable because manufacturers and carriers will require that period of time to develop and deploy CALEA-compliant equipment once such a standard is adopted.

As an initial matter, 360° echoes the concern expressed by TIA and AT&T Wireless that CALEA-compliant solutions simply will not be available to be installed or deployed prior to the October 25, 1998 deadline, or for some time thereafter. In the case of 360°, compliance with assistance capability requirements will not be reasonably achievable through the application of existing cellular network technology and thus will require deployment of CALEA-compliant hardware and software in conjunction with upgrades to 360°'s cellular network. Indeed, 360° has been told by representatives of Motorola, Inc. – the provider of the majority of its cellular switches, base stations and home and visiting location registers – that Motorola has not yet been able to produce CALEA-compliant cellular equipment for sale because of controversies and delays attributable to the development of J-STD-025.

Motorola has stated that their CALEA equipment, which is compliant with J-STD-025, will not be available for testing until sometime in 1999. Once such equipment is made available, it will be necessary for 360° to conduct evaluation and field acceptance testing to verify performance and to ensure that there is no impairment to network

operation. This testing would need to occur in order to evaluate potential deployment and would require at least six months to complete.[10]

Moreover, the Petitions filed by TIA and CTIA *et al.* correctly point out that requiring the continued development and deployment of J-STD-025 equipment would be contrary to the public interest in the face of current challenges to this standard.[11] The unstable nature of the interim standard makes it technically impractical and financially imprudent for manufacturers to build CALEA-compliant equipment based on the interim standard, and equally imprudent for carriers to buy such equipment. As TIA notes, modifications to the interim standard are likely to require complex changes for manufacturers' equipment and compatibility with telecommunications carriers' networks.[12] Thus, a failure to extend the compliance deadline would force equipment manufacturers and telecommunications carriers to incur the substantial cost of developing and deploying equipment that could be quickly rendered obsolete when a final standard is reached.

In addition, 360° agrees with TIA's suggestion that at least a two-year extension window should be adopted in order to allow manufacturers and carriers to develop and

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[10] Accordingly, subject to acceptance and network compatibility, the earliest that 360° would be able to provide J-STD-025 capability is six months after availability of the equipment, assuming there are no delays associated with the deployment of this equipment in 360°'s network or its network upgrades.

[11] TIA Petition at 7; CTIA *et al.* Petition at 11-13.

[12] TIA Petition at 6-7.

deploy CALEA-compliant solutions once a final standard has been issued.[13] As the Commission knows and the FBI itself has recognized, the historical development cycle for hardware and software is at least 18 months after promulgation of a standard, and TIA suggests that this process could possibly take up to 30 months.[14] In turn, carriers need adequate opportunity to field test and deploy new technology. The compliance schedule requested herein will thus give manufacturers and carriers the necessary opportunity to meet the assistance capability requirements of CALEA.

Lastly, the Petitions underscore the need for a comprehensive and consistent approach to extend the deadline for compliance with CALEA's assistance capability requirements. An industry-wide approach is justified due to the commonality of issues faced by all telecommunications carriers -- namely, the absence of a final technical standard and the lack of availability of compliant equipment. Further, it is far more efficient to address these issues through a general extension process in light of the substantial carrier resources that will be needed to prepare, and the Commission resources that will be needed to review, individual carrier petitions.

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[13] TIA Petition at 7-11; *see also* CTIA *et al.* Petition at 12-13.

[14] *See* Comments of TIA, CC Docket No. 97-213, at 9 (filed Dec. 12, 1997) (noting that standard industry practice requires 24-30 months of development before manufacturers can even release a software package containing new features). As TIA points out, the Attorney General has estimated that the industry would require at least 18 months to develop the equipment and software necessary to meet the FCC's final decision. TIA Petition at 6 n.7 (citing Testimony of Attorney General before the House Appropriations Subcommittee for Commerce, State, Justice, the Judiciary and Related Agencies (Feb. 26, 1998)).

Accordingly, the Commission should take prompt action to grant the relief requested herein. Delay at this juncture would not only serve to exacerbate the uncertainty regarding the status of CALEA compliance, but also would leave carriers little choice except to file individual extension requests in order to avoid the consequences of failing to comply with CALEA.[15]

III. AN EXTENSION OF THE COMPLIANCE DEADLINE IS AUTHORIZED UNDER SECTION 107 OF CALEA

The Commission's authority to extend the deadline for complying with the assistance capability requirements as requested plainly rests on Section 107(c) of CALEA. Section 107(c) provides that the Commission, upon petition by a telecommunications carrier and after consultation with the Attorney General, may grant an extension if it determines that "compliance with the assistance capability requirements under section 103 is not reasonably achievable through application of technology available within the compliance period."[16] Further, a telecommunications

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[15] In the event the Commission declines to grant an industry-wide extension, 360° requests a specific extension under Section 107(c) on the basis of these comments, or at least, a reasonable period of time to comply with the Commission's decision. Without an extension from the Commission or other relief, the absence of a stable standard does not relieve 360° from its obligations under CALEA and a specific extension would be wholly appropriate for the reasons stated herein. 360° further requests that the Commission expressly toll the CALEA compliance date during the pendency of this Petition in the event that the Commission requires longer than the remaining time in the compliance period to decide this matter.

[16] 47 U.S.C. § 1006(c)(2). CALEA does not specify the nature of the Commission's consultation with the Attorney General under Section 107. However, Congress made it clear that accountability was to be the hallmark of CALEA, stating that "all proceedings before the FCC will be subject to public scrutiny, as well as congressional oversight and judicial review." *See* House Report No. 103-827 at 20, *reprinted in* 1994 U.S.C.C.A.N.

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carrier proposing to install or deploy, or having installed or deployed, any equipment, facility, or service prior to the effective date of Section 103 of CALEA may petition the Commission for one or more extensions of the deadline for complying with such requirements.[17] Here, an extension is warranted for all telecommunications carriers because, as noted by TIA and others, it is unreasonable to expect that manufacturers and carriers will develop and deploy CALEA-compliant technology given the uncertainty surrounding the interim standard and the absence of a final standard.[18]

This authority also is supported by the plain language of Section 107(b) of the statute. Under this subsection, the Commission may "provide a reasonable time and conditions for compliance with and transition to any new standard" either if there is a failure to issue technical standards or requirements or if "a Government agency or any

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3489, 3500. Thus, the Commission's consultation with the Attorney General must be on the record.

[17] 47 U.S.C. § 1006(c)(1). Moreover, Section 107(c)(3)'s two-year limit on an extension "from the date the extension is granted" does not serve as a barrier to the relief requested. As TIA suggests, the Commission could "toll" CALEA compliance during the standards process and then put the two-year extension into effect. TIA Petition at 10. Also, the fact that Section 107(c)(1) expressly allows the Commission to grant one or more extensions of the deadline makes it clear that Section 107(c)(3) does not intend to allow an extension to expire before compliance is "reasonably achievable." *See* 47 U.S.C. § 1006(c)(1).

[18] TIA Petition at 5-7; AT&T Wireless Petition at 9. Further, grant of an extension is consistent with the Commission's authority under Section 109(b) of CALEA, which permits the Commission to determine whether "compliance with the assistance capability requirements of section 103 is reasonably achievable with respect to any equipment, facility, or service installed or deployed after January 1, 1995." 47 U.S.C. § 1008(b).

other person believes that such requirements or standards are deficient."[19] In light of the claims by the FBI/DOJ and the Center for Democracy and Technology that the industry J-STD-025 standard is deficient, grant of such an extended compliance deadline clearly is justified.[20]

IV. CONCLUSION

For the reasons set forth above, 360° requests that the Commission extend the CALEA compliance date for all telecommunications carriers until at least two years following ratification of a final standard by the Commission.

Respectfully submitted,

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19 47 U.S.C. § 1006(b).

20 *See* FBI/DOJ Petition at 23-59; CDT Petition at 4-5, 12-16.