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Before The
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Communications Assistance for) CC Docket No. 97-213
Law Enforcement Act)

To: The Commission

COMMENTS OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY
ASSOCIATION

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CONTENTS

SUMMARY 1

I. ALL FACTORS SUPPORT AN EXTENSION OF THE COMPLIANCE DATE 4

 A. There Is No Dispute that CALEA-Compliant Technology Is Not Available 4

 B. Stable Standards Are Needed to Develop CALEA Technology 6

 C. The Commission Should Reject Any Attempt to Bifurcate an Extension 10

II. CALEA EMPOWERS THE COMMISSION TO GRANT AN INDUSTRY-WIDE EXTENSION OF THE COMPLIANCE DATE 12

III. CONCLUSION 16

SUMMARY

The Cellular Telecommunications Industry Association ("CTIA") submits these comments in response to the Public Notice issued by the Federal Communications Commission ("Commission") on April 20, 1998, to support an immediate industry-wide extension of the October 25, 1998, Communications Assistance for Law Enforcement Act ("CALEA") compliance date. The grounds for extension are clear: CALEA-compliant technology is not available and will not become available until the Commission resolves the dispute over the scope of a carrier's obligations under Section 103 of CALEA.

At the time of the Public Notice, the Commission had before it five petitions that all agreed that carriers needed an extension of time to meet the assistance capability obligations of Section 103 of CALEA. All petitioners agreed that CALEA-compliant equipment currently was not available and likely would not be available for up to two years after the Commission resolved the dispute over the scope of Section 103 requirements. Six more extension petitions have been filed since the Public Notice. In light of the unanimous views of all petitioners that there is a need for an industry-wide extension, and because Section 107 of CALEA authorizes the

Commission to act, CTIA urges the Commission to stay all CALEA compliance pending resolution of the standards dispute by the Commission and then to grant a blanket extension of time for all of industry to comply.

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**COMMENTS OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY
ASSOCIATION**

The Cellular Telecommunications Industry Association ("CTIA")¹ submits these comments in response to the Public Notice² issued by the Federal Communications Commission ("Commission") on April 20, 1998, regarding resolution of

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² Public Notice, DA 98-762, In the Matter of Communications Assistance for Law Enforcement Act, CC Docket No. 97-213 (released April 20, 1998) (the "Public Notice").

various disputes over the implementation of the Communications Assistance for Law Enforcement Act ("CALEA"). CTIA's comments are submitted in support of an immediate industry-wide extension of the October 25, 1998, CALEA compliance date because CALEA-compliant technology is not available and will not become available until the Commission resolves the dispute over the scope of a carrier's obligations under Section 103 of the Act.

Granting an extension does not mean that carriers will not have the ability to perform wiretaps during the extension period. All carriers currently provide technical assistance to law enforcement to conduct lawfully authorized wiretaps, whether digital or analogue, wireless or wireline. The vast majority of these wiretaps are carried out without impediment. CALEA solutions will result in *advanced* features being available for wiretapping in addition to the basic surveillance already being conducted. Thus, granting an extension does not mean that electronic surveillance will come to a standstill.

On the need for an extension, at the time the Public Notice was issued, the Commission had before it five petitions that, despite a range of views on other CALEA issues, all

agreed that carriers needed an extension of time to meet the assistance capability obligations of Section 103 of CALEA.³ All petitioners agreed that CALEA-compliant equipment currently was not available and likely would not be available for up to two years after the Commission resolved the dispute over the scope of Section 103 requirements. Since that time, six more extension petitions have been filed, further validating the need for an industry-wide extension.⁴ Faced

³ The five petitions included (1) CTIA's Petition for Rulemaking, filed July 16, 1997 ("CTIA Petition"); (2) Petition for Rulemaking under Sections 107 and 109 by the Center for Democracy and Technology ("CDT"), filed March 26, 1998 ("CDT Petition"); (3) Joint Petition for Expedited Rulemaking by the Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI"), filed March 27, 1998 ("DOJ Petition"); (4) Petition for Rulemaking by the Telecommunications Industry Association ("TIA"), filed April 2, 1998 ("TIA Petition"); and (5) Petition for Extension of Compliance Date by AT&T Wireless Services Inc. ("AWS"), Lucent Technologies Inc. ("Lucent"), and Ericsson Inc. ("Ericsson"), filed March 30, 1998 ("AWS Petition"). The Commission also has before it the Response to Petition for Rulemaking by CTIA, the Personal Communications Industry Association ("PCIA") and the United States Telephone Association ("USTA"), filed April 9, 1998 ("Joint Industry Response").

⁴ Petition for an Extension of Time to Comply with the Capability Requirements of Section 103 of CALEA by Powertel, Inc., filed April 23, 1998 ("Powertel Petition"); Petition for an Extension of CALEA's Assistance Capability Compliance Date by PrimeCo Personal Communications, L.P., filed April 21, 1998; Petition for Extension of time by Ameritech, filed April 24, 1998 ("Ameritech Petition"); Petition for Extension

with the unanimous views of all petitioners on the need for an extension, and empowered to act by Section 107 of CALEA, there is every reason for the Commission to act now and no valid reason not to do so.

I. ALL FACTORS SUPPORT AN EXTENSION OF THE COMPLIANCE DATE

A. There Is No Dispute that CALEA-Compliant Technology Is Not Available

CTIA applauds the Commission's recognition in the Public Notice of the need for an immediate extension, particularly if it appears the factors supporting an extension apply equally to large numbers of telecommunications carriers. The Commission already has its answer because in response to its first notice of proposed rulemaking on implementation of CALEA,⁵ the Commission received an overwhelming carrier response that the October 25, 1998, compliance deadline could

of Compliance Date by USTA, filed April 24, 1998 ("USTA Petition"); AirTouch Paging Services, Inc., Petition for an Extension of the CALEA Capability Compliance Date, filed May 4, 1998; AirTouch Communications, Inc., and Motorola, Inc., Joint Petition for an Extension of the CALEA Assistance Capability Compliance Date, filed May 5, 1998.

⁵ See Communications Assistance for Law Enforcement, Notice of Proposed Rulemaking, CC Docket No. 97-213, FCC 97-356, released October 10, 1997.

not be met due to the absence of technology.⁶

Now, petitions for extension are being filed under Section 107(c), including the AWS Petition and petitions from Powertel, PrimeCo, Ameritech, AirTouch Paging Services, AirTouch Communications, Motorola and USTA on behalf of its 1000 members. Each petition for extension justifies an

⁶ See Comments of the American Mobile Telecommunications Association, filed December 12, 1997, p. 8; Comments of the Ameritech Operating Companies, filed December 12, 1997, pp. 8-10, Comments of AT&T Corp., filed December 12, 1997, pp. 27-28; Comments of Bell Atlantic Mobile, Inc., filed December 12, 1997, pp. 8-9; Comments of BellSouth Corporation, filed December 12, 1997, pp. 18-19; CTIA Comments at 6-8; Comments of GTE Service Corporation, filed December 12, 1997, p. 14; Comments of Motorola, Inc., filed December 12, 1997, p. 11; Comments of Nextel Communications, Inc., filed December 12, 1997, pp. 15-16; Comments of Omnipoint Communications, Inc., filed December 12, 1997, p. 8; Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, filed December 12, 1997, pp. 6-8; Comments of Paging Network, Inc., filed December 12, 1997, pp. 13-15; PCIA Comments, filed December 12, 1997, pp. 3-6; Comments of PrimeCo Personal Communications, L.P. ("PrimeCo") filed December 12, 1997, pp. 5-6; Comments of the Rural Telecommunications Group, filed December 12, 1997, pp. 6-7; Comments of SBC Communications Inc.; filed December 12, 1997, p. 24; 360 Communications Company, filed December 12, 1997, pp. 7-8; Comments of United States Cellular Corporation, filed December 12, 1997, pp. 13-14; USTA Comments, filed December 12, 1997, pp. 13-14; Comments of U S WEST, Inc., filed December 12, 1997, p. 30; Reply Comments of AirTouch Communications, Inc., filed February 11, 1998, pp. 9-12; Reply Comments of ICO Services Limited, filed February 11, 1998, pp. 3-4.

extension on the same grounds--the absence of commercially available technology.

Thus, equally and for all carriers, the record is undisputed that compliance is not reasonably achievable with technology commercially available within the compliance period. DOJ itself admitted as much in its January 26, 1998, report to Congress when it acknowledged that not even a partial solution would be by the compliance date available from the three biggest suppliers of switching equipment.⁷

B. Stable Standards Are Needed to Develop CALEA Technology

It should be no surprise that there is an absence of commercially available CALEA technology. The absence of stable technical standards has guaranteed that result. Yet it did not have to be that way. On July 16, 1997, CTIA requested that the Commission initiate a rulemaking to resolve the very

⁷ See Communications Assistance for Law Enforcement Act Implementation Report, at 15, Appendix B to DOJ Petition. Remarkably, the FBI advised Congress that a non-switch solution would be available from Bell Emergis within the compliance date when the FBI apparently had in its possession clear information from the only carrier that tested the product that it was infeasible. See Ameritech Petition at 6-7.

questions now raised by the DOJ Petition. DOJ opposed the petition in meetings with the Commission while at the same time law enforcement attempted to block promulgation of any industry standard.⁸ As a result, nine months were lost in bringing the standard forward.

Despite DOJ opposition, industry promulgated JSTD-025 in December 1997. But in March 1998, DOJ challenged the standard as deficient, alleging that it failed to provide enough capabilities, while CDT challenged the standard, arguing that it provided too many capabilities thereby impinging on privacy. TIA then filed a petition, asking the Commission to resolve the dispute because manufacturers cannot devote significant engineering resources developing and implementing a standard that may or may not be radically modified in the next few months.⁹ CTIA agreed and now all carriers and manufacturers alike await Commission resolution of the dispute

⁸ See CTIA Petition at 8-12; CTIA NPRM Comments at 4.

⁹ TIA Petition at 5.

so that industry can get on with its compliance obligations.¹⁰

Once the requirements of Section 103 are clarified, the standard can be modified to reflect the Commission's determination. CTIA has urged that the Commission then remand the standard, if changes are necessary, to TIA's TR45.2 committee for final implementation.¹¹

Once CALEA's requirements are standardized, there again is complete agreement between the parties that it will take up to 24 months to develop the necessary technology to implement the standard. All carriers are equally situated because they rely on their vendors to make available the necessary equipment and the vendors rely upon stable standards. During this development period, under Section 106 of CALEA, carriers and their vendors will be consulting on installation of the

¹⁰ See e.g., TIA Petition at 5-6 ("Until the current uncertainty surrounding J-STD-025 has been resolved, manufacturers should not be required to devote engineering resources developing and implementing a standard that may be radically modified in the next few months.")

¹¹ As the Commission has requested in its Public Notice, CTIA will address the benefits of such a remand in subsequent comments.

technology.¹²

Finally, the Commission should understand that if relief is not granted soon, it may not be enough for some carriers to simply petition for an individual extension and then wait for Commission action. Some carriers may opt for non-standard solutions to guard against possible enforcement actions under Section 108. This approach will make compliance much more expensive for law enforcement, which will have to acquire nonstandard collection equipment to receive the intercepted information. CTIA agrees with TIA that if solutions are not uniform, there is a risk of incompatibility of systems and network elements.¹³

In no event should the Commission abandon carriers to the prospect of DOJ enforcement actions and potential penalties of \$10,000/day when the Commission has the power to extend the compliance date for all carriers, thereby relieving the

¹² It is important for the Commission to recognize that many wireless carriers use equipment from multiple manufacturers and so must consult not only on achieving compliance, but coordinating it within the network as well..

¹³ TIA Petition at 6-7.

administrative and legal burden.¹⁴

C. The Commission Should Reject Any Attempt to Bifurcate an Extension

CTIA has urged the Commission to adopt a two-phased approach in response to the Petitions: (1) grant an immediate stay of CALEA compliance pending determination of CALEA's capability requirements and (2) grant a year for TR45.2 to complete technical specifications upon remand by the Commission and extend the compliance date for 24 months after completion and promulgation of the revised standard. DOJ proposes that the Commission grant a limited extension for industry to proceed with development of JSTD-025 while the punch list items are evaluated by the Commission.¹⁵ Presumably, any changes to the standard would then be the subject of a further extension.

CTIA strongly opposes such a bifurcated approach to any

¹⁴ The threat is real. Attorney General Reno told Congress that if DOJ files a deficiency petition, as to carriers that are not in compliance on October 25, 1998, "we will avail ourselves of all lawful mechanisms available." Testimony of the Attorney General before the House Appropriations Subcommittee for Commerce, State, Justice, the Judiciary and Related Agencies (Feb. 26, 1998).

extension because it not only presupposes that the CDT petition will not be granted but because it will substantially increase the cost of compliance.¹⁶ CTIA members have been told by manufacturers that bifurcated development of the punch list will be the functional equivalent of a second development effort, perhaps doubling the cost of compliance. These are costs that would be passed on to the carrier by the manufacturer and ultimately fall on the shoulders of subscribers.

DOJ can only justify the bifurcated approach because it opposed CTIA's July, 1997, Petition asking the Commission to intervene in order to ensure that CALEA technology "made it to the streets" as soon as possible.¹⁷ Thus responsibility for the nine month delay before acting to resolve the CALEA dispute lay squarely at the feet of the government.

In evaluating any petition under Section 107(b), the

¹⁵ DOJ Petition at 4.

¹⁶ Joint Industry Response at 11.

¹⁷ Freedom of Information Act documents obtained by CTIA indicate that the FBI urged the Commission to "sit on" the CTIA petition.

Commission is obligated to ensure that any rule the Commission promulgates will implement CALEA in a cost-effective manner with a minimal impact on subscriber rates.¹⁸ The Commission does not have a record before it to make the required finding on cost-effectiveness or impact on subscriber rates. If the DOJ approach is even considered in these proceedings, the Commission, at a minimum, must require manufacturers to disclose the cost of a bifurcated development effort.

CTIA believes the better approach is to stay CALEA compliance while the Commission expeditiously resolves the dispute over the scope of CALEA requirements. Then, the Commission can remand the requirements to the technical standards committee with a definite schedule for completion of work and an extension of 24 months thereafter to develop the solutions. CTIA does not believe, given the comment schedule announced by the Commission, that such an approach will materially delay CALEA compliance.

II. CALEA EMPOWERS THE COMMISSION TO GRANT AN INDUSTRY-WIDE EXTENSION OF THE COMPLIANCE DATE

With the record before the Commission supporting an

¹⁸ 47 U.S.C. § 1006(b)(1) & (3).

extension, the Commission has clear authority under Section 107(b) of CALEA to set a reasonable time for compliance after it resolves the standards dispute. Section 107(b) contemplates an industry-wide extension when a person challenges an *industry* standard. Congress was well aware that the modern telecommunications industry has been built on standards and sought to ensure that those most affected by CALEA had the primary role in designing the solution.¹⁹ Should the standard for the *industry* be challenged, Congress mandated that the Commission set a reasonable time for compliance after resolution of the dispute for carriers to

¹⁹ H. Rep. No. 103-837, at 19, *reprinted in* 1994 U.S.C.C.A.N. 3489, 3499. Congress stated:

The legislation provides that the telecommunications industry itself shall decide how to implement law enforcement's requirements. The bill allows industry associations and standard-setting bodies, in consultation with law enforcement, to establish publicly available specifications creating "safe harbors" for carriers. This means that those whose competitive future depends on innovation will have a key role in interpreting the legislated requirement and finding ways to meet them without impeding the deployment of new services.

meet their obligations.²⁰ With the Petitions now before the Commission, the requirements of Section 107(b)(5) are triggered and a reasonable time for meeting CALEA after the Commission determines the scope of a carrier's compliance obligations is mandated.

The grant of a blanket extension to similarly situated carriers to avoid the administrative burden of filing and granting individual petitions is not without Commission precedent. In the recent radiofrequency emissions proceedings, the Commission eliminated the need for the filing and granting of individual extension requests following a delay in the issuance of guidelines for carriers and extended the compliance deadline for all carriers an additional eight months.²¹ A further extension of the compliance date in this same proceeding was granted to all carriers after guidelines had to be revised to include clarifications requested by

²⁰ Id. at 3507.

²¹ In the Matter of Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, First Memorandum Opinion and Order, 11 F.C.C. Rcd 17512, 17515-6 (1996).

carriers.²² The Commission's reasoning there applies equally to CALEA, where a blanket extension is warranted by a delay in issuance of "guidelines" that affects all carriers equally.

As an alternative, the Commission certainly can act on individual petitions now being filed before the Commission under Section 107(c). However, as the Commission implies in the Public Notice, such individual petitions impose significant administrative burdens on both carriers and the Commission, with no countervailing benefit.

The grounds for extension under Section 107(c)(2) is that compliance is not reasonably achievable through application of technology available in the compliance period.²³ There is no dispute that this ground has been met for all carriers. Since individual carriers each would be entitled to an extension under Section 107(c), there is no reason for the Commission to refrain from granting an extension that would apply in the

²² In the Matter of Procedures for Reviewing Requests for Relief from State and Local Regulations Pursuant to Section 332(c)(7)(b)(v) of the Communications Act of 1934, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 97-303, released August 25, 1997.

²³ 47 U.S.C. § 1006(c)(2).

aggregate to all carriers.²⁴ Thus, CTIA urges the Commission to act under Section 107(b) to grant an omnibus extension.²⁵

III. CONCLUSION

CTIA urges the Commission to stay CALEA compliance pending completion of this rulemaking, to remand any changes in JSTD-025 to TR45.2 for action, and to immediately extend the compliance deadline for 24 months, effective upon completion and promulgation of any revised standards. The Commission has the authority to grant this request, it is the most efficient approach, and it will avoid needlessly burdening carriers and the Commission by requiring hundreds of individual petitions for extension to be filed and then responded to in rubber-stamp fashion.

²⁴ Certainly, the Commission could use its authority under Section 301 of CALEA to implement a procedure to streamline the petition process by requiring only a carrier submission that would state that the carrier has consulted with the manufacturer of its telecommunications equipment and that a compliant technology is not currently available. But this is still an unnecessary burden given the clear and undisputed record that solutions are not now available.

²⁵ The extension would apply to all lines of business, whether providing wire or electronic communication. No segment of the wireless industry can field CALEA-compliant equipment today.

Respectfully submitted,



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