

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) CC Docket No. 97-213
Law Enforcement Act)
)
)

REPLY COMMENTS OF METROCALL, INC.

Metrocall, Inc. ("Metrocall"), through its undersigned counsel, and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, respectfully submits these Reply Comments in response to the FCC's April 20, 1998 Public Notice ("Notice")¹ in the above-captioned proceeding.

I. Summary

Metrocall agrees with the Cellular Telecommunications Industry Association ("CTIA"), the Personal Communications Industry Association ("PCIA") and the United States Telephone Association's ("USTA") joint request for a blanket extension of the deadlines for compliance with the assistance capability requirements of Section 103 of the Communications Assistance for Law Enforcement Act ("CALEA"). Under that joint request, broadband and narrowband Commercial Mobile Radio Service ("CMRS") providers would not have to comply with Section 103 until two years after final capacity and capability requirements for narrowband and

¹ In the Matter of: Communications Assistance for Law Enforcement Act, Public Notice, CC Docket No. 97-213, DA-98-762 (rel. April 20, 1998)

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broadband telecommunications service providers and equipment manufacturers are promulgated.

In the alternative, Metrocall also supports Nextel Communications Inc.'s suggestion that the Commission should toll or suspend the CALEA compliance date, until the final technical industry standards² are established. The FCC should then extend the compliance deadline for two years after adoption of these standards.³

II. Statement of Interest

Metrocall is the second largest paging company in the nation, with over 4,000,000 subscribers. As a one-way CMRS carrier, and reseller of two-way narrowband PCS, Metrocall is required to comply with CALEA, and will be adversely affected by the uncertainty of standards, questions of technical feasibility, and costs of CALEA compliance. Although Metrocall will file its own motion for an extension of time to comply with the assistance capability requirements of Section 103 of CALEA, it has standing to file these Reply Comments in support of these joint industry proposals.

III. Background

In the Notice, the Commission requests comments regarding: 1) how the Commission can

² The technical industry standards will prescribe technical baselines which industry may choose to meet CALEA's Section 103 requirements. These standards will also provide equipment manufacturers with guidance to ensure inter-manufacturer compatibility. The current interim industry technical standards (entitled J-STD-025) were drafted by TIA in conjunction with the Federal Bureau of Investigations ("FBI") (via delegated authority from the Attorney General's Office) and other telecommunications carriers and associations. Despite its own participation in the process, the Department of Justice ("DOJ") and the FBI filed a joint petition with the Commission on March 27, 1998, stating that the standard did not include nine surveillance features (entitled the "punchlist"). See TIA Petition at 3-4.

³ See Nextel Communications, Inc. Comments at 5-6; and TIA Petition at 7.

most quickly and efficiently extend the October 1998 compliance deadline, especially if such an extension is equally applicable to a large number of affected telecommunications carriers; and, 2) any other measures the FCC might take to streamline the process for granting extensions.⁴

In reviewing the record in this proceeding, it is remarkable how much uncertainty there is with regard to almost every aspect of the establishment of final capabilities standards and capacity requirements. Only one thing appears certain: that it is impossible to comply by October 1998⁵ with standards that have yet to be conclusively established, four months before that deadline. Until the Commission has resolved all of the CALEA-related petitions and proceedings before it, the CALEA standards cannot be fully developed, and affected telecommunications providers cannot properly comply with the standards.

Therefore, the Commission has only two reasonable solutions: delay implementation of the October 1998 compliance deadline, either by granting a blanket extension of two or more years, or, toll or suspend the compliance deadline until the final capabilities standards are established for all industries concerned.

IV. Discussion

There are several petitions pending before the Commission involving various aspects of CALEA. The primary goal of all of these petitions is to resolve the CALEA conundrum, and to establish appropriate final technical standards and capacity requirements for the implementation

⁴ Notice at 4.

⁵ See AT&T Wireless, Lucent Technologies and Ericsson, Inc. Petition for Extension of Time; PrimeCo Petition for Extension of Time; USTA Petition for Extension of Time; National Telephone Cooperative Association Comments at 2 ("NTCA"); USTA Comments at 4; TIA Comments at 2.

of CALEA, within a reasonable time frame.

Metrocall supports PCIA's position, as stated in its Comments filed on May 8, 1998. The paging industry is faced with greater uncertainty than other broadband CMRS providers regarding its CALEA compliance responsibilities.⁶ This is due to the FBI's failure to address the unique requirements and operational aspects of the paging industry.

CALEA requires the FBI⁷ to: 1) establish final capacity requirements by October 25, 1995,⁸ and 2) cooperate with industry standards-setting bodies to help translate CALEA's assistance capability requirements into technical standards for the manufacture of telecommunications equipment.⁹ The FBI issued a final capacity notice on March 12, 1998, but did not mention the paging industry.¹⁰

In addition, the FBI has remained silent regarding which paging assistance capabilities

⁶ See PCIA Comments at 6.

⁷ CALEA imposes this requirement on the DOJ's Attorney General, but the Attorney General delegated that authority to the FBI.

⁸ The assistance capability requirement requires telecommunications carriers to provide certain interception capabilities to law enforcement. 47 U.S.C. § 1003(a).

⁹ CALEA imposes a capacity requirement on carriers, which allows the government to request the telecommunications carriers to provide the interception capabilities in quantities which they specify. 47 U.S.C. § 1003(b). A good example of this is the number of wiretaps supported by a switch (e.g., 5 per switch or 250 per switch). Not surprisingly, the capacity and capability requirements are interlinked, therefore making it impossible for equipment manufacturers to develop equipment without conclusively establishing both the capability and capacity requirements. See TIA Comments at 12.

¹⁰ See TIA Comments at 13.

are mandated by Section 103 of CALEA.¹¹ Although the FBI has recognized that compliance for industries such as paging will have to be postponed until after these technical questions are resolved and the standards are settled, this provides little comfort to the paging industry.¹² For now, paging carriers do not know what equipment is necessary to comply with CALEA's Section 103 requirements. Consequently, paging carriers are unable to anticipate and avoid any potential enforcement action that might be brought pursuant to Section 108.

It is generally accepted, even by the FBI,¹³ that it will take equipment manufacturers a minimum of two years from the date of issuance of the final technical standards to develop the software and hardware necessary to implement CALEA's Section 103 requirements. In addition, manufacturers will then need to consult with their paging customers to integrate CALEA software and hardware into their current paging systems in the most economic and efficient manner.¹⁴

All of the affected telecommunications carriers are in agreement on one issue: it is not possible for any sector of the telecommunications industry to comply with the Section 103

¹¹ See Id. at 7 citing FBI, Implementation of Section 104 of the Communications Assistance for Law Enforcement Act, 63 Fed. Reg. 12218 (March 12, 1998) ("Capacity Notice").

¹² See Capacity Notice at 12220.

¹³ See USTA Comments at 3 citing Communications Assistance for Law Enforcement Act Implementation Report, Federal Bureau of Investigation of the Department of Justice, January 26, 1998; see also TIA Comments at 2.

¹⁴ See AT&T Wireless, Lucent Technologies and Ericsson, Inc. Petition for Extension of Time at 5-6; PCIA Comments at 6; USTA Petition at 3-4; SBC Comments at 1-2; Alliant Communications Comments at 2; OPASTCO Comments at 3;

capability requirements by October 25, 1998.¹⁵ Given this unanimous industry consensus, the Commission should delay the October 25, 1998 CALEA compliance deadline.

Metrocall concurs with this conclusion: the Commission has several legal grounds on which to delay the compliance deadline.¹⁶ The Commission has authority to grant a two year blanket extension of the compliance date pursuant to Section 107(c) of CALEA. Section 107(c) allows the Commission, after consulting with the Attorney General, to grant an extension of the compliance deadline by finding that compliance is not reasonably achievable through application of technology available within the compliance period.¹⁷ The Commission may also act pursuant to Section 107(b)(5), which permits the Commission to provide reasonable time and conditions for resolving a dispute regarding an industry standard, and allow transition to any new standard.¹⁸ Finally, the Commission may grant an extension pursuant to its general CALEA implementation authority under Section 301.¹⁹ Section 301 grants the Commission broad authority to "prescribe such rules as are necessary to implement the requirements of the

¹⁵ See Airtouch and Motorola Joint Petition at 15; AT&T Wireless, Lucent Technologies and Ericsson, Inc. Petition for Extension of Time; PrimeCo Petition for Extension of Time; USTA Petition for Extension of Time; National Telephone Cooperative Association Comments at 2 ("NTCA"); USTA Comments at 4; TIA Comments at 2; OPASTCO Comments at 5.

¹⁶ See CTIA, PCIA and USTA Response to Petition for Rulemaking at 13 n.30; Airtouch and Motorola Joint Petition at 16; SBC Communications Petition for Extension of Compliance Date at 6; TIA Comments at 5.

¹⁷ 47 U.S.C. § 1006(c).

¹⁸ 47 U.S.C. § 1006(b)(5).

¹⁹ 47 U.S.C. § 223.

Communications Assistance for Law Enforcement Act."²⁰

In short, the Commission has several statutory bases on which to grant the requested blanket extension. Moreover, the public interest will be served by issuing a blanket extension in this proceeding, by avoiding the necessity of adjudicating multiple individual extension requests. A grant of the requested blanket extension will thus conserve the Commission's scarce resources, and avoid imposing unnecessary burdens on affected telecommunications carriers.

²⁰ Id.

V. Conclusion

Given the unanimous industry-wide consensus, Metrocall respectfully suggests that the Commission should expeditiously grant either: 1) a two year blanket extension of the October 25, 1998, compliance deadline for affected manufacturers and carriers of all telecommunications products, regardless of whether the interim industry standard applies; or, 2) toll the compliance deadline until the final capabilities standards are established for all industries, and extend the compliance deadline two years thereafter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rhonda M. Johnson, a secretary in the law offices of Joyce & Jacobs, do hereby certify that the foregoing Metrocall's Reply Comments, was served, on this 15th day of May, 1998, by first class U.S. mail, postage prepaid upon the following:

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