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

In the Matter of )  
)  
Communications Assistance for )  
Law Enforcement Act Request )  
for Extension of Compliance Date )

CC Docket No. 97-213

To: The Commission

**REPLY COMMENTS OF AT&T CORP., REGARDING EXTENSION  
OF CALEA COMPLIANCE DATE**

AT&T Corp., for itself and AT&T Wireless Services, Inc., ("AWS") (collectively "AT&T"), submits these Reply Comments regarding the Commission's consideration of an industry-wide extension of the Communications Assistance for Law Enforcement Act compliance deadline. In its initial comments, AT&T urged the Commission to use its authority under Section 107 of CALEA to grant an industry-wide extension of the October 25, 1998, compliance deadline for meeting the assistance capability requirements of Section 103.<sup>1</sup> Uniformly, industry comments support AT&T's position.<sup>2</sup>

<sup>1</sup> Comments of AT&T Corp., CC Docket No. 97-213, DA 98-762, filed May 8, 1998.

<sup>2</sup> See Comments filed May 8, 1998, in CC Docket No. 97-213, DA 98-762, by 360° Communications Company; AirTouch Communications, Inc. ("AirTouch"); Aliant Communications, Inc.; Alltel Communications, Inc.; The Association for Local Telecommunications Services ("ALTS"); Ameritech Communications, Inc. and Ameritech Operating Companies ("Ameritech"); Bell Atlantic Mobile, Inc.; BellSouth Corporation; The Cellular Telecommunications Industry Association ("CTIA"); Centennial Cellular Corp. ("Centennial"); The Center for Democracy and Technology; Centurytel Wireless, Inc.; GTE Service Corporation; ICG Telecom Group, Inc.; Liberty Cellular, Inc.; Nextel Communications, Inc.; Northern Telecom, Inc.; The National Telephone Cooperative Association; Omnipoint Communications, Inc.; The Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"); Paging Network, (footnote continued on following page)

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List A B C D E

Further, in its Public Notice of April 20, 1998, the Commission requested comment on the March 30, 1998, Petition for Extension of Compliance Date filed by AWS, Lucent Technologies Inc. ("Lucent"), and Ericsson Inc. ("Ericsson") (hereinafter "AWS Petition"). Overwhelmingly, industry comments support the AWS Petition for an extension or rely on it for their own extension under Section 107(c) of CALEA.<sup>3</sup>

DOJ did not specifically oppose the AWS Petition in its comments. Rather, DOJ expressed a generic preference for carriers to enter into so-called "forbearance agreements" with DOJ rather than for the Commission to grant individual extensions. For the reasons set forth below, AT&T opposes any such approach and specifically asks the Commission to grant the AWS Petition.

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(footnote continued from previous page)

Inc.; The Personal Communications Industry Association ("PCIA"); Powertel, Inc.; PrimeCo Personal Communications, L.P. ("PrimeCo"); The Rural Cellular Association; SBC Communications Inc.; Southern Communications Services, Inc.; Sprint Spectrum L.P. (d/b/a Sprint PCS); The Telecommunications Industry Association ("TIA"); United States Cellular Corporation; United States Telephone Association ("USTA"); and U S WEST, Inc. ("U S WEST"). Bell Emergis - Intelligent Signaling Technologies filed comments that recognize its network-based solution will not be ready by October 1998 and will not work at all without switch modifications, so implicitly they recognize the need for an extension. The Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI") alone oppose an industry-wide extension in their comments ("DOJ Extension Comments").

<sup>3</sup> See Comments of 360° Communications at 5; AirTouch Communications at 3, n.6; Alltel Communications at 1; ALTS at 1, 3; Ameritech at 6; Bell Atlantic Mobile at 4; BellSouth Corporation at 9-11; CTIA at 5; Centurytel Wireless at 4-5; GTE Service Corporation at 5-6; ICG Telecom Group at 4; Nextel Communications at 3-4; Northern Telecom at 5; Omnipoint Communications at 2; OPASTCO at 5; Paging Network at 3; The Personal Communications Industry Association at 2; Powertel at 3; PrimeCo Personal Communications at 3; The Rural Cellular Association at 6; SBC Communications at 2; Southern Communications Services at 1; Sprint PCS at 1; and U S West at 10.

**I. THE AWS PETITION PROVIDES UNCONTRADICTED EVIDENCE THAT ITS EXTENSION PETITION SHOULD BE GRANTED**

Based on the record before it, and notwithstanding any action to extend the CALEA compliance date that the Commission might take on an industry-wide basis, AWS is entitled, as a matter of law, to an extension under Section 107(c). In the AWS Petition, Lucent and Ericsson unequivocally declare that neither will have CALEA-compliant technology available within the compliance period or up to two years thereafter.<sup>4</sup> No one, including DOJ or the FBI, has disputed this simple fact.<sup>5</sup>

The DOJ Extension Comments, while opposing an industry-wide extension, acknowledge at least that individual carrier extensions are proper under Section 107(c).<sup>6</sup> However, DOJ would prefer to force carriers into so-called "forbearance agreements" instead of using the lawful process established by Congress in Section 107(c) to grant extensions.<sup>7</sup> This is not surprising inasmuch as these agreements require carriers and manufacturers to build not only to the industry standard, but to include all of the punch list items now in dispute before

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<sup>4</sup> AWS Petition at 7-8.

<sup>5</sup> Indeed, DOJ in its recent report to Congress expressly acknowledged that Lucent (and several other manufacturers) would not have technology available within the compliance period. See Communications Assistance for Law Enforcement Act (CALEA) Implementation Report, January 26, 1998, contained in Joint Petition for Expedited Rulemaking by the Department of Justice and the Federal Bureau of Investigation, filed March 27, 1998, Appendix A.

<sup>6</sup> DOJ Extension Comments at 8 ("Fourth, Congress authorized the Commission . . . to grant carrier-specific extensions of the compliance date . . . whenever the petitioning carrier can demonstrate that . . . compliance is 'not reasonably achievable through application of technology available within the compliance period.'").

<sup>7</sup> DOJ Extension Comments at 17.

the Commission or face civil penalties.<sup>8</sup> Such agreements are neither acceptable to AT&T nor desirable under CALEA. They are not a substitute for a lawful extension under Section 107(c) as requested in the AWS Petition. Moreover, these private forbearance negotiations subvert the open processes and accountability that Congress mandated for all CALEA decisions, including whether the punch list items are required for compliance and whether a carrier is entitled to an extension.<sup>9</sup>

The Commission now has before it numerous other petitions for extension from carriers and their manufacturers each of which is supported by clear statements on the record that CALEA-compliant technology is not available during the compliance period from any manufacturer or carrier.<sup>10</sup> Undoubtedly, more petitions based on the same unavailability of CALEA-compliant technology will follow. On the other hand, DOJ has not identified any manufacturer that it believes meets its CALEA requirements. For DOJ to oppose any individual carrier extension petitions under these circumstances is untenable.

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<sup>8</sup> See Letter from Stephen R. Colgate, Assistant Attorney General for Administration, to Thomas Wheeler, President, CTIA (Feb. 3, 1998).

<sup>9</sup> H. Rep. No. 103-837, at 19, reprinted in 1994 U.S.C.C.A.N. 3489, 3507 ("[Section 107(b)] is also intended to add openness and accountability to the process of finding solutions to intercept problems. Any FCC decision on a standard for compliance with this bill must be made publicly.")

<sup>10</sup> Like AT&T, several of the petitioners rely on Lucent and/or Ericsson, or both, for their telecommunications equipment. Consistent with the AWS Petition, these petitioners advise the Commission that Lucent and Ericsson have informed their customers that CALEA-compliant technology and equipment will not be available by the October 1998 deadline. See Ameritech at 6; Bell Atlantic Mobile at 3-4; BellSouth at 11; Centennial, Appendix A at 6; ICG Telecom Group at 4; PrimeCo at 3; and U S WEST at 8, 10.

## II. THE COMMISSION HAS AUTHORITY TO ISSUE AN INDUSTRY-WIDE EXTENSION

CTIA and other industry commenters concur with AT&T that the Commission has legal authority under Section 107(b)(5) to grant a blanket extension.<sup>11</sup> Moreover, all industry commenters point the Commission to its general authority and specific authority under Section 301 of CALEA to fashion rules that permit the efficient implementation of CALEA such that a blanket extension to avoid repetitive petitions by similarly situated carriers could be granted.<sup>12</sup>

Section 107(b)(5) permits the Commission to "provide a reasonable time and conditions for *compliance with and the transition to* any new standard" promulgated by the Commission in response to a deficiency petition for an existing industry standard or request for rulemaking for a new one. In addition to granting an extension of the compliance date to permit compliance with its final rule, the Commission also has the authority to define the obligations of telecommunications *carriers* under section 103 during any transition period." Any reasonable reading of Section 107 will reveal that Congress intended the *industry* to set the standards in the first instance, gave the Commission authority to resolve disputes over an existing standard or create new standards for the *industry* upon petition of any person, and mandated that the Commission grant *industry* a reasonable time to comply with its final ruling.

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<sup>11</sup> See, footnote 1, supra.

<sup>12</sup> See e.g., CTIA at 14, n.22 (citing 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; and AirTouch at 8, n.24, Regarding the CALEA Compliance Date, CC Docket No. 97-213, filed May 8, 1998 (citing Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Memorandum Opinion and Order, DA 98-481, at ¶ 47 (March 9, 1998) and Ameritech Operating Companies, 6 FCC Rcd 1541, 1542 ¶ 18 (1991)).

AT&T simply does not understand the DOJ argument that a provision designed to address the development and implementation of standards, including the length of time necessary for *carriers* to achieve compliance with such standards, somehow deprives the Commission of authority to grant an extension. In the DOJ Extension Comments, DOJ reverses its prior position that the industry standard did not provide a safe harbor<sup>13</sup> but then argues that no carrier is entitled to an extension under Section 107(b)(5) until the Commission declares the safe harbor deficient and adds the punch list items by rule.<sup>14</sup> Thereafter, carriers can look forward to an extension, but only if they manifest a desire to be bound by the new rule.

This vision of CALEA implementation is baffling. It requires the Commission to accept that Congress intended there to be gaps in safe harbor coverage. It requires manufacturers and carriers to be actively building toward a safe harbor standard that has been challenged as both over and under inclusive while having no protection from civil penalties for failing to be in compliance with Section 103 while striving to develop the technology to meet the standard. Finally, it empowers the government to prevent any carrier from ever achieving a safe harbor simply by petitioning the Commission to declare a standard as deficient. The carrier and its manufacturer will have "choice" of continuing to pay to develop technology to meet an allegedly deficient standard or stopping work at the risk of an enforcement action. Nothing in CALEA suggests that Congress intended such a trap.

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<sup>13</sup> See DOJ Extension Comments at 4, 14; but see, contra, Reply Comments of the Federal Bureau of Investigation Regarding the Implementation of the Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, filed February 11, 1998, at 4-5.

<sup>14</sup> DOJ Extension Comments at 12.

There is no question that the Commission should reject DOJ's strained interpretation of the statute and use its authority to grant an immediate, blanket extension, to take effect upon finalization of any revised standard.<sup>15</sup>

### III. CONCLUSION

For all the reasons set forth above, AT&T urges the Commission to grant an industry-wide extension for all covered carriers, both wireline and wireless, for at least two years after the standard is final.

Respectfully submitted,

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Dated: May 15, 1998

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<sup>15</sup> Even if the Commission grants an industry-wide extension, AT&T requests that the Commission separately hold, based upon the record, that an individual extension be granted to AWS under § 107(c) for the reasons set forth in the AWS Petition.

**CERTIFICATE OF SERVICE**

I, Rena Martens, do hereby certify that on this 15th day of May, 1998, a copy of the foregoing "Reply Comments of AT&T Corp., Regarding Extension of CALEA Compliance Date" was served by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.

  
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