

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

MAY 20 1998

Federal Communications Commission Office of Secretary

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

COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA"), by its attorneys, hereby submits its comments on the Commission's Public Notice in the above-captioned proceeding. PCIA supports J-STD-025 as the reasoned product of a comprehensive and exhaustive industry standards-setting process. As such, and consistent with Congressional policy, the technical and operational requirements of J-STD-025 should not be modified absent compelling public interest grounds. Specifically, the Commission should not permit law enforcement agencies to further delay the implementation of industry standards for the Communications Assistance for Law

1 PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, and the Mobile Wireless Communications Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

2 Public Notice, Communications Assistance for Law Enforcement Act, CC 97-213, DA 98-762 (April 20, 1998) ("Notice").

No. of Copies rec'd List ABCDE 044

Enforcement Act ("CALEA") to add features that are not required by Section 103, or are not reasonably achievable. PCIA therefore urges the FCC to expeditiously affirm J-STD-025, expediting the roll-out of CALEA-compliant systems and the introduction of legitimate surveillance assistance capabilities for law enforcement.

I. INTRODUCTION AND SUMMARY

The standard at issue in this proceeding, J-STD-025, was developed by the Telecommunications Industry Association ("TIA"), after numerous discussions with carriers, manufacturers, and law enforcement officials that took place over a period of years.³ In particular, by participating in the formation of Electronic Communications Service Providers ("ECSP") action teams, the telecommunications industry began exploring ways to deliver electronic surveillance information to law enforcement agencies prior to the enactment of CALEA. After the passage of CALEA, the telecommunications industry selected TIA, an ANSI-accredited institution, as its Section 107(a)(2) "industry association or standard-setting organization" for two-way voice telephony.⁴

By late 1995, approximately one year after CALEA's enactment, TIA Subcommittee TR-45.2 produced a draft standard, PN-3580. Despite the fact that Section 107(a) grants the telecommunications industry alone the authority to set standards, TIA sought FBI participation in reviewing PN-3580 to ensure their needs were met and to avoid later challenges. The FBI, however, ultimately rejected PN-3580 as inadequate, and submitted its own proposed standard,

³ "AirTouch Communications, Inc. and Motorola, Inc. Joint Petition for an Extension of the CALEA Assistance Capability Compliance Date," at 6-10 (filed May 5, 1998).

⁴ 47 U.S.C. § 1006(a)(2).

the Electronic Surveillance Interface ("ESI") document. Although many of the ESI's requirements are not mandated by CALEA, the industry nevertheless sought to reach a compromise with the FBI that met the requirements of manufacturers, carriers, users, and law enforcement.

The industry-law enforcement negotiations lasted until March 1997, at which time TIA issued proposed standard SP-3580, a standard that included most of the features requested by the FBI. Law enforcement, however, continued to oppose this standard, because it did not contain items designated in a "punch list" supplied by law enforcement.⁵ Due to this objection, SP-3580 did not receive the consensus necessary for ANSI approval. In the summer of 1997, the industry, acting through TR-45.2, again attempted to be responsive to law enforcement concerns by promulgating SP-3580A, a modification to SP-3580. Once again, this proposed standard was rejected by law enforcement. Finally, after more unsuccessful attempts to reach a compromise with law enforcement officials, on December 8, 1997, TIA and the Alliance for Telecommunications Industry Solutions ("ATIS") jointly published interim standard J-STD-025.

⁵ The nine "punch list" items still sought by the FBI are: (1) content of the conversations of all parties on conferenced calls, even after the subscriber has dropped off or been put on hold; (2) messages indicating whether a party is connected to a multiparty call at any given time (*i.e.*, "party hold," "party join," "party drop" messages); (3) access to subject-initiated dialing and signaling activity (*e.g.*, hold, transfer, flash); (4) notification message for network generated in-band and out-of-band signaling (*e.g.*, ringing, busy signals, call waiting signals); (5) timing to correlate call data and call content information; (6) surveillance status message, which would verify that the surveillance is on the correct service and is operational; (7) feature status message, which would report any changes in a subscriber's service features; (8) continuity tone or signal, which would ensure that law enforcement is notified immediately if the delivery channels from the carrier have failed; and (9) post cut-through dialing and signaling information delivered on the call data channel. *See* "FBI and DOJ, Joint Petition for Expedited Rulemaking," at 27-59 (filed March 27, 1998).

Against this background, the Commission should view with skepticism the DOJ/FBI's claims that J-STD-025 is inadequate. Over the past two years, the telecommunications industry has made considerable good faith efforts to respond to the needs of law enforcement officials, and J-STD-025 represents what the telecommunications industry believes is a reasonable compromise between industry concerns and law enforcement concerns. Therefore, in reviewing the "punch list" items, the Commission should be aware that the telecommunications industry—which is tasked with setting standards by CALEA—has already determined that these items are not required by CALEA.

Over the years, the FCC has wisely avoided attempts to develop standards through the unwieldy mechanism of public rulemakings. Instead, the agency has deferred complex technical standards to *fora* constituted precisely for those purposes, including, in different land mobile contexts, both TIA and PCIA. PCIA supports the policy of allowing industry bodies to develop standards absent regulatory mandates, and urges the FCC not to substitute its judgment for the reasoned consensus of an overwhelming majority of industry participants.

II. THE COMMISSION SHOULD NOT PERMIT THE FBI TO ADD FEATURES TO J-STD-025 THAT ARE EITHER NOT REQUIRED BY SECTION 103 OR ARE NOT REASONABLY ACHIEVABLE

In determining whether a feature should be included in J-STD-025, the FCC must undertake a two-part analysis. First, the FCC must determine whether the feature in question is required by Section 103 as either call content or "call identifying information." In particular, Section 103's assistance capability requirements require carriers to provide law enforcement agencies, pursuant to a warrant, with only: (1) call content information that is "carried by the carrier within a service area to or from equipment, facilities or services of a subscriber of such

carrier;”⁶ and (2) “call-identifying information” that is “reasonably available to the carrier ... before, during or immediately after the transmission of a wire or electronic communication (or at such later time as may be acceptable to the government).”⁷ Call identifying information is further defined as “dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber.”⁸

Second, the FCC must determine whether implementation of the feature in question is “reasonably achievable” by carriers and manufacturers. In making this determination, Section 109 of CALEA directs the Commission to consider, *inter alia*, the following factors: (1) the effect on rates for basic residential telephone service; (2) the need to protect the privacy and security of communications not authorized to be intercepted; (3) the need to achieve the capability assistance requirements of section 103 by cost-effective methods; (4) the effect on the nature and cost of the equipment, facility, or service at issue; (5) the effect on the operation of the equipment, facility, or service at issue; and (6) the effect on competition in the provision of telecommunications services.⁹

In defining “reasonably achievable,” Congress clearly sought to preserve customer privacy and to prevent either law enforcement officials or carriers from adding features that went beyond the assistance capability requirements of CALEA, as the cost of such features would inevitably be borne by rate payers. According to Congressman Markey, one of the drafters of

⁶ 47 U.S.C. § 1002(a)(1).

⁷ 47 U.S.C. § 1002(a)(2).

⁸ 47 U.S.C. § 1001(2).

⁹ 47 U.S.C. § 1008(b)(1).

Section 109, "These factors [*i.e.*, those in Section 109] are designed to give the Commission direction so that the following goals are realized: (1) Costs to consumers are kept low, so that "gold-plating" by the industry is kept in check; (2) the legitimate needs of law enforcement are met, but that law enforcement does not engage in "gold-plating" of its demands; (3) privacy interests of all Americans are protected; [and] (4) the goal of encouraging competition in all forms of telecommunications is not undermined ..."¹⁰

The decisional criteria for excluding punch list items from J-STD-025 has been thoroughly documented and does not bear repetition here. Indeed, except for law enforcement, all other industry participants have accepted the TIA process as it stands and, despite the cost and difficulty of developing and implementing J-STD-025 compliant equipment, will move forward upon affirmance by the FCC. The industry is ready, willing, and able to meet the terms of CALEA, as determined by Congress. The industry should not be forced to accept, however, law enforcement's attempts to obtain information, whether useful or not, that extends beyond the statute.

III. THE COMMISSION SHOULD PRESERVE THE INTEGRITY OF THE STANDARDS PROCESS

As discussed above, PCIA believes that the record in this proceeding strongly supports a determination that J-STD-025 meets the assistance capability requirements of Section 103. If, nonetheless, the Commission finds J-STD-025 to be deficient, PCIA joins TIA in asking that any deficiencies be remanded to Subcommittee TR-45.2.¹¹ Upon such a remand, TR-45.2 can turn

¹⁰ 140 Cong. Rec. H10781 (Oct. 4, 1994).

¹¹ TIA "Petition for Rulemaking," at 5 (filed April 2, 1998).

the additional features ordered by the Commission into detailed technical standards. Tasking TR-45.2 with this standards development work will ensure that whatever standards are promulgated are consistent with existing industry protocols, and the equipment built according to these standards will function within the existing telecommunications network.

IV. CONSISTENT WITH CONGRESSIONAL POLICIES, INDUSTRY ASSOCIATIONS ARE CONTINUING TO WORK TO DEVELOP CALEA STANDARDS

Like TIA, the paging industry has continued to make progress in its effort to develop “publicly available technical requirements or standards ...to meet the requirements of section 103,” pursuant to Section 107(a)(2) of CALEA.¹² Specifically, on May 4, 1998, the CALEA Subcommittee of PCIA’s Technical Committee (“PTC”) published Version 1.0 of its CALEA Specification for Traditional Paging. This standard, developed with input from law enforcement, provides a safe harbor whereby paging providers offering traditional one-way paging services (*i.e.*, one-way messaging services with fixed geographic coverage areas) can comply with the assistance capability requirements of Section 103 by providing law enforcement officials, pursuant to a valid warrant, with cloned pagers. Because paging providers offering traditional one-way services have historically cooperated with law enforcement officials by providing them with cloned pagers, the standard requirements set forth by the PTC will enable such providers to comply with the October 25, 1998 compliance deadline for one-way services.

After further input from law enforcement, PCIA’s PTC CALEA Subcommittee intends to publish standards for advanced messaging (*i.e.*, subscriber defined on demand roaming,

¹² 47 U.S.C. § 1006(a)(2).

forwarding and redirection, two-way and acknowledged voice paging, real-time wireless packet data services) and ancillary services (*i.e.*, caller/subscriber bridging, outdial, and other real-time bridged audio services). Once these standards are published, advanced messaging service providers and ancillary service providers, and manufacturers of advanced messaging and ancillary service equipment, will have safe harbors.

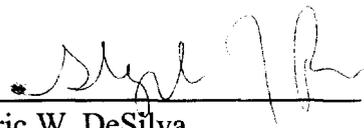
V. CONCLUSION

The Commission should affirm J-STD-025 as a complete standard detailing the assistance capability measures required by statute and reasonably achievable for carriers. Any other result will impermissibly invade the privacy of telecommunications customers, delay the overall implementation of CALEA, and lead to unnecessary expenditures of carrier and manufacturer resources.

Respectfully submitted,

PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

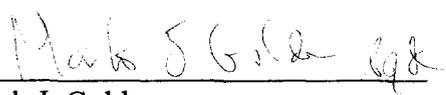
By:


Eric W. DeSilva
Stephen J. Rosen
WILEY, REIN & FIELDING
1776 K Street, NW
Washington, DC 20006
(202) 429-7000

Its Attorneys

May 20, 1998

By:


Mark J. Golden,
Senior Vice President, Industry Affairs
Robert Hoggarth
Senior Vice President, Paging/Messaging
PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION
500 Montgomery Street, Suite 700
Alexandria, VA 22314-1561
(703) 739-0300