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

JAN 27 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

**Communications Assistance for
Law Enforcement Act**

CC Docket No. 97-213

REPLY COMMENTS OF MOTOROLA, INC.

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To: The Commission

REPLY COMMENTS OF MOTOROLA, INC.

Motorola, Inc. respectfully submits these reply comments on the Commission's *Further Notice of Proposed Rulemaking*¹ in this proceeding, regarding implementation of the Communications Assistance for Law Enforcement Act ("CALEA").²

I. Disposition of J-STD-025

Motorola agrees with the vast majority of commenting parties that the industry standard for wireline, broadband Personal Communications Services ("PCS") and cellular technologies -- J-STD-025³ -- satisfies the requirements of CALEA, while carefully balancing CALEA's competing interests in preserving public safety, individual privacy, and technological

¹ Further Notice of Proposed Rulemaking, *In the Matter of Communications Assistance for Law Enforcement Act*, FCC No. 98-282, CC Docket No. 97-213 (rel. on Nov. 5, 1998) ("Further Notice").

² Pub. L. 103-414, 108 Stat. 4279 (1994), *codified at* 47 U.S.C. §§ 1001 *et seq.*

³ TIA & Alliance for Telecommunications Industry Solutions, J-STD-025, *Lawfully Authorized Electronic Surveillance*, Interim Standard (Dec. 1997).

innovation.⁴ Motorola joins these parties in urging the Commission to reject the conflicting challenges brought by the Federal Bureau of Investigation (“FBI”) and the Center for Democracy and Technology (“CDT”).

In evaluating the pending challenges to J-STD-025, the Commission properly separates its analysis into two parts. First, the Commission must determine whether the requested modifications fall within the scope of Section 103(a).⁵ In conducting this analysis, the Commission appropriately emphasizes Congress’ qualification that only call-identifying information that is “reasonably available” to a carrier must be provided to law enforcement.⁶ Second, the Commission must determine whether the requested modifications are consistent with the other purposes of CALEA -- i.e., the preservation of individual privacy and the encouragement

⁴ See, e.g., Comments of AirTouch Communications, Inc. (Dec. 14, 1998) (“AirTouch Comments”); Comments of AT&T Corporation (Dec. 14, 1998) (“AT&T Comments”); Comments of Ameritech Corporation, *et al.* (Dec. 14, 1998); Comments of Bell Atlantic (Dec. 14, 1998) (“Bell Atlantic Comments”); Comments of Bell Atlantic Mobile, Inc. (Dec. 14, 1998) (“BAM Comments”); Comments of BellSouth Corporation, *et al.* (Dec. 14, 1998); Comments of the Cellular Telecommunications Industry Association (Dec. 14, 1998) (“CTIA Comments”); Comments of GTE Service Corporation, *et al.* (Dec. 14, 1998) (“GTE Comments”); Comments of Nextel Communications, Inc. (Dec. 14, 1998) (“Nextel Comments”); Comments of the Personal Communications Industry Association (Dec. 14, 1998) (“PCIA Comments”); Comments of the Rural Cellular Association (Dec. 14, 1998); Comments of SBC Communications, Inc. (Dec. 14, 1998) (“SBC Comments”); Comments of the Telecommunications Industry Association (Dec. 14, 1998) (“TIA Comments”); Comments of United States Cellular Corporation (Dec. 15, 1998); Comments of U.S. West, Inc. (Dec. 14, 1998) (“U.S. West Comments”); Comments of the United States Telephone Association (Dec. 14, 1998) (“USTA Comments”).

⁵ Further Notice, ¶ 25.

⁶ Further Notice, ¶¶ 25-27. Congress explicitly provided that if call-identifying “information is not reasonably available, the carrier does not have to modify its systems to make it available.” H.R. Rep. No. 103-827, at 22 (1994) (“House Report”).

of technological innovation -- as enumerated by Congress in Section 107(b).⁷ Motorola respectfully suggests that the extensive record already before the Commission clearly demonstrates that the modifications proposed by the FBI and CDT are neither required by Section 103, "reasonably available," nor consistent with Section 107(b).

Motorola is especially concerned with the treatment of packet-mode communications and endorses the cautious approach taken by the Commission on CALEA compliance for such services. As the Commission properly notes, "packet-mode technology is rapidly changing, and . . . different technologies may require differing CALEA solutions."⁸ It is imperative that the Commission not stifle the continued development of packet-mode technologies by imposing a single solution that could require the redesign (or even abandonment) of certain technologies. Accordingly, Motorola agrees with those parties that have urged the Commission to preserve the flexible approach contained in J-STD-025 or, at least, defer this issue to a separate rulemaking (and, perhaps, industry standards effort).⁹

However, should the Commission determine that J-STD-025 must be modified, Motorola endorses the Commission's proposal to delegate to TIA's Engineering Subcommittee

⁷ Further Notice, ¶¶ 29-31. *See also* CALEA, §§ 107(b)(1)-(4), 47 U.S.C. §§ 1006(b)(1)-(4); House Report, at 27 ("In taking any action under [section 107], the FCC is directed to protect the privacy and security of communications that are not the targets of court-ordered electronic surveillance and to serve the policy of the United States to encourage the provision of new technologies and services to the public.").

⁸ Further Notice, ¶ 64.

⁹ AT&T Comments, at 25-26; AirTouch Comments, at 32-34; BAM Comments, at 12-13; Bell Atlantic Comments, at 11-13; Comments of the U.S. Department of Justice and Federal Bureau of Investigation, at 78-80 (Dec. 14, 1998) ("DoJ/FBI Joint Comments"); SBC Comments, at 8-9; TIA Comments, at 43-47; USTA Comments, at 11-13; U.S. West Comments, at 26-29.

TR 45.2 the responsibility for making such technical revisions.¹⁰ As the Commission notes, TR 45.2 is best qualified to issue such modifications in the most efficient and reliable manner.

Motorola also agrees with the Commission's decision to establish a reasonable transition period for carriers to implement any such modifications. Motorola endorses TIA's proposal that the Commission provide manufacturers at least 24 months to design and develop the software and hardware modifications necessary to implement any revised standard and allow carriers roughly another 12 months to install and test these modifications.

Because the disposition of J-STD-025 has already been fully addressed in several rounds of comments with the Commission,¹¹ the remainder of these reply comments will address the Commission's query regarding "what role, if any, the Commission can or should play in assisting those telecommunications carriers not covered by J-STD-025 to set standards for, or to achieve compliance with, CALEA's requirements."¹²

II. Other Technologies

As the Commission is aware both from this round of comments and previous proceedings, the FBI has focused its resources on developing CALEA capability and capacity

¹⁰ Further Notice, ¶¶ 132 & 133. The Commission's proposal has received strong support from commenting parties. *See, e.g.*, AT&T Comments, at 2, 3 & 22-23; CTIA Comments, at ii & 36; DoJ/FBI Joint Comments, at 30; GTE Comments, at iii & 13; Nextel Comments, at 25; PCIA Comments, at iv; SBC Comments, at 18; TIA Comments, at iii & 7-16; U.S. West Comments, at ii & 29-31; USTA Comments, at 2.

¹¹ In addition to the comments filed December 14, 1998 on the Commission's Further Notice, *see also* the several rounds of comments on the Commission's Public Notice, *In the Matter of Communications Assistance for Law Enforcement Act*, DA 98-762, CC Docket No. 97-213 (rel. on April 20, 1998).

¹² Further Notice, ¶ 141.

requirements for “wireline, cellular, and broadband PCS carriers, the telecommunications carriers whose compliance with CALEA’s assistance capability requirements is of most immediate concern to law enforcement.”¹³ Nevertheless, CALEA compliance for telecommunications services other than wireline, cellular and broadband PCS is proceeding.

For example, Motorola has played an active role in the successful standards-setting effort conducted under the auspices of PCIA’s Paging Technical Committee. In May of last year, PCIA released a standard for traditional, one-way paging services¹⁴ that endorsed the practice of cloning pagers for law enforcement -- a process that “provides law enforcement officials with the ability to monitor the communications of approximately 95 percent of the nation’s paging customers who use traditional, one-way paging services.”¹⁵ In August, PCIA released a second standard for advanced messaging services (such as two-way paging)¹⁶ and its Paging Technical Committee is currently completing a final technical standard for the handful of carriers offering ancillary services.

¹³ DoJ/FBI Joint Comments, at 34. *See also* Further Notice, ¶ 11 & n. 26; *Implementation of Section 104 of the Communications Assistance for Law Enforcement Act*, 63 Fed. Reg. 12,218, 12,210 (March 12, 1998); Comments of Paging Network, Inc., DA 98-762, CC Docket No. 97-213, at 2 (filed on May 8, 1998) (“PageNet Extension Comments”); Comments of PCIA, DA 98-762, CC Docket No. 97-213, at 6-8 (filed on May 8, 1998); Comments of Southern Communications Services, Inc., DA 98-762, CC Docket No. 97-213, at 5 (filed on May 8, 1998); Reply Comments of Metrocall, Inc., DA 98-762, CC Docket No. 97-213, at 4-5 (filed on May 15, 1998); Reply Comments of TIA, DA 98-762, CC Docket No. 97-213, at 10 & n. 31 (filed on May 15, 1998); Joint Petition for Extension of Compliance Date of Ardis Company, *et al.*, CC Docket No. 97-213 (filed on June 3, 1998) (“Ardis Petition”).

¹⁴ PCIA, *Standard 1: CALEA Specification for Traditional Paging*, v. 1.0 (adopted on May 4, 1998).

¹⁵ Ardis Petition, at 5.

¹⁶ PCIA, *Standard 2: CALEA Specification for Advanced Messaging*, v. 1.0 (adopted on Aug. 25, 1998).

In developing these standards, PCIA's Paging Technical Committee frequently met with both law enforcement and Commission staff, keeping them apprised of their developments and seeking comments and input. Motorola recommends the Commission's informal, advisory role in this standards process as a model for Commission involvement in other standards-setting efforts.¹⁷

Similarly, as the Commission notes, Motorola's Satellite Communications Group and its customer, Iridium United States, L.P. "went to great lengths during the last four years to analyze the technical implications that CALEA would have for its system, to discuss the systems' intercept capabilities with the government, and to explore electronic surveillance architecture solutions particular to its system."¹⁸ Motorola believes that the sophisticated intercept solution it has developed for the Iridium system fully satisfies CALEA's assistance capability obligations.

Motorola also has been proactive in developing technical solutions for its Specialized Mobile Radio ("SMR") and Enhanced SMR ("ESMR") customers, even though these customers remain uncertain as to whether they are covered by CALEA's obligations. As Southern Communications Services, Inc. and Nextel Communications, Inc. both note, Motorola has been working closely with these carriers to develop CALEA-compliant equipment for Motorola's iDEN[®] technology.¹⁹ In addition, Motorola is participating in the standards work being conducted under the auspices of the American Mobile Telecommunications Association.

¹⁷ See also PCIA Comments, at 35.

¹⁸ Further Notice, ¶ 139. See also Joint Petition for an Extension of the CALEA Assistance Capability Compliance Date by Iridium United States, L.P. and Motorola, Inc., CC Docket No. 97-213 (filed on June 30, 1998).

¹⁹ Comments of Southern Communications Services, Inc., at 2-3 (Dec. 14, 1998) ("Southern Comments"); Nextel Comments, at 23-24.

These development efforts are consistent with Congress' intent that "the telecommunications industry itself shall decide how to implement law enforcement's requirements."²⁰ As the Commission has noted, Congress gave industry the first opportunity to develop standards so that "those whose competitive future depends on innovation will have a key role in interpreting the legislated requirements and finding ways to meet them without impeding the deployment of new services."²¹ The Commission should defer to and encourage these ongoing efforts by the other sectors of the telecommunications industry to comply with CALEA's obligations.

The Commission should also expressly clarify that its Report and Order in this proceeding "is not a 'checklist' against which other standards will be judged in the future."²² As several parties have noted, "technological differences between services, and the text of CALEA, . . . limit the Commission's decisions in this rulemaking to the wireline, cellular and broadband PCS carriers expressly included in J-STD-025."²³ J-STD-025 and the FBI's punch list were designed specifically for wireline, cellular and broadband PCS technologies. Requirements that may be reasonable in the wireline or cellular context simply may not apply to other technologies, and vice versa. For example, for many technologies (such as traditional, one-way paging and analog

²⁰ House Report, at 19.

²¹ *Id.*

²² AT&T Comments, at 24.

²³ PCIA Comments, at iv. *See also* AT&T Comments, at 23; Comments of American Mobile Satellite Corporation, at 2-3 (Dec. 14, 1998); Comments of ICO Services Limited, at 2 (Dec. 14, 1998); Nextel Comments, at 26-27; Southern Comments, at 3. As several parties note, the Commission's authority to establish capability requirements for a particular technology is limited to those instances when it is formally petitioned to do so. CALEA, § 107(b), 47 U.S.C. § 1006(b). In the absence of such a request, the Commission does not have authority to establish requirements *sua sponte*.

SMRs), cloning a handset remains the most elegant and efficient method of supporting lawful surveillance; at the same time, however, a cloning solution is not feasible for the voice telephony technologies covered by J-STD-025.

Finally, the Commission should recognize that, despite industry's best efforts, compliance for these other technologies may not be possible by June 30, 2000.²⁴ Because of understandable prioritization of resources, "law enforcement agencies have not had adequate time or resources to assist in establishing a CALEA capability standard for paging, narrowband PCS, and SMR."²⁵ In addition, there is continued confusion among many technologies whether they are even covered by CALEA's requirements.²⁶

Most importantly, however -- unlike the wireline, cellular and broadband PCS industries -- these other technologies still do not have any capacity requirements. In fact it was only last month that the FBI issued a *Notice of Inquiry*, seeking suggestions on how it should establish capacity requirements for "telecommunications services other than local exchange services, cellular and broadband PCS."²⁷ Motorola looks forward to working with the FBI in

²⁴ See Memorandum Opinion and Order, *In the Matter of Petition for the Extension of the Compliance Date under Section 107 of the Communications Assistance for Law Enforcement Act*, FCC No. 98-223, CC Docket No. 97-213 (rel. on Sept. 11, 1998).

²⁵ PageNet Extension Comments, at 2.

²⁶ As the Commission acknowledged, many carriers "using technologies and systems not covered by J-STD-025 . . . express concern about the lack of clarification regarding whether their equipment, facilities and services are subject to the requirements of CALEA." Further Notice, ¶ 139. In order to resolve this confusion, Motorola respectfully encourages the Commission to issue its anticipated Report and Order on its Notice of Proposed Rulemaking, *In the Matter of Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213 (rel. on Oct. 10, 1997).

²⁷ *Implementation of Section 104 of the Communications Assistance for Law Enforcement Act: Telecommunications Services Other than Local Exchange Services, Cellular and Broadband PCS*, 63 Fed. Reg. 70,610 (Dec. 18, 1998).

developing such requirements, as it has already done informally through PCIA. However, until the FBI releases its final capacity notice (which might not occur until 2001), manufacturers and service providers of such technologies will have a difficult time developing the equipment necessary to implement CALEA's capability requirements.²⁸

Given this delay in identifying law enforcement's requirements -- especially, capacity -- the Commission should expect to receive extension requests from providers of such technologies. The Commission may even want to consider preempting such requests by granting a blanket extension for these technologies -- postponing their capability compliance until their eventual capacity deadline under the FBI's Final Notice of capacity. Under Section 104(b)(1), carriers are provided three years to comply with the Attorney General's Final Notice. Thus, if a Final Notice were issued in the first quarter of 2000, carriers would have until the first quarter of 2003 to bring their equipment into compliance. Correlating these two deadlines would restore Congress' original intent that capacity and capability be implemented simultaneously and should not have a dramatic impact on law enforcement's ability to conduct lawfully authorized surveillance.

²⁸ Capacity and capability are fundamentally intertwined; capacity requirements are critical to the design and development of technical specifications and the equipment needed to implement them. For example, both a Lear Jet and a Boeing 777 are airplanes with the capability to fly passengers. However, their technical designs and complexity differ radically because of the different number of passengers they have the capacity to carry. Similarly, a CALEA capability solution that might be elegant for five simultaneous wiretaps could be incapable of supporting fifty. Without official capacity requirements, service providers are either forced to wait until such requirements are established or make educated assumptions about what requirements law enforcement may need in several years. Should these educated assumptions differ from law enforcement's eventual capacity requirements, however, industries may be forced to completely change their previous solutions and start over. Accordingly, to the extent that companies (in the absence of an official capacity notice) do move forward on developing capability solutions by making reasonable assumptions regarding capacity, the Commission should be prepared to grant extensions in the event the Attorney General's Final Notice of capacity differs from these assumptions.

III. Conclusion

Based on the extensive record already before it, the Commission should conclude that J-STD-025 is not "deficient" and should deny the modifications proposed by the FBI and CDT. However, if the Commission does conclude that J-STD-025 is "deficient" in any respect, it should, as it has proposed, remand to TIA's Engineering Subcommittee TR 45.2 the task of revising J-STD-025 as necessary to remedy these alleged deficiencies.

As for technologies not covered by J-STD-025, the Commission should defer to and encourage the ongoing efforts by the other sectors of the telecommunications industry to comply with CALEA's obligations. The Commission should clarify that its Report and Order in this proceeding is not a checklist against which other standards will be judged in the future and should appreciate that, despite industry's best efforts, complete compliance by June 30, 2000 may not be achievable.

Respectfully submitted,



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January 27, 1999

CERTIFICATE OF SERVICE

I, L. Benjamin Ederington, an attorney in the law firm of Steptoe & Johnson, L.L.P., hereby certify that I have on this January 27, 1999 caused to be served by first class mail, postage prepaid, or by hand delivery, a copy of the foregoing Reply Comments to the following:

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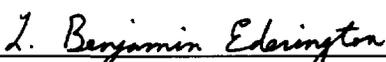
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