

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

In the Matter of

Communications Assistance for
Law Enforcement Act

CC Docket No. 97-213

COMMENTS OF VERIZON

The four “punch list” features that are still in dispute do not provide law enforcement with “call-identifying information” as defined in CALEA. The industry standard correctly construed that term in the statute and is, therefore, not deficient. The Commission should promptly issue an order confirming that the standard is consistent with CALEA, so that carriers like Verizon¹ can get on with implementing the statute in a cost-effective manner.

The Meaning of “Call-Identifying Information”

Section 102(2) of CALEA defines “call-identifying information” as

“dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier.”²

The House report on CALEA explains:

“For voice communications, this information is typically the electronic pulses, audio tones, or signaling messages that identify the numbers dialed or otherwise transmitted *for the purpose of routing calls through the telecommunications carrier’s network*. In pen register investigations, these pulses, tones, or messages identify the numbers dialed from the facility that is the subject of the court order or other lawful authorization. In trap and trace investigations, these are the incoming pulses, tones, or messages which identify the originating number of the facility from which the call was placed and which are captured when directed to the facility that is the subject of the court order or authorization. Other dialing tones that may be generated by the sender that are used to signal customer

¹ The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. listed in Attachment A

² 47 U.S.C. § 1001(2).

premises equipment of the recipient are not to be treated as call-identifying information.”³

Therefore, call-identifying information is limited to information that a carrier uses to route calls. Not all signaling or other information that passes through a carrier’s network is call-identifying information under the statute.

The J-Standard follows Congress’ direction. It fleshes out the statutory definition by clarifying that:

“[D]estination is the number of the party to which a call is being made (*e.g.*, called party); direction is the number to which a call is re-directed or the number from which it came, either incoming or outgoing (*e.g.*, redirected-to party or redirected-from party); origin is the number of the party initiating a call (*e.g.*, calling party); and termination is the number of the party ultimately receiving a call (*e.g.*, answering party).”⁴

None of the petitioners that sought to change the J-Standard claimed that this definition was “deficient” under section 107(b) of CALEA, and the Commission did not find this definition “deficient” in its previous order in this proceeding.⁵

The J-Standard is consistent with the straightforward English meanings of the words in the statute and reflect the way the statutory words are used in the industry. Therefore, the only information that is call identifying is the number of the party to which a call is being made, the number to which a call is re-directed, the number from which the re-directed call came, the number of the party initiating a call and the number of the party ultimately receiving a call. Any other information is not call identifying and, therefore, not within the CALEA assistance capability requirements.

³ H. Rep. 103-827, 103d Cong., 2d Sess. at 21 (1994) (“H. Rep.”) (emphasis added).

⁴ Telecommunications Industry Ass’n, Committee TR45.2, Interim Standard J-STD-025A, dated May 1, 2000, at 6.

⁵ *Communications Assistance for Law Enforcement Act*, 14 FCC Rcd 16794 (1999).

The Features Rejected by the Court

As the Court of Appeals noted, “Nowhere in the record did the Commission explain how the key statutory terms —origin, direction, destination, and termination— can cover the wide variety of information required by the punch list.”⁶ This is because those terms cannot cover that “wide variety of information.”

None of the features rejected by the Court of Appeals involves the provision of call-identifying information. In fact, there can be no serious argument as to three of these features.

The J-Standard already includes the provision of information to identify all the parties to a multi-party telephone call. However, the party hold/join/drop messages that the FBI wants go beyond call identifying and would be used to determine who is listening when.

The J-Standard already provides information to identify calls that are forwarded, waiting, on hold or made part of a three-way connection. However, the subject-initiated dialing and signaling information that the FBI wants would inform law enforcement when a subject uses call forwarding, call waiting, call hold and three-way calling. This information has nothing to do with identifying “the origin, direction, destination, or termination” of a call and is not call-identifying information.

The J-Standard already provides signaling information to identify the telephones involved in a call under surveillance. However, the in-band and out-of-band signaling that the FBI wants would provide information about other signals sent from the carrier’s network to a subject’s telephone, such as message-waiting indicators, special dial tones,

⁶ *United States Telecom Ass’n v. FCC*, 227 F.3d 450 (D.C. Cir. 2000).

and busy signals. This information has nothing to do with identifying “the origin, direction, destination, or termination” of a call and is not call-identifying information.

Post-cut-through dialed digits are a mixed bag. In many, if not most, instances, they are not call identifying, but are part of the content of the call (such as a banking or voice mail PIN or a credit card number). Carriers will provide this information to law enforcement just as they provide other call content in response to appropriate legal authorization.

Post-cut-through dialed digits also may include the telephone numbers dialed after connecting to a long distance carrier, in which case they are call-identifying information under CALEA, as they identify the destination of the call. But these digits are call identifying to the long distance company to which the call is delivered, not to the local exchange carrier that merely passes them on just like the rest of the content of the call. Information is not call identifying when the carrier involved in the surveillance does not use it for that purpose.

Rejecting the FBI’s request would not prevent law enforcement from obtaining this information. With the proper authority, it could get this information from the local exchange carrier as part of the content of the call, exactly as it does today and has done on thousands of surveillances for decades. Or, without that authority, law enforcement would simply go to the right carrier, the carrier that uses the information to route the call. Congress clearly contemplated that law enforcement might have to involve more than one carrier in its surveillance activities, and it stated that CALEA “is not intended to guarantee ‘one-stop shopping’ for law enforcement.”⁷

Because none of these features involves the provision of call-identifying information by local exchange carriers, the inquiry contemplated by section 107(b)⁸ of CALEA is not required.

⁷ H. Rep. at 22.

⁸ 47 U.S.C. § 1006(b).

However, there is no way for a local exchange carrier to provide post-cut-through dialed digits in response to a pen register request in a way that “protect[s] the privacy and security of communications not authorized to be intercepted,” as required by section 107(b)(2). That carrier has no way to separate out for delivery to law enforcement only the call-identifying digits (those that the long distance company might use to deliver the call) while not providing the call content digits (such as the caller’s credit card number) that law enforcement has no right to receive. Especially where law enforcement has other ways to get this information (that is, from the other carrier involved), the Commission should not require the exchange carrier to provide it in a way that compromises “the privacy and security of communications not authorized to be intercepted.”

Conclusion

The Commission should promptly confirm that the industry standard is consistent with CALEA.

Respectfully submitted,

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Dated: November 16, 2000

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc.. These are:

Contel of Minnesota, Inc. d/b/a Verizon Minnesota
Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Alaska Incorporated d/b/a Verizon Alaska
GTE Arkansas Incorporated d/b/a Verizon Arkansas
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.