

Commission staff conversations with the Alliance for Telecommunications Industry Solutions (“ATIS”) and other participants in the section 107(a)(2) standards-setting process confirm that additional packet-mode standards recently have been developed that address call-identifying information required in connection with call intercept requests.

95. Since November 19, 2003, we have received more than 800 packet-mode extension petitions from large and small telecommunications carriers, including the Regional Bell Operating Companies (“RBOCs”). Most of these petitions cite lack of an available packet-mode solution as the primary reason justifying an extension; about half of the submitted petitions also claim that there are no packet-based standards.²²⁶ Roughly a quarter of the petitions assert that lack of regulatory guidance about what services are subject to CALEA justifies an extension, and some argue that their services are not subject to CALEA at all. Some petitioners state that cost is a factor justifying extension, but by and large they do not identify specific costs. In terms of the services offered, nearly all of the petitioners state that they “provide Digital Subscriber Line (“DSL”) service” or are using equipment commonly used to provide DSL services, but by-and-large they do not specify whether they are referring to DSL-based Internet access, or DSL transport. A few petitioners state they are providing Asynchronous Transfer Mode (“ATM”), Frame Relay (“FR”), or Integrated Services Digital Network (“ISDN”). Reflecting this service mix, most petitioners indicate that they employ Digital Subscriber Line Access Multiplexers (“DSLAMs”), and nearly half deploy routers. In addition, a number of petitioners claim to have deployed a variety of ATM access and multi-service switches and multiplexers. Some petitioners include circuit switches in their network architecture descriptions, usually in relation to ISDN service.

(ii) Availability of Sections 107(c) and 109(b) in Connection with Packet-Mode

96. In construing CALEA sections 107(c) and 109(b),²²⁷ the Commission has concluded that they are complementary provisions that serve different purposes: “Section 107(c) concerns extensions of the compliance deadline, while section 109(b) addresses who pays for modifications made to those portions of a carrier’s networks that were “installed or deployed after January 1, 1995.”²²⁸ The Commission has not, to date, set out in detail its understanding of what factors should be considered in determining what is or is not “reasonably achievable” under the terms of section 107(c). However, it has determined that Congress

²²⁶It is simply not true that no packet-based standards have been developed by standards committees. Since 1997, J-STD-025 has provided a standard for intercepting and delivering packet *content* to law enforcement; this was unchanged in J-STD-025-A. The *Third R&O* required that the industry comply with the packet content standard by September 30, 2001, later extended to November 19, 2001. J-STD-025-B-2003 (December 2003) is a T1/TIA Joint Standard. T1.678-2004 (January 2004) is an ANSI standard. T1.PP.724-2004 (January 2004) is a pre-published American National Standard. It has been approved by Committee T1 and ANSI, but has not completed its editing and publication cycles. Some petitioners claim that existing standards do not apply to their packet services, including Asynchronous Transfer Mode, Frame Relay, Digital Subscriber Line and others. The J-Standard explicitly lists a number of packet formats to which the content standard applies; however, other common packet formats are not listed, including ATM, FR, and DSL. See *Third R&O, supra* n.26 at 16819-20, ¶¶ 55-56.

²²⁷See *supra* ¶¶ 20-21.

²²⁸*Petition for Extension of the Compliance Date Under Section 107 of the Communications Assistance for Law Enforcement Act by AT&T Wireless Services, Inc. et al., Memorandum Opinion and Order*, 13 FCC Rcd 17990 (1998) at 17995-96, ¶ 7 n.21.

intended that an evaluation of “reasonable” in the context of section 107(c) should include “consideration for the evolutionary introduction of new technology by telecommunications carriers in the normal course of business.”²²⁹ The Commission has expressly declined to read into section 107(c) the eleven criteria set out in section 109(b)(1).²³⁰ Moreover, it has not construed those eleven criteria in a rulemaking proceeding, and instead has decided to consider section 109(b) petitions on a case-by-case basis.²³¹ Thus, we have not, for example, considered whether we should weigh these criteria equally when evaluating section 109(b) petitions or whether we should assign greater weight to particular criteria.

97. Section 107(c) expressly limits extensions to cases where the petitioning carrier proposes to install or deploy, or has installed or deployed, its “equipment, facility, or service *prior to the effective date of section 103 ...*,”²³² *i.e.*, prior to October 25, 1998. Given this limitation, we believe that a section 107(c) extension is not available to cover equipment, facilities, or services installed or deployed after October 25, 1998. This interpretation of the scope of section 107(c) would likely preclude granting section 107(c) relief in connection with packet-mode applications because, in our experience, most if not all carrier packet-based “equipment, facilit[ies], or service” have been installed or deployed after the section 107(c)-mandated cut-off date.²³³ We seek comment on this analysis.

98. Moreover, we believe that carriers face a high burden in making an adequate showing to obtain alternative relief pursuant to section 109(b). Under the requirements of that section, carriers must demonstrate that compliance is not reasonably achievable, and we must evaluate submitted petitions under the criteria set out in section 109(b)(1), including cost and cost-related criteria and an assessment of the effect of any granted extension “on public safety and national security.”²³⁴ It would be difficult for a petitioner to make such a showing unless the request was made in connection with precisely identified “equipment, facilities, or services.” As explained more fully below, under the requirements of section 109(b)(1)(B) and 109(b)(1)(D), such a demonstration would need to include a thorough analysis of precisely identified costs of upgrading the carrier’s network to satisfy CALEA obligations and of other difficulties, as well as their effects on ratepayers; general allegations that projected costs were “too high” or unreasonably burdensome would not suffice. We tentatively conclude that the requirements of section 109(b) would not be met by a petitioning carrier that merely asserted that CALEA standards had not been developed, or that solutions were not readily available from manufacturers. Unlike section 107(c), section 109(b) contains no requirement that we evaluate what is “reasonably achievable” with reference to available technology. We recognize, however, that carriers may bring to the Commission’s attention section 107(c) requirements in the context of a section 109 petition, under the heading “such other factors as the Commission determines are appropriate.”²³⁵ If standards or solutions do not exist, petitioning

²²⁹*Id.* at 18005, ¶ 25.

²³⁰*See Second R&O, supra* n. 8 at 7127, ¶ 37.

²³¹*Id.* at 7129-30, ¶ 42.

²³²*See* 47 U.S.C. § 1006(c)(1).

²³³Some carriers still offer so-called legacy packet services like packet ISDN and X.25. These might continue to qualify for section 107(c) extensions.

²³⁴*See* 47 USC §§ 1008(b)(1)(A) through (K).

²³⁵47 U.S.C. § 1008(b)(1)(K).

carriers would still need to demonstrate why they could not negotiate system-specific CALEA solutions with manufacturers or with third-party CALEA service providers. In short, we believe that petitioners that purchased and installed non-CALEA compliant equipment after the CALEA compliance date bear a heavy burden to show why they could not have selected CALEA-compliant equipment. That showing must include a demonstration that the petitioning carrier exercised due diligence to obtain CALEA-compliant solutions from manufacturers or third-party service providers. We seek comment on this analysis.

99. Under this interpretation of the applicability and scope of sections 107(c) and 109(b), we believe that many carriers could find it difficult to obtain either CALEA compliance extensions or exemptions in connection with packet requirements. As a result, they may become immediately subject to enforcement action.²³⁶ This outcome could be precisely what Congress intended, because it would encourage carriers to press for the development of CALEA standards by industry-staffed committees and for solutions from manufacturers. Under this reading of the statute, neither section 107(c) nor section 109(b) provides a permanent exemption from CALEA's section 103 compliance mandate. And it reflects a statutory expectation that whenever a carrier replaces or upgrades its network architecture after section 107(c)'s mandated compliance date, it must do so by employing CALEA-compliant equipment, or explain why it could not do so under the stringent requirements of a section 109(b) petition.

100. We seek comment on this interpretation of the relationship of CALEA sections 103, 107(c), and 109(b) and the likely effects if we apply it to pending packet-mode section 107(c) extension petitions. Although this interpretation of the relationship of CALEA sections 103, 107(c), and 109(b) appears to be consistent with the CALEA statute considered as a whole, it clearly imposes great responsibility on carriers to actively and consistently advocate for the development of technical standards and solutions. We recognize that this statutory interpretation could create potentially heavy burdens for small and rural carriers in particular. For example, the section 107(a) "safe harbor" provision encourages the development of CALEA standards that allow small and mid-size carriers to take advantage of standards that are negotiated among large carriers and equipment manufacturers.²³⁷ Would this process be encouraged or impeded by the interpretation of CALEA sections 103, 107(c), and 109(b) described here?²³⁸

²³⁶See, e.g., 47 U.S.C. § 1007(a). Pursuant to this section's explicit terms, the court must decide whether CALEA compliance is reasonably achievable with reference to available technology and that "alternative technologies or capabilities or the facilities of another carrier are not reasonably available to law enforcement ..." 47 U.S.C. § 1007(a)(1) and (2). In other words, defendants have the opportunity to demonstrate that CALEA compliance is not "reasonably achievable," and, even if they fail in that demonstration, a court must also consider whether CALEA "technologies, capabilities, or facilities" are available from another carrier before issuing an enforcement order.

²³⁷See, e.g., Comments of CCCC at 3-4; Arkansas, Illinois, Iowa, and Oklahoma Rural Telephone Companies ("Rural ILECS") Reply Comments at 5.

²³⁸The section 107(c)/109(b) regime also does not seem to anticipate the likely *temporary* nature of "safe harbors" for packet services, in the same manner raised in ¶ 81 of this *Notice, supra*. For example, the current packet content standard might only be considered a "safe harbor" until service-specific packet standards for call-identifying information are specified. This has led to a number of practical problems. LEAs may be reluctant to agree that any standard functions as a "safe harbor" because they do not want to foreclose movement to standards that provide additional capabilities. Carriers, on the other hand, may be reluctant to deploy equipment incorporating capabilities specified by existing standards because they are unsure whether to do so would satisfy CALEA compliance requirements.

101. We recognize that the interpretation of the applicability and scope of section 107(c), as discussed above, would represent a change from the manner in which the Commission has applied section 107(c) in the past. For example, we have previously afforded petitioning carriers provisional section 107(c) extensions for packet mode pursuant to our 9/28/01 *Public Notice*,²³⁹ which potentially covers equipment installed or deployed *after* October 25, 1998 (the effective date of section 103). Our application of section 107(c) at that time was supported by the FBI, which specifically included packet-mode in its Flexible Deployment Program.²⁴⁰ We recognize that, if the proposed interpretation of section 107(c) is ultimately adopted, affected carriers may require additional time to seek alternative relief or to become CALEA-compliant for packet mode. We propose to afford carriers with packet-mode section 107(c) petitions currently on file ninety (90) days to file any requests for alternative relief in the event that the Commission affirms the proposed interpretation of the applicability and scope of section 107(c) in a subsequent Report and Order. We also seek specific comment whether a blanket transition period is required to afford affected carriers an adequate opportunity to become CALEA-compliant for packet mode. Commenters should address what authority the Commission has to grant any such transition period, if section 107(c) is not available for packet-mode equipment installed or deployed after October 1998.

102. We also seek comment about how this interpretation of the relationship between sections 103, 107(c), and 109(b) comports with the realities of packet-based technology development. The section 107(c)/section 109(b) regime we describe would seem aimed primarily at achieving CALEA compliance in a circuit-based technology environment, where a relatively standardized, switch-based technology could be readily retrofitted or otherwise modified (and largely with funding provided directly by DoJ/FBI). Do CALEA's section 107(c) and 109(b) mechanisms adequately address the requirements of rapidly evolving packet-based technologies and architectures? Congress may not have anticipated these difficulties and complexities when CALEA was enacted, given that the primary network model available at that time (1994) reflected a switch-centralized network providing POTS and various related services. If not, can sections 107(c) and 109(b) nevertheless be interpreted in ways that, consistent with their stated limitations, facilitate packet-mode CALEA compliance?

103. Even if section 107(c) continues to be available for legacy packet services, we cannot use participation in the Flexible Deployment Program to support additional extension grants because the FBI has terminated that program for packet-based applications. Moreover, based on our examination of the pending packet-based petitions, we preliminarily conclude they lack sufficient information to enable us to conduct a complete review. Accordingly, for legacy packet-service providers that wish to file under 107(c), we will require substantial additional information from petitioners. As with circuit-mode petitions discussed previously, we tentatively conclude that submitted information should include a compliance plan that will outline how the petitioner proposes to become CALEA compliant for packet-mode capabilities by specified dates, and that no date may be set later than two years after the date of the petition. Additionally, the petition must include the information described in Appendix F of this *Notice*, as well as a "due diligence" description of the petitioner's attempts to become CALEA compliant since November 19, 2001, *i.e.*, the date mandated for packet-mode CALEA compliance by our September 28, 2001 *Public Notice*. This description should include a documented recital of negotiations with equipment manufacturers and third-party CALEA service providers, or other persuasive evidence that the petitioner actively and

²³⁹9/28/01 *Public Notice*, *supra* n.43.

²⁴⁰See *FBI CALEA Implementation Section, Flexible Deployment Assistance Guide* (Third Edit. May, 2002), at 5-6.

diligently searched for available CALEA-compliant solutions since November 19, 2001. We seek comment on this analysis.

(iii) Section 109(b) Petition Requirements

104. Our reading of the statute and its legislative history indicates that Congress anticipated that section 109(b) would be used in extraordinary cases by carriers facing particularly high CALEA-related costs and difficulties.²⁴¹ What burdens would exist for both the Commission and the industry, particularly smaller rural carriers, if many more entities are persuaded to file section 109(b) petitions? Although we have, to date, declined to construe section 109(b) in favor of making case-by-case determinations of submitted petitions, this approach might not make sense if hundreds of carriers were to decide to file section 109(b) petitions. Should we now set out more explicit guidelines governing such petitions? How should we construe and weigh the eleven evaluative criteria set out in that section? These criteria address various issues, including economic and national security concerns. We tentatively conclude that we need not weigh these criteria equally, and that, following the events of September 11, 2001, we should assign greater weight to national security and public safety-related concerns. We note that inquiry into such issues here, or in the context of discrete section 109(b) adjudicatory proceedings, could predictably involve highly sensitive information about LEA activities. We seek comment about how such information should be handled, particularly in the context of section 109(b) proceedings.

105. We note that section 109(b), unlike section 107(c), makes no reference to "available technology" in connection with a showing of what is and is not reasonably achievable. Consequently, we tentatively conclude that carriers may not assert the lack of available standards or solutions to support a showing under section 109(b). Instead, carriers filing section 109(b) petitions will be expected to demonstrate active and sustained efforts at developing and implementing CALEA solutions for their operations, *i.e.*, regardless whether CALEA solutions for packet-mode are generally available. We tentatively conclude that we should require section 109(b) petitioners to submit detailed information about discussions and negotiations with switch manufacturers, other equipment manufacturers, and third party CALEA service providers, both before and after the FBI announced the termination of the Flexible Deployment Program in connection with packet-mode technology. We tentatively conclude that unless we are persuaded that petitioners have engaged in sustained and systematic negotiations with manufacturers and third-party providers to design, develop, and implement CALEA solutions, we should reject submitted petitions. Regarding cost and other economic impact-related section 109(b) criteria, we tentatively conclude that petitioners must precisely identify the alleged costs of packet-mode CALEA compliance in connection with upgrading specifically identified network technologies and system architectures. To this end, petitioners must include copies of all offers, bids, and price lists negotiated with manufacturers and third party CALEA service providers that support their demonstrations of CALEA-related costs and associated impacts on customers. Additionally, petitioners must provide the information requested in Appendix E for a circuit-mode petition or Appendix F for a packet-mode petition. Again, we tentatively conclude that we should reject any section 109(b) petition that does not contain such documentation.²⁴²

²⁴¹ 47 U.S.C. § 1008(b)(1).

²⁴² Notwithstanding our tentative conclusions about the scope and requirements of section 109(b), we note concerns expressed by rural carrier representatives that it is unreasonable to expect small companies to independently develop CALEA solutions with manufacturers and other CALEA service providers because of allegedly prohibitive costs. See Comments of CCCC at 3-4, Reply Comments of NASUCA at 6-7, and Reply Comments of Rural ILECS at 2-6. We seek more detailed information about these alleged costs and their particular effects on small and rural carriers. Commenters should specifically include an assessment of costs associated with (continued....)

Regarding petitioner showings about costs associated with packet-mode CALEA compliance generally, we direct parties' attention to the cost discussion in the *Second R&O*, including our determination that costs not directly related to CALEA compliance may not be included in such showings.²⁴³ We seek specific comment about appropriate protections for cost and other information that petitioners assert is proprietary or otherwise sensitive.²⁴⁴

106. In the past, the Commission provided that section 107(c) petitioners would be afforded provisional two-year extensions pending Commission action on particular extension petitions. Because section 109(b) is not an extension provision but, rather, addresses who must pay for CALEA implementation, we do not propose similar treatment for section 109(b) petitions. We seek comment on our analysis of section 109(b), including all tentative conclusions.

c. The Alternative Extension Mechanism Proposed by Law Enforcement

107. In its Petition, Law Enforcement asks the Commission to impose a new compliance regime consisting of standardized CALEA compliance benchmarks for packet services. Under this scheme, limited compliance extensions generally would be granted only if carriers agreed to meet the proposed benchmarks.²⁴⁵ In effect, Law Enforcement asks the Commission to adopt a packet-mode compliance plan that mimics the phased-in program we ordered in connection with the implementation of E911 service.²⁴⁶ We have received substantial comment opposing the Law Enforcement proposal. Commenters broadly assert that the proposed scheme is unsupported by the statute and, in fact, subverts those protections Congress expressly provides in sections 107(c) and 109(b).²⁴⁷ Commenters also attack the Law Enforcement proposal as impractical, because the proposed benchmarks do not reflect how CALEA standards and solutions are developed in the real world, or otherwise realistically address the particular difficulties associated with developing standards and solutions for packet-mode technologies and services.²⁴⁸

108. At the outset, we note that the Commission's statutory authority to implement 9-1-1 nationwide differs substantially from that authority conveyed by CALEA. Law Enforcement asserts that its

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developing CALEA solutions directly with manufacturers, plus an assessment of the (putatively lower) costs associated with developing CALEA solutions provided by third-party vendors.

²⁴³*Second R&O, supra* n. 8 at 7129, ¶ 40. We also determined that only overhead costs incremental to and resulting from CALEA compliance may be included in carrier cost showings relating to CALEA implementation.

²⁴⁴*See* 47 C.F.R. §§ 0.457-0.461.

²⁴⁵*See Petition* at 34-53.

²⁴⁶47 U.S.C. § 251(e)(3).

²⁴⁷*See, e.g.,* AT&T Comments at 9, 19-21; BellSouth Comments at 13-14; NTCA Comments at 2-3; SBC Comments at 13; Sprint Comments at 14; USTA Comments at 9-11; IPI Reply Comments at 4-5; TIA Reply Comments at 18-19; and USTA Reply Comments at 4-6.

²⁴⁸*See, e.g.,* AT&T Comments at 17-18; BellSouth Comments at 22-26; CCCC Comments at 3-4; TIA Comments at 10; SBC Comments at 2, 13-14; Sprint Comments at 18-19; USTA Comments at 1, 5, and 10; TIA Reply Comments at 8; and NASUCA Reply Comments at 7.

benchmark-driven proposal can be based upon section 229(a) of the Communications Act, which it interprets to give the Commission broad authority to adopt rules necessary to implement CALEA.²⁴⁹ We seek more extensive comment about the Law Enforcement benchmark proposal. Can section 229(a), or some other provision of the Communications Act or CALEA, be used to support the proposal? Assuming the Commission has the authority to mandate such a regime, would it tend to promote CALEA compliance? How difficult would it be to develop and administer such a regime, particularly with respect to packet-mode technologies and services?²⁵⁰ With respect to the differing characteristics of wireline, wireless, and other CALEA-obligated carriers? With respect to the differing regulation of these carriers? Are the specific benchmarks (including both tasks and due dates) identified by Law Enforcement appropriate and useful? What protections would extensions granted pursuant to such a regime provide? Is such a regime compatible with the continued availability of extensions and exemptions provided by sections 107(c) and 109(b)?

109. In recommending a benchmark regime that imposes uniform compliance dates upon all telecommunications carriers, the Petition assumes that all packet mode services are subject to CALEA, regardless of whether these services are deemed to be telecommunications services or information services under the Communications Act. How does our analysis of the applicability of CALEA to services deemed to be information services affect the benchmark/extension regime proposed by Law Enforcement? Are there alternative benchmark regimes, or other incentive-based programs, that might better promote CALEA compliance while satisfying the specific mandates of the CALEA statute?

110. We seek comment on these questions, and on any and all additional issues raised by the Petition regarding how to dispose of current and future extension petitions.

E. ENFORCEMENT OF CALEA

111. In its Petition, Law Enforcement requests that the Commission establish rules that “specifically outline the types of enforcement action that may be taken against carriers and/or equipment manufacturers and support service providers that fail to comply with their general CALEA obligations” or fail to comply with established CALEA compliance benchmarks and deadlines.²⁵¹ According to Law Enforcement, section 107(c) of CALEA,²⁵² in conjunction with sections 229(a) and (d) of the Communications Act,²⁵³ require the Commission to enforce CALEA compliance deadlines²⁵⁴ and render

²⁴⁹Law Enforcement Reply Comments at 41; *but see* USTA Comments at 9 and IPI Reply Comments at 4.

²⁵⁰Regarding the difficulties of managing the proposed benchmark regime, we note the suggestion of FBI, *et al.*, that “the Commission may need to establish separate phase-in schedules for separate packet-mode services in order to achieve CALEA packet-mode compliance.” *See* Petition at 40.

²⁵¹*Id.* at 58-59.

²⁵²47 U.S.C. § 1006(c).

²⁵³47 U.S.C. §§ 229(a), (d). Section 229(a) of the Communications Act states that the Commission “shall prescribe such rules as are necessary to implement the requirements of [CALEA].” 47 U.S.C. § 229(a). Section 229(d), entitled “Penalties,” provides that a violation “of a rule prescribed by the Commission pursuant to subsection (a), shall be considered to be a violation by the carrier of a rule prescribed by the Commission pursuant to [the Communications] Act.” 47 U.S.C. § 229(d).

²⁵⁴Petition at 59.

the Commission the “appropriate agency” to enforce CALEA compliance generally.²⁵⁵ Law Enforcement states that the Commission has broad authority to establish rules as needed to implement CALEA, and enforcement is an inherent component of implementation.²⁵⁶ Law Enforcement contends that the “Enforcement Orders” provision set forth in section 108 of CALEA²⁵⁷ is “far less reliable” than a Commission notice of apparent liability because of certain limitations contained within section 108²⁵⁸ and because it is effectively unavailable by virtue of Commission-granted extensions of the compliance date.²⁵⁹ Law Enforcement states that the establishment of Commission rules to enforce CALEA is consistent with the Commission’s enforcement of other public safety implementation mandates, such as E911.²⁶⁰

112. The New York State Attorney General’s Office supports Law Enforcement’s request for the establishment of enforcement rules, stating that there “is no acceptable alternative in light of the industry’s track record of delays in establishing compliance standards for existing and new technologies, failures to cooperate with law enforcement, and foot-dragging in deploying technology needed to assist law enforcement with court authorized intercepts.”²⁶¹

113. Other commenters, however, maintain that there is no need or authority for the Commission to establish a separate CALEA enforcement scheme.²⁶² According to commenters, a separate CALEA enforcement scheme would violate the statutory requirements of CALEA,²⁶³ would be duplicative and would be a potentially enormous drain on Commission resources.²⁶⁴ Commenters assert that under sections 108 and 201 of CALEA,²⁶⁵ Congress assigned the CALEA enforcement role to the federal courts, and strictly confined the courts’ enforcement authority “under procedures and standards that are favorable to service providers.”²⁶⁶ Commenters state that CALEA requires the Attorney General to bring a civil action

²⁵⁵*Id.*

²⁵⁶Law Enforcement Reply Comments at 45.

²⁵⁷47 U.S.C. § 1007. Section 108 permits a court to issue an order enforcing CALEA under section 2522 of title 18, U.S.C., only if two enumerated conditions exist: (1) alternative technologies or facilities of another carrier are not reasonably available to law enforcement; and (2) compliance with CALEA is reasonably achievable through the application of available technology. 47 U.S.C. §1007(a). Other limitations on enforcement orders are set forth under subsection (c). 47 U.S.C. §1007(c).

²⁵⁸Petition at 59-60, n.91.

²⁵⁹Law Enforcement Reply Comments at 45.

²⁶⁰Petition at 60.

²⁶¹See NYSAG Comments at 18-19.

²⁶²See, e.g., CDT Comments at 29; CTIA Comments at 17-18; Global Crossing Comments at 12-15; ISPPC Comments at 3, 34-38; TIA Comments at 12.

²⁶³*Id.*

²⁶⁴Global Crossing Comments at 13.

²⁶⁵47 U.S.C. § 1007; 18 U.S.C. § 2522.

²⁶⁶See CDT Comments at 29-30; ISPPC Comments at 34.

in the appropriate district court to seek an order directing compliance.²⁶⁷ According to commenters, section 229(a)'s²⁶⁸ general grant of authority does not authorize the Commission to ignore Congress' explicit delegation of CALEA enforcement power to the federal courts.²⁶⁹ Commenters also state that section 229(a) does not authorize the Commission to promulgate enforcement rules that directly apply to manufacturers.²⁷⁰ Instead, section 106(b) of CALEA gives enforcement powers to the Attorney General through the courts to ensure compliance with CALEA's obligations on manufacturers.²⁷¹

114. We consider whether, in addition to the enforcement remedies through the courts available to LEAs under section 108 of CALEA,²⁷² the Commission may take separate enforcement action against telecommunications carriers, manufacturers and providers of telecommunications support services that fail to comply with CALEA. The Commission has broad authority to enforce its rules under the Communications Act. Section 229(a)²⁷³ provides broad authority for the Commission to adopt rules to implement CALEA and, unlike section 229(b),²⁷⁴ does not limit such rulemaking authority to common carriers. While the "penalties" provision of section 229(d) refers to CALEA violations "by the carrier,"²⁷⁵ nothing in section 229(d) appears to limit the Commission's general enforcement authority under the Communications Act.²⁷⁶ As such, it appears the Commission has general authority under the Communications Act to promulgate and enforce CALEA rules against carriers as well as non-common carriers. We seek comment on this analysis. We also seek comment on whether sections 108 and/or 201²⁷⁷

²⁶⁷ See CDT Comments at 30; Global Crossing Comments at 12.

²⁶⁸ 47 U.S.C. § 229(a).

²⁶⁹ See ISPPCC Comments at 36-37.

²⁷⁰ See ITIC Comments at 17.

²⁷¹ *Id.* at 18.

²⁷² 47 U.S.C. § 1007.

²⁷³ 47 U.S.C. § 229(a) ("The Commission shall prescribe such rules as are necessary to implement the requirements of [CALEA]").

²⁷⁴ 47 U.S.C. § 229 (b).

²⁷⁵ 47 U.S.C. § 229(d).

²⁷⁶ *Id.* Section 229(d) provides:

For purposes of this Act, a violation by an officer or employee of any policy or procedure adopted by a common carrier pursuant to subsection (b), or of a rule prescribed by the Commission pursuant to subsection (a), shall be considered to be a violation by the carrier of a rule prescribed by the Commission pursuant to this Act.

Id.

²⁷⁷ 18 U.S.C. § 2522(a) (where a court issuing a surveillance order finds that a telecommunications carrier, manufacturer, or support services provider has failed to comply with CALEA, the court may direct such entity to comply); 18 U.S.C. § 2522(b) (the Attorney General may, in a civil action in the United States district court, obtain an order in accordance with section 108 of CALEA, directing that a telecommunications carrier, manufacturer, or support services provider comply with CALEA); 18 U.S.C. § 2522(c) (authorizing a court to impose a civil penalty (continued....))

impose any limitations on the nature of the remedy that the Commission may impose (*e.g.* injunctive relief) and whether section 106 imposes any limitations on the Commission's enforcement authority over manufacturers and support service providers.

115. Next, we seek comment on how the Commission would enforce the assistance capability requirements under section 103 of CALEA.²⁷⁸ To facilitate enforcement, we tentatively conclude that, at a minimum, we should adopt the requirements of section 103 as Commission rules.²⁷⁹ We ask whether, given this tentative conclusion, the lack of Commission-established technical requirements or standards under section 107(b)²⁸⁰ for a particular technology would affect the Commission's authority to enforce section 103? How would the lack of publicly available technical requirements or standards from a standard-setting organization impact the Commission's authority/ability to enforce section 103?²⁸¹ In addition, we ask whether there are other provisions of CALEA, such as section 107(a)'s safe harbor provisions, that the Commission should adopt as rules in order to effectively enforce CALEA? How would the upgrade of a standard by a standard-setting organization impact the application of section 107(a)'s safe harbor provision?

116. We believe it is in the public interest for covered carriers to become CALEA compliant as expeditiously as possible and recognize the importance of effective enforcement of Commission rules affecting such compliance. We seek comment on whether the Commission's general enforcement procedures are sufficient for purposes of CALEA enforcement. The Commission has broad authority to enforce its rules under the Communications Act. It can, for example, issue monetary forfeitures and cease and desist orders against common carriers and non-common carriers alike for violation of Commission rules.²⁸² Is this general enforcement authority sufficient or should we implement some special procedures for purposes of CALEA enforcement? Would an established enforcement scheme expedite the CALEA implementation process? We seek comment on any other measures we should take into consideration in deciding how best to enforce CALEA requirements.

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of up to \$10,000 per day against a telecommunications carrier, manufacturer, or support services provider for each day in violation after the issuance of a court order requiring compliance).

²⁷⁸47 U.S.C. § 1002.

²⁷⁹*See, e.g.*, 47 C.F.R. §§ 22.1100-22.1103; 24.900-24.903; 64.2200-64.2203.

²⁸⁰47 U.S.C. § 1006(b) (authorizing the Commission to adopt technical requirements or standards that meet the assistance capability requirements of section 103 where industry fails to adopt such requirements or standards or where a Government agency or any other person petitions the Commission claiming that such requirements or standards are deficient).

²⁸¹The absence of technical requirements or standards for implementing the assistance capability requirements of section 103 does not relieve a carrier, manufacturer, or support services provider of its CALEA obligations. 47 U.S.C. § 107(a)(3).

²⁸²*See, e.g.*, 47 U.S.C. §§ 312(b), 503(b).

F. COST AND COST RECOVERY ISSUES

117. The modifications and upgrades required under the J-Standard and punch list will potentially require significant capital expenditures on the part of carriers. Moreover, carriers face a future of recurring CALEA-related costs given that, as technology develops, telecommunications networks will be upgraded and modified as part of normal business operations. These upgrades will require in turn the implementation of new CALEA compliant technology. Many CALEA-related costs associated with upgrading equipment and facilities deployed prior to January 1995 were paid through a \$500 million appropriations fund established by Congress to implement CALEA.²⁸³ It has been reported that DoJ/FBI has nearly exhausted that fund to bring pre-1995 equipment and facilities into compliance with CALEA.²⁸⁴ While no solid cost estimates for CALEA implementation of post-January 1, 1995 equipment and facilities have yet been generated, the need for significant capital expenditures associated with CALEA are expected to continue into the future.

118. In this section, we seek comment on various cost determination and recovery issues that different telecommunications carriers face in complying with CALEA. We seek comment on whether individual carriers should bear responsibility for the costs of CALEA compliance. We further seek comment on specific jurisdictional issues, depending on whether carriers provide wireline or wireless service, that may affect our determinations concerning what responsibilities they should have in bearing those costs. We invite commenters to raise any issues related to those we address below. In addressing the issues raised below, commenters should afford special attention to providers that the Commission may determine are covered by CALEA but operate in an unregulated environment. Do such firms require guidance in the recovery of CALEA costs from end-users? What would be the competitive effect of such guidance?

119. In its Petition, Law Enforcement contends that "there continues to be dispute concerning who bears financial responsibility for various costs associated with CALEA implementation."²⁸⁵ Accordingly, Law Enforcement requests the Commission to establish rules that (1) confirm "carriers bear the sole financial responsibility for development and implementation of CALEA for post January 1, 1995 communications equipment, facilities and services;" (2) permit carriers to recover the cost of post-January 1, 1995 CALEA requirements from their customers; and (3) clarify the methodology for determining carrier CALEA intercept provisioning costs and who bears financial responsibility for such costs.²⁸⁶ Law Enforcement contends that permitting carriers to include their CALEA implementation costs in their administrative intercept provisioning costs would not only violate Title III of the Omnibus Crime Control and Safe Streets Act of 1968 ("OCCSSA"), but would also make it increasingly cost-prohibitive for LEAs to conduct intercepts. Law Enforcement argues that, although Title III of the OCCSSA provides for carriers to be compensated for their costs associated with provisioning a court-authorized intercept, nothing

²⁸³ See 47 U.S.C. § 1009 (appropriating \$500 million to carry out CALEA for fiscal years 1995-1998); 47 U.S.C. § 1021 (establishment of Department of Justice Telecommunications Carrier Compliance Fund).

²⁸⁴ See 47 U.S.C. § 1008(a) ("The Attorney General may, subject to the availability of appropriations, agree to pay telecommunications carries for all reasonable costs directly associated with the modifications performed by carriers in connection with equipment, facilities, and services installed or deployed on or before January 1, 1995").

²⁸⁵ Petition at 63.

²⁸⁶ *Id.*

in either Title III or CALEA authorizes carriers to include in such provisioning costs their CALEA implementation costs.²⁸⁷

120. Some commenters insist that CALEA costs for post-January 1, 1995 technologies are “far-reaching” and “should not be borne exclusively by a carrier or its customer.”²⁸⁸ Similarly, BellSouth argues that Congress did not intend “to tax the communications industry or consumers with all the costs of building and maintaining the most effective and efficient surveillance system envisioned by law enforcement.”²⁸⁹ Some commenters argue that the Commission should adopt rules permitting covered carriers to pass on to subscribers the costs of CALEA compliance.²⁹⁰ Other carriers, however, remind the Commission that passing the costs along to customers would place unique burdens on the customers of small, rural carriers,²⁹¹ and other niche groups such as providers of broadband access to small hospitality properties.²⁹²

121. Our discussion here will address cost and cost recovery in connection with both circuit-mode and packet-mode solutions. In order to better understand the dimensions of CALEA-related costs and their impact on carriers and other entities subject to CALEA, we seek comment about the nature and extent of circuit-mode CALEA-related costs generally, as well as packet-mode costs.²⁹³

122. We also seek comment on how our analysis of cost and cost recovery issues applies to carriers that are deemed to be telecommunications carriers pursuant to CALEA section 102(8)(B)(ii).²⁹⁴ Commenters should address whether costs or cost recovery methods should differ for carriers subject to Title II of the Communications Act and carriers deemed to be telecommunications carriers pursuant to CALEA section 102(8)(B)(ii) that otherwise operate in an unregulated environment for purposes of the Communications Act.

²⁸⁷*Id.* at 68.

²⁸⁸USTA Comments at 14. *See also* BellSouth Comments at 28; Verizon Comments at 21-22; Level 3 Reply Comments at 9.

²⁸⁹BellSouth Comments at 28.

²⁹⁰*See, e.g.*, SBC Comments at 14-15; Verizon Comments at 21.

²⁹¹*See, e.g.*, RIITA Comments at 2 (“for rural customers, the costs would not be minimal and any requirement should only be made with a funding mechanism in place first”); CCCC Comments at 5 (“Noticeably absent from petitioners’ discussion is any recognition that for some rural carriers, CALEA software upgrades are quite expensive”); NTCA Comments at 5 (although an end user charge may be appropriate for large carriers, it may be more appropriate for rural carriers to recover costs in the interstate jurisdiction).

²⁹²Hotel Internet Technology Comments at 1.

²⁹³*See* discussion, *supra*, at ¶ 92, where we state our belief that the FBI’s Flexible Deployment Program has facilitated circuit-mode CALEA compliance. This is because participating carriers are able to negotiate CALEA compliance commitments with the FBI in connection with their ordinary capital upgrade schedules. Notwithstanding the availability of the Flexible Deployment Program, we note that small and rural carriers in particular may require further extensions of circuit mode-related CALEA compliance dates for “cost-related or other reasons.”

²⁹⁴47 U.S.C. § 1001(8)(B)(ii).

1. Cost Recovery for Post-January 1, 1995 CALEA Compliance

123. Law Enforcement contends that Congress “clearly” places the financial burden of post-January 1, 1995 CALEA implementation on carriers and not LEAs.²⁹⁵ Law Enforcement requests that the Commission establish rules “confirming” that carriers bear the “sole financial responsibility” for post-January 1, 1995 CALEA implementation, unless otherwise specified by the Commission in the context of a carrier-specific CALEA section 109(b) petition.²⁹⁶ Related to this request, Law Enforcement asks the Commission to “eliminate the issues of compliance costs as a basis for delayed compliance or non-compliance” by establishing rules permitting carriers to recover CALEA implementation costs from their customers.²⁹⁷

124. Section 229(a) of the Communications Act requires the Commission to “prescribe such rules as are necessary” to implement CALEA.²⁹⁸ Section 229(e) of the Communications Act also permits a common carrier to petition the Commission to adjust charges, practices, classifications, and regulations to recover costs expended for making modifications to equipment, facilities, or services pursuant to the requirements of section 103 of CALEA.²⁹⁹

125. CALEA itself contains cost recovery provisions. CALEA section 109’s cost recovery provisions allow recovery from the federal government in relation to three specific areas of costs:³⁰⁰ (1) the costs of developing the modifications for equipment deployed *on or before* January 1, 1995, (2) the costs of providing the capabilities for equipment deployed *after* January 1, 1995, but only where the

²⁹⁵Petition at 64. Various law enforcement groups also have filed comments supporting the view that CALEA places the financial burden of post-January 1, 1995 equipment, services and facilities on carriers. *See, e.g.,* ILSP Comments at 1; LA Clear Comments at 1-2; MSP Comments at 2. We note that Congress enacted a different cost recovery scheme for equipment, facilities, and services installed or deployed on or before January 1, 1995. For such pre-January 1, 1995 CALEA compliance costs, the Attorney General may, subject to the availability of appropriations, agree to pay telecommunications carriers for all reasonable costs directly associated with the modifications performed by carriers to establish the capabilities necessary to comply with CALEA section 103. 47 U.S.C. § 1008(a).

²⁹⁶Petition at 64. Under CALEA section 109(b), the Commission, after receiving a petition from a telecommunications carrier or any other interested person, has one year to determine whether compliance with the assistance capability requirements of CALEA section 103 is reasonably achievable. In making its determination, the Commission is required to evaluate a list of factors, including whether compliance would impose significant difficulty or expense on the carrier or on the users of the carrier's systems. If the Commission determines that CALEA compliance is not reasonably achievable, the Attorney General may agree, subject to the availability of appropriations, to pay that carrier for the additional reasonable costs of making CALEA compliance reasonably achievable. 47 U.S.C. § 1008(b).

²⁹⁷Petition at 64-67.

²⁹⁸47 U.S.C. § 229(a).

²⁹⁹47 U.S.C. § 229(e)(1). Section 229(e)(2) further states that the Commission may, consistent with maintaining just and reasonable charges, practices, classifications, and regulations in connection with the provision of interstate or foreign communication by wire or radio by a common carrier, allow carriers to adjust such charges, practices, classifications, and regulations. 47 U.S.C. § 229(e)(2).

³⁰⁰Section 109(e)(2)(A) of CALEA, 47 U.S.C. § 1008(e)(2)(A).

Commission finds compliance is not “reasonably achievable,” and (3) the costs of providing the “capacities” required under section 104 of CALEA, a subject that is not at issue here.³⁰¹ CALEA section 109 provides for different cost treatment for equipment and facilities deployed *on or before* January 1, 1995 and that which is deployed *after* January 1, 1995.³⁰² CALEA section 109 places financial responsibility on the federal government for CALEA implementation costs related to equipment deployed *on or before* January 1, 1995.³⁰³ Where the federal government refuses to pay for such modifications, a carrier’s pre-1995 deployed equipment and facilities will be considered CALEA compliant until such equipment or facility “is replaced or significantly upgraded or otherwise undergoes major modification” for purposes of normal business operations.³⁰⁴ However, for CALEA implementation costs associated with equipment deployed *after* January 1, 1995, CALEA section 109 places financial responsibility on the telecommunications carriers unless the Commission determines compliance is not “reasonably achievable.”³⁰⁵ Based on CALEA’s delineation of responsibility for compliance costs, we tentatively conclude that carriers bear responsibility for CALEA development and implementation costs for post-January 1, 1995 equipment and facilities. We seek comment on this analysis. Are specific rules regarding carriers’ responsibility for CALEA implementation costs for post-January 1, 1995 equipment and facilities necessary?

126. In the *Second R&O*, the Commission stated an expectation that “carriers will become CALEA compliant in the course of general network upgrades and will recover any additional cost of CALEA compliance through their normal charges.”³⁰⁶ Did the Commission accurately forecast a carrier’s ability to recover such costs? Is it now necessary for the Commission to adopt rules specifically allowing carriers to recover CALEA compliance costs from their customers?³⁰⁷ Commenters requesting that the Commission adopt such rules should describe the scope and level of detail that would be necessary from any new cost recovery rules.

127. We also seek comment on other cost recovery options that could reduce CALEA-related burdens otherwise imposed on carriers and their customers. Given the public benefits of CALEA-supported surveillance of criminals and terrorists, does it make sense to consider cost recovery devices that

³⁰¹ CALEA section 104 requires that telecommunications carriers comply with “capacity” requirements established by the Attorney General. 47 U.S.C. § 1003(a), (b). “Capacity” refers to the ability of carriers’ equipment, facilities, and services to accommodate communications interceptions, pen registers, and trap and trace devices simultaneously. 47 U.S.C. § 1003(b). The D.C. Circuit addressed reimbursement of capacity related costs in *USTA v. FBI*, 276 F.3d 620 (D.C. Cir. 2002).

³⁰² Compare 47 U.S.C. § 1008(a), (d) with § 1008(b).

³⁰³ CALEA section 109(a), (d), 47 U.S.C. § 1008(a), (d).

³⁰⁴ Section 109(d) of CALEA, 47 U.S.C. § 1008(d). See also, CALEA section 108(c)(3), 47 U.S.C. § 1007(c)(3) (no court may issue a CALEA enforcement order requiring a carrier to make modifications to pre-1995 equipment or facilities unless the federal government has agreed to pay for any such modifications).

³⁰⁵ Section 109(b)(1) of CALEA, 47 U.S.C. § 1008(b)(1).

³⁰⁶ *Second R&O*, *supra* n.8 at 7128, ¶ 39.

³⁰⁷ See, e.g., Global Crossing Comments at 15 (statute already allows carriers to recover costs from customers; new rules are unnecessary).

more equitably spread costs among the general public? For example, should CALEA costs be recovered directly from telecommunications and other consumers by means of a Commission-mandated, flat monthly charge similar to the current subscriber line charge ("SLC")?³⁰⁸ Does the Commission have authority to impose such a charge? How would such a charge be developed? Our experience to date evaluating *circuit-based* CALEA-related costs indicates that developing an appropriate cost analysis for packet capabilities could be complex and difficult. We seek comment on how to assess the scope of CALEA-related costs in this proceeding. We ask commenters to submit cost calculations and analysis, and to identify any conditions or factors that may affect our ability to determine the true scope of CALEA-related costs.

128. We note here that wireless carriers have a statutorily prescribed rate paradigm that is different from that for wireline carriers. Section 332(c)(3)(A) of the Communications Act precludes state regulation of the rates charged by any commercial mobile service.³⁰⁹ Further, the Commission has found that this statute expresses a clear Congressional intent to preempt the states from any rate regulation for CMRS carriers.³¹⁰ Thus, unlike LECs, which are subject to state-based tariff regulation, CMRS carriers could collect directly from their customer base on a competitive market basis.

129. Given this different statutory approach for regulation of CMRS rates, we seek comment on whether a national surcharge scheme, similar to the one that we request comment on above, is feasible for wireless carriers in their efforts to meet CALEA requirements. In order for the Commission to be able to make an informed decision, we invite commenters, including those from industry, the economic community, and state regulatory groups, to address possible rationales for such a scheme for wireless carriers regarding cost recovery to implement CALEA capabilities for the application of packet mode technologies, particularly with regard to considering the potential cost factors involved. We also request comment on the relevant methodologies to estimate the magnitude of those costs.

130. In the alternative, we request comment on whether the Commission would need to undertake a specific forbearance analysis in view of the public interest concerns underlying CALEA.³¹¹ In addition, although section 332(c)(3) of the Communications Act prohibits states from regulating CMRS rates, it allows states to regulate "other terms and conditions."³¹² We seek comment on whether, pursuant

³⁰⁸The SLC is a flat-rated charge imposed by LECs on end users to recover the interstate-allocated portion of local loop costs. The SLC is also referred to as the end user common line charge. See 47 C.F.R. § 69.152.

³⁰⁹Section 332(c)(3)(A) provides in pertinent part that ". . . no State or local government shall have any authority to regulate . . . the rates charged by any commercial mobile radio service or any private mobile radio service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services." 47 U.S.C. § 332(c)(3)(A).

³¹⁰See GN Docket No. 93-252 – *CMRS Second Report and Order*, *supra* n.113 at 1417-18; Erratum, 9 FCC Rcd 2156 (1994); *recon. denied*. 15 FCC Rcd 5231 (2000). See also, e.g., *Petition of Arizona Corporation To Extend State Authority Over Rate and Entry Regulation of All Commercial Mobile Radio Services*, PR Docket No. 94-104, *Report and Order on Reconsideration*, 10 FCC Rcd 7824 (1995) at 7826, ¶ 9 (*Arizona Decision*).

³¹¹See generally 47 U.S.C. § 160(a)-(b).

³¹²See 47 U.S.C. § 332(c)(3)(A). See *Arizona Decision*, 10 FCC Rcd at 1742-43, ¶ 16.

to this exception, states may expressly provide for or preclude the recovery of CALEA compliance costs, e.g., intercept costs that have been set according to state tariff.³¹³

131. We seek specific comment about how cost and cost-recovery issues connected with CALEA affect small and rural carriers. Should we adopt specific rules and policies to help ensure that such carriers can become CALEA compliant? Is it sufficient that such carriers have recourse to the CALEA section 109(b) petition process to seek funding from the Attorney General? Would exclusive reliance on CALEA section 109(b) tend to encourage hundreds of rural carriers to file such petitions? If the Attorney General finds, in such a case, that it cannot pay for CALEA compliance upgrades, successful petitioners would be deemed CALEA compliant. Is this result desirable from the perspective of providing for the reasonable needs of LEAs to engage in intercept activities in rural areas?

2. Intercept Provisioning Costs

132. We also seek comment on whether we should distinguish carrier recovery of CALEA-incurred capital costs generally from recovery of specific intercept-related costs. As a general rule, LEAs must compensate carriers for their costs associated with provisioning a court-authorized intercept.³¹⁴ In analyzing the cost effectiveness of implementation of four CALEA punch list items in the context of a CALEA section 107(b) proceeding, the Commission noted that several aspects mitigated the cost burden on carriers, including the fact that “carriers can recover at least a portion of their CALEA software and hardware costs by charging to LEAs, for each electronic surveillance order authorized by CALEA, a fee that includes recovery of capital costs, as well as recovery of the specific costs associated with each order.”³¹⁵ Law Enforcement contends that carriers passing along their capital costs in this way “constitutes an improper shifting of the CALEA-allocated cost burden from industry to law enforcement not authorized or contemplated by CALEA.”³¹⁶ Law Enforcement alternatively contends that even if the Commission did have the authority to allow recovery of capital costs associated with intercept provisioning, this constitutes a new rule that was not subject to notice and comment and therefore violates the Administrative Procedure Act (“APA”).³¹⁷

133. At the outset, we note that our prior observation concerning a carrier’s ability to recover a portion of its CALEA capital costs through individual wiretap charges was made without the benefit of a full and complete record compiled in response to a request for comment. Given its significance to both LEAs and industry, we seek to develop a full record in this proceeding on this very important aspect of cost

³¹³See e.g., *Petition of Pittencrief Communications, Inc. for Declaratory Ruling Regarding Preemption of the Texas Public Utility Regulatory Act of 1995*, 13 FCC Rcd 1735, 1736 (1997), *affirming Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9181-82, ¶ 791 (1997) (finding that section 332(c)(3) does not preclude states from requiring CMRS providers to contribute to state universal service support mechanisms).

³¹⁴See OCCSSA, *supra* n.89, § 802, 18 U.S.C. § 2518(4).

³¹⁵*Order on Remand, supra* n.32 at 6917, ¶ 60 (citing 47 U.S.C. § 229(e) and collateral state regulations).

³¹⁶Petition at 69. Law Enforcement contends that an increasing number of LEAs have expressed concern over “the significant administrative costs” in carriers’ bills for intercept provisioning, and that Congress has not authorized carriers to include CALEA-related capital costs in their intercept provisioning costs. Petition at 68.

³¹⁷*Id.* at 69. See also Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

recovery. We seek comment on the costs that can be included in intercept provisioning costs and the entities that should bear financial responsibility for those costs. As Law Enforcement acknowledges,³¹⁸ Title III of the OCCSSA generally authorizes carriers to recover intercept provisioning costs from law enforcement.³¹⁹ We seek comment on whether CALEA limits the available cost recovery for intercept provisioning, and on whether carriers should be allowed to adjust their charges for such intercept provisioning to cover costs for CALEA-related services, which would include CALEA-related intercept provisioning charges. We seek comment as to whether recovery for capital costs associated with intercept provisioning should be different in the circuit-mode and packet-mode contexts, and if so, why.

134. In the context of wireless services, we have recognized that larger, nationwide carriers are better able to implement regulatory requirements than smaller, rural carriers.³²⁰ We seek comment on whether those with large subscriber bases have more capability to spread CALEA compliance costs over all of their customers to a more economical degree than those with a smaller subscriber base. If so, would the result thereby narrow the number of smaller carriers, for instance Tier III wireless carriers, that could use a cost recovery approach pursuant to CALEA section 109? What would be the impact on such smaller carriers and administration of a cost recovery program pursuant to this CALEA provision? Moreover, how do we define the market and cost parameters for CALEA compliance in order to make determinations that are reasonably based on carriers' capabilities and the scope of their particular markets? We seek comment on these and any other concerns related to cost recovery for wireless carriers deploying packet technologies.

135. How should we treat such costs for broadband services offered on a commercial basis by cable modem service providers, wireless ISPs and broadband over powerline operators that operate on a totally unregulated basis under Part 15 of the Commission's rules?

3. Jurisdictional Separations Implications

136. Section 229(e)(3) of the Communications Act requires the Commission to convene a Federal-State Joint Board³²¹ "to recommend appropriate changes to Part 36 of the Commission's rules with

³¹⁸Petition at 68.

³¹⁹See 18 U.S.C. § 2518(4). See also Covad Comments at 19-20.

³²⁰See *In the Matter of the Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers*, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987 (2003) at 20993, ¶ 17; *In the Matter of the Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers*, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841 (2002) at 14846-47, ¶¶ 16-20 (noting factors underlying why wireless carriers with relatively small customer bases are at a disadvantage compared with large nationwide carriers); see also, *In the Matter Numbering Resource Optimization, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Telephone Number Portability, Fourth Report and Order in CC Docket No. 99-200 and CC Docket No. 95-116, and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 99-200*, 18 FCC Rcd 12472 (2003) at 12478-79, ¶¶ 16-18 (providing limited exemption for rural and small carriers from number pooling requirements).

³²¹Under section 410(c) of the Communications Act, "[t]he Commission shall refer any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations, which it institutes pursuant to a notice of proposed rulemaking and . . . may refer any other matter, relating to common carrier communications of joint Federal-State concern, to a Federal-State Joint Board."

(continued...)

respect to recovery of costs [related to CALEA compliance] pursuant to charges, practices, classifications, and regulations under the jurisdiction of the Commission.”³²² In 1997, the Commission referred CALEA cost recovery issues to the Federal-State Joint Board on Jurisdictional Separations (Federal-State Separations Joint Board).³²³

137. When the Commission referred CALEA cost recovery issues to the Federal-State Separations Joint Board in 1997, parties were focused on cost recovery issues related to deployment of CALEA capabilities in circuit-switched networks of telecommunications carriers; standards for CALEA implementation had not yet been developed. Since then, a number of significant technological, marketplace, and regulatory developments have taken place, including the development of standards for circuit-mode and packet-mode CALEA implementation and widespread deployment of packet-switching capabilities. Meanwhile, the Federal-State Separations Joint Board recommended, and the Commission adopted, an interim freeze on further modifications to the Commission’s jurisdictional separations rules.³²⁴ The separations freeze went into effect on July 1, 2001 and is scheduled to end on June 30, 2006, absent further action by the Commission.³²⁵

138. As a result of the separations freeze, the Federal-State Separations Joint Board has not had the opportunity to consider fully CALEA cost recovery issues and their implications for the Commission’s jurisdictional separations rules. We therefore refer to the Federal-State Separations Joint Board the following CALEA-related cost recovery issues: (i) whether costs for circuit-based capabilities should be separated, and if so, how the associated costs and revenues should be allocated for jurisdictional separations purposes; (ii) whether costs for packet-mode capabilities should be separated, and if so, how the associated costs and revenues should be allocated for jurisdictional separations purposes. We emphasize that our separations rules only apply to incumbent LECs under the Communications Act, and do not apply to entities that may be deemed telecommunications carriers under CALEA. As such, the Federal-

(Continued from previous page)

47 U.S.C. § 410(c). The Federal-State Joint Board is composed of three members of this Commission, and four state commissioners. *Id.* After such a referral, the Federal-State Joint Board is to issue a recommended decision to the Commission. *Id.*

³²²47 U.S.C. § 229(e)(3). Part 36 jurisdictional separations rules apply only to incumbent LECs as defined in the Communications Act.

³²³*Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, *Notice of Proposed Rulemaking*, 12 FCC Rcd 22120 (1997) at 22168-69, ¶¶ 108-10 (*Separations NPRM*). The Commission sought comment on how to separate the costs a carrier may incur and the revenues a carrier may receive in establishing the capabilities and capacity necessary to comply with CALEA; whether the costs incurred should be allocated to a new single category identified as CALEA-related expenses or to previously-existing separations categories; and whether revenues could be allocated to the respective jurisdictions based on relative-use factors based on the relative surveillance requirements of federal, state, and local law enforcement agencies. *Separations NPRM* at 22169, ¶ 110. The Federal-State Separations Joint Board was established in 1980. *Amendment of Part 67 of the Commission’s Rules and Establishment of a Joint Board*, CC Docket No. 80-286, *Notice of Proposed Rulemaking and Order Establishing a Joint Board*, 78 FCC 2d 837 (1980).

³²⁴*Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Recommended Decision, 15 FCC Rcd 13160 (Fed-State Jt. Bd. on Jurisdictional Separations 2000); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382 (2001) (*Separations Freeze Order*).

³²⁵47 C.F.R. § 36.3 (codifying separations freeze requirements).

State Separations Joint Board shall focus on the foregoing questions only insofar as they pertain to entities subject to jurisdictional separations.

139. In addition, we ask parties to refresh the record on the CALEA issues identified in the *Separations NPRM*, i.e., whether costs should be allocated in a new CALEA-specific category or in previously-existing categories, whether revenues received from the Attorney General should be allocated in a particular manner (and if so, how), and whether CALEA-related revenues could be allocated to the jurisdictions based on relative-use factors derived from the relative electronic surveillance requirements of federal, state, and local LEAs.³²⁶ Finally, because of the national importance of CALEA issues, we request that the Federal-State Separations Joint Board issue its recommended decision no later than one year from the release of this *Notice*.

G. EFFECTIVE DATES OF NEW RULES

140. If the Commission ultimately decides, as discussed in this *Notice*, that broadband access providers or additional entities are subject to CALEA, entities that heretofore have not been subject to CALEA will have to comply with its requirements. Thus, entities previously identified as information service providers under the Commission's previous decisions³²⁷ would be subject to CALEA and would have to comply with various requirements, including the assistance capability requirements in CALEA section 103, the capacity requirements in CALEA section 104, and the system security requirements in CALEA section 105 and in section 229(b) of the Communications Act.³²⁸

141. Carriers already subject to CALEA either are in compliance with its requirements or have filed petitions to extend their compliance date with the section 103 assistance capability requirements, as discussed in Section III.D. of this *Notice*. Newly-identified entities, on the other hand, will need a reasonable amount of time to come into compliance with all relevant CALEA requirements. Law Enforcement addressed compliance deadlines for section 103 within the context of its request that the Commission establish benchmarks and deadlines for section 107(c) extensions, but it is not clear from the petition if Law Enforcement was proposing this scheme for all carriers subject to CALEA, including newly-identified carriers as a result of this rulemaking, or only those who already had filed extension petitions. Law Enforcement proposes that carriers come into compliance with CALEA section 103 within 15 months of a Commission-issued Public Notice that explains the policies and procedures for the extension process.³²⁹ It did not address compliance deadlines for CALEA sections 104 and 105 and section 229(b) of the Communications Act.

142. Many commenters argue that the proposed benchmarks for CALEA section 107(c) extensions are not reasonable. They point out, for example, that manufacturers have not yet devised CALEA solutions because not all packet standards have been finalized; that, in the absence of standardized solutions, the benchmarks do not provide enough time for manufacturers and carriers to devise

³²⁶*Separations NPRM*, *supra* n.323 at 22169, ¶ 110.

³²⁷*See supra* ¶ 8.

³²⁸The Commission adopted system security requirements for telecommunications carriers in 1999. *See supra* ¶ 22, n. 56. *See also* 47 C.F.R. §§ 64.2100-64.2106.

³²⁹Petition at 48.

individualized solutions; and that the benchmarks do not provide carriers with enough time to install and deploy solutions.³³⁰ No commenters addressed compliance deadlines for other CALEA requirements.

143. If the Commission ultimately decides that entities that heretofore have not been subject to CALEA will have to comply with its requirements, we seek comment on what would be a reasonable amount of time for those entities to come into compliance with sections 103 and 105 of CALEA.³³¹ Should newly-identified entities either come into compliance with or seek relief from section 103 requirements within 90 days, as we propose for carriers that have filed section 107(c) petitions?³³² Or should newly-identified entities have 15 months to come into compliance with section 103, as Law Enforcement suggests, or is some other amount of time reasonable? Regarding compliance with CALEA section 105 and section 229(b) of the Communications Act, should newly-identified carriers comply with the system security requirements previously adopted by the Commission within 90 days, which was the amount of time the Commission provided when it adopted those rules, or is some other amount of time reasonable? Commenters should address factors that would support their suggestions for sections 103, 105 and 229(b) compliance deadlines.

IV. DECLARATORY RULING ON PUSH-TO-TALK SERVICES

A. BACKGROUND

144. In this section, we address the request of Law Enforcement to reaffirm the Commission's determination in the *Second R&O* that wireless push-to-talk "dispatch" services are subject to CALEA requirements.³³³ Law Enforcement asserts that an increasing number of wireless carriers offer this service without admitting that they have related CALEA obligations.

145. Several parties support Law Enforcement's position.³³⁴ Verizon Wireless submits that push-to-talk voice services offered by telecommunications carriers, which use packet mode technologies such as its own push-to-talk service, are covered by CALEA.³³⁵ Nextel supports a clarification that all push-to-talk "dispatch" like services provide CALEA-compliant solutions as quickly as possible.³³⁶ On the other hand, Sprint asserts that a decision that a particular push-to-talk "dispatch" service was subject to CALEA requires a factual determination as to whether such offering meets the necessary criteria, *i.e.*, that it is offered in

³³⁰See, e.g., Verizon Comments at 17-20; Sprint Comments at 17-19; SBC Comments at 14.

³³¹The FBI has authority to establish capacity requirements for carriers subject to CALEA, so we do not address here compliance dates for section 104 of CALEA. See *supra* ¶ 16.

³³²See *supra* ¶ 91. We note that, as discussed above in ¶¶ 96-103, newly-identified entities may not be able to request compliance extensions under § 107(c) of CALEA.

³³³See Petition at 32-33 (citing *Second R&O*, *supra* n.8 at 7117, ¶ 21).

³³⁴See, e.g., Comments of MSP, Baltimore County Police, LA Clear, NYSAG.

³³⁵See Letter from J. Scott III, Vice President and General Counsel, Regulatory Law, Verizon Wireless to M. Dortch, Secretary, Federal Communications Commission (April 14, 2004) (responding to comments and hereinafter referred to as Reply Comments of Verizon Wireless).

³³⁶See Reply Comments of Nextel, at 4.

conjunction with interconnected service, to render it subject to CALEA.³³⁷ Consequently, Sprint argues that because Law Enforcement does not submit facts for the Commission to make such a determination as to any push-to-talk service, the Commission cannot declare that all such services should be subject to CALEA.³³⁸

B. DISCUSSION

146. We find that the situation presented by CMRS push-to-talk “dispatch” service warrants further clarification, and therefore, we are issuing this Declaratory Ruling. Although Law Enforcement does not specifically request such a ruling, we clarify that CMRS carrier offerings of push-to-talk service that are offered in conjunction with interconnected service to the PSTN, but may use different technologies, are subject to CALEA requirements.

147. Following the Commission’s treatment of push-to-talk “dispatch” service offered by CMRS carriers in the *Second R&O*, it appears that CMRS providers are in the process of deploying new technological advances in offering the service. For instance, Verizon Wireless generally expresses that it plans to offer its push-to-talk “dispatch” service over its 1X Code Division Multiple Access (“CDMA”) packet data network.³³⁹ In addition, Sprint asserts that push-to-talk “dispatch” service over “closed” networks, which the Commission previously found was not subject to CALEA, requires a rulemaking proceeding to determine whether it has become a replacement for a substantial portion of the local exchange service once provided by incumbent LECs.³⁴⁰

148. We note at the outset, that pursuant to section 1.2 of the Commission’s rules, the Commission has authority to issue on its own motion “. . . a declaratory ruling terminating a controversy or removing an uncertainty.”³⁴¹ We find that the record of comments in response to Law Enforcement indicates that developments in push-to-talk “dispatch” services are complicating how these services should be treated for purposes of applying CALEA requirements. Consequently, we find that further clarification is necessary.

149. The *Second R&O* addressed the dichotomy between push-to-talk “dispatch” services that are interconnected to the PSTN and those that are not. The Commission focused on this difference in the context of first concluding that CMRS providers should be considered telecommunications carriers for the purposes of CALEA. The Commission found that section 102(8)(B)(i) of CALEA, defining “telecommunications carrier” as including “a person or entity engaged in providing commercial mobile

³³⁷Comments of Sprint at 5-6 (citing *Second R&O*, *supra* n.8 at 7117, ¶ 21-22).

³³⁸*See id.* at 5-6.

³³⁹*See* Andrew Seybold, *Putting PTT To The Test*, *Wireless Week*, Feb. 15, 2004 <http://www.wirelessweek.com/article/CA381631?spacedesc=Departments&stt=001> (visited July 14, 2004) (also noting that Sprint uses a CDMA data channel, while other carriers, such as Nextel and Alltel use the voice channel in their push-to-talk offerings). *See also*, Sue Marek, *PTT Solutions Proliferate*, *Wireless Week*, Nov. 15, 2003 <http://www.wirelessweek.com/article/CA336369?stt=001&text=marek> (visited July 14, 2004) (observing that the deployment of the voice channel relies on a packet-switched solution).

³⁴⁰Comments of Sprint at 9 (citing *Second R&O*, *supra* n.8 at 7117, ¶ 22).

³⁴¹*See* 47 C.F.R. § 1.2.

service (as defined in section 332(d) of the [Communications Act])” requires that conclusion.³⁴² The Commission further recognized that the definition of commercial mobile service requires interconnected service.³⁴³ Thus, if services such as “traditional” SMR provide interconnection to the PSTN, the Commission determined that they satisfy the definition of CMRS and thus, are subject to CALEA. The Commission further found the same definitional approach holds for push-to-talk “dispatch” service, because if it is offered as an interconnected service, “it is a switched service functionally equivalent to a combination of speed dialing and conference calling.”³⁴⁴ If the push-to-talk “dispatch” service otherwise does not interconnect to PSTN, the Commission found that it is not subject to CALEA.³⁴⁵

150. We find that this approach continues to be applicable to CMRS offered push-to-talk services that may use different technologies, such as a packet mode network based on more advanced wireless protocols. The Commission noted in the *Second R&O* that CALEA is technology neutral, and “[t]hus, the choice of technology that a carrier makes when offering common carrier services does not change its obligations under CALEA.”³⁴⁶ We do not agree with Sprint’s contention that for each offering of push-to-talk “dispatch” service by CMRS carriers, a factual determination is required to determine whether the carrier must comply with CALEA. We also note that Verizon Wireless recognizes its CALEA responsibilities for its CMRS push-to-talk service, based on the application of its CDMA packet data network.³⁴⁷ We find that whether a CMRS carrier’s push-to-talk service offering is subject to CALEA depends on the regulatory definition and functional characteristics of that service and not on the particular technology the carrier chooses to apply in offering it. Therefore, we conclude that regardless of what newer technologies a CMRS carrier may use in its offering of push-to-talk “dispatch service,” it continues to be subject to the requirements of CALEA, if the required definitional element for CMRS service is met, *i.e.*, the delivery of the push-to-talk service is offered in conjunction with interconnected service to the PSTN.

151. On the other hand, we reiterate that if the push-to-talk service is limited to a private or “closed” network, and is not offered in conjunction with interconnected service to the PSTN, then, generally, it remains not subject to CALEA. We qualify this approach, however, recognizing that what has been termed “private dispatch services” may be developed or implemented in a manner that raises issues pertaining to the Substantial Replacement Provision.³⁴⁸ For example, an entity might deploy a seemingly

³⁴²See *Second R&O*, *supra* n.8 at 7116, ¶ 19.

³⁴³*Id.* at 7116-17, ¶¶ 20-22 (referring to definition of “commercial mobile service” as “any mobile service . . . that is provided for profit and makes interconnected services available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public . . .”). See 47 U.S.C. § 332(d).

³⁴⁴See *Second R&O*, *supra* n.8 at 7117, ¶ 21.

³⁴⁵*Id.*

³⁴⁶*Id.* at 7120, ¶ 27 n.69.

³⁴⁷See Reply Comments of Verizon Wireless at 2.

³⁴⁸See, *e.g.*, *supra*, ¶ 44 (seeking comment concerning classes of wireless services that may not meet the definition of a “commercial mobile service” under section 102(8)(B)(i) of CALEA). For instance, some wireless push-to-talk offerings being developed will rely on Wi-Fi, combined with VoIP, and unlike CMRS-based push-to-talk that provides the capability of interconnecting to the local exchange network, would not interconnect to the PSTN. See, *e.g.*, *IP-Enabled Services Notice*, *supra* n.1 at 4875, ¶ 14.

“private” or “closed” push-to-talk services that may satisfy all three prongs of the Substantial Replacement Provision such that this service would be subject to CALEA. We find that such instances are within the scope of the *Notice* above, and commenters should address them in that context.

V. PROCEDURAL MATTERS

A. INITIAL REGULATORY FLEXIBILITY ANALYSIS

152. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in this *Notice*, provided below in Section V.D. Comments must have a separate and distinct heading designating them as responses to the IRFA.

B. PAPERWORK REDUCTION ACT

153. This document contains proposed new information collection requirements. If these proposals are finalized in a Report and Order, the Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the Office of Management and Budget to comment on the information collection requirements contained in that Report and Order, as required by the Paperwork Reduction Act of 1995, Public Law 104-13.

C. EX PARTE RULES

154. This is a permit-but-disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.2306(a).

D. COMMENTS

155. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before **[45 days from date of publication in the Federal Register]**, and reply comments on or before **[75 days from date of publication in the Federal Register]**. Comments may be filed using the Commission's Electronic Comment Filing System (“ECFS”) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

156. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, “get form <your e-mail address.>” A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

157. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Best Copy and Printing, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

E. CONTACT PERSONS

158. For further information concerning this rule making proceeding, contact the Office of Engineering and Technology's Rodney Small at (202) 418-2452 (Rodney.Small@fcc.gov) or Geraldine Matise at (202) 418-2322 (Geraldine.Matise@fcc.gov).

VI. ORDERING CLAUSES

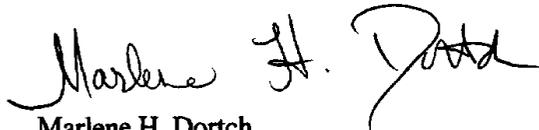
159. Accordingly, IT IS ORDERED that pursuant to sections 1, 4(i), 7(a), 229, 301, 303, 332, and 410 of the Communications Act of 1934, as amended, and sections 103, 106, 107, and 109 of the Communications Assistance for Law Enforcement Act, 47 U.S.C. §§ 151, 154(i), 157(a), 229, 301, 303, 332, 410, 1002, 1005, 1006, and 1008, the NOTICE OF PROPOSED RULEMAKING AND DECLARATORY RULING is hereby ADOPTED.

160. It IS FURTHER ORDERED that, pursuant to section 410(c) of the Communications Act of 1934, 47 U.S.C. § 410(c), the Federal-State Joint Board on Jurisdictional Separations is requested to review the CALEA cost recovery issues set forth in paragraph 138 of the NOTICE OF PROPOSED RULEMAKING AND DECLARATORY RULING and to provide recommendations to the Commission.

161. IT IS FURTHER ORDERED that the Joint Petition for Expedited Rulemaking, filed by the Department of Justice, Federal Bureau of Investigation, and Drug Enforcement Administration on March 10, 2004, IS GRANTED TO THE EXTENT INDICATED HEREIN.

162. IT IS FURTHER ORDERED that the Commission's Consumer Information and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this NOTICE OF PROPOSED RULEMAKING AND DECLARATORY RULING, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX A

COMMENTERS TO THE LAW ENFORCEMENT PETITION

Comments

Alliance for Telecommunications Industry Solutions
American Association of Community Colleges, et al.
American Civil Liberties Union
Anchorage (Alaska) Police Department
Arapahoe County (Colorado) Sheriff's Office
AT&T Corp.
Michael Attili
Baltimore County Police Department
BellSouth Corporation
Ren Bucholz
Buchanan County (Virginia) Office of the Sheriff
Butler County (Pennsylvania) District Attorneys Office
Canadian Association of Chiefs of Police
Cape May Prosecutor's Office
Cellular Telecommunications and Internet Association
Center for Democracy & Technology
City of Alexandria, Virginia Department of Police
Charlotte-Mecklenburg (Virginia) Police Department
City of Virginia Beach, Virginia Department of Police
Robert Collinge
Concerned CALEA Compliant Carriers
Conference America
County of New York District Attorney
Covad Communications
Earthlink, Inc.
Electronic Frontier Foundation
Electronic Privacy Information Center
Global Crossing North America, Inc.
Honolulu Police Department
Hotel Internet Technology
Illinois State Police
Information Technology Industry Council
International Association of Chiefs of Police
Internet Commerce Coalition
ISP CALEA Coalition
King County (Washington) Sheriff's Office
Kitsap County (Washington) Sheriff's Office
Leap Wireless International, Inc.
Los Angeles County Regional Criminal Information Clearinghouse
Los Angeles County's Sheriff's Department
Madisonville (Texas) Police Department
Major Cities Chiefs Association
Major Counties Sheriffs' Association
Maryland State Police

Maryland Office of the Attorney General
Keith R. McCall
Meredith, New Hampshire Police Department
Metropolitan Police Department of Nashville and Davidson County (Tennessee)
National District Attorneys Association
National Narcotic Officers Association Coalition
National Sheriffs' Association
National Telecommunications Cooperative Association
New Hampshire Department of Safety
New Jersey Division of Criminal Justice
New Jersey State Police
New York State Attorney General's Office
New York State Police
Oklahoma State Bureau of Narcotics and Dangerous Drug Control
Philadelphia (Pennsylvania) County Office of the District Attorney
Pittsburgh Bureau of Police
Police Executive Research Forum
Privacilla.org
Rockland County (New York) District Attorney's Office
Rural Iowa Independent Telephone Association
Salt Lake County (Utah) District Attorney's Office
San Bernardino County (California) Police Department
San Bernardino County (California) Sheriff's Department
Satellite Industry Association
SBC Communications, Inc.
Shelby County Indiana Sheriff's Department
Skype Technologies, S.A.
Sprint Corporation
Telecommunications Industry Association
Tennessee Bureau of Investigation
Texas Department of Public Safety
Top Layer Networks, Inc.
Town of Wells (Maine) Police Department
VeriSign, Inc
Voices on the Net Coalition
Uinta County (Wyoming) Sheriff's Office
United Power Line Council
United States Telecom Association
Verizon
Warriner, Gesinger & Associates, LLC
Westbrook (Maine) Police Department
WorldCom, Inc. d/b/a/ MCI

Also, more than 2000 1-page form letters were filed opposing the Petition.