



PUBLIC NOTICE

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DA 98-762
Released: April 20, 1998

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

Petition for Rulemaking under Sections 107 and 109 of the Communications Assistance for Law Enforcement Act, filed by Center for Democracy and Technology

Joint Petition for Expedited Rulemaking, filed by Federal Bureau of Investigation and U.S. Department of Justice

Petition for Rulemaking, filed by Telecommunications Industry Association

Petition for Rulemaking, filed by Cellular Telecommunications Industry Association

Petition for Extension of Compliance Date, filed by AT&T Wireless Services Inc., Lucent Technologies Inc., and Ericsson Inc.

Joint Motion to Dismiss CTIA's July 16, 1997 Petition for Rulemaking, filed by Federal Bureau of Investigation and U.S. Department of Justice

The purpose of this Public Notice is to solicit comments on the petitions listed above.

In October 1994, Congress passed and the President signed the Communications Assistance for Law Enforcement Act (CALEA or the Act). The Act was designed to respond to rapid advances in telecommunications technology and enable law enforcement personnel to continue to conduct electronic surveillance efficiently and effectively.

CALEA requires telecommunications carriers to ensure that their equipment, facilities, and services will meet assistance capability requirements that enable law enforcement to conduct authorized electronic surveillance.¹ It sets the effective date for complying with these assistance capability requirements as four years after the date of enactment of CALEA, which will be October 25, 1998.² CALEA also contains a “safe harbor” provision, stating that a telecommunications carrier, a manufacturer of telecommunications transmission or switching equipment, or a provider of telecommunications support services will be deemed in compliance with CALEA's assistance capability requirements if it complies with publicly available technical standards. However, carriers are required to comply with the assistance capability requirements mandated by CALEA even if they choose not to use publicly available standards and take advantage of the safe harbor provision. CALEA envisions that an industry association or a standards-setting organization will set these standards.³ Under Section 107 of CALEA, if technical requirements or standards are not issued, or if any person believes any standards issued are deficient, that party may petition the Commission to establish such requirements or standards.⁴

On December 5, 1997, the Telecommunications Industry Association (TIA) and Committee T1, sponsored by the Alliance for Telecommunications Industry Solutions (ATIS), announced the adoption and joint publication of an interim industry standard, J-STD-025, *Lawfully Authorized Electronic Surveillance*. J-STD-025 defines services and features to support lawfully authorized electronic surveillance and the interfaces to deliver intercepted communications and call-identifying information to a law enforcement agency. The stated purpose of this industry standard is to facilitate a telecommunications service provider's compliance with the assistance capability requirements defined in CALEA.

On March 26, 1998, the Center for Democracy and Technology (CDT) filed a petition for rulemaking, requesting the Commission to intervene in the implementation of CALEA. CDT contends that the interim industry standard goes too far in enhancing location tracking capabilities and fails to protect the privacy of packet switched communications, and that additional surveillance enhancements being sought by the Federal Bureau of Investigation (FBI) are not required under CALEA and would further render the industry standard deficient.⁵ CDT states that the telecommunications industry and the FBI have failed to agree on a plan for preserving a narrowly-

¹ 47 U.S.C. § 1002(a).

² 47 U.S.C. § 1001 note.

³ 47 U.S.C. § 1006(a).

⁴ 47 U.S.C. § 1006(b).

⁵ The Attorney General, who is required under the Act to publish capacity requirements and consult on the efficient implementation of the assistance capability requirements of CALEA, delegated management and administrative responsibility for CALEA to the FBI. The FBI, in turn, established the Law Enforcement Technical Forum (LETf), which consists of representatives from federal, state, and local law enforcement agencies. The FBI and LETf have coordinated their CALEA activities with several hundred agencies and prosecutors' offices across the United States.

focused surveillance capability while protecting privacy, and, further, are now mired in an argument over designing additional surveillance features for the Nation's telecommunications systems. CDT states that compliance with the industry standard is not reasonably achievable and requests that the Commission indefinitely delay implementation of CALEA while a more narrowly-focused standard consistent with the intent of CALEA is being developed.

On March 27, 1998, the FBI and the Department of Justice (DoJ) jointly filed a petition for expedited rulemaking, asking the Commission to correct deficiencies in the industry standard by establishing additional technical requirements and standards that meet the requirements of CALEA. The FBI and DoJ claim that the interim technical standard adopted by industry is deficient because it does not ensure that law enforcement will be able to receive all of the communications content and call-identifying information that carriers are obligated to deliver under CALEA, and because it also fails to ensure that information will be delivered in a timely manner. The petition explains why the parties believe the industry standard is deficient and lists a number of services and features (a so-called "punch list") that they believe should be added to the standard to correct its deficiencies. The parties request that the Commission leave the interim standard in effect pending the issuance of a final decision in the requested rulemaking proceeding, and that the Commission provide a reasonable time for compliance with technical standards adopted in the proceeding by making the standards effective 18 months after the date of the Commission's decision.

On April 2, 1998, the Telecommunications Industry Association (TIA) filed a petition for rulemaking, asking the Commission to resolve the dispute as to whether the industry standard is over inclusive or under inclusive and to provide guidance to telecommunications equipment manufacturers. TIA requests that the Commission: 1) immediately announce suspension of enforcement of CALEA until the Commission issues its final determination; 2) establish, at the beginning of the rulemaking, a reasonable compliance schedule of at least 24 months to implement the Commission's final decision; 3) undertake an expedited schedule for addressing the issues; and 4) remand any further technical standardization work to the TIA subcommittee that issued the interim industry standard.

On March 30, 1998, AT&T Wireless Services Inc. (AWS), Lucent Technologies Inc. (Lucent), and Ericsson Inc. (Ericsson) filed a petition for extension of the compliance date, seeking an extension of CALEA's October 25, 1998 compliance date until at least October 24, 2000. AWS and its vendors contend that an extension is necessary because CALEA-compliant hardware and software will not be available within the compliance period. The parties state that further development of an industry solution in the face of the unstable industry standard would expose the vendors to potentially enormous expense of money and engineering resources because any modification to the existing industry standard could require significant changes in Lucent's or Ericsson's individual CALEA solution.

We request comments on the petitions and on the issues raised by them.⁶ We request specific comments on the issues raised concerning compliance with CALEA obligations, including any extension of the October 1998 compliance date. In this regard, we understand that many carriers believe they will not be able to meet the compliance deadline. In order to reduce the administrative burden on both the affected parties and the Commission, commenters should address how the Commission can most quickly and efficiently extend the compliance deadline, assuming such an extension is warranted, particularly if it appears that the factors supporting an extension apply equally to large numbers of telecommunications carriers. Specifically, commenters should address all possible actions the Commission might take, including the issuance of an extension order that applies to all carriers subject to the compliance deadline, to ensure that the objectives and obligations of CALEA are met in the most timely manner. Commenters should also address any other measures the Commission might take to streamline the process for granting extensions. Interested parties may file comments on compliance date issues on or before **May 8, 1998**, and reply comments on or before **May 15, 1998**.

We also request specific comment on the issues raised concerning the scope of the assistance capability requirements necessary to satisfy the obligations imposed by CALEA. In particular, we request analyses of whether the capabilities discussed in the petitions from CDT and from the FBI and DoJ fall within the scope of CALEA, including an explanation of the commenting party's reasoning based on existing privacy laws and their legislative history. We further request specific comment on the requests to remand any additional standards development to the TIA Subcommittee TR45.2, which developed the interim industry standard. Interested parties may file comments on the petitions and specific issues regarding standards for assistance capability requirements on or before **May 20, 1998**, and reply comments on or before **June 5, 1998**.

Regarding a related matter, we note that on July 16, 1997, the Cellular Telecommunications Industry Association (CTIA) submitted a petition for rulemaking requesting the FCC to establish standards to implement the assistance capability requirements of CALEA. CTIA contended at the time that the industry standard-setting process was at an impasse between industry and law enforcement over capabilities that should be included in a standard.⁷ On March 27, 1998, the FBI and DoJ filed a joint

⁶ On April 9, 1998, the Cellular Telecommunications Industry Association (CTIA), the Personal Communications Industry Association (PCIA), and the United States Telephone Association (USTA), jointly filed a response to the petitions. These carrier associations ask the Commission to resolve the dispute over the reach of CALEA. They also urge the Commission to 1) remand to TIA's Subcommittee TR45.2 any change in the industry standard brought about by FCC rulemaking; 2) toll the CALEA compliance date during rulemaking; 3) grant an industry-wide extension to allow adequate time to implement any revised standard; 4) ensure that any rule promulgated by the FCC is voluntary so that carriers retain the choice of how to meet CALEA's assistance capability requirements; and 5) determine whether compliance is reasonably achievable at this time.

⁷ On August 11, 1997, CDT and the Electronic Frontier Foundation (EFF) jointly filed comments in response to the CTIA petition which urged the Commission to 1) adopt a CALEA standard that deletes location tracking and packet switching features from the then-proposed

motion requesting the FCC to dismiss CTIA's petition on the grounds that the adoption of the interim industry standard now renders the CTIA petition moot and that the joint petition filed by the FBI and DoJ supersedes it in terms of relevancy and accuracy. We also request comments on this motion on or before **May 20, 1998**, and reply comments on or before **June 5, 1998**.

For ex parte purposes, this is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

Pursuant to procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments with the Office of Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Copies of the petitions, comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), and may also be obtained from the Commission's duplicating contractor, International Transcription Service, Inc. (ITS, Inc.), 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857-3800.

For further information contact David Wye, Wireless Telecommunications Bureau, (202) 418-1897 or Lawrence Petak, Office of Engineering and Technology, (202) 418-2478.

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industry standard; 2) require industry and law enforcement to develop an additional standard for packet switching that affirmatively protects the privacy of content information that law enforcement is not authorized to receive; and 3) reject requests by the FBI or other agencies to further expand surveillance features.