

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Petition for the Extension of the Compliance)
Date under Section 107 of the)
Communications Assistance for)
Law Enforcement Act by)
AT&T Wireless Services, Inc.,)
Lucent Technologies, Inc., and Ericsson Inc.; PrimeCo)
Personal Communications, L.P.; Powertel, Inc.; United)
States Telephone Association; Ameritech Operating)
Companies and Ameritech Mobile Communications;)
AirTouch Paging, Inc.; AirTouch Communications, Inc. and)
Motorola, Inc.; SBC Communications, Inc.; ICG Telecom)
Group, Inc.; Centennial Cellular Corp.; Comcast)
Cellular Communications, Inc.; BellSouth Corporation,)
BellSouth Telecommunications, Inc., BellSouth Cellular)
Corp., BellSouth Personal Communications, Inc. and)
Bell South Wireless Data, L.P.; CommNet Cellular,)
Inc.; Metrocall, Inc.; United States Cellular Corporation;)
PageMart Wireless, Inc.; Ardis Company, Conxus Network,)
Inc., Metrocall, Inc., MobileMedia Communications, Inc.)
Motorola, Inc., PageMart Wireless, Inc., Preferred Networks,)
Inc., RAM Technologies, Inc., Real Time Strategies, Inc., and)
TekNow, Inc.; Redcom Laboratories, Inc.; Skytel)
Communications, Inc.; Iridium United States, L.P.;)
360° Communications Co.; Centurytel Wireless, Inc.;)
Paging Network, Inc.)

MEMORANDUM OPINION AND ORDER

Adopted: September 10, 1998

Released: September 11, 1998

By the Commission: Commissioners Ness and Powell issuing a joint statement; Commissioner Furchtgott-Roth concurring and issuing a statement.

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I. INTRODUCTION

1. In this Memorandum Opinion and Order, we grant an extension until June 30, 2000, of the deadline for complying with the Communications Assistance for Law Enforcement Act (CALEA or the Act).¹ In providing this extension, we grant, in part, the relief requested in the above-captioned petitions.² In issuing this Memorandum Opinion and Order, we have also considered fully the comments filed in

¹ Communications Assistance for Law Enforcement Act, Pub. L. No. 103-414, 108 Stat. 4279 (1994) (codified as amended in 18 U.S.C. § 2522, and 47 U.S.C. §§ 229, 1001-1010.).

² AT&T Wireless Services, Inc., Lucent Technologies, Inc. and Ericsson, Inc. (AT&T) Joint Petition for Extension of Compliance Date, filed Mar. 30, 1998; PrimeCo Personal Communications, L.P. (PrimeCo), Petition for an Extension of Compliance Date, filed April 21, 1998; Powertel, Inc. (Powertel), Petition for an Extension of Compliance Date, filed April 23, 1998; United States Telephone Association (USTA), Petition for an Extension of Compliance Date, filed April 24, 1998; Ameritech Operating Companies and Ameritech Mobile Communications, Inc. (Ameritech), Petition for an Extension of Compliance Date, filed April 24, 1998; AirTouch Paging, Inc. (AirTouch Paging), Petition for an Extension of Compliance Date, filed May 4, 1998; AirTouch Communications Inc. and Motorola, Inc. (AirTouch), Joint Petition for an Extension of Compliance Date, filed May 5, 1998; SBC Communications, Inc. (SBC), Petition for Extension of Compliance Date, filed May 8, 1998; ICG Telecom Group, Inc. (ICG), Petition for Extension of and Comments, filed May 8, 1998; Centennial Cellular Corp. (Centennial), Petition for an Extension of Compliance Date, filed May 6, 1998; Comcast Cellular Communications, Inc. (Comcast Cellular), Petition for Extension of Compliance Date, filed May 29, 1998; BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp., BellSouth Personal Communications, Inc. and BellSouth Wireless Data, L.P. (BellSouth), Combined Comments and Petition for Extension of Time, filed May 8, 1998; CommNet Cellular Inc. (CommNet), Petition for Extension of Compliance Date, filed April 30, 1998; Metrocall, Inc. (Metrocall), Petition for Extension of Compliance Date, filed May 21, 1998; United States Cellular Corporation (USCC), Comments and Petition for Extension of Compliance Date, filed May 8, 1998, PageMart Wireless, Inc. (PageMart), Petition for Extension of CALEA Compliance Date, filed June 10, 1998; Ardis Company, Conxus Network, Inc., Metrocall, Inc., MobileMedia Communications, Inc., Motorola, Inc., PageMart Wireless, Inc., Preferred Networks, Inc., RAM Technologies, Inc., Real Time Strategies, Inc., and TekNow, Inc. (Ardis, et al.), Joint Petition for Extension of Compliance Date, filed June 10, 1998; Skytel Communications, Inc. (Skytel), Request for Extension of Time to Comply with the Assistance Capability Requirements of Section 103 of CALEA, filed July 24, 1998; Redcom Laboratories, Inc. (Redcom), Petition for Extension of CALEA Compliance Date, filed June 1, 1998; Joint Petition For an Extension of the CALEA Assistance Capability Compliance Date of Iridium United States, L.P. and Motorola, Inc. (Iridium), filed June 30, 1998; 360° Communications Company (360°) Comments at 8 n.15, filed May 8, 1998; Centurytel Wireless Communications, Inc. (Centurytel) Comments at 8 n.27, filed May 8, 1998; Paging Network, Inc. (PageNet), Petition for Extension of Compliance Date, filed June 8, 1998.

response to the Public Notice requesting comment on the issue of a blanket extension.³ As explained below, we find that compliance with the assistance capability requirements of section 103 of CALEA (section 103) is not reasonably achievable by any telecommunications carrier through the application of technology that will be available within the compliance period, which CALEA set to end on October 25, 1998.⁴ Accordingly, pursuant to our authority under section 107(c) of the Act, and in the interest of administrative efficiency, we grant an extension of CALEA's compliance deadline until June 30, 2000.⁵ This extension applies to all telecommunications carriers which are similarly situated to the petitioners, *i.e.*, those telecommunications carriers that are proposing to install or deploy, or having installed or deployed, any equipment, facility or service prior to the effective date of section 103 for that part of the carrier's business on which the new equipment, facility or service is used.⁶

II. BACKGROUND

2. CALEA, enacted on October 25, 1994, was intended to preserve the ability of law enforcement officials to conduct electronic surveillance effectively and efficiently in the face of rapid advances in telecommunications technology.⁷ To achieve this goal, section 103 of the Act sets forth four general assistance capability requirements with which carriers must comply. Specifically, section 103(a) requires a telecommunications carrier to:

(a) . . . [E]nsure that its equipment, facilities, or services that provide a customer or subscriber with the ability to originate, terminate, or direct communications are capable of--

(1) expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to intercept, to the exclusion of any other communications, all wire and electronic communications carried by the carrier within a service area to or from equipment, facilities, or services of a subscriber of such carrier concurrently with their transmission to or from the subscriber's equipment, facility, or service, or at such later time as may be acceptable to the government;

(2) expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to access call-identifying information that is reasonably available to the carrier--

(A) before, during, or immediately after the transmission of a wire or

³ "In the Matter of Communications Assistance for Law Enforcement Act, CC Docket No. 97-213," *Public Notice*, DA 98-762 (rel. Apr. 20, 1998) (*April 20 Public Notice*); *see also* Appendix, listing comments received in response to *April 20 Public Notice*.

⁴ 47 U.S.C. §§ 1001 note(b), 1006(c)(2).

⁵ *See* 47 U.S.C. § 1006(c)(1)-(4).

⁶ *Id.* We note that a carrier is deemed to be in compliance with section 103 of CALEA as to its "old" equipment, facilities and services -- *i.e.* those installed or deployed on or before January 1, 1995 -- until such time as it is reimbursed by the Attorney General for all reasonable costs directly associated with modifications necessary to bring that equipment into compliance. 47 U.S.C. § 1008(a), (d).

⁷ 140 Cong. Rec. H-10779 (daily ed. October 7, 1994) (statement of Rep. Hyde).

electronic communication (or at such later time as may be acceptable to the government); and

(B) in a manner that allows it to be associated with the communication to which it pertains, except that, with regard to information acquired solely pursuant to the authority for pen registers and trap and trace devices (as defined in section 3127 of title 18, United States Code), such call-identifying information shall not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number);

(3) delivering intercepted communications and call-identifying information to the government, pursuant to a court order or other lawful authorization, in a format such that they may be transmitted by means of equipment, facilities, or services procured by the government to a location other than the premises of the carrier; and

(4) facilitating authorized communications interceptions and access to call-identifying information unobtrusively and with a minimum of interference with any subscriber's telecommunications service and in a manner that protects--

(A) the privacy and security of communications and call-identifying information not authorized to be intercepted; and

(B) information regarding the government's interception of communications and access to call-identifying information.⁸

Under section 111(b) of CALEA, the deadline for compliance with these requirements is October 25, 1998.⁹

3. CALEA does not specify how these requirements are to be met. Rather, the Act requires carriers, in consultation with manufacturers, to ensure that their equipment, facilities, or services can comply with the requirements set out in section 103.¹⁰ Manufacturers are required to make available the features and modifications that are necessary to comply with the capability requirements "on a reasonably timely basis and at a reasonable cost."¹¹ The Attorney General is to consult with the telecommunications industry, users, and state utility commissions to "ensure the efficient and industry-wide implementation of the assistance capability requirements."¹²

⁸ 47 U.S.C. § 1002(a)(1)-(4).

⁹ 47 U.S.C. § 1001 note(b).

¹⁰ See 47 U.S.C. § 1005(a). Section 104 of CALEA also requires carriers to meet capacity requirements specified by the Attorney General. These requirements identify the actual number of and maximum capacity required to accommodate all the simultaneous interceptions, pen registers and trap and trace devices the Attorney General estimates will be needed to conduct authorized surveillance. 47 U.S.C. § 1003(a). CALEA gives carriers until October 25, 1998 or three years from the publication of the capacity requirements by the Attorney General, whichever is longer, to comply with the section 104 requirements. 47 U.S.C. § 1003(b).

¹¹ See 47 U.S.C. § 1005(b).

¹² See 47 U.S.C. § 1006(a)(1).

4. Although CALEA does not specify technologies or standards that carriers must use to meet the assistance capability requirements, it does contain a "safe harbor" provision, which states that a telecommunications carrier, a manufacturer of telecommunications transmission or switching equipment, or a provider of telecommunications support services will be deemed to be in compliance with CALEA's assistance capability requirements if it complies with "publicly available technical requirements or standards adopted by an industry association or standard-setting organization, or by the Commission"¹³ However, compliance with CALEA's capability requirements is still required even if a carrier chooses not to use publicly available standards.¹⁴ In that case, the carrier would have to work with its equipment suppliers to develop and deploy an alternative technical solution(s) that would meet the capability requirements.

5. Under section 107(b) 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.¹⁵ In so doing, the Commission is required to meet a number of conditions, and may provide a reasonable time and conditions for compliance with any new standard.¹⁶ The issues surrounding the establishment of technical standards for meeting CALEA requirements are not considered in this Memorandum Opinion and Order, but will be addressed in a separate item we intend to issue in the near future.

6. Additionally, pursuant to section 107(c), telecommunications carriers may petition the Commission for an extension of the compliance deadline, and may receive such an extension ". . . if the Commission determines that compliance with the assistance capability requirements under section 103 is not reasonably achievable through application of technology available within the compliance period."¹⁷ To date, the Commission has received petitions for extension of the CALEA compliance date based on both sections 107(b) and 107(c), as well as our general authority in sections 4(i), 4(j) and 229(a) of the Communications Act.¹⁸

7. To fulfill the Commission's other obligations under CALEA, the Commission released a Notice of Proposed Rule Making on October 10, 1997, proposing rules and seeking comment on a number of

¹³ 47 U.S.C. § 1006(a)(2). Manufacturers and providers of telecommunications support services are subject to section 106 and not section 103. 47 U.S.C. § 1005.

¹⁴ 47 U.S.C. § 1006(a)(3)(B).

¹⁵ 47 U.S.C. § 1006(b).

¹⁶ 47 U.S.C. § 1006(b)(5). This section requires the Commission to establish, by rule, technical requirements or standards that also (1) meet the assistance capability requirements of section 103 by cost-effective methods; (2) protect the privacy and security of communications not authorized to be intercepted; (3) minimize the cost of such compliance on residential ratepayers; and (4) serve the policy of the United States to encourage the provision of new technologies and services to the public. *Id.* at (b)(1)-(4).

¹⁷ *See* 47 U.S.C. § 1006(c)(1).

¹⁸ 47 U.S.C. §§ 154(i), 154(j), 229(a). *See* note 2 *supra*.

issues, including criteria that could be used to extend the CALEA compliance date under section 107, definitional issues relevant to which carriers are subject to CALEA requirements, and carriers' security policies and procedures.¹⁹ Because it was not clear whether requests for extension of the compliance date would be forthcoming, we declined at that time to propose specific rules regarding such requests.²⁰ We proposed instead to permit carriers to petition the Commission for an extension of time under section 107.²¹ In the NPRM, we also declined to address the issue of technical capability standards because we concluded that it would be inappropriate to address capability standards while the standards-setting process was ongoing.²² We received several comments from carriers in response to the NPRM requesting that the Commission grant a two-year blanket extension of the CALEA compliance date.²³

8. Since the enactment of CALEA, industry and law enforcement have been working to develop a standard that would meet the requirements of the statute and allow carriers to fulfill their obligations under the Act. These efforts have been concentrated almost exclusively on the technical standards required to conduct surveillance on wireline, cellular, and personal communications services (PCS) systems; standards-setting efforts to conduct surveillance on other telecommunications services, such as advanced paging,

¹⁹ See Communications Assistance for Law Enforcement, *Notice of Proposed Rulemaking*, CC Docket No. 97-213, FCC 97-356 (Oct. 10, 1997) (CALEA NPRM). Comments were due on December 12, 1997, and Reply Comments were due on February 11, 1998.

²⁰ CALEA NPRM at ¶ 50. CTIA had filed a petition for rulemaking on July 16, 1997 recommending that the Commission adopt industry capability standards and allow a two year implementation period from the adoption of this standard. Because our intention in the NPRM was to focus on obligations assigned specifically to the Commission by CALEA, we concluded that we would address CTIA's petition, including CTIA's request for an extension of the implementation period, separately. CALEA NPRM at ¶ 44.

²¹ *Id.* The CALEA NPRM originally indicated that such petitions would be analyzed under the criteria specified in section 109(b)(1). However, as detailed below, upon further review, we conclude that consideration of an extension under section 107(c) is based on one criteria--that is, whether "compliance with the assistance capability requirements under section 103 is not reasonably achievable through application of technology available within the compliance period." 47 U.S.C. §1006(c)(2). We also note that section 109(b)(1) and section 107(c) serve different purposes. Section 107(c) concerns extensions of the compliance deadline, while section 109(b) concerns the Attorney General's financial liability for the cost of modifications made to those portions of a carrier's network that were "installed or deployed after January 1, 1995." 47 U.S.C. §§1006(c), 1008(b)(1). Accordingly, the section 109(b)(1) criteria will not be evaluated here. Commenters have agreed with this conclusion. *See e.g.*, U.S. West Comments to NPRM at 38 n.66; AT&T Comments to NPRM at 23-27; FBI Reply Comments to NPRM at 14-15; Paging Network Comments at 4.

²² CALEA NPRM at ¶ 44.

²³ *See, e.g.*, American Mobile Telephone Association, Inc. (AMTA) Comments to NPRM at 8; BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp., BellSouth Personal Communications, Inc. and BellSouth Wireless Data, L.P. (BellSouth) Comments to NPRM at 19; Motorola, Inc. (Motorola) Comments to NPRM at 11; Paging Network, Inc. (PageNet) Comments to NPRM at 13-14; Personal Communications Industry Association (PCIA) Comments to NPRM at 3-4; PrimeCo Personal Communications, L.P. (Prime Co) Comments to NPRM at 5-6; AirTouch Reply Comments to NPRM at 9-12; AT&T Corporation (AT&T) Reply Comments to NPRM at 13-14.

specialized mobile radio, and satellite-based systems, have either not yet begun or are in their early stages. A standard for one-way paging was recently released by the Personal Communications Industry Association (PCIA), but it has not yet been evaluated by the law enforcement community or other parties.²⁴

9. 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.²⁵ 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.²⁶ The interim industry standard has been challenged by several parties, including law enforcement agencies, which believe it does not address all the capabilities to which they are entitled, and organizations advocating privacy concerns, which believe the standard includes capabilities beyond those allowed by CALEA.²⁷ As a result of the disagreement on the standards necessary to implement CALEA, the Commission has been petitioned to establish technical standards for meeting the assistance capability requirements of section 103.²⁸

10. Despite the uncertainty surrounding J-STD-025, CALEA still requires carriers to meet the requirements of section 103. Presumably carriers could come into compliance by developing alternative technical solutions in cooperation with the manufacturers of their equipment. However, it appears that no alternative technologies or solutions have been developed that would allow U.S. carriers to comply with CALEA's section 103 capability requirements before the compliance deadline. Given these circumstances, on March 30, 1998, AT&T Wireless Services, Inc., Lucent Technologies, Inc., and Ericsson, Inc. filed a petition for extension of CALEA's compliance deadline under section 107(c) of the Act.²⁹ In this petition,

²⁴ *CALEA Specification for Traditional Paging*, PCIA Technical Committee, CALEA Subcommittee, released May 4, 1998.

²⁵ *Interim Standard, Lawfully Authorized Electronic Surveillance, J-STD-025*, Telecommunications Industry Association Standards Committee, Subcommittee TR45.2, adopted December 8, 1997 (J-STD-025).

²⁶ *Id.* at 2.

²⁷ *See* Center for Democracy and Technology (CDT), Petition for Rulemaking Under Sections 107 and 109 of the Communications Assistance for Law Enforcement Act, filed March 26, 1998 (CDT Petition); Department of Justice and Federal Bureau of Investigations (FBI), Joint Petition for Expedited Rulemaking, filed March 27, 1998 (FBI Petition).

²⁸ We have received four petitions for rulemaking requesting that the Commission resolve the dispute as to whether the interim industry standard is overinclusive or underinclusive. CDT Petition; FBI Petition; Telecommunications Industry Association (TIA), Petition for Rulemaking, filed April 2, 1998 (TIA Petition); Cellular Telecommunications Industry Association (CTIA), Petition for Rulemaking, filed July 16, 1997 (CTIA Petition). *See also* note 116 *infra*.

²⁹ AT&T Petition.

the parties contend that a two year extension is necessary because CALEA-compliant hardware and software will not be available by October 25, 1998. We placed the AT&T petition on Public Notice, along with the CDT, DoJ/FBI and TIA petitions for rulemaking, on April 20, 1998, with initial comments due on May 8, 1998, and reply comments due on May 15, 1998.³⁰

11. The Public Notice requested comment on how the Commission could quickly and efficiently extend the compliance deadline if an extension were warranted; and whether the factors supporting an extension apply equally to large numbers of telecommunications carriers.³¹ In that regard, we asked commenters to address all possible actions we might take, including the issuance of an extension order for all carriers subject to the Act's compliance date, so that we could ensure that the objectives and obligations of CALEA would be met in a timely manner.³² We also requested suggestions for any other measures we might take to streamline the process for granting extensions.³³

12. Since the release of the Public Notice, we have received additional petitions for extension of the CALEA compliance date.³⁴ These petitions allege that compliance with the assistance capability requirements of section 103 is not reasonably achievable through the application of technology that will be available before the compliance date.³⁵ On May 8, 1998, along with other responsive comments, we also received several additional petitions for extension, as well as filings which were styled as comments and petitions for extension.³⁶

³⁰ *April 20 Public Notice.*

³¹ *Id.* at 4.

³² *Id.*

³³ *Id.* In the *April 20 Public Notice*, we requested comment on whether the capabilities discussed in the CDT and FBI petitions for rulemaking fall within the scope of CALEA and whether the Commission should grant FBI's motion to dismiss CTIA's Petition for Rulemaking as moot in light of the adoption of interim standards. *Id.* We established different comment dates for these issues and will address them in a separate order. Comments were due on May 20, 1998, and reply comments were due on June 5, 1998. We also note that the Commission has held several extensive meetings with the DOJ and FBI staffs regarding CALEA. *See, e.g.*, Letter from Daniel Kaplan, Department of Justice, to Magalie R. Salas, Secretary, Federal Communications Commission, dated June 4, 1998 (FBI June 4 *ex parte*); Letter from H. Michael Warren, Department of Justice/Federal Bureau of Investigation, to Magalie R. Salas, Secretary, Federal Communications Commission, dated June 29, 1998 (FBI June 29 *ex parte*); Letter from David Yarbrough, Department of Justice/Federal Bureau of Investigation, to Magalie R. Salas, Secretary, Federal Communications Commission, dated July 1, 1998 (FBI July 1, 1998 *ex parte*).

³⁴ *See* note 2 *supra*.

³⁵ *Id.*

³⁶ *See, e.g.*, BellSouth Combined Comments and Petition for Extension of Time; ICG Petition for Extension and Comments; SBC Petition for Extension of Compliance Date; USCC Comments and Petition for Extension of Compliance Date; CenturyTel Comments at 8 n. 27; 360° Comments at 8 n.15. Comments were submitted by 36 parties. Reply comments were submitted by 16 parties.

13. We note that, pursuant to the requirement in section 107(c)(2) that the Commission consult with the Attorney General when considering the grant of an extension of time under this section, we have conferred with the Department of Justice in preparing our decision in this matter.³⁷ In addition, we have been apprised of the Attorney General's views through the detailed comments and reply comments filed by the FBI and the Department of Justice regarding the action the Commission should take.³⁸

III. DISCUSSION

14. The comments we received in response to the April 20 Public Notice indicate that the telecommunications industry generally advocates an extension of CALEA's October 25, 1998 compliance deadline, and that such an extension should apply to all entities subject to the assistance capability requirements set forth in section 103.³⁹ The telecommunications carriers that submitted comments unanimously assert that "CALEA-compliant" technology⁴⁰ is not currently available, and will not become

³⁷ See 47 U.S.C. § 1006(c)(2).

³⁸ See DOJ/FBI Joint Comments (FBI Comments) in response to the April 20 Public Notice; DOJ/FBI Joint Reply Comments (FBI Reply Comments) in response to the April 20 Public Notice. See also *infra*, ¶¶ 19-21, 39.

³⁹ See 47 U.S.C. § 1002. See also ALLTEL Communications, Inc. (ALLTEL) Comments at 1-3; Aliant Communications (Aliant) Comments at 3; AT&T Corporation, for itself and AT&T Wireless Services Inc. (AWS) collectively (AT&T) Comments at 2; AirTouch Communications, Inc. (AirTouch) Comments at 2; Ameritech Operating Companies and Ameritech Mobile Communications, Inc. (collectively Ameritech) Comments at 9-10; Association for Local Telecommunications Services (ALTS) Comments at 2; Cellular Telecommunications Industry Association (CTIA) Comments at 2, 16; Centennial Cellular Corp. (Centennial) Comments at 1-2; Omnipoint Communications, Inc. (Omnipoint) Comments at 1-2; Paging Network, Inc. (PageNet) Comments at 5; Powertel, Inc. (Powertel) Comments at 2; PrimeCo Personal Communications, L.P. (PrimeCo) Comments at 1, 5-7; United States Telephone Association (USTA) Comments at 6; 360° Communications Company (360°) Comments at 1; ICG Telecom Group, Inc. (ICG) Comments and Petition for Extension at 5; Sprint Spectrum L.P. d/b/a Sprint PCS (Sprint PCS) Comments at 3; Center for Democracy and Technology (CDT) Comments at 5; US West, Inc. (US West) Comments at 13-15; Electronic Privacy Information Center, the Electronic Frontier Foundation, and American Civil Liberties Union filing jointly (EPIC) Comments at 5; Bell Atlantic Mobile, Inc. (BAM) Comments at 1; Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) Comments at 2-6; Northern Telecom, Inc. (Nortel) Comments at 1-2; Telecommunications Industry Association (TIA) Comments at 9; CenturyTel Wireless, Inc. (CenturyTel) Comments at 4-7; BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp., BellSouth Personal Communications Inc. and BellSouth Wireless Data, L.P. (BellSouth) Comments at 4; Personal Communications Industry Association (PCIA) Comments at 11; Nextel Communications, Inc. (Nextel) Comments at 1; Rural Cellular Association (RCA) Comments at 5-6; Liberty Cellular, Inc. (Liberty) Comments at 3-5; Southern Communications Services, Inc. (Southern) Comments at 2.

⁴⁰ It is important to make clear the distinction between technology and equipment that is "CALEA-compliant" and equipment that is compliant with TIA's interim standard (J-STD-025). The term CALEA-compliant technology refers to any technology that could be used to meet the assistance capability requirements of section 103 of CALEA--whether it adheres to the interim standard or not. Technology solutions based on the interim standard are thus just one way for a carrier to comply with CALEA's requirements.

available before the compliance deadline.⁴¹ The Department of Justice and FBI, on the other hand, generally argue that an industry wide extension of the CALEA compliance date is unjustified because there is evidence that CALEA solutions will be available shortly.⁴² Below we discuss the three main issues raised in regard to the compliance deadline: whether it would be appropriate to grant an extension; the rationale for adopting a blanket extension, if an extension is necessary; and, the length of any such extension.

15. Need for Extension. As noted above, section 107(c) of CALEA empowers the Commission to grant an extension of the compliance deadline where it finds that "compliance with the assistance capability requirements imposed under section 103 is not reasonably achievable through application of technology available within the compliance period."⁴³ The telecommunications carriers that submitted comments assert that the record supports such a finding since no CALEA-compliant technology (whether based on J-STD-025 or otherwise) will be available before the deadline. AT&T specifically notes that all of the petitions received by the Commission to date seek extensions under the same justification -- "that there is and will be no commercially available technology that will permit carrier compliance in the next two years."⁴⁴ USTA agrees, stating that the "hardware and software necessary to comply with the capacity requirements of CALEA are not commercially available and will not be commercially available and deployed by October 25, 1998."⁴⁵

⁴¹ AT&T Comments at 2; Nortel Comments at 1; BellSouth Comments at 6 (stating that switch manufacturers and other manufacturers maintain that they are unable to manufacture and implement CALEA-compliant technology by October 25, 1998); CenturyTel Comments at 5 (explaining that it uses Nortel switches and that Nortel does not expect to begin full commercial deployment of compliant equipment until September of 2000); RCA Comments at 5 (stating that carriers cannot meet CALEA requirements if equipment necessary to implement those upgrades is not readily available); Ameritech Comments at 5 (stating that it is not aware of one switch manufacturer that can provide a CALEA capability solution by the 1998 compliance date); PrimeCo Comments at 3; Aliant Comments at 3 (stating that CALEA compliant technology will not be available by October 1998); BellSouth Comments at 6 (neither switch manufacturers nor other manufacturers currently have the technology available to meet CALEA requirements); PCIA Comments at 14; Southern Comments at 4; ALTS Comments at 2 (asserting that the current lack of CALEA-compliant technology merits a deferral of the current compliance date); Liberty Comments at 4 (stating that the hardware and software necessary to comply with the capacity requirements are not commercially available); Nextel Comments at 2; TIA Comments at 10-11; OPASTCO Comments at 4; BAM Comments at 3 (explaining that telecommunications carriers cannot deploy equipment that does not yet exist); ACLU Comments at 4; CDT Comments at 5; Sprint PCS Comments at 2; Centennial Comments at 1-2; AirTouch Comments at 7; USTA Comments at 3. *See also* Bell Emergis Comments at 4.

⁴² *See* FBI Reply Comments at 2 (stating that the comments are devoid of direct evidence showing that carriers and manufacturers are incapable of achieving compliance with section 103 even in light of the undisputed availability of J-STD-025 as a safe harbor, and it is possible that many carriers will be able to comply in accordance with these safe harbor standards quite soon).

⁴³ 47 U.S.C. § 1006(c)(2).

⁴⁴ AT&T Comments at 5.

⁴⁵ USTA Comments at 3.

16. Certain commenters assert that the lack of CALEA-compliant equipment is significantly due to the fact that industry, law enforcement and privacy organizations have not agreed on a standard. According to CTIA, the grounds for extension are clear because "CALEA-compliant technology is not available and will not become available until the Commission resolves the dispute over the scope of a carrier's obligations under Section 103 of CALEA."⁴⁶ Omnipoint also notes that the "lack of final standards has made it technically impractical and financially imprudent for manufacturers to fully develop CALEA-compliant equipment, and equally imprudent for carriers to purchase, install and test telecommunications equipment and software that might be rendered substandard as soon as final specifications are promulgated."⁴⁷ Likewise, Century argues that requiring manufacturers to move ahead prematurely would waste valuable engineering resources, sacrifice other profit-making activity, and expose companies to the prospect of having to create several versions of their CALEA solution.⁴⁸ 360° explains that it has been told by "representatives of Motorola, Inc. - the provider of the majority of its cellular switches, base stations and home and visiting location registers - that Motorola has not yet been able to produce CALEA-compliant cellular equipment for sale because of controversies and delays attributable to the development" of the interim standard.⁴⁹ Ameritech argues that the FBI's own reports demonstrate that no switch-based solution for CALEA compliance will be available by October 25, 1998.⁵⁰

17. Manufacturers echo this view. Nortel states that, although it anticipates that its switching products will eventually provide the capabilities required by CALEA, the current deadline of October 25, 1998, will not realistically permit it to provide CALEA-compliant technology and have it deployed and tested by carriers within the compliance deadline.⁵¹ Arguing that it has not sat idle, Nortel maintains that the delay in the publication of the final FBI capacity requirements has made complying with the capability requirements impossible under the current deadline.⁵² Similarly, Lucent and Ericsson state that they are unable to manufacture and implement an acceptable solution which is consistent with section 103 of

⁴⁶ CTIA Comments at 1.

⁴⁷ Omnipoint Comments at 3- 4; *see also* PCIA Comments at 7; RCA Comments at 4-5; Nortel Comments at 4-5; Southern Comments at 5; BellSouth Reply Comments at 7-8; Nextel Reply Comments at 7.

⁴⁸ CenturyTel Comments at 6 (citing TIA Petition at 4).

⁴⁹ 360° Comments at 5.

⁵⁰ Ameritech Comments at 4-5 (citing Communications Assistance for Law Enforcement Act (CALEA), Implementation Report, Federal Bureau of Investigations of the Department of Justice, January 26, 1998).

⁵¹ Nortel Comments at 1.

⁵² *Id.* at 4; *see also* CenturyTel Comments at 4; TIA Comments at 10. The Attorney General is required under CALEA to provide carriers with information they need to be capable of accommodating the actual number of simultaneous interceptions law enforcement might conduct as of October 25, 1998, and to size and design their networks to accommodate the maximum number of simultaneous interceptions that law enforcement might conduct after October 25, 1998. *See* 47 U.S.C. § 1003.

CALEA.⁵³ Furthermore, Lucent and Ericsson maintain that they have spent valuable time and resources developing a solution consistent with the current interim standard, however, given the current dispute regarding that standard, they have reached a stage in the manufacturing process in which further development would be a waste of significant resources.⁵⁴

18. Bell Emergis' position is slightly different from that of other manufacturers in that it advocates that CALEA technical standards should be broadened to allow network-based solutions either optionally or to displace requirements from other network elements (i.e., switches).⁵⁵ However, Bell Emergis notes that certain CALEA functionalities can only be provided through a switch-based approach,⁵⁶ and that it will be taking steps to identify areas where mutual cooperation with switch vendors could ultimately lead to fully compliant networks for all telecommunications operators deploying its product line.⁵⁷ Nevertheless, even Bell Emergis recognizes that "with less than 6 months remaining before the October 25, 1998, date, serious challenges in terms of network engineering; contract negotiation; product material sourcing; installation, turn-up and integration testing, and training remain."⁵⁸

19. The FBI raises three arguments in response. First, the FBI believes that the carriers' arguments for an extension rest on the mistaken premise that "the prospect of the Commission eventually issuing a rule that will supervene J-STD-025 has rendered the safe harbor method of compliance 'uncertain.'"⁵⁹ Disagreeing with the validity of such an argument, the FBI notes that "even the absence of any safe harbor does not excuse [non]compliance" with section 103.⁶⁰ In sum, the FBI views the carriers'

⁵³ See AT&T Petition at 7. Several petitioners also note that they rely on Lucent and/or Ericsson for their telecommunications equipment and have been informed by these manufacturers that no solution will be available before CALEA's compliance date. See, e.g., Ameritech Comments at 6; Bell Atlantic Comments at 3-4; BellSouth Comments at 11; Centennial Petition at 6-7; ICG Telecom Group Comments at 4; PrimeCo Comments at 3; and U S West Comments at 8, 10.

⁵⁴ See AT&T Petition at 7.

⁵⁵ Bell Emergis Comments at 2.

⁵⁶ *Id.*

⁵⁷ *Id.* at 3.

⁵⁸ *Id.* at 4. Another manufacturer, ADC, is also developing an "out-of-switch" approach to CALEA compliance. Letter from Catherine Wang, Swidler & Berlin on behalf of ADC Telecommunications, Inc., to Magalie R. Salas, Secretary, Federal Communications Commission, dated June 26, 1998 (ADC June 26 *ex parte*); see also Letter from David Fisher, ADC Telecommunications, Inc., to Magalie Salas, Secretary, Federal Communications Commission, dated July 6, 1998 (ADC July 6 *ex parte*). The ADC system takes surveillance information from the carrier's switch, and delivers it to the law enforcement monitoring center. *Id.* Both these solutions differ from the approach taken by switch vendors such as Lucent, Nortel, and Motorola in that they do not place all CALEA functionality in the switches' software.

⁵⁹ FBI Comments at 14.

⁶⁰ *Id.* at 15.

argument for extension as one of a lack of standards and notes that such an excuse does not warrant an extension under the statute.

20. Second, the FBI argues that an extension of the compliance date would interfere with law enforcement's ability to protect the public from criminal activity.⁶¹ Many carriers that have commented, however, disagree with the FBI's conclusion that an extension will hinder the efforts of law enforcement.⁶² Telecommunications carriers state that electronic surveillance will not come to a "standstill" if carriers are granted an extension of CALEA's compliance date because carriers will be able to "continue to provide law enforcement with the ability to intercept telephone calls from targeted numbers, and the grant of an extension of time will not change that fact."⁶³ As explained by CTIA, "[a]ll carriers currently provide technical assistance to law enforcement to conduct lawfully authorized wiretaps, whether digital or analogue (sic), wireless or wireline. The vast majority of these wiretaps are carried out without impediment."⁶⁴

21. Finally, the FBI argues that an extension is unnecessary because it is already undertaking extensive discussions with the industry regarding the negotiation of forbearance agreements between the FBI and "individual manufacturers and their customers."⁶⁵ The FBI asserts that it will assure manufacturers and carriers that they will not be subject to federal enforcement actions under section 108 of CALEA in return for the manufacturers' and carriers' assurance that they will develop and use equipment meeting the assistance capability requirements.⁶⁶ The FBI contends that these agreements will prevent the Commission from being "deluged" with extension petitions,⁶⁷ and asserts that the use of its forbearance

⁶¹ *Id.* at 19.

⁶² *See, e.g.*, AirTouch Reply Comments at 8 (citing CTIA Comments at 2); BellSouth Reply Comments at 2; CDT Reply Comments at 6; Ameritech Reply Comments at 4-5.

⁶³ Ameritech Reply Comments at 5; *see also* CDT Reply Comments at 6; TIA Reply Comments at 11.

⁶⁴ CTIA Comments at 2.

⁶⁵ FBI Comments at 17.

⁶⁶ *Id.* In its initial comments, the FBI provided a sample forbearance agreement, which stated that the capability requirements include functions defined in standard J-STD-025 and additional "punch list" capabilities. FBI Comments, Attachment B. The "punch list" refers to the FBI-proposed inclusion of additional capabilities within the J-STD-025 standard. The additional capabilities the FBI seeks to include are: (1) Content of conference calls; (2) Party hold, party join, party drop; (3) Access to subject-initiated dialing and signaling; (4) Notification message (in-band and out-of-band signaling); (5) Timing to correlate call data and call content; (6) Surveillance status message; (7) Feature status message; (8) Continuity check; (9) Standardized delivery interface; (10) Post cut-through dialing and signaling; and (11) Separated delivery. *See* FBI Petition at 25, and Appendix C; *see also* FBI Comments, Attachment A. However, in its reply comments, the FBI states that, pending the Commission's issuance of a final rule, it will not require manufacturers and carriers to provide the punch list capabilities as a condition to being offered enforcement forbearance while J-STD-025 is still in effect as a safe harbor. FBI Reply Comments at 11.

⁶⁷ FBI Comments at 17.

agreements will ensure a solution fair to carriers, acceptable to law enforcement, and consistent with the language and structure of CALEA.⁶⁸

22. Many industry commenters, however, disagree that the negotiation of forbearance agreements with the FBI by each carrier is a viable alternative to an industry-wide extension of CALEA's compliance date.⁶⁹ For example, SBC argues that the forbearance agreements would impose on industry the FBI's own preferred network design and configuration of services, and, therefore, would not provide much relief to carriers who do not agree with the inclusion of these disputed standards within CALEA.⁷⁰ Moreover, commenters state that this approach would be administratively unworkable because each forbearance agreement would have to be separately negotiated.⁷¹ GTE points out that forbearance agreements would not assist the industry in determining the standard for CALEA compliance.⁷² Furthermore, AirTouch argues that the use of forbearance agreements is impractical because, as even the FBI concedes, a federal agreement does not protect carriers from enforcement actions filed by state or local law enforcement agencies in the manner that a Commission order would.⁷³ AirTouch also contends that the use of forbearance agreements is inconsistent with CALEA because Congress expressly gave the Commission, not the FBI, the authority to grant extensions and to determine the scope of CALEA.⁷⁴ Noting that Congress intended public accountability with regard to the standards-setting process to be the hallmark of CALEA, AirTouch further argues that the use of forbearance agreements will not permit public accountability.⁷⁵

⁶⁸ *Id.* at 19.

⁶⁹ *See, e.g.*, AirTouch Reply Comments at 6; BellSouth Reply Comments at 5-6; AT&T Reply Comments at 4; CDT Reply Comments at 3; Ameritech Reply Comments at 5; SBC Reply Comments at 6; USTA Reply Comments at 4; US West Reply Comments at 5; GTE Reply Comments at 6; AirTouch Reply Comments at 6; PrimeCo Reply Comments at 5.

⁷⁰ *See* SBC Reply Comments at 6; *see also* USTA Reply Comments at 4; US West Reply Comments at 5.

⁷¹ SBC Reply Comments at 6; *see also* USTA Reply Comments at 4; US West Reply Comments at 5.

⁷² GTE Reply Comments at 6.

⁷³ *See* AirTouch Reply Comments at 6 (citing FBI Comments at 17 n.3); *see also* PrimeCo Reply Comments at 5.

⁷⁴ AirTouch Reply Comments at 6. AirTouch believes that, as part of its forbearance agreement procedure, the FBI is attempting to convince manufacturers to provide capabilities which carriers do not agree are required by CALEA, thereby bypassing the congressional determination that ultimate control over the scope of CALEA rests in the Commission. *Id.* at 6-7 n.23; *see also* CDT Reply Comments at 4; Ameritech Reply Comments at 5; PrimeCo Reply Comments at 7; US West Reply Comments at 5.

⁷⁵ AirTouch Reply Comments at 7 (citing H. Rep. at 14, 20, and 27-28 (1994)). *See also* AT&T Reply Comments at 4 (citing H. Rep. No. 103-837 at 19, *reprinted in* 1994 U.S.C.C.A.N. 3489, 3507 (stating that "[Section 107(b)] is also intended to add openness and accountability to the process of finding solutions to intercept problems. Any FCC decision on a standard for compliance with this bill must be made publicly.").

23. Decision. Having reviewed all of the comments concerning the issue of CALEA's impending deadline, we find that compliance with the assistance capability requirements of section 103 of the Act is not reasonably achievable for any telecommunications carrier through the application of technology that will be available within the compliance period.⁷⁶ Accordingly, pursuant to our authority under section 107(c)(3)(A) of the Act, and in the interest of administrative efficiency, we grant an extension of CALEA's October 25, 1998, compliance date for all telecommunications carriers proposing to install or deploy, or having installed or deployed, any equipment, facility or service prior to the effective date of section 103, for that part of the carrier's business on which the new equipment, facility or service is used, until June 30, 2000.⁷⁷

24. The record before us indicates that compliance with the assistance capability requirements of section 103 of the Act is not reasonably achievable for any telecommunications carrier through the application of technology that will be available within the compliance period. Even Bell Emergis, for example, which states that it is close to completing a network-based CALEA-compliant product, does not state that it will be able to deliver CALEA-compliant equipment by October 25, 1998, alluding to "serious challenges" that remain in meeting the deadline.⁷⁸ We note that some vendors are developing "out-of-switch" technologies that will provide a portion of CALEA's requirements. We also note, however, that these solutions depend critically on the switch to provide section 103 capability requirements. If the switch itself has not been upgraded--as manufacturers have stated will not be possible before the deadline--to provide the required information or interconnect with the out-of-switch vendor's equipment, no CALEA capabilities can be provided.⁷⁹ In addition we note that none of these systems have been fully tested, either for their ability to meet the section 103 requirements or for their ability to interconnect to carrier networks.⁸⁰

25. Accordingly, we rest our conclusion that an extension is warranted under section 107(c)(2) upon our finding that no CALEA-compliant technology is currently available or will be available in time for carriers to meet the compliance deadline.⁸¹ The FBI alleges, and a handful of carriers seem to agree, that one of the reasons why CALEA-compliant technology is not available is because manufacturers were reluctant to develop any CALEA technology until clear standards had emerged. On this basis, the FBI

⁷⁶ See 47 U.S.C. § 1006(c)(2).

⁷⁷ See 47 U.S.C. § 1006(c)(1)-(4).

⁷⁸ Bell Emergis Comments at 4. It is also important to note that the Bell Emergis solution, as pointed out by the FBI in its Petition for Rulemaking, will not work with "older" (analog, electro-mechanical) switching systems. FBI/DOJ Petition at 11 (stating that ". . . the Bell Emergis solution would operate . . . for approximately 90% of the access lines nationwide.").

⁷⁹ ADC July 6 *ex parte*.

⁸⁰ The Bell Emergis solution is still being tested by the FBI, and the ADC technology has not yet been tested. Despite significant industry interest in both potential solutions, neither, to our knowledge, has been fully tested by a telecommunications carrier.

⁸¹ *But see* para. 46 *infra*.

argues that the petitions for extension actually hinge upon an absence of standards, which under section 107(a)(3)(B) does not excuse non-compliance with section 103. Most carriers, however, have grounded their requests for an extension not on the absence of an industry standard, but on the absence of technology.⁸² These are separable issues. On the one hand, it is possible that, in the absence of an industry standard, CALEA-compliant technology could be developed. Congress implicitly recognized this possibility in enacting section 107(a), and concluded in section 107(a)(3)(B), as the FBI points out, that the absence of standards does not relieve an individual carrier of the obligation to comply with CALEA. We agree with the FBI that the lack of standards does not relieve carriers of their obligation to comply with CALEA's capability requirements. We emphasize, however, that we are not granting an extension based on the simple assertion that standards do not exist. Rather, our conclusion rests on the determination that, although an industry standard has been developed, there is no technology available that will enable carriers to implement that standard. We are also persuaded by the fact that there are no fully developed alternative technologies or solutions that will be available by October 25, 1998, and that would allow carriers to meet their section 103 obligations. Congress enacted section 107(c)(2) to address just such a circumstance. We therefore find that the FBI's reliance on section 107(a)(3)(B) is misplaced, and instead focus our inquiry on the need for an extension on the primary issue specified in the plain language of section 107(c)(2): Is technology currently available that will allow carriers to comply with CALEA by the October 25, 1998, compliance deadline? We have, as discussed above, concluded on the record before us that such technology is not currently available, and this conclusion confers upon us the authority to grant relief under section 107(c)(2). For these reasons, we reject the FBI's argument.

26. We also reject, with the support of several commenters, the FBI's assertion that an extension of the compliance date would interfere with law enforcement's ability to protect the public from criminal activity.⁸³ We agree with AirTouch that the grant of an industry-wide extension will not mean that electronic surveillance will come to a standstill.⁸⁴ All carriers currently provide technical assistance to law enforcement to conduct lawfully authorized wiretaps, and nothing in this Order should be construed as relieving carriers of their pre-CALEA responsibilities to assist law enforcement authorities in conducting authorized surveillance. In fact, we note that CALEA was designed to allow law enforcement to continue its surveillance activities in the face of new digital technologies and services. However, we recognize that no matter what action we take today, hardware and software will not be available in time to meet the October 25, 1998, deadline. Given that fact, it is our belief that nothing we do in the instant Order will

⁸² See 47 U.S.C. § 1006(c)(2).

⁸³ See, e.g., AirTouch Reply Comments at 8 (citing CTIA Comments at 2); BellSouth Reply Comments at 2; CDT Reply Comments at 6; Ameritech Reply Comments at 4-5.

⁸⁴ *Id.* CDT points out that, when the numbers of law enforcement wiretaps and national security wiretaps conducted during 1997 are combined, the number of wiretaps authorized during 1997 are at least 20% higher than those authorized in 1994. CDT Reply Comments at 6. CDT contends that these statistics contradict the FBI's claim that new technologies are interfering with surveillance. *Id.* TIA also states, that in 1997, federal and state courts "granted a record 1,186 Title III wiretap orders, permitting law enforcement agents to transparently intercept approximately two million conversations." TIA Reply Comments at 11 (citing to Administrative Office of the United States Courts, *Annual Report of the Director of the Administrative Office of the United States Courts on Applications for Orders Authorizing or Approving the Interception of Wire, Oral, or Electronic Communications -- 1997*, released in April, 1998.).

delay the ultimate deployment of CALEA-compliant equipment; rather, this extension should serve as a recognition that more time is needed to develop technologies that will allow the industry to meet CALEA's section 103 requirements.

27. Finally, we reject the FBI's argument that its proposed forbearance agreements with carriers eliminate the need for an industry-wide extension of the compliance deadline. First, such agreements do not preclude the possibility that individual state or local law enforcement authorities may begin enforcement proceedings against their local carrier. Thus, a carrier could still be subject to potential enforcement action even though it had come to an agreement with the FBI/DOJ.⁸⁵ Forbearance agreements thus represent only a partial solution, and it is unclear how many carriers and manufacturers would be willing to risk such exposure. Second, forbearance agreements are not the equivalent of extensions since they cannot legally extend the compliance deadline. Rather, a forbearance agreement represents an agreement on the part of DOJ/FBI that they will not bring section 108 enforcement actions if a carrier meets certain conditions.⁸⁶ The use of such agreements would in essence allow the FBI to extend the compliance date at will, which would be inconsistent with the Act.⁸⁷ Third, because J-STD-025 is a voluntary standard, we believe that forcing carriers through a forbearance agreement to pledge that they will develop and use equipment meeting J-STD-025 specifications might arguably go beyond what Congress intended, thus undermining the use of the standard as a safe harbor, and effectively nullifying the technical flexibility Congress sought to preserve in sections 103(b)(1) and 107(a). Such a requirement, before the Commission rules on the section 107(b) petitions for rulemaking, might also make irrelevant that separate, congressionally-authorized proceeding.⁸⁸ In addition, we also note that widespread use of forbearance agreements to require adherence to J-STD-025 could further reduce manufacturers' incentives to develop alternative (non-J-STD-025) solutions. Finally, such agreements would have to be negotiated individually, which would place a considerable administrative burden on carriers, as well as the Government. It is also likely that with the large number of carriers and manufacturers involved, agreements would not be reached with all affected parties, making it likely that the Commission would still receive many petitions for extension upon which it

⁸⁵ See PrimeCo Reply Comments at 5-6 (citing FBI Comments at 17 n.3); Airtouch Reply Comments at 6.

⁸⁶ See FBI Comments at 17-19. *But see* CDT Reply Comments at 4-5 "[t]he government's attempt to use its enforcement authority under section 108, not only to extend the deadline for compliance but as a lever over what is within and beyond the scope of CALEA, completely undermines the Act's carefully crafted balance among the roles of industry, law enforcement, the Commission, the courts, and the public."

⁸⁷ CALEA expressly gives authority to extend the deadline solely to the Commission based on the specific criteria outlined section 107(c) of the Act. 47 U.S.C. § 1006(c). CTIA suggests that if the Commission allowed the use of forbearance agreements to extend the compliance deadline the "DOJ would use the promise of an extension to extract punch list concessions thereby transferring the section 107 process from the FCC, as Congress intended, to the FBI." CTIA Reply Comments at 15.

⁸⁸ The Department of Justice and the FBI have requested that the Commission not stay the interim standard during consideration of its section 107(b) expedited petition for rulemaking. See FBI Petition at 67. We note that the majority of commenters strongly oppose this suggestion. See, e.g., AT&T Comments at 8; CTIA Comments at 10-11; US West Comments at 14; BellSouth Reply Comments at 8. As explained in paras. 5 and 37, we emphasize that we are not reaching any conclusions with respect to the interim standard in this Memorandum Opinion and Order. We will consider this issue in our disposition of the 107(b) petitions for rulemaking.

would have to act. For all these reasons, we do not believe that the forbearance agreement approach as suggested by the FBI/DOJ would solve the problems identified in the petitions for extension filed with us.

28. Processing of Extension Requests. Having determined that an extension is warranted based on the lack of available technology, we now address the issue of how the Commission can most effectively and efficiently process petitions for extension under CALEA. Telecommunications carriers, which represent the vast majority of commenters, urge the Commission to grant an industry-wide extension of the compliance date because every individual petition for extension will reveal the same set of facts--a rapidly approaching compliance deadline, a set of technical standards that have been challenged, and no commercially available equipment that complies with CALEA's assistance capability requirements.⁸⁹

29. As the carriers point out, section 107(c) of CALEA provides the statutory basis for the Commission to extend the October 25, 1998, compliance deadline. Section 107(c)(2) of the Act states that: "The Commission may, after consultation with the Attorney General, grant an extension under this subsection, if the Commission determines that compliance with the assistance capability requirements under section 103 is not reasonably achievable through the application of technology available within the compliance period."⁹⁰ None of the commenters dispute the fact that this provision of CALEA authorizes the Commission to grant an extension of the Act's compliance deadline. With respect to whether the Commission may grant an extension of the deadline on an industry-wide basis, the telecommunications carriers submitting comments argue that since it is undisputed that the Commission has the authority to grant individual requests for extension under section 107(c) of the Act, it should also be able to grant a more efficient omnibus extension for all telecommunications carriers.⁹¹ AT&T, for example, contends that if the Commission may "act on petitions individually, it [may] act in the aggregate when the single factor affecting compliance is the same for all carriers -- the absence of CALEA-compliant technology due to the

⁸⁹ PCIA Comments at 14; *see also* Ameritech Comments at 2 (stating that the Commission has the authority for administrative efficiency to recognize that all telecommunications carriers are similarly situated, and thus equally deserving of an extension of time); ALLTEL Comments at 1-2; AT&T Comments at 2; CTIA Comments at 2; Omnipoint Comments at 4-5; PageNet Comments at 3-4; Powertel Comments at 3; PrimeCo Comments at 2-3; USTA Comments at 5; 360° Comments at 1; ICG Comments at 5; Sprint PCS Comments at 3; CDT Comments at 1-2; US West Comments at 1-2; BAM Comments at 3; OPASTCO Comments at 2-4; Airtouch Comments at 2; Centennial Comments at 4; Nortel Comments at 1-2; TIA Comments at 13; CenturyTel Comments at 4; BellSouth Comments at 4; Nextel Comments at 1; RCA Comments at 6; Aliant Comments at 3; Southern Comments at 1; SBC Comments at 1-2; AirTouch Reply Comments at 9; BellSouth Reply Comments at 1; Ameritech Reply Comments at 1-2; Nextel Reply Comments at 2.

⁹⁰ 47 U.S.C. § 1006(c)(2).

⁹¹ AT&T Comments at 5; PageNet Comments at 3; Powertel Comments at 3-6; TIA Comments at 5; CenturyTel Comments at 2; Nextel Comments at 1; Ameritech Comments at 4, n.4 (stating that nothing in the language of section 107 prohibits the Commission from granting a blanket extension of time and that, although the language is written in the singular, the Commission has the authority to recognize that the information applies to all carriers equally); ALTS Comments at 1; USCC Comments at 1; Centennial Comments at 1; BAM Comments at 1; ACLU Comments at 1, Sprint PCS Comments at 1; US West Comments at 1; CDT Comments at 1; BellSouth Comments at 3 (agreeing with Ameritech that nothing in section 107 prohibits the Commission from granting a blanket extension); Ameritech Reply Comments at 3; Nextel Reply Comments at 4.

absence of a stable industry standard."⁹²

30. The Department of Justice and the Federal Bureau of Investigation are, on the other hand, opposed to a blanket extension of CALEA's compliance date. The FBI challenges the Commission's statutory authority to grant such an extension,⁹³ and asserts that any extension provided under section 107(c) of CALEA cannot be granted *en masse*, but instead must be extended to individual carriers based upon individual petitions to the Commission.⁹⁴ The FBI further maintains that the commenters favoring a blanket extension have not presented sufficient evidence of an industry-wide inability to achieve compliance with CALEA by the October 25, 1998, deadline. Rather, the FBI asserts, carriers have offered only "bare assertions."⁹⁵

31. Asserting that the "clear intent of Congress" is expressed in the language and structure of CALEA, the FBI argues that section 107(c), by its plain terms, provides for only the grant of an extension to individual carriers on individual petitions, and even then "shall apply to only that part of the carrier's business on which the new equipment, facility, or service is used."⁹⁶ The FBI further argues that while Congress "went to great lengths" to ensure that compliance within the statutory deadline "would create no unfairness or undue burdens for individual industry participants," Congress did not "grant the Commission or any other entity the authority to change the statutory compliance date of October 25, 1998 for the industry as a whole."⁹⁷ The FBI contends that the legislative history of CALEA reveals that the extension provision allows "any company to seek from the [Commission] up to a two year extension of the compliance date if retrofitting a particular system [would] take longer than the four years allowed for compliance."⁹⁸ Finally, the FBI argues that to interpret the Act in any other manner would interfere with law enforcement's ability to "protect the public from criminal activity."⁹⁹

32. Decision. The Commission is committed to providing law enforcement with the tools it needs to protect U.S. citizens, and we recognize the FBI's concern that a delay in implementing CALEA's requirements might pose some potential risk. Nevertheless, we conclude that granting a blanket extension is both within the Commission's authority and the most reasonable course of action under the circumstances. Moreover, given the telecommunications industry's overwhelming consensus that

⁹² AT&T Comments at 6.

⁹³ FBI Comments at 11-13.

⁹⁴ FBI Comments generally.

⁹⁵ *Id.* at 16.

⁹⁶ *Id.* at 12-13 (emphasis in original).

⁹⁷ *See generally id.* at 9-10.

⁹⁸ *Id.* at 13 (citing H.R. REP. NO. 103-827, pt. 1, at 18-19 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3489, 3498-99.).

⁹⁹ *Id.* at 11.

compliance is not reasonably achievable through the application of technology available within the compliance date, we anticipate that we would be inundated with repetitive filings for extension if an industry-wide extension was not granted. We believe that the approach we take today best preserves the intent of Congress since we conclude that, if we were to seek additional comment on every petition for extension of CALEA's compliance date we receive, the issues raised in those comment cycles would unquestionably duplicate the issues raised in the comments on the above-captioned petitions, thereby substantially and unnecessarily delaying CALEA implementation.

33. Neither section 107(c) nor its legislative history speak directly to the question of whether the Commission must grant extensions individually or instead has the discretion to grant a blanket extension.¹⁰⁰ As the agency charged with interpreting CALEA, the Commission has the authority (and the obligation) to fill in this legislative gap.¹⁰¹ As long as the Commission acts reasonably in doing so, its decision is entitled to deference.¹⁰²

34. The Commission finds that interpreting section 107(c) to permit a blanket extension is reasonable. The sole question under section 107(c)(2) is "whether compliance with the assistance capability requirements under section 103 is reasonably achievable through application of technology available within the compliance period." As discussed above, the answer to this question at this time is the same for all telecommunications carriers -- CALEA-compliant technology will not be available to the industry by the compliance deadline. As a result, the only difference between granting a blanket extension under section 107(c)(2) and granting an extension for each individual carrier is the additional time and effort required of the Commission to process and issue individual petitions for extension to each carrier. We find it unreasonable to presume that Congress intended the Commission to inefficiently expend its resources by individually acting on potentially thousands of duplicative filings. In fact, if we were to attempt to consider requests for extension of the compliance deadline on an individual basis, it is almost

¹⁰⁰ See Ameritech Comments at 4 n.4 (stating that nothing in the language of section 107 prohibits the Commission from granting a blanket extension of time and that, although the language is written in the singular, the Commission has the authority to recognize that the information applies to all carriers equally); BellSouth Reply Comments at 3 (agreeing with Ameritech that nothing in section 107 prohibits the Commission from granting a blanket extension).

¹⁰¹ The United States Court of Appeals for the District of Columbia Circuit relied on similar reasoning in one of its recent decisions affirming an agency's promulgation of a "blanket" regulation. See *Sweet Home Chapter of Communities For a Great Oregon v. Babbitt*, 1 F.3d 1 (1993), *reh'g granted in part on different grounds*, 17 F.3d 1463 (D.C. Cir. 1994), *rev'd on different grounds*, 515 U.S. 687 (1995) (*Sweet Home*). In that case, the Fish and Wildlife Service issued a regulation that declared all "threatened" species entitled to the same protection against "takings" as "endangered" species, over the objection of parties claiming that the Service could only issue this type of regulation for one species at a time. The Court of Appeals affirmed the blanket regulation in part because the statutory provision granting the Fish and Wildlife Service the authority to issue such regulations, even though phrased in the singular, "simply [did] not speak directly to the question of whether the [Service] must promulgate protection species-by-species or may extend such protection in a single rulemaking." *Id.* at 7.

¹⁰² See *Chevron U.S.A., Inc. v. Natural Resources Defense Counsel*, 467 U.S. 837, 842-843 (1984); see also *INS v. Cardoza-Fonseca*, 480 U.S. 421, 448 (1987) (citations omitted) ("In [the] process of filling any gap left, implicitly or explicitly, by Congress, the courts must respect the interpretation of the agency to which Congress has delegated the responsibility for administering the statutory program.").

certain that we could not resolve all such requests prior to the October 1998 deadline.¹⁰³ This would open the possibility that carriers could be exposed to enforcement actions based on their inability to comply with CALEA's requirements even though they had timely petitions for extension pending before us. Furthermore, the more resources the Commission devotes to processing individual petitions, the less it has remaining to resolve the still-pending rulemaking on CALEA standards and the greater the chances of delaying the ultimate implementation of CALEA. We therefore believe that it is both reasonable and appropriate to interpret section 107(c) so as to avoid such a waste of administrative resources and to allow a blanket extension.¹⁰⁴

35. We reject the FBI's argument that the use of the singular in section 107(c)(2) necessarily requires us to grant extensions on an individual, case-by-case basis. In fact, the United States Code sets up the exact opposite presumption: Section 1, Title 1, of the United States Code states that "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise . . . words importing the singular include and apply to several persons, parties, or things."¹⁰⁵ There is nothing in the context of section 107(c)(2) that would rebut this presumption. Indeed, the context here favours the inclusion of plural in Congress' use of the singular. Congress, through CALEA's use of mandatory deadlines,¹⁰⁶ clearly expressed its preference for the timely deployment of CALEA-compliant technology. Reading section 107(c)(2) as requiring individual petitions for extension would, as discussed above, result in the inundation of the Commission with petitions and would accordingly hamper the Commission's ability to resolve expediently the "standards" issue.¹⁰⁷ Thus, we find that 1 U.S.C. §1 provides us with additional support for

¹⁰³ See, e.g., AT&T Comments at 5-6, 9 ("The Commission will be inundated with petitions and carriers and their vendors will be put to a substantial and unnecessary burden in the preparation and submission of requests."); Omnipoint Comments at 3-4 (stating that "carriers may be subject to a fine of \$10,000 per switch for every day of non-compliance unless an extension is granted" and that "such a comprehensive approach will conserve the Commission's resources and will prevent every carrier in the United States from filing an individual extension request in order to protect itself from potential liability."); Powertel Comments at 2, 6; PrimeCo Comments at 5; USTA Comments at 5; 360° Comments at 7; ICG Petition at 5; CTIA Comments at 9 ("Some carriers may opt for non-standard solutions to guard against possible enforcement actions under section 108"); Omnipoint Comments at 3.

¹⁰⁴ See also, Letter from Henry J. Hyde and John Conyers, Members, U.S. House of Representatives, to William E. Kennard, dated July 24, 1998 at 1 (urging the Commission to grant an extension); Letter from Patrick J. Leahy, Senator, United States Senate, to William E. Kennard, Chairman, Federal Communications Commission, dated June 26, 1998 at 1.

¹⁰⁵ 1 U.S.C. §1. See also *First National Bank in St. Louis v. State of Missouri*, 263 U.S. 640, 647 (1924); *Toy Manufacturers of America, Inc. v. Consumer Product Safety Comm'n*, 630 F.2d 70, 74 (2d Cir. 1980) (*Toy Manuf.*) (ascertaining whether the "typical rule of statutory construction set forth in 1 U.S.C. §1 would be inappropriate" by examining the "general thrust" of the statute).

¹⁰⁶ 47 U.S.C. §1001 note(b) ("Sections 103 and 105 of this title shall take effect on the date that is 4 years after the date of the enactment of this Act.").

¹⁰⁷ In this regard, our decision today is similar to the decision of the Consumer Product Safety Commission to require testing for all toys intended for children under the age of three, over the objection of parties who insisted that the statute, which used the singular, required the Commission to specify toys for testing on an individual basis.

our conclusion that section 107(c) enables us to grant a blanket extension.

36. Although we do not deem it necessary to rest our authority to grant blanket extensions upon sources other than section 107(c), we will nevertheless respond to arguments that we have such other authority. A number of carriers suggest that the Commission should extend the compliance deadline pursuant to its authority under section 107(b)(5) of the Act.¹⁰⁸ For instance, CTIA and 360° contend that the record supports a blanket extension and that "the Commission has clear authority under section 107(b) of CALEA to set a reasonable time for compliance after it resolves the standards dispute."¹⁰⁹ CTIA explains that where the technical standard developed by industry for compliance with section 103 is challenged, "Congress mandated that the Commission set a reasonable time for compliance after resolution of the dispute for carriers to meet their obligations."¹¹⁰ Given the petitions challenging the capability standards that are currently before the Commission, CTIA maintains that "the requirements of section 107(b)(5) are triggered and a reasonable time for meeting CALEA after the Commission determines the scope of a carrier's compliance obligations is mandated."¹¹¹ Likewise, PrimeCo submits that a blanket extension under section 107(b) is "within the Commission's statutory mandate 'to provide a reasonable time and conditions for compliance with and transition to' the new standards."¹¹² The FBI does not agree that section 107(b)(5) grants the Commission the authority to extend the CALEA compliance date under the current circumstances.¹¹³ Instead, the FBI maintains that the Commission's authority under section 107(b)(5) applies only in the context of a section 107(b) rulemaking petition.¹¹⁴

37. We agree with those carriers contending that section 107(b)(5) provides the Commission with the authority to provide carriers with a reasonable amount of time to comply with section 103 during any

See Toy Manuf., 630 F.2d 70. The Second Circuit, in reviewing the Commission's regulation, concluded that a blanket approach was consistent with Congressional intent under 1 U.S.C. §1, noting that "identification of the hazard that is the concern of the Small Parts Regulation (i.e., small parts) appears well suited to a general prescriptive approach employing carefully defined, objective, and standardized testing procedures." *Id.* at 74. Because section 107(c)(2) involves the same inquiry for all carriers, it is equally well suited to "a general prescriptive approach" and is equally consistent with 1 U.S.C. §1. *Accord Sweet Home*, 1 F.3d at 5-7 (rejecting argument that Congress' use of singular prevented a blanket regulation, relying in part upon 1 U.S.C. §1).

¹⁰⁸ *See, e.g.*, CTIA Comments at 13; 360° Comments at 9-10; BellSouth Reply Comments at 4; AT&T Reply Comments at 5; PrimeCo Comments at 6 n.19.

¹⁰⁹ CTIA Comments at 13; *see also* 360° Comments at 9-10; BellSouth Reply Comments at 4; AT&T Reply Comments at 5.

¹¹⁰ CTIA Comments at 14.

¹¹¹ *Id.*

¹¹² PrimeCo Comments at 6 n.19.

¹¹³ FBI Comments at 12.

¹¹⁴ *Id.*

transition period associated with the Commission's establishment of a standard for CALEA.¹¹⁵ However, we also agree with the DOJ/FBI that CALEA only allows an extension of time to be granted under section 107(b) as a result of a 107(b) rulemaking proceeding. As noted previously, the Commission is not taking any action affecting the assistance capability standards in this Memorandum Opinion and Order. Instead, the issue of technical standards for CALEA compliance will be addressed in a separate order. Accordingly, we find no occasion to rest our decision to grant a blanket extension upon section 107(b)(5). We nonetheless remain committed to effectuating the swift implementation of CALEA, and will take action in the very near future on the contested technical issues, including transition terms and conditions, addressed in the section 107(b) petitions for rulemaking we have received. We emphasize that nothing we say in this Memorandum Opinion and Order should be interpreted as prejudging those contested issues.¹¹⁶

38. Telecommunications industry commenters also suggest that sections 4(i), 4(j), and 229(a) of the Communications Act provide the Commission with additional authority to issue a blanket extension of the CALEA compliance date.¹¹⁷ As those commenters note, section 4(i) of the Communications Act grants the Commission the general authority to "make such rules and regulations, and issue such orders, not inconsistent with [the Act], as may be necessary in the execution of its functions."¹¹⁸ Section 4(j) gives the Commission further ability to "conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice."¹¹⁹ Similarly, section 229(a) of the Communications Act, added by section 301 of CALEA,¹²⁰ specifically provides that "[t]he Commission shall prescribe such rules

¹¹⁵ See 47 U.S.C. § 1006(b)(5). Thus, whereas section 107(b)(5) pertains to the grant of an extension of time where the Commission becomes involved in setting a standard for the implementation of section 103, section 107(c) provides the Commission with the authority to grant an extension independent of any standard setting process.

¹¹⁶ We note that only certain portions of the interim standard have been challenged. Accordingly, the contested technical standards which will be resolved by the Commission's section 107(b) rulemaking include the issues raised by the Center for Democracy and Technology as well as the contentions of the FBI. Specifically, CDT challenges that the interim industry standard goes too far in enhancing location tracking capabilities and failing to protect the privacy of packet switched communications that the government is not authorized to intercept. CDT Petition at 7, 10. The FBI, on the other hand, believes the standard is underinclusive and seeks to implement the so called "punch list" items, which include: (1) Content of conference calls; (2) Party hold, party join, party drop; (3) Access to subject-initiated dialing and signaling; (4) Notification message (in-band and out-of-band signaling); (5) Timing to correlate call data and call content; (6) Surveillance status message; (7) Feature status message; (8) Continuity check; (9) Standardized delivery interface; (10) Post cut-through dialing and signaling; and (11) Separated delivery. See FBI Petition at 25, and Appendix C; see also FBI Comments, Attachment A.

¹¹⁷ See, e.g., AT&T Comments at 7 n.22; TIA Comments at 5 n.18; Nextel Reply Comments at 4. See also Letter from Pamela J. Riley, AirTouch Communications, Inc., to Magalie R. Salas, Secretary, Federal Communications Commission, dated June 18, 1998 at 5-6 (AirTouch June 18 *ex parte*).

¹¹⁸ See 47 U.S.C. § 154(i); see also AirTouch June 18 *ex parte* at 5-6.

¹¹⁹ See 47 U.S.C. § 154(j).

¹²⁰ See 108 Stat. 4292-93.

as are necessary to implement the requirements of" CALEA.¹²¹ Certain carriers contend that these broad provisions complement the Commission's authority granted in section 107(c) of CALEA.¹²² Moreover, these commenters assert that, pursuant to sections 4(i), 4(j), and 229(a), the Commission has the authority to determine what steps are necessary to resolve proceedings brought before it in a manner that is both fair and reasonable.¹²³

39. The FBI disagrees with this reasoning and states that section 229(a) of the Communications Act grants the Commission only the authority to prescribe rules that are necessary to implement the requirements of CALEA, that section 229(a) does not give the Commission the authority to prescribe rules that "contravene" it, and that a blanket extension would contravene the Act.¹²⁴ Given the fact that CALEA expressly anticipates the need for the Commission to grant an extension of CALEA's compliance date, we do not believe that our doing so for all affected carriers (where the record supports a finding of lack of reasonable achievability), contravenes the requirements of the Act. We find it unnecessary to decide whether section 229(a) is an appropriate basis upon which to supplement our authority to grant a blanket extension under the Act. That section allows us to prescribe "rules," and we are not convinced that granting any appropriate extension under authority of section 107(c) requires an exercise of our rulemaking authority.¹²⁵ Sections 4(i) and 4(j), however, do supplement our 107(c) authority to grant a blanket extension. In light of our conclusion that issuing a blanket extension order achieves the same result as granting multiple extensions to individual carriers, and that it enables us to devote our resources to resolving the standards issue more quickly, as Congress clearly intended, we have little trouble concluding that our order today is "necessary in the execution of [our] functions"¹²⁶ and "conduce[s] to the proper dispatch of business and to the ends of justice."¹²⁷ Thus, in the interest of conserving administrative resources, and in an effort to ensure that the objectives and obligations of CALEA are met in a timely manner, we conclude that we may and should grant a broad extension order based upon the authority provided us in section 107(c)(2). Therefore, although section 107(c)(2) is a sufficient basis for our action, that authority is supplemented by the authority found in sections 4(i) and 4(j) of the Communications Act.

¹²¹ See 47 U.S.C. § 229(a).

¹²² We note that the FBI made this argument with regard to the Commission's authority to act under section 107(b) of CALEA. See FBI Petition at 24, ¶ 41.

¹²³ See, e.g., AT&T Comments at 7 n.22; TIA Comments at 5 n.18; Nextel Reply Comments at 4.

¹²⁴ FBI Comments at 13.

¹²⁵ To the extent that rulemaking authority might be required, however, we do believe that section 229(a) is appropriate authority for our action and that "good" cause would exist for dispensing with notice and comment procedures. Given that the factual basis for our extension Memorandum Opinion and Order applies equally to all affected carriers, and we have received extensive comment on these issues, public notice and comment procedures would be unnecessary and contrary to the public interest. See 5 U.S.C. § 553(b)(3)(B).

¹²⁶ 47 U.S.C. § 154(i).

¹²⁷ 47 U.S.C. § 154(j).

40. Finally, a few carriers offered suggestions for ways that the Commission could grant extensions if we found that we lacked the authority to issue a blanket extension.¹²⁸ However, because we have determined that the Commission has the authority to grant a blanket extension and that such an extension is warranted, and because we believe doing so is in the public interest and best ensures that the objectives and obligations of CALEA are met in a timely manner, we will not address such alternatives.

41. Length of the Extension. We have been presented with three different suggestions by industry with respect to the length of the extension. Many carriers argue that the CALEA compliance deadline should be extended for two years after the Commission establishes accepted compliance standards.¹²⁹ Some commenters urge the same result in a slightly different manner by asking us to toll the compliance deadline during the pendency of the Commission's standards-setting rulemaking and then allow for a two year extension to take effect.¹³⁰ Other telecommunications carriers simply suggest that we should grant a two year extension from the October 1998 deadline.¹³¹

42. The FBI recommends that the length of any extension should be no longer than two years

¹²⁸ AT&T notes that the Commission "could streamline the process by requiring only a carrier certification that it is in consultation with the manufacturer of its telecommunications equipment as required by section 106 and that at least a two year extension is required due to the absence of CALEA-compliant equipment. The extension could be approved upon filing without further action by the Commission, effective October 25, 1998. The extension would apply to all of the carrier's business covered by CALEA." AT&T Comments at 6 n.17. Similarly, CTIA suggests that the "Commission could use its authority under section 301 of CALEA to implement a procedure to streamline the petition process by requiring only a carrier submission that would state that the carrier had consulted with the manufacturer of its telecommunications equipment and that compliant technology is not currently available." CTIA Comments at 16 n.24. ICG also notes that the Commission could "avoid unnecessarily burdensome requirements and accept *pro forma* requests for extensions." ICG Comments at 5 n.5.

¹²⁹ See, e.g., AT&T Comments at 9 (suggesting extension until 24 months after standards are adopted); CTIA Comments at 12 ("extend the compliance deadline for 24 months, effective upon completion and promulgation of any revised standards"); Omnipoint Comments at 6 (seeking an extension until two years after final standards are adopted); 360° Comments at 4, 10 (suggesting two years from adoption of final standards); RCA Comments at 6 (suggesting extension until October 20, 2000 or 24 months following adoption of final standards); PCIA Comments at 11 (requesting two years from adoption of final standards); GTE Comments at 3, 6 (arguing for two years from adoption of final standards); CenturyTel Comments at 4-5 (seeking two years after adoption of final standards); Nortel Comments at 2 (suggesting an extension of the compliance date until 24 to 36 months after adoption of final capability standards).

¹³⁰ Omnipoint Comments at 4 n.9; see also Nextel Comments at 2; PCIA Comments at 9, n.20.

¹³¹ See ALLTEL Comments at 1 (requesting extension until October 24, 2000); PageNet Comments at 5 ("PageNet supports a blanket extension of the CALEA compliance date to October 24, 2000, effective on or before October 25, 1998."); Powertel Comments at 1,7 ("Powertel has filed a petition for extension of time, through October 24, 2000."); PrimeCo Comments at 7 (requesting a two year extension); USTA Comments at 1 n.2 ("While CALEA allows for two year extensions, the Commission should exercise its authority to grant extensions at least until the hardware and software necessary to comply with the capacity requirements are commercially available."); ICG Petition for Extension at 5; SBC Petition at 1, 7; Ameritech Comments at 8 (suggesting extension until 24 months after compliance date); TIA Comments at 2 (suggesting two year extension of compliance date); AT&T Petition (requesting extension until at least October 24, 2000).

measured from December 1997, when the industry published the standards incorporated in J-STD-025.¹³² The FBI also argues that the Commission should provide that, unless new carrier-specific justifications have arisen, the extensions be one-time extensions that include "milestones" in the design and development process that carriers must meet during the extension period.¹³³ Furthermore, the FBI recommends that the Commission terminate these extensions if and when a compliance solution that substantially facilitates compliance on an industry-wide basis becomes available.¹³⁴ Finally, the FBI maintains that industry participants should be required to consult in good faith with law enforcement during the extension period and manufacturers should be required to develop their J-STD-025 solutions in a manner that does not impede, and will indeed facilitate, the future addition of punch list features.¹³⁵

43. Decision. Pursuant to section 107(c)(3), the Commission may grant an extension for no longer than the earlier of "(A) the date determined by the Commission as necessary for the carrier to comply with the assistance capability requirements under section 103; or (B) the date that is two years after the date on which the extension is granted."¹³⁶ Thus, both extension periods suggested by the carriers--two years from the issuance of our standards order or two years from the October 1998 deadline--fall outside our authority under section 107(c)(3), which caps the length of any single extension at two years from the date of the extension order. Because the dates urged by the carriers are beyond that point in time, the Commission is without authority to grant the extensions the carriers request.

44. Of the alternatives actually available to the Commission, we conclude that an extension until June 30, 2000, provides the necessary amount of time for telecommunications carriers to achieve CALEA compliance. Section 107(c)(3)(A) permits the Commission to extend the compliance deadline to the date it determines "as necessary for the carrier to comply with the assistant capability requirements under section 103."¹³⁷ Based on the comments we have received, we determine that an extension to June 30, 2000, is necessary for carriers to comply with section 103's requirements. We base this conclusion on a three-part analysis.

45. First, all parties generally agree that an interim standard, J-STD-025, was adopted by the industry in December 1997. The FBI contends that this standard is deficient because it does not support nine additional law enforcement surveillance capabilities (the punch list), while privacy advocates take the

¹³² FBI Reply Comments at 12. The FBI states that the duration of extension "should be no longer than two years measured from December 1997, when the industry itself published the standards incorporated in J-STD-025." *Id.* The FBI contends that two years from the time that a standard is in place is ample time to develop compliance solutions in accord with the standard. *Id.*

¹³³ *Id.* at 12. The FBI recommends that the Commission consult with the Attorney General in developing these milestones. *Id.*

¹³⁴ *Id.* at 13.

¹³⁵ *Id.* at 13. *See also* note 66 *supra* for an explanation of the punch list features.

¹³⁶ 47 U.S.C. § 1006(c)(3)(A)-(B).

¹³⁷ 47 U.S.C. §1006(c)(3)(A).

position that this standard includes two capabilities that would undermine the privacy interests of telecommunications users and are not required to be provided under CALEA.¹³⁸ Law enforcement, the carriers and manufacturers and privacy groups, however, do not dispute any of the other features or requirements of J-STD-025. Thus, the vast majority of the features--the "core"-- of J-STD-025 is not opposed.

46. We note that in the near future we expect to initiate a rulemaking proceeding under section 107(b) that will adopt final technical requirements and/or standards that will allow carriers to meet the capability requirements of section 103 of CALEA. Since final action in that proceeding is not likely to be completed in time for carriers to meet CALEA's October 25, 1998 deadline, we will require carriers to have installed CALEA-compliant equipment and facilities based on the core J-STD-025 standard by June 30, 2000.¹³⁹ This is a firm deadline. If this standard is ultimately modified and new capabilities or features are added to the core standard in the section 107(b) rulemaking, we will consider establishing a separate deadline for upgrading carrier equipment and facilities to comply with those capabilities or features in that proceeding pursuant to our authority under section 107(b)(5). This approach provides certainty to the telecommunications industry in developing and installing CALEA-compliant solutions, and recognizes the interests of law enforcement in providing effective public safety. It also seeks to allow carriers to implement a CALEA-compliant solution sooner, rather than later, while providing the flexibility to design modifications to the core J-STD-025 standard that can be installed in carrier equipment and facilities in subsequent upgrades, if any such modifications are adopted in the section 107(b) rulemaking proceeding.

47. Second, all parties generally agree that it should take manufacturers approximately two years from the date CALEA requirements are standardized to develop technology capable of complying with that standard.¹⁴⁰ In analyzing this amount of time, we rely in great measure upon the FBI's expertise on the issue of CALEA compliance. Because J-STD-025 was adopted in December 1997, manufacturers should be able to produce equipment that will be generally available for carriers to meet the section 103 capability requirements by December 31, 1999.¹⁴¹

48. Third, we agree with commenters that after a manufacturer makes CALEA-compliant equipment and facilities based on the core J-STD-025 standard generally available, carriers require an additional period of time to purchase, test and install such equipment and facilities throughout their

¹³⁸ FBI Petition at 25, and Appendix C; CDT Petition at 7, 10.

¹³⁹ "Core J-STD-025" refers here to the industry interim standard, excluding the provision of location information and technical requirements related to packet-switched communications that are under review pursuant to the CDT Petition.

¹⁴⁰ FBI Reply Comments at 12(citing *e.g.* CTIA Comments at 8). The FBI states that two years is ample time to implement the J-STD-025 standard. *Id.*

¹⁴¹ As noted above, the fact that the J-STD-025 standard has fallen under contention does not relieve the carriers of their statutory obligation to implement the capability requirements of section 103 of CALEA. 47 U.S.C. § 1006(a)(3). *See also* FBI June 29 *ex parte* (indicating that some manufacturers will have network-based or switch-based solutions generally available before December 1999).

networks.¹⁴² Based on the record in this proceeding, we conclude that six months will provide carriers with sufficient time to accomplish these tasks.¹⁴³ Although USTA and TIA indicate that a 12 month installation period for the carriers is appropriate, we believe that a six month period is both sufficient and reasonable given the urgency of ensuring law enforcement access to CALEA's capabilities. The 12 month period is based on the time the largest carriers would require to install a CALEA-compliant solution in all of their switches. Not all carriers are large carriers with the same number of switches. Consequently, some carriers will be able to install CALEA-compliant solutions earlier than 12 months. Finally, the record indicates that out-of-switch CALEA-compliant solutions are likely to be available as early as the end of calendar year 1998.¹⁴⁴ These out-of-switch solutions generally work by taking information (call identifying data, for example) provided by the switch, processing it in a separate computer, and then delivering the information and data to the law enforcement surveillance center.¹⁴⁵ As a result, some carriers may opt to install out-of-switch solutions in lieu of switch-based solutions.

49. For these reasons, a six month period for carriers to install CALEA-compliant equipment and facilities based on the core J-STD-025 standard appears to be the necessary time frame for compliance. Therefore, starting with the December 31, 1999, date by which manufacturers should have CALEA compliant equipment and facilities based on the core J-STD-025 standard generally available, and adding six months to this date for carrier installation of equipment and facilities, we conclude that carrier compliance with CALEA's section 103 requirements should be extended to June 30, 2000.

50. Despite our desire to facilitate the rapid implementation of CALEA compliance, our careful review of the record leads us to conclude that we should not adopt the FBI's other conditions for granting extensions. Although we anticipate that manufacturers and carriers will work diligently towards developing and installing CALEA-compliant equipment and facilities by June 30, 2000, we conclude that we cannot impose the FBI's suggested limitation that our extension will be a one-time grant, because the

¹⁴² AT&T Petition at 7; PrimeCo Petition at 10.

¹⁴³ See US West Comments at 8-9 (stating that "[o]nce CALEA solutions do become commercially available, carriers will need additional time to order, engineer, and install the technology in switches across their networks.") US West explains that once CALEA solutions are made commercially available by manufacturers, carriers need another six months to twelve months to install those solutions. *Id.*; see also Letter from Thomas M. Barbara, Steptoe & Johnson on behalf of Telecommunications Industry Association, to Magalie R. Salas, Secretary, Federal Communications Commission, dated August 20, 1998 at 1 (TIA explains that it "typically requires approximately twelve months from the time a software product has reached the generally available phase for a large wireline carrier to make a generic switch upgrade in every switch within its network."); Letter from Linda L. Kent, United States Telephone Association, to Magalie R. Salas, Secretary, Federal Communications Commission, dated August 18, 1998 at 2 (contending that "once a product which is compliant with J-STD-025 becomes generally available, additional time will be required to install these products into the carrier switches.") USTA estimates that it "would require approximately twelve months from the time a software product is generally available . . . for a large wireline carrier to make a generic switch upgrade in every switch." *Id.*

¹⁴⁴ See FBI June 29 *ex parte* at 2. See also Letter from David F. Fisher, ADC Telecommunications, Inc., to Magalie R. Salas, Secretary, Federal Communications Commission, dated August 12, 1998 at 2.

¹⁴⁵ ADC July 6 *ex parte* at 2.

plain language of section 107(c) states that carriers may petition the Commission for one or more extensions of the deadline.¹⁴⁶ Nonetheless, we fully believe that an extension until June 30, 2000 will allow sufficient time for carriers to satisfy their obligations and that further extensions should not be necessary. Furthermore, with respect to the FBI's request that we establish milestones for carriers during the extension period, we note that as part of our section 107(b) rulemaking proceeding, the Commission can establish, "a reasonable time and conditions for compliance with and the transition to any new standard, *including defining the obligations of telecommunications carriers under section 103 during any transition period.*"¹⁴⁷ If in that proceeding we adopt a modified J-STD-025 standard and adjustments are needed in the time or conditions (such as the "milestones" advocated by the FBI) required for carriers to comply with CALEA's assistance capability requirements, we can make such adjustments as part of that proceeding.

51. Therefore, based on the above considerations, and pursuant to section 107(c) of the Act, we grant an extension of CALEA's compliance date to June 30, 2000. By this deadline, all telecommunications carriers subject to the provisions of CALEA will be required to comply with section 103's assistance capability requirements. Based on the record before us, we believe that this extension should provide a reasonable amount of time for the development of CALEA-compliant technology based on the core J-STD-025 standard. Further, as explained above, the Commission is committed to an expedited rulemaking to resolve the section 107(b) petitions we have received to adopt CALEA-compliant standards or technical requirements. Therefore, we believe this extension order fully considers both the current state of technology development and the need to develop CALEA solutions expeditiously.

V. ORDERING CLAUSES

52. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 154(j), and sections 107(c)(1)-(4) of the Communications Assistance for Law Enforcement Act, 47 U.S.C. § 1006(c)(1)-(4), the Petition for Extension of Compliance Date jointly filed by AT&T Wireless Services, Inc., Lucent Technologies, Inc., and Ericsson, Inc. on March 30, 1998; the PrimeCo Petition for an Extension of Compliance Date, filed April 21, 1998; the Powertel Petition for an Extension of Compliance Date, filed April 23, 1998; the USTA, Petition for an Extension of Compliance Date, filed April 24, 1998; the Ameritech Petition for an Extension of Compliance Date, filed April 24, 1998; the AirTouch Paging Petition for an Extension of Compliance Date, filed May 4, 1998; the AirTouch Joint Petition for an Extension of Compliance Date, filed May 5, 1998; the SBC Petition for an Extension of Compliance Date, filed May 8, 1998; the ICG Petition for an Extension of Compliance Date, filed May 8, 1998; the Centennial Petition for an Extension of Compliance Date, filed May 6, 1998; the Comcast Cellular Petition for Extension of Compliance Date, filed May 29, 1998; the BellSouth Petition for Extension of Time, filed May 8, 1998; the CommNet Petition for Extension of Compliance Date, filed April 30, 1998; the Metrocall Petition for Extension of Compliance Date, filed May 21, 1998; the USCC Petition for Extension of Compliance Date, filed May 8, 1998, the PageMart Petition for Extension of CALEA Compliance Date, filed June 10, 1998; the Ardis, et al. Joint Petition for Extension of Compliance Date, filed June 10, 1998; the Redcom Petition for Extension

¹⁴⁶ See 47 U.S.C. § 1006(c)(1).

¹⁴⁷ See 47 U.S.C. § 1006(b)(5) (emphasis added).

of CALEA Compliance Date, filed June 1, 1998; Request of Skytel Communications, Inc. for Extension of Time to Comply with the Assistance Capability Requirements of Section 103 of CALEA, filed July 24, 1998, Joint Petition For an Extension of the CALEA Assistance Capability Compliance Date of Iridium United States, L.P. and Motorola, Inc., filed June 30, 1998; 360° Communications Company Comments at 8 n.15, filed May 8, 1998; Centurytel Wireless, Inc. Communications Comments at 8 n.27, filed May 8, 1998, Paging Network, Inc., Petition for Extension of Compliance Date, filed June 8, 1998 ARE GRANTED to the extent discussed above.

53. IT IS ORDERED that, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 154(j), and sections 107(c)(1)-(4) of the Communications Assistance for Law Enforcement Act, 47 U.S.C. § 1006(c)(1)-(4), all telecommunications carriers proposing to install or deploy, or having installed or deployed, any equipment, facility, or service prior to October 25, 1998, are HEREBY GRANTED AN EXTENSION of the compliance date of the assistance capability requirements of section 103 of CALEA, 47 U.S.C. § 1002(a)(1)-(4), until June 30, 2000.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas,
Secretary

AppendixParties Filing Comments

1. Airtouch Communications, Inc. (AirTouch)
2. Aliant Communications, Inc. (Aliant)
3. ALLTEL Communications, Inc. (ALLTEL)
4. Ameritech Operating Companies and Ameritech Mobile Communications, Inc. (Ameritech)
5. Association for Local Telecommunications Services (ALTS)
6. AT&T Corporation, and AT&T Wireless Services Inc. (AT&T)
7. Bell Atlantic Mobile, Inc. (BAM)
8. Bell Emergis-Intelligent Signalling Technologies (Bell Emergis)
9. BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corporation, BellSouth Personal Communications, Inc. and BellSouth Wireless Data, L.P. (BellSouth)
10. Cellular Telecommunications Industry Association (CTIA)
11. Centennial Cellular Corporation (Centennial)
12. Center for Democracy and Technology (CDT)
13. CenturyTel Wireless, Inc. (CenturyTel)
14. Electronic Privacy Information Center, the Electronic Frontier Foundation, and the American Civil Liberties Union (filing jointly) (EPIC)
15. GTE Service Corporation (GTE)
16. ICG Telecom Group (ICG)
17. Liberty Cellular, Inc. (Liberty)
18. National Telephone Cooperative Association (NTCA)
19. Nextel Communications, Inc. (Nextel)
20. Northern Telecom, Inc. (Nortel)
21. Omnipoint Communications, Inc. (Omnipoint)
22. Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
23. Paging Network, Inc. (PageNet)
24. Personal Communications Industry Association (PCIA)
25. Powertel, Inc. (Powertel)
26. PrimeCo Personal Communications, L.P. (PrimeCo)
27. Redcom Laboratories, Inc. (Redcom)
28. Rural Cellular Association (RCA)
29. SBC Communications (SBC)
30. Southern Communications Services (Southern)
31. Sprint Spectrum L.P. d/b/a Sprint PCS (Sprint)
32. Telecommunications Industry Association (TIA)
33. United States Cellular Corporation (USCC)
34. United States Department of Justice and Federal Bureau of Investigation (filing jointly) (DoJ/FBI)
35. United States Telephone Association (USTA)
36. US West, Inc. (US West)
37. 360° Communications Company (360°)

Parties Filing Reply Comments

1. AirTouch Communications, Inc. (AirTouch)
2. Ameritech Operating Companies and Ameritech Mobile Communications, Inc. (Ameritech)
3. AT&T Corporation, and AT&T Wireless Services Inc. (AT&T)
4. BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corporation, BellSouth Personal Communications, Inc. and BellSouth Wireless Data, L.P. (BellSouth)
5. Center for Democracy and Technology (CDT)
6. Cellular Telecommunications Industry Association (CTIA)
7. Electronic Privacy Information Center, the Electronic Frontier Foundation, and the American Civil Liberties Union (filing jointly) (EPIC)
8. Globalstar L.P. (Globalstar)
9. GTE Service Corporation (GTE)
10. Metrocall, Inc. (Metrocall)
11. Nextel Communications, Inc. (Nextel)
12. PrimeCo Personal Communications, L.P. (PrimeCo)
13. SBC Communications, Inc. (SBC)
14. Telecommunications Industry Association (TIA)
15. United States Department of Justice and Federal Bureau of Investigation (filing jointly) (DoJ/FBI)
16. United States Telephone Association (USTA)
17. US West, Inc. (US West)

**Joint Statement
of
Commissioners Susan Ness and Michael Powell**

Re: Petition for the Extension of the Compliance Date under Section 107 of the Communications Assistance for Law Enforcement Act by AT&T Wireless Services, Inc. et al.

Upgrading our nation's telecommunications networks to provide law enforcement agencies with the surveillance capabilities necessary to protect public safety in the digital technology era is an important public policy goal of the Communications Assistance for Law Enforcement Act (CALEA). Implementation of this important goal, however, must be balanced against the actual ability of the telecommunications manufacturers and carriers to design, manufacture and deploy CALEA compliant equipment and facilities in their telecommunications networks.

We believe that the June 30, 2000, CALEA compliance deadline established in the order balances these competing interests. Each day that goes by without CALEA compliant equipment and facilities in operation limits the capabilities of law enforcement agencies. Nevertheless, telecommunications manufacturers and carriers will require a period of time to manufacture, test and install CALEA compliant equipment and facilities in their telecommunications networks. The extension to June 30, 2000, establishes an aggressive but achievable deadline that is within the limits of the Commission's authority. This is a firm deadline. It affords telecommunications carriers the necessary time to deploy CALEA compliant equipment and facilities, and we strongly encourage telecommunications manufacturers and carriers to cooperate with law enforcement agencies to meet this deadline.

The June 30, 2000, deadline is appropriate for another reason. In light of the significant resources that the telecommunications industry is dedicating to resolving the Year 2000 problem, it makes good sense to establish a CALEA compliance deadline that will not conflict with the telecommunications industry's efforts to comply with the Year 2000 problem.

For these reasons, we support the June 30, 2000, compliance deadline set forth in the order.

**Statement of
Commissioner Harold Furchtgott-Roth**

Re: Petition for the Extension of the Compliance Date under Section 107 of the Communications Assistance for Law Enforcement Act by AT&T Wireless Services, Inc., Lucent Technologies, and Ericsson, Inc.

I concur in today's decision to extend the CALEA compliance deadline. Clearly we needed to grant such an extension pursuant to our authority under Section 107(c)(3). All five Commissioners agree. The differences among us are measurable in months. I would have preferred for us to grant the maximum allowable 24 months. While some Commissioners would have favored less than the 22 months we grant here, I concur with the 22 month extension because it allows nearly as much time for compliance as I would have preferred. I do not believe, however, that we can predict with such great precision when compliance will be possible.

Perhaps our decision to grant a 22 month extension can be read as a signal to industry that we do not plan to grant a series of maximum length 24 month extensions and that we take seriously our responsibilities under CALEA. This much is true. But I don't believe in simply "sending signals" and, if any signal needed to be sent, it should have been to those parties who simultaneously demand haste and create uncertainty by seeking rapid implementation of technology that is based on a standard they still are seeking to modify.