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Federal Communications Commission
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Report No. ET 98-8 ENGINEERING AND TECHNOLOGY ACTION October 22, 1998

FCC PROPOSES RULES TO MEET TECHNICAL REQUIREMENTS OF CALEA (CC Docket No. 97-213)

The Commission has adopted a Further Notice of Proposed Rulemaking (Further Notice) addressing technical requirements for wireline, cellular, and broadband Personal Communications Services (PCS) carriers to comply with the assistance capability requirements prescribed by the Communications Assistance for Law Enforcement Act (CALEA). Additionally, the Commission seeks comment on an implementation schedule for the technical requirements the Commission proposes to adopt in this proceeding. The Further Notice also seeks comment on other issues associated with the Commission's obligations under CALEA.

Section 103 of CALEA generally requires a telecommunications carrier to ensure that its equipment, facilities, or services are capable of: (1) expeditiously isolating, and enabling the government, pursuant to a court order or other lawful authorization, to intercept all wire and electronic communications; (2) providing access to call-identifying information that is reasonably available to the carrier; (3) delivering intercepted communications and call-identifying information to a Law Enforcement Agency (LEA) in an acceptable form and at a remote location; and (4) protecting the privacy and security of communications and call-identifying information not authorized to be intercepted.

CALEA does not specify how these four assistance capability requirements are to be met. It does, however, provide a safe harbor provision under section 107(a), which states that carriers and manufacturers are deemed CALEA-compliant if they meet publicly available standards adopted by industry or the Commission. While no carrier or manufacturer is required to use a safe harbor standard, the Telecommunications Industry Association (TIA) has developed an interim standard for wireline, cellular, and broadband PCS carriers (J-STD-025) that TIA contends satisfies the CALEA safe harbor provision.

Section 107 (b) of CALEA authorizes the Commission, upon petition, to establish by rule, technical requirements or standards that meet the assistance capability requirements of section 103. Earlier this year, the Commission received petitions asking it to establish such requirements or standards from the Department of Justice (DoJ)/Federal Bureau of Investigation (FBI) and the Center for Democracy and Technology (CDT).

DoJ/FBI claim that the interim standard is underinclusive because it does not include nine necessary capabilities that CALEA mandates, while CDT claims that the standard is overinclusive because it includes location and packet-mode information that CALEA does not authorize. The Further

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Notice analyzes the issues raised by DOJ/FBI and CDT, and proposes initial threshold judgments on these issues. Specifically, the Further Notice addresses the following:

■ **J-STD-025 Standard**

In the Further Notice, the Commission acknowledges the immense time and effort both industry and government representatives have put into the development of CALEA standards, noting that the Act expresses a preference for industry to set CALEA standards, in consultation with the Attorney General, and that the Act's legislative history also reveals that Congress envisioned that industry would have primary responsibility in defining standards. Consequently, the Commission indicates that the most efficient and effective method for ensuring that CALEA can be implemented as soon as possible is to build on the work that has been done to date. Therefore, it does not intend to reexamine any of the uncontested technical requirements of the J-STD-025 standard. Instead, the Commission states that it would make determinations only regarding whether each of the items in dispute (including location information and packet-mode provisions currently included within J-STD-025, and the nine additional items raised by DOJ/FBI that are currently not included) meet the assistance capability requirements of Section 103. The other elements of the "core" J-STD-025 are beyond the scope of this proceeding.

Location Information: The Commission tentatively concludes that location information falls under CALEA's definition of call identifying information because location information identifies the origin or destination of a communication. Therefore, where location information is reasonably available to a carrier, the Further Notice proposes that a provision of location information to LEAs is necessary to meet the mandates of section 103. The Commission also seeks comment on its proposal that location information necessary to meet section 103 would include only the caller's cell site location at the beginning and termination of a call.

Packet-mode Communications: The Commission concludes that the record is not sufficiently developed to support any particular technical requirements for packet-mode communications and therefore does not propose technical requirements for such communications at this time. However, in the Further Notice, the Commission seeks comment on a wide range of issues to develop a sufficient record.

■ **Technical Requirements Proposed by DOJ/FBI**

As noted above, DOJ/FBI has stated that nine additional capabilities must be added to J-STD-025 in order for carriers to meet section 103's mandates and qualify as a safe harbor under section 107(a). The Commission has made tentative conclusions regarding whether those capabilities fall

within the definitions expressly delineated in section 103, and has asked for comment on the section 107(b) factors relating to each capability. In addition, for those capabilities falling under CALEA's definition of call-identifying information, the Commission has sought comment on how it should interpret CALEA's requirement that such information be "reasonably available" to a carrier and whether, in fact, call-identifying information needed to meet CALEA's section 103 requirements is reasonably available. The Commission tentatively concludes that the capability to intercept subject-initiated conference calls is necessary to meet the assistance capability requirements under section 103(a). In addition, the Commission tentatively concludes that the other four capabilities listed below are call-identifying information and proposes that, if reasonably available to the carrier, these capabilities are necessary to meet the assistance capability requirements under section 103(a):

Subject-initiated Conference Calls: This capability would permit the LEA, pursuant to a court order or other lawful authorization, to intercept, to the exclusion of any other communications, the content of conversations connected via a conference call set up by the facilities under surveillance.

Party Hold, Join, Drop on Conference Calls: This capability would permit the LEA to receive messages indicating whether a party is on hold, has joined or has been dropped from the conference call.

Subject-initiated Dialing and Signaling Information: This capability would permit the LEA to be informed when a subject using the facilities under surveillance uses services such as call forwarding, call waiting, call hold, and three-way, calling, , etc.

Timing Information: In those cases where the LEA has obtained authorization to intercept both content and call-identifying information, this capability would require that a telecommunications carrier send call timing information to the LEA so the LEA could associate the call-identifying information with the actual content of the call.

Dialed Digital Extraction: This capability (also known as "post-cut-through digits") would require the telecommunications carrier to provide a LEA any digits dialed by the subject after connecting to another carrier's service if such information is reasonably available.

The Commission proposes that the following three items do not fall within any of the provisions of section 103 and therefore should not be required for CALEA compliance:

Surveillance Status: This capability would require the telecommunications carrier to send information to the LEA to verify that a wiretap has been established and is still functioning correctly.

Continuity Check Tone: This capability would require that, in cases where a LEA has obtained authority to intercept wire or electronic communications, a C-tone or dial tone be placed on the call content channel received by the LEA from the telecommunications carrier until a user of the facilities under surveillance initiates or receives a call.

Feature Status: This capability would require a carrier to notify the LEA when specific subscription-based calling services are added to or deleted from the facilities under surveillance, including when the subject modifies capabilities remotely through another phone or through an operator. Examples of such services are call

waiting, call hold, three-way calling, conference call, and return call.

The Commission makes no proposal on one item:

In-band and Out-of-band Signaling: This capability would allow a telecommunications carrier to send a notification message to the LEA when any network message (ringing, busy, call waiting signal or message light) is sent to the subject using facilities under surveillance. The Further Notice does not propose to either include or exclude this feature as a CALEA requirement. However, the Commission seeks comment on what types of in-band and out-of-band signaling should constitute a technical requirement necessary to meet the CALEA assistance capability requirements.

The Commission emphasizes that while the Further NPRM proposes only initial threshold judgments on each of the above issues, the Commission in this proceeding -- as directed by Congress -- will also take into account five factors that must be considered under section 107(b). Those factors are: (1) meeting the assistance capability requirements of section 103 by cost-effective methods; (2) protecting the privacy and security of communications not authorized to be intercepted; (3) minimizing the cost of CALEA compliance on residential ratepayers; (4) serving the policy of the United States to encourage the provision of new technologies and services to the public; and (5) providing a reasonable time and conditions for CALEA compliance.

The Commission also tentatively concludes that the technical requirements proposed in the Further Notice can be most efficiently implemented by permitting TIA to modify J-STD-025 in accord with the Commission's determinations. The Commission believes that although TIA may have to undertake additional work to implement the technical requirements identified in the Further Notice, TIA has the experience and resources to develop technical specifications and implement CALEA's requirements most rapidly.

Finally, the Further NPRM seeks comment on what role, if any, the Commission can or should play in assisting telecommunications carriers other than wireline, cellular, and broadband PCS to set standards for, or to achieve compliance with, CALEA's requirements.

Action by the Commission, October 22, 1998, by Further Notice of Proposed Rulemaking (FCC 98-282). Chairman Kennard, Commissioners Ness, Furchtgott-Roth, Powell and Tristani with Chairman Kennard and Commissioner Furchtgott-Roth issuing separate statements.

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