



PUBLIC NOTICE

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**THE COMMON CARRIER AND WIRELESS TELECOMMUNICATIONS BUREAUS
ESTABLISH PROCEDURES FOR CARRIERS TO SUBMIT OR SUPPLEMENT
CALEA SECTION 107(C) EXTENSION PETITIONS,
BOTH GENERALLY AND WITH RESPECT TO PACKET-MODE
AND OTHER SAFE HARBOR STANDARDS**

1. This Public Notice is being released as announced by the Commission in Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, *Order*, FCC 01-265 (rel. Sept. 21, 2001) (*Order*). In the *Order*, the Commission held that wireline, cellular and broadband PCS carriers have until November 19, 2001 either to implement a packet-mode communications electronic surveillance capability, or to seek individual relief under section 107(c)¹ of the Communications Assistance for Law Enforcement Act (“CALEA”).² This notice explains the petitioning process for telecommunications carriers seeking relief under section 107(c) for an extension of the CALEA compliance deadline with respect to packet-mode communications, as well as other safe harbor standards.

BACKGROUND

2. *Assistance capability requirements.* CALEA was enacted on October 25, 1994, and 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. To achieve this goal, section 103(a) of CALEA sets out four assistance capability requirements applicable to carriers’ “equipment, facilities, or services that provide a customer, or subscriber with the ability to originate, terminate, or direct communications.”³ Telecommunications carriers had until June 30, 2000 to implement these capabilities in their systems.⁴

3. *Petitions for extension of CALEA compliance deadline.* Under section 107(c) of CALEA, a carrier may petition the Commission for an extension of the compliance deadline;⁵ but before acting on a

¹ 47 U.S.C. § 1006(c).

² 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).

³ 47 U.S.C. § 1002(a). For purposes of simplicity, this *Public Notice* refers to “equipment, facilities and services” collectively as “facility” or “facilities,” except where a given subset is meant.

⁴ See Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, *Memorandum Opinion and Order*, 13 FCC Rcd 17990 (1998).

⁵ 47 U.S.C. § 1006(c)(1).

carrier's petition, the Commission must consult with the Attorney General.⁶ An extension may be granted 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."⁷ In granting a petition, the Commission may extend the compliance deadline no longer than two years from the date of grant.⁸

4. By *Public Notice* released April 25, 2000, the Commission established procedures for the filing and consideration of section 107(c) petitions for extension.⁹ The CALEA Implementation Section of the FBI (CIS) published a FLEXIBLE DEPLOYMENT ASSISTANCE GUIDE,¹⁰ establishing a voluntary Flexible Deployment program parallel to the Commission's process, to facilitate its review of carrier extension proposals and negotiate changes, where necessary, to meet the needs of law enforcement agencies. In the *April 2000 Public Notice*, the Commission encouraged carriers to participate in the CIS's Flexible Deployment program, and to file with their CALEA section 107(c) extension petitions evidence of such participation. A large number of carriers filed extension petitions; almost all participated in the Flexible Deployment process. The Commission has completed its required consultations with the CIS with respect to most of these petitions, and is in the process of acting on them.¹¹ On August 8, 2001, the CIS released a second edition of its FLEXIBLE DEPLOYMENT ASSISTANCE GUIDE¹² applicable to packet-mode communications.

5. *Safe harbor standards.* Section 107(a)(2) of CALEA provides that a carrier will be deemed to comply with the assistance capability requirements if it complies with "publicly available technical requirements or standards adopted by an industry association or standard-setting organization."¹³ Section 107(b) provides that any person may petition the Commission to modify such standards (or, in their absence, to establish standards).¹⁴ In such cases, section 107(b)(5) directs the Commission to "provide a reasonable time and conditions for compliance with and the transition to any new standard."¹⁵

⁶ 47 U.S.C. § 1006(c)(2). The Attorney General delegated the consultation responsibility to the Federal Bureau of Investigation (FBI), which established a CALEA Implementation Section to carry out this and related functions.

⁷ 47 U.S.C. § 1006(c)(2).

⁸ 47 U.S.C. § 1006(c)(3).

⁹ See CALEA Section 103 Compliance and Section 107(c) Petitions, *Public Notice*, 15 FCC Rcd 7482 (2000), as modified by *Public Notice*, 15 FCC Rcd 9518 (2000) [hereinafter the *April 2000* and *June 2000 Public Notices*], available at <<http://www.fcc.gov/ccb/nsd/documents/CALEA2001.html>> (last visited on Sept. 26, 2001).

¹⁰ U.S. Dept. of Justice, Federal Bureau of Investigation, CALEA Implementation Section, FLEXIBLE DEPLOYMENT ASSISTANCE GUIDE (Jan. 2000) [hereinafter JANUARY 2000 CIS GUIDE]. The Guide is available on the Internet at <<http://www.askcalea.net/pdf/lexguide.pdf>> (last visited on Sept. 26, 2001).

¹¹ See, e.g., CALEA Section 107(c) Extension of Capability Requirements, *Order*, DA 01-1902 (Comm. Carr. Bur., Aug. 15, 2001). Commission staff expects to take action on virtually all pending petitions where the Commission and the FBI have completed the consultation process in advance of September 30, 2001.

¹² U.S. Dept. of Justice, Federal Bureau of Investigation, CALEA Implementation Section, FLEXIBLE DEPLOYMENT ASSISTANCE GUIDE, SECOND EDITION, PACKET-MODE COMMUNICATIONS (Aug. 2001) [hereinafter AUGUST 2001 CIS PACKET-MODE GUIDE]. The Guide is available on the Internet at <<http://www.askcalea.net/pdf/lexguide2.pdf>> (last visited on Sept. 26, 2001).

¹³ 47 U.S.C. § 1006(a)(2).

¹⁴ 47 U.S.C. § 1006(b).

¹⁵ 47 U.S.C. § 1006(b)(5).

6. Subcommittee TR45.2 of the Telecommunications Industry Association (TIA) developed an interim standard (J-STD-025) to serve as a “safe harbor” for wireline, cellular and broadband PCS carriers under section 107(a) of CALEA.¹⁶ The standard was challenged under section 107(b).¹⁷ In response, the Commission modified the standards by adding six “punch list” items,¹⁸ and specified September 30, 2001 as the effective date both for the additional standards and for those portions of J-STD-025 that covered packet-mode communications.¹⁹ On review, the U.S. Court of Appeals for the District of Columbia Circuit vacated and remanded to the Commission those portions of the *Third Report and Order* regarding four of the six punch list items; the court upheld the Commission’s decision maintaining the packet-mode capability specified in J-STD-025.²⁰

7. By *Order* released September 21, 2001, the Commission acted on petitions seeking blanket extensions of the September 30, 2001 effective date for the punch list portions of the amended safe harbor standards and for the packet-mode portions of J-STD-025.²¹ It postponed the effective date of the standards for all six of the punch list items, pending further Commission action on the four remanded items. The Commission declined to similarly postpone the effective date of the packet-mode standards from September 30, 2001, but provided a brief extension of that effective date until November 19, 2001, to provide time for carriers to either upgrade their systems or file extension petitions for individual relief under section 107(c) of CALEA.

ADDITIONAL EXTENSION RELIEF

8. *Previously filed extension petitions.* Both the Commission’s *April 2000 Public Notice* and the JANUARY 2000 CIS GUIDE require carriers seeking CALEA extensions under section 107(c) to detail the facilities for which they seek extensions and the dates by which each facility would provide the assistance capabilities required by section 103. A Commission action extending a carrier’s deadline for complying with section 103 applies only to those facilities (*e.g.*, each switch) for which the carrier sought an extension, and not to other facilities the carrier may have.²² Unless the Commission action specifies otherwise, the extension applies to all assistance capability functions, including punch list and packet-mode capabilities, at the listed facilities.²³ Grant of a section 107(c) extension petition establishes for that carrier’s facilities a new, individualized compliance deadline or deadlines, which supersede—but by no more than two years—the June 30, 2000, deadline.

¹⁶ See Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, *Third Report and Order*, 14 FCC Rcd 16794, 16798 (1999) (*Third Report and Order*).

¹⁷ Two industry associations—the United States Telecom Association and the Cellular Telecommunications Industry Association—joined by the Center for Democracy and Technology, filed a petition for judicial review, as did the Electronic Frontier Foundation, Electronic Privacy Information Center, and American Civil Liberties Union.

¹⁸ *Id.*, 14 FCC Rcd at 16820-46.

¹⁹ *Id.*, 14 FCC Rcd at 16819, 16849. The Commission retained the June 30, 2000, effective date for the rest of J-STD-025’s standards. For a description of the difference between circuit-mode and packet-mode communications, *see id.* at 16816 n.97.

²⁰ *United States Telecom Ass’n v. FCC*, 227 F.3d 450 (D.C. Cir. 2000).

²¹ Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, *Order*, FCC 01-265 (Sept. 21, 2001).

²² To date, Commission orders granting extensions have not specified or referenced facilities, but rather referenced the FBI Flexible Deployment plan support letters that in turn reference the facilities.

²³ Should a carrier have in place assistance capabilities in advance of an extended deadline, it should of course stand ready to make them available to law enforcement agencies upon request.

9. *Circumstances that call for additional extension relief.* All carriers should take this opportunity to carefully review the status of their CALEA implementation efforts, and any extension requests they may have filed, to determine whether they need to seek additional relief at this time. Carriers in the following circumstances should file with the Commission a request for an extension of their compliance deadlines:

- A carrier that seeks to extend its compliance date for **packet-mode** communications beyond November 19, 2001, the new effective date of the packet-mode safe harbor standard for wireline, cellular and broadband PCS carriers.
- A carrier that previously received a section 107(c) extension from the Commission, but whose facilities will not be CALEA-compliant (e.g., packet mode facilities) by its extended compliance deadline.
- A carrier that previously filed a CALEA extension petition, but did not include some of its facilities, if those facilities will not be CALEA-compliant by the compliance deadline.
- A carrier that did not previously file a CALEA extension petition, and has facilities (for example, new service offerings) that will not comply with CALEA by the compliance deadline.

10. *Flexible Deployment program.* The Commission continues to encourage—but not require—carriers seeking extension relief to participate in the CIS Flexible Deployment program. Our experience indicates that participation expedites and significantly aids the Commission in its statutory obligation to consult with the Attorney General on individual carriers’ section 107(c) petitions.

- Carriers wishing to participate in the Flexible Deployment program regarding their **packet-mode** facilities should refer to the AUGUST 2001 CIS PACKET-MODE GUIDE in preparing their filings.²⁴
- All other carriers that wish to participate in the Flexible Deployment program should refer to the JANUARY 2000 CIS GUIDE.²⁵

MODIFIED PROCEDURES FOR 107(C) EXTENSIONS

11. *Carriers that have previously filed a CALEA 107(c) petition and that choose to participate in the CIS Flexible Deployment program.* A carrier that has previously filed a CALEA extension petition with the Commission and that chooses to participate in the CIS Flexible Deployment program may simply supplement its earlier petition with a one-page letter:

- Identifying the carrier by name and Telephone Relay Service (TRS) number.²⁶
- Indicating whether it is a wireline or a wireless carrier. Wireline and wireless requests must be filed separately.
- Stating that it is participating in the Flexible Deployment program.
- Attaching a copy of its Flexible Deployment filing, which includes information such as the specific facilities for which an extension is sought and the date(s) by which the carrier expects to provide CALEA capabilities—

²⁴ See *supra* n.12.

²⁵ See *supra* n.10.

²⁶ Both the JANUARY 2000 CIS GUIDE and the AUGUST 2001 CIS PACKET-MODE GUIDE require that a carrier include its TRS number on its FBI filing as well.

- **Packet-mode filers** must follow the AUGUST 2001 CIS PACKET-MODE GUIDE.
- **Other filers** must follow the JANUARY 2000 CIS GUIDE.

12. Carriers that have not previously filed a CALEA 107(c) petition, and that choose to participate in the CIS Flexible Deployment program. A carrier that has not previously filed a CALEA extension petition but wishes to participate in the CIS Flexible Deployment program should refer to either the JANUARY 2000 CIS GUIDE or the AUGUST 2001 CIS PACKET-MODE GUIDE, as appropriate. Upon submitting its Flexible Deployment documentation to the CIS, the carrier must then file with the Commission an extension petition. The petition must include all the information listed in paragraph 11, above, plus the following:

- contact information for the carrier, including the name, telephone number, facsimile number, address and e-mail address of the officer or employee authorized to discuss the extension request with the Commission, and
- the signature of the officer or employee authorized by the carrier to be responsible for its content.

13. Carriers that choose not to participate in the CIS Flexible Deployment program. Carriers that choose not to participate in the Flexible Deployment program must file with the Commission a petition that includes all the information listed in paragraphs 11 and 12, above, plus the following:

- a brief statement or showing as to why the extension is necessary,
- in lieu of a Flexible Deployment template—
 - the identity of the carrier's switching equipment (by manufacturer; type, make and model; software version or generic currently operating; Common Language Location Identification (CLLI) Code and geographic areas served),
 - the date or dates that the equipment will become compliant with section 103, to the extent such information is available to the carrier,
- a letter from each of its switching equipment manufacturers—
 - identifying itself as the equipment manufacturer for the petitioning carrier,
 - asserting that the section 103 compliance solutions will not be tested and installed for that carrier by the compliance date,
 - identifying the installation date(s) that it has negotiated with the petitioning carrier, stating when compliance with section 103 will be accomplished, broken down by switch platform if the petitioning carrier's recommended compliance date differs by switch platform, and
 - including the name, title, and telephone number of the manufacturer's officer or employee who signed the letter.

14. FCC filing details. In the first sentence of its petition or supplement, a carrier must list its TRS number(s), specify whether it is a wireline or wireless carrier, and indicate the specific subject matter of the petition (e.g., CALEA Section 107(c) Petition Packet-mode Communications). All carriers (i.e., both petition filers and letter filers) must file an original and two copies addressed to:

Secretary, Federal Communications Commission
ATTN: CALEA 107(c)
445 12th Street, S.W.

Washington, D.C. 20554.

In addition, wireline carriers should reference File No. NSD-L-00-234, and send an additional copy of the petition or supplement to:

CALEA Section 107(c) Petition
Network Services Division
Portals II, 445 12th Street, S.W., Room 6-A320,
Washington, D.C. 20554.

These procedures replace the previous requirement to file an original and five copies with the Commission; further, the Commission no longer asks carriers to file electronic copies on diskette. Petitioning carriers may not file their petitions or supplements with the Commission electronically. The Commission is currently not equipped with encryption capability to ensure the confidential treatment of information as it is transmitted to the FCC.²⁷

15. *CIS filing requirement.* All carriers, whether or not they choose to participate in the CIS Flexible Deployment program, must at the same time send one additional copy of their FCC filings to:

CALEA Implementation Section
14800 Conference Center Drive, Suite 300
Chantilly, Virginia 20151-0450.

16. *Confidentiality of filings.* The information carriers provide in their petitions and supplements pursuant to CALEA section 107(c) will not be made routinely available for public inspection, and carriers do not need to request confidential treatment separately. Persons seeking access to such information must request such access pursuant to 47 C.F.R. § 0.461 of the Commission's rules.

17. *Preliminary determinations under section 107(c).* The CALEA extension process established in the *April 2000 Public Notice* provided that a carrier filing a facially complete extension petition would be shielded from enforcement actions under section 108 of CALEA²⁸ pending Commission action on its petition, through the mechanism of a "preliminary determination" that the petition was meritorious.²⁹ This presumption will also apply to future CALEA extension filings. Upon the filing with the Commission of a petition or supplement in accordance with the requirements set forth in this *Public Notice*, the carrier will be deemed to have received a preliminary extension for the period requested in its filing, but not to exceed the two-year limit provided by section 107(c)(3)(B),³⁰ until the preliminary determination is superseded by a Commission determination on the merits of the petition. Once the Commission makes a determination on the merits of the petition, it will release an appropriate order.

18. *Other information.* Petitions or supplements filed pursuant to CALEA section 107(c) are classified as "permit but disclose" proceedings for purposes of the Commission's ex parte rules. *See generally* 47 C.F.R. §§ 1.1200-1.1216. As a "permit but disclose" proceeding, ex parte presentations will be governed by the procedures set forth in section 1.1206 of the Commission's rules applicable to non-restricted proceedings, 47 C.F.R. § 1.1206. Parties making oral ex parte presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and

²⁷ See Electronic Filing of Documents in Rulemaking Proceedings, *Order*, 13 FCC Rcd 11322 (1998).

²⁸ 47 U.S.C. § 1007.

²⁹ See *April 2000 Public Notice*, 15 FCC Rcd at 7486-87.

³⁰ 47 U.S.C. § 1006(c)(3)(B).

not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. *See* 47 C.F.R. § 1.1206(b)(2). Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.

19. *CIS information.* Questions regarding the CIS Flexible Deployment program should be addressed to the Flexible Deployment Program Manager, CALEA Implementation Section (CIS), Attention: Flexible Deployment Assistance Guide, 14800 Conference Center Drive, Suite 300, Chantilly, Virginia 20151-0450. CIS can be reached by telephone at 800-551-0336 or 703-814-4700, or via e-mail at FlexD@AskCalea.net.

20. *FCC information.* For further information concerning 107(c) petition filings to the Commission, wireline carriers should contact Gayle Radley Teicher of the Network Services Division, Common Carrier Bureau, at 202-418-1515, gteicher@fcc.gov; wireless carriers should contact Susan Kimmel or John Spencer of the Policy Division, Wireless Telecommunications Bureau, at 202-418-1310, skimmel@fcc.gov or jspencer@fcc.gov.

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