



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

DA 03-3722
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**THE WIRELINE COMPETITION AND WIRELESS TELECOMMUNICATIONS
BUREAUS ANNOUNCE A REVISED SCHEDULE FOR CONSIDERATION OF
PENDING PACKET MODE CALEA SECTION 107(C) PETITIONS AND RELATED
ISSUES**

CC Docket No. 97-213

In this Public Notice, the Wireline Competition Bureau (WCB) and Wireless Telecommunications Bureau (WTB) extend, until January 30, 2004 unless superseded by a final determination on the merits of individual petitions, the current November 19, 2003 preliminary extension granted to wireline and wireless carriers who filed for extensions of packet-mode surveillance capability requirements imposed pursuant to section 103 of the Communications Assistance for Law Enforcement Act (CALEA), 47 U.S.C. § 1002.

On September 28, 2001, WCB and WTB jointly released a Public Notice setting out procedures applicable to telecommunication carriers seeking an extension of packet-mode communications electronic surveillance capability requirements mandated pursuant to CALEA section 103.¹ The *2001 Public Notice* provided that a carrier filing a facially complete petition pursuant to CALEA section 107(c), 47 U.S.C. § 1006(c), would be deemed to have a “preliminary extension” of CALEA requirements for a period not exceeding the two-year limit provided by that section, or until such preliminary determination is superseded by a Commission determination on the merits of the petition. Subsequently, WCB and WTB received over 1000 CALEA section 107(c) petitions. Preliminary extensions responsive to these petitions will expire on November 19, 2003.

¹ *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*, Public Notice, 16 FCC Rcd 17101 (2001) (*2001 Public Notice*). When the *2001 Public Notice* was adopted, WCB was called the Common Carrier Bureau. The *2001 Public Notice* followed Commission action ordering wireline, cellular and broadband PCS carriers to implement the packet-mode requirements by November 19, 2001. See *Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, *Order*, 16 FCC Rcd 17397 (2001). The *2001 Public Notice* superseded two previous Public Notices that addressed procedural issues in connection with CALEA. See *CALEA Section 103 Compliance and Section 107(c) Petitions*, Public Notice, 15 FCC Rcd 7482 (2000), as modified by Public Notice, 16 FCC Rcd 12738 (2000).

The *2001 Public Notice* also provided specific guidance regarding the content of section 107(c) petitions and noted that, pursuant to statutory requirement, the Federal Communications Commission (FCC or Commission) is required to consult with the Attorney General when considering the disposition of submitted petitions, and that the Attorney General had delegated that consultation responsibility to the Federal Bureau of Investigation (FBI).² The *2001 Public Notice* also noted that, in January 2000, the FBI had established a Flexible Deployment Program to assist telecommunications carriers in meeting their CALEA obligations. Pursuant to enrollment in the Flexible Deployment Program, the FBI would negotiate with carriers to achieve specific, agreed-upon CALEA implementation schedules. In its published Flexible Deployment Assistance Guide, the FBI requested that carriers voluntarily submit certain information to the FBI on carrier-specific templates, and explained under what circumstances, based on a review of that templated information, the FBI might support a carrier's section 107(c) petition filed with the FCC.³ If, after reviewing the information submitted, the carrier and the FBI were able to arrive at a mutually agreeable CALEA deployment schedule, the FBI would issue a letter to the FCC indicating its support for an appropriate extension. If, on the other hand, the carrier and the FBI could not reach agreement, the FBI might issue a letter opposing grant of an extension.

The *2001 Public Notice* indicated that the Commission encourages, but does not require, carriers to participate in the Flexible Deployment Program because participation produces various benefits. In fact, the Public Notice allowed carriers participating in the Flexible Deployment Program to submit related documentation to the FCC as part of their section 107(c) petitions in lieu of more extensive documentation. Since most carriers seeking packet-mode extensions chose to enroll in the Flexible Deployment Program,⁴ their 107(c) petitions could merely reference any previously-filed 107(c) petitions, indicate enrollment in Flexible Deployment (and attach a copy of the Flexible Deployment template), and submit a small amount of additional information.⁵

The FBI recently decided to end its Flexible Deployment Program with respect to packet-mode requirements as of November 19, 2003. Moreover, in letters issued to parties that submitted section 107(c) petitions, the FBI stated that it is unable to determine generally, based on information provided in the FBI's Flexible Deployment templates, which carriers propose to install and deploy CALEA-compliant packet mode intercept solutions by the deadline. The FBI letters state that the FBI will not oppose pending extension petitions to bring carrier packet-mode communication networks into compliance by November 19, 2003. The letters also indicate that the FBI will work with the FCC to institute an effective means of monitoring carrier progress for carriers seeking packet mode extensions beyond November 19, 2003.⁶

² See 47 U.S.C. § 1006(c)(2).

³ U.S. Department of Justice, Federal Bureau of Investigation, CALEA Implementation Section, FLEXIBLE DEPLOYMENT ASSISTANCE GUIDE (Jan. 2000).

⁴ Review of submitted 107(c) petitions indicates that approximately 98% of wireline petitioners, as well as a large percentage of wireless petitioners, participate in the Flexible Deployment Program and submitted their 107(c) petitions specifically in reference to Flexible Deployment-related guidelines in the *2001 Public Notice*.

⁵ See *2001 Public Notice* at paras. 11-12.

⁶ The Flexible Deployment Program remains in effect with respect to non-packet based services.

Considerable Commission staff time and resources have been devoted to evaluating each submitted 107(c) petition. However, the filing guidelines announced in the *2001 Public Notice* were significantly predicated upon carrier enrollment in the Flexible Deployment Program, and our complete review presumes effective consultation with the Department of Justice in the context of a working Flexible Deployment program. In light of the FBI's recent decision to terminate Flexible Deployment relating to packet-mode functionalities, and in view of the FBI's stated inability to determine, based on its review of carrier-submitted templates, whether any carrier will be compliant with packet-mode requirements by November 19, we find that we are unable to take final action on the pending petitions before November 19, 2003. As a result, we have decided to extend the current preliminary extensions for packet-mode services to January 30, 2004. This short extension will enable us to assess what additional steps may be necessary to decide the pending 107(c) petitions. We caution carriers that we will not routinely grant further blanket extensions pursuant to CALEA section 107(c), but expect all carriers to comply with CALEA section 103 requirements with respect to packet-mode communications electronic surveillance capability mandates at the earliest practicable date.⁷

Accordingly, we hereby determine that wireline and wireless carriers that have filed with the FCC facially complete extension requests in accordance with the *2001 Public Notice* are deemed to have a further preliminary extension of the deadline for complying with CALEA section 103 with respect to packet-mode communications electronic surveillance capability until January 30, 2004, unless superseded by an earlier, final determination on the merits of particular underlying extension requests.

The Department of Justice and FBI, as well as other parties, have filed comments in the Commission's wireline broadband and cable modem proceedings (CC Docket Nos. 02-33, 95-20, 98-10 and CS Docket No. 02-52), addressing the matter of whether certain services that are provided using packet-mode technology are subject to CALEA. These matters will be addressed by the Commission at a later time. Nothing in this public notice prejudices the Commission's deliberations in the rule making proceedings.

For further information regarding these petitions, please contact Thomas J. Beers of the Wireline Competition Bureau at (202) 418-0952 or John Spencer of the Wireless Telecommunications Bureau at (202) 418-1896.

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⁷ We recognize that particular factors and conditions might necessitate continuing 107(c) extension grants for particular classes of carriers, for example, small and rural telephone companies. We are confident that we can work with carriers and manufacturers, as well as with the FBI/Department of Justice, to appropriately encourage CALEA implementation in such cases.