



**FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

DA 04-3589  
November 16, 2004

John T. Scott, III  
Verizon Wireless  
1300 I Street, NW Suite 400-W  
Washington, DC 20005-3314

Re: CALEA Section 107(c) Extension Petition  
Deadline for Packet-Mode Communications  
Verizon Wireless  
TRS Nos. 803807 et al.

Dear Mr. Scott:

This responds to the petition you filed on behalf of Verizon Wireless (“Verizon”) on January 30, 2004, seeking an extension of the deadline for Verizon to comply with its assistance capability obligations for its packet-mode services as required by Section 103(a) of CALEA, 47 U.S.C. § 1002(a).<sup>1</sup> The compliance deadline, June 30, 2004, has passed; and for the reasons stated herein, we deny Verizon’s request for a further extension to June 30, 2005 with regard to its push-to-talk service (PTT).<sup>2</sup> We hold in abeyance Verizon’s extension request with regard to other packet-mode services. This is consistent with our practice regarding packet-mode extension requests filed during the pendency of the CALEA implementation rulemaking.<sup>3</sup>

In 1999, the Commission determined that wireless push-to-talk dispatch services, by whatever technology provided, are subject to CALEA requirements when offered in conjunction with interconnected PSTN service.<sup>4</sup> On September 28, 2001, the Common Carrier and Wireless

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<sup>1</sup> Petition in letter form dated Jan. 30, 2004 from John T. Scott, III, Vice President and Deputy General Counsel, Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC (Verizon Petition).

<sup>2</sup> The June 30, 2004 deadline was established in November, 2003. 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, *Public Notice*, 18 FCC Rcd 24243 (WCB/WTB 2003) (*November 2003 Public Notice*).

<sup>3</sup> See Communications Assistance for Law Enforcement Act and Broadband Access and Services, ET Docket No. 04-295, RM-10865, *Notice of Proposed Rulemaking and Declaratory Ruling*, 19 FCC Rcd 15676, 15728 at para. 101 (Aug. 9, 2004) (*CALEA NPRM*).

<sup>4</sup> Communications Assistance for Law Enforcement Act, *Second Report and Order*, CC Docket No. 97-213, 15 FCC Rcd 7105, 7117-18 para. 22, 7120 para. 27 n.69 (“CALEA, like the Communications Act, is technology neutral. Thus, a carrier’s choice of technology when offering common carrier services does not change its obligations under CALEA.”) (1999) (*CALEA Second Report and Order*). The Commission recently reiterated that push-to-talk services – even those that may use different technologies, such as a packet-mode network based on more advanced wireless protocols – continue to be subject to the requirements of CALEA where the delivery of

Telecommunications Bureaus released a Public Notice addressing, *inter alia*, the compliance deadline for packet-mode communications.<sup>5</sup> The *September 2001 Public Notice* provided that carriers choosing to participate in the Flexible Deployment Program applicable to packet-mode communications could apply for an extension of the CALEA compliance deadline by referencing the carrier's participation in the program and provide a copy of the information submitted to the FBI.<sup>6</sup> The *September 2001 Public Notice* further provided that upon the filing of a facially complete petition for extension, the carrier would be deemed to have received a preliminary extension for the period requested in its filing, until the preliminary determination is superceded by a Commission determination on the merits, but not to exceed the two-year limit provided by section 107(c)(3)(B).<sup>7</sup>

Verizon first offered its PTT service to the public in August 2003, without a CALEA solution in place.<sup>8</sup> In September 2003, the FBI announced the discontinuance of its Flexible Deployment Program with respect to packet-mode communications.<sup>9</sup> On November 19, 2003, the Wireline Competition and Wireless Telecommunications Bureaus released a Public Notice announcing the FBI's discontinuance of flexible deployment with respect to packet-mode services, and extended the preliminary extensions for packet-mode services to January 30, 2004.<sup>10</sup> The *November 2003 Public Notice* cautioned carriers that the Commission "will not routinely grant further blanket extensions pursuant to CALEA section 107(c), but expects all carriers to comply with CALEA section 103 requirements with respect to packet-mode communications electronic surveillance capability mandates at the earliest practicable date."<sup>11</sup>

Verizon had petitioned for an extension of the compliance deadline for packet-mode communications on November 19, 2003, and amended that petition on January 30, 2004 to reflect the *November 2003 Public Notice*. That amended petition sought to extend Verizon's packet-mode compliance deadline, including its PTT service, until June 30, 2005.<sup>12</sup> On February 19, 2004, the Department of Justice filed a Statement of Non-Support opposing Verizon's petition for extension, maintaining that Verizon failed to satisfy its burden of proof, as required under CALEA section 107(c)(2), to demonstrate why compliance with the assistance capability requirements was not reasonably achievable for its PTT service by the compliance deadline.<sup>13</sup> DoJ stated that it could not identify the

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the push-to-talk service is offered in conjunction with interconnected service to the PSTN. *CALEA NPRM*, 19 FCC Rcd at 15745 para. 149.

<sup>5</sup> 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) (*September 2001 Public Notice*).

<sup>6</sup> *Id.* at 17104-05 paras. 11-12.

<sup>7</sup> *Id.* at 17106 para. 17.

<sup>8</sup> See Federal Bureau of Investigation, Department of Justice and U.S. Drug Enforcement Administration, Statement of Non-Support Opposing Cellco Partnership d/b/a Verizon Wireless' Amended Petition for Extension of the Packet-Mode Communications Deadline Under CALEA Section 107(c), CC Docket No. 97-213, Feb. 19, 2004 at 6 (DoJ Statement).

<sup>9</sup> See Petition of Verizon to Extend Compliance Deadline for Packet-Mode Communications Pursuant to Section 107 of CALEA, CC Docket No. 97-213, Jan. 30, 2004. All other references herein to the "Verizon Petition" refer to the Scott petition in letter form on behalf of Verizon Wireless, *supra* n. 1.

<sup>10</sup> See November 2003 Public Notice.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> See Verizon Petition.

<sup>13</sup> See DoJ Statement at 14-18.

range of services affected by Verizon's packet-mode petition, and reserved its right to oppose extension of CALEA compliance obligations for other specific services.<sup>14</sup>

*Reasonable Achievability.* We are unable to determine whether CALEA compliance for Verizon's PTT service was reasonably achievable by Verizon before the time it filed its extension request. To support its extension request, Verizon had the burden of submitting information that would demonstrate that compliance was not reasonably achievable, but failed to file the requisite documentation. Further, we note that Verizon has not shown that it is entitled to rely on the "safe harbor" provisions of 107(a) for purposes of demonstrating its PTT service's compliance with the requirements of Section 103.<sup>15</sup> Finally, we have nothing before us negating DoJ's assertion that compliance with CALEA would have been "reasonably achievable" for PTT service had Verizon acted with reasonable diligence and pursued the matter earlier.<sup>16</sup>

We also note that, in its January 30, 2004 petition, Verizon could no longer rely on participation in the FBI's Flexible Deployment Program as a presumptive basis for a provisional extension, because several months prior that program had terminated. Verizon placed substantial reliance on the lack of an industry compliance standard for packet-mode services as the basis for seeking an extension.<sup>17</sup> Its reliance is misplaced because section 107(a)(3) explicitly states that the absence of standards does not relieve a carrier or manufacturer from the assistance capability obligations imposed by sections 103 and 106.<sup>18</sup> Moreover, Verizon has failed to show that a non-standard CALEA solution designed for Verizon's PTT service was not reasonably achievable during the planning and development of that service.

Verizon now describes a projected compliance schedule, consistent with its extension request, in which it relies on equipment manufacturers' estimates for the provision of the specific elements necessary for compliance. That mere averment falls short of the evidentiary standard that required Verizon to produce letters or other documentation directly from equipment vendors, which letters or other documentation listed the affected equipment, or contained a specific projected compliance schedule for the affected equipment.<sup>19</sup> However, even if Verizon had been able to produce such vendor letters, that

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<sup>14</sup> *Id.* at 2 n.3, 4.

<sup>15</sup> 47 U.S.C. § 1006(a). A carrier may be deemed in compliance if it comports with publicly available technical requirements or standards adopted by an industry association or standards-setting organization. The absence of a technical standard does not, however, relieve a carrier of its obligation to seek proprietary solutions that are reasonably achievable.

<sup>16</sup> 47 U.S.C. § 1006(c)(2).

<sup>17</sup> *See* Petition at 3-5. Paradoxically, however, Verizon later concedes that lack of an industry standard is no excuse for not complying with CALEA. *See* Petition at 4. *See also* 47 USC § 1006(a)(3).

<sup>18</sup> 47 U.S.C. § 1006(a)(3).

<sup>19</sup> Without deciding whether it is controlling here, we note that a September 28, 2001, Public Notice is instructive of the content the Commission expects in such letters, *e.g.*, 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." 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, 17105 (CC Bur., WTB, 2001).

would not alter our assessment that Verizon's compliance efforts have been deficient.

Verizon also argues that CALEA does not require carriers to delay deploying a service or technology just because standards -- "safe harbor" or otherwise -- do not exist.<sup>20</sup> Verizon's reliance on section 107(a)(3) as dispositive here is misplaced because its argument fails to consider other directly relevant provisions of CALEA, such as section 107(a)(3)(B). Section 107(a)(3)(B) states that the absence of a standard does not relieve a carrier from its CALEA obligations.<sup>21</sup> Moreover, section 106(a) requires a carrier to consult "in a timely fashion" with manufacturers of its equipment to ensure that "current *and planned* equipment" comply with CALEA capability requirements.<sup>22</sup> The correspondence submitted by DoJ demonstrates that Verizon neglected to consult with manufacturers of its equipment.

We learn, for example, from exhibits to DoJ's Statement of Non-Support that Verizon's equipment manufacturer, Motorola, offered to develop a proprietary CALEA solution for Verizon's PTT service that could have been developed as early as 2001.<sup>23</sup> Nevertheless, Verizon apparently chose not to avail itself of this opportunity to consult with Motorola about current and planned equipment which might have allowed Verizon to initially offer a compliant PTT service. The information from DoJ undercuts Verizon's claim that compliance was not reasonably achievable. Moreover, it requires that the evaluation of any further request for extension consider whether this foregone compliance opportunity, or compliance alternatives possibly available from third parties, could have made compliance for Verizon's PTT service reasonably achievable if Verizon had timely considered alternative -- albeit non-standard -- compliance solutions.

We do not consider here Verizon's separate assertion that there are significant obstacles remaining "before carriers can comply with the Commission's rules with respect to packet data." While Verizon's factual materials do not adequately distinguish the functional elements implicated by packet-mode compliance from those specifically involved in providing PTT service, this does not warrant our initiating a comprehensive review of their packet-mode request while the CALEA implementation rulemaking is developing general standards for such review. The record provided by DoJ suggests a non-standard solution for PTT service might have been reasonably achievable within the compliance deadline, but, more generally, no comparable showing regarding packet-mode services has happened.<sup>24</sup> Accordingly, we hold in abeyance that portion of Verizon's petition that pertains to packet-mode services other than PTT.

In sum, since 1999, the Commission has held that providers of wireless push-to-talk dispatch services are subject to CALEA requirements.<sup>25</sup> Verizon commenced offering its PTT service to the public in August 2003, without a CALEA solution. Further, because Verizon's petition is factually deficient, we are precluded from determining whether CALEA compliance is "reasonably achievable" within the meaning of CALEA section 107(c)<sup>26</sup> for the PTT offering now, or might have been reasonably

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<sup>20</sup> See CALEA Section 107(a)(3), 47 U.S.C. § 1006(a)(3).

<sup>21</sup> 47 U.S.C. § 1006(a)(3)(B).

<sup>22</sup> 47 U.S.C. § 1005(a) [emphasis added].

<sup>23</sup> See DoJ Statement at Exhibits B, C. We note that Verizon did not introduce PTT service until 2003; however Motorola's 2001 potential compliance solution could have been integrated into Verizon's PTT planning and design efforts.

<sup>24</sup> We note that DoJ has reserved its right to oppose Verizon's compliance extension request with regard to other packet-mode services. See n. 14, *supra*.

<sup>25</sup> *CALEA Second Report and Order*, 15 FCC Rcd 7105, 7117 (¶ 21) (1999).

<sup>26</sup> We note that Verizon's PTT service was deployed after the effective date of CALEA section 103, *i.e.*, after October 25, 1998. The pending *CALEA NPRM* seeks comment on whether section 107(c) should be interpreted to mean that such extensions are not available to equipment, facilities or services installed or deployed after October

achievable had Verizon undertaken compliance efforts at an earlier stage.<sup>27</sup> Accordingly, we hereby deny Verizon's January 30, 2004 petition. Nonetheless, we are aware that Verizon has been cooperating with the FBI in an effort to satisfy its CALEA obligations relative to its PTT service. We commend that cooperation and encourage Verizon to redouble its efforts to comply with a statute so suffused with homeland security implications.

This action is taken pursuant to authority delegated by Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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25, 1998. *See CALEA NPRM* at para. 96. The instant decision is not intended to prejudge that issue.

<sup>27</sup> The CALEA rulemaking will generally consider the relation between the development of a technical standard and the scope of a carrier's 'reasonably achievable' compliance obligation absent such a standard, as well as any differences between section 107(c) and section 109(b) in this regard. *See CALEA NPRM*.