



PUBLIC NOTICE

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FEDERAL-STATE JOINT BOARD ON JURISDICTIONAL SEPARATIONS SEEKS COMMENT ON COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA) ISSUES

CC Docket No. 80-286
ET Docket No. 04-295

Comments Due: April 1, 2005

Reply Comments Due: April 18, 2005

1. The Federal-State Joint Board on Jurisdictional Separations (“Joint Board”) requests public comment concerning jurisdictional separations issues related to the Communications Assistance for Law Enforcement Act (“CALEA”), pursuant to a referral from the Federal Communications Commission (“Commission”).¹ As explained below, the Joint Board seeks comments concerning specific questions in order to assist the Joint Board consider the manner in which CALEA-related costs and revenues should be allocated for jurisdictional separations purposes.

I. BACKGROUND

2. The Communications Act requires referral of CALEA-related cost recovery issues to the Joint Board. Specifically, § 229(e)(3) of the Act requires the Commission to convene a Federal-State Joint Board “to recommend appropriate changes to Part 36 of the Commission’s rules with respect to recovery of costs [related to CALEA compliance] pursuant to charges, practices, classifications, and regulations under the jurisdiction of the Commission.”² Pursuant to this requirement, in 1997 the Commission referred CALEA cost recovery issues to the Joint Board.³ At that time, the parties were focused on cost recovery issues related to deployment of CALEA capabilities in circuit-switched networks of telecommunications carriers and the standards for CALEA implementation had not yet been developed. Since then, a number of significant technological, marketplace, and regulatory developments have taken place, including the development of

¹See *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, Notice of Proposed Rulemaking and Declaratory Ruling, 19 FCC Rcd 15676, 15741-42, paras. 136-139 (2004) (*CALEA NPRM*).

²47 U.S.C. § 229(e)(3). Part 36 jurisdictional separations rules apply only to incumbent local exchange carriers (LECs), as defined in the Communications Act of 1934, as amended (the Act).

³*Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 12 FCC Rcd 22120, 22168-69, paras. 108-110 (1997) (*Separations NPRM*).

standards for circuit-mode and packet-mode CALEA implementation and widespread deployment of packet-switching capabilities.⁴ Meanwhile, the Joint Board recommended, and the Commission adopted, an interim freeze of the Commission's jurisdictional separations rules.⁵ The separations freeze went into effect on July 1, 2001, and is scheduled to end on June 30, 2006, absent further action by the Commission.⁶

3. As a result of the separations freeze, the Joint Board has not had the opportunity to consider fully the CALEA cost recovery issues and their implications for the jurisdictional separations rules. The Commission has therefore referred these issues to the Joint Board for consideration during the freeze. In addition, the Commission has asked that the public refresh the record on the CALEA issues identified in the *Separations NPRM*, including the questions of whether costs should be allocated in a new CALEA-specific category or in previously-existing categories, whether revenues received from the Attorney General should be allocated in a particular manner (and if so, how), and whether CALEA-related revenues could be allocated to the jurisdictions based on relative-use factors derived from the relative electronic surveillance requirements of federal, state, and local law enforcement agencies ("LEAs"). The Commission has requested that the Joint Board issue its recommended decision no later than one year from the release of the *Notice*, that is, by August 9, 2005.

II. SEPARATIONS TREATMENT OF CALEA-RELATED COSTS

4. CALEA is a federal enactment that seeks to balance three important public policies: "(1) to preserve a narrowly focused capability for law enforcement agencies to carry out properly authorized intercepts; (2) to protect privacy in the face of increasingly powerful and personally revealing technologies; and (3) to avoid impeding the development of new communications services and technologies."⁷ CALEA was enacted on October 24, 1994, and requires telecommunications carriers to modify and design their equipment, facilities, and services to support the electronic surveillance needed by LEAs. Section 103 of CALEA requires telecommunications carriers to ensure that their facilities enable law enforcement officials, pursuant to authorization, to intercept and access call-identifying information that is reasonably available to the carrier. Section 104 of CALEA requires that carriers comply with capacity requirements established by the Attorney General. These capacity requirements are to aid telecommunications carriers in developing and deploying solutions to meet the assistance capability requirements of section 103.

5. Sections 109 and 104(e) of CALEA grant the Attorney General authority, subject to the availability of appropriations, to reimburse a telecommunications carrier for the reasonable costs associated with compliance with the assistance capabilities and capacity requirements. The Joint Board seeks comment on whether and how to separate the costs a carrier may incur and the reimbursements (revenues) a carrier may receive in establishing the capabilities and capacity necessary to comply with CALEA sections 103 and 104. Specifically, we seek comment on the following:

- a. What equipment, investments, and other costs (including expenses) can or should be considered to be related to CALEA compliance?

⁴*CALEA NPRM*, 19 FCC Rcd at 15741, para. 137.

⁵*Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Recommended Decision, 15 FCC Rcd 13160 (Fed-State Jt. Bd. on Jurisdictional Separations 2000); *Jurisdictional Separations and Referral to the Federal State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382 (2001) (*Separations Freeze Order*).

⁶*Separations Freeze Order*; 47 C.F.R. § 36.3 (codifying separations freeze requirements).

⁷H.R. Rep. No. 103-827, 103rd Cong., 2d Sess., pt. 1, at 13 (1994) ("House Report").

- b. Who are the users (anticipated and historical) of CALEA-related services (*i.e.*, federal, state, or local LEAs, or others)? What has been their relative usage, and do you expect that relationship to change in the future? If so, how?
- c. Should CALEA-related costs incurred be allocated to a single category identified as CALEA-related expenses or should the costs associated with compliance be allocated to the existing separations categories or subcategories within them?
- d. If changes to Part 36 are required or appropriate, are any similar or related changes required in Part 32 or in any other Commission rules?
- e. Should CALEA-related revenues received from the Attorney General be allocated to ensure that revenues follow their associated costs to a particular jurisdiction?
- f. Should CALEA-related costs for circuit-based capabilities be separated, and if so, how should the associated costs and revenues be allocated for jurisdictional separations purposes?
- g. Should CALEA-related costs for packet-mode capabilities be separated, and if so, how should the associated costs and revenues be allocated for jurisdictional separations purposes?
- h. Should the interim freeze of the Commission's jurisdictional separations rules⁸ affect the treatment of CALEA-related costs? If there are any recommended changes to Part 36 of the Commission's rules, should they wait until the end of the freeze, or should the frozen factors and categories be adjusted during the freeze?
- i. In addition, we seek comment on three alternative proposals for the appropriate jurisdictional separation of CALEA-related costs and revenues:
 - i. Should all CALEA-related costs and revenues be directly assigned to the Federal jurisdiction, based on the fact that CALEA is a Federal mandate?
 - ii. Should CALEA-related costs and revenues be allocated between jurisdictions based on relative-use factors derived from the relative electronic surveillance requirements of the LEAs?
 - iii. Should CALEA-related costs and revenues be allocated between jurisdictions based on a fixed factor, and if so, what should the fixed factor be based on?

The Joint Board also invites additional proposals for our consideration.

III. PROCEDURAL MATTERS

6. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before April 1, 2005, and reply comments on or before April 18, 2005. All pleadings are to reference CC Docket No. 80-286 and ET Docket 04-295. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in

⁸*See* note 5, *supra*.

Rulemaking Proceedings, 63 FR 24121 (1998).

7. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, “get form <your e-mail address>.” A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

8. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). One (1) courtesy copy should also be sent to Sheryl Todd, Wireline Competition Bureau, FCC, Room 5-B540, 445 12th Street, SW, Washington, DC 20554.

9. The Commission’s contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

10. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

11. This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. See 47 C.F.R. §§ 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations 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). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission’s rules, 47 C.F.R. § 1.1206(b).

12. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. The complete text of this Public Notice may be purchased from the Commission’s duplicating contractor, BCPI, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail at www.bcpiweb.com.

13. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). This *Public Notice* can also be downloaded in Word and Portable Document Format at <http://www.fcc.gov/wcb/tapd/sep/welcome.html>.

14. For further information, please contact Warren Firschein, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418-0844.

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