



PUBLIC NOTICE

Federal Communications Commission
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DA 06-2511
December 14, 2006
OMB Control Number 3060-0809

OMB APPROVES NEW INFORMATION COLLECTION PROCEDURES ASSOCIATED WITH CALEA SECTION 107(c) EXTENSION PETITIONS AND CALEA SECTION 109(b) COST- RECOVERY PETITIONS

ET DOCKET NO. 04-295

On May 12, 2006, the Commission released the *Second Report and Order and Memorandum Opinion and Order* in ET Docket No. 04-295 (*CALEA Second Report and Order*).¹ The *CALEA Second Report and Order*, *inter alia*, sets out new filing instructions in connection with section 107(c) and section 109(b) of the Communications Assistance for Law Enforcement Act (CALEA), 47 U.S.C. §§ 1006(c) and 1008(b). Specifically, the *CALEA Second Report and Order* imposes new requirements and procedures regarding the filing of CALEA section 107(c)(1) compliance extension petitions;² requires every telecommunications carrier with a pending section 107(c)(1) petition currently on file to file a letter that attests that its petition exclusively concerns equipment, facilities, or services installed or deployed prior to October 25, 1998 (“attesting letter”);³ and sets out requirements and procedures regarding the filing of CALEA section 109(b)(1) cost recovery petitions.⁴

The *CALEA Second Report and Order* noted that the effective date for the new CALEA section 107(c) and 109(b)(1) information collection requirements was subject to Office of Management and Budget (OMB) approval,⁵ which was granted on December 12, 2006.⁶

Compliance. The new CALEA section 107(c) and 109(b) requirements are effective immediately. All attesting letters concerning pending section 107(c)(1) petitions currently on file with the Commission must be filed no later than **February 12, 2007**. Thereafter, the Commission will dismiss all pending section 107(c)(1) petitions that include *any* equipment, facilities, or services deployed on or after October 25, 1998 as well as all pending section 107(c)(1) petitions for which attesting letters are not received. A telecommunications carrier that believes it continues to qualify for section 107(c)(1)

¹ Communications Assistance for Law Enforcement Act and Broadband Access and Services, ET Docket No. 04-295, *Second Report and Order and Memorandum Opinion and Order*, 21 FCC Rcd 5360 (2006).

² *Id.* Appendix F.

³ *Id.* at 5388 ¶ 62.

⁴ *Id.* Appendix E.

⁵ *Id.* at 5374 ¶ 30.

⁶ The Commission also will announce this approval by notification in the Federal Register.

extension relief pursuant to rule requirements adopted in the *CALEA Second Report and Order* may file a new section 107(c)(1) petition, but only if such petition exclusively concerns equipment, facilities, or services installed or deployed before October 25, 1998.

The Commission reiterates that any provider seeking cost recovery pursuant to section 109(b)(1) faces a high burden to obtain relief.⁷ *Inter alia*, a provider must demonstrate: (1) that it undertook active and sustained efforts (“due diligence”) to come into compliance with assistance capability requirements mandated by CALEA section 103, and (2) that compliance could not reasonably be achieved without significant difficulty or expense.⁸ As noted in the *CALEA Second Report and Order*, the Commission expects that providers of newly covered services will utilize the full 18-month period ending May 14, 2007, to actively promote the development of CALEA standards and their own compliance, and expects that few if any petitioners will be able to successfully demonstrate that due diligence necessary to support a CALEA section 109(b)(1) petition if it is filed before May 14, 2007.⁹ The Commission also reiterates that it will not accept jointly-filed CALEA section 109(b)(1) petitions (*i.e.*, a single petition filed on behalf of multiple carriers) due to the fact-specific nature of the inquiry required by the CALEA statute.¹⁰ Finally, the Commission once again emphasizes that, unlike a CALEA section 107(c) petition, a CALEA section 109(b)(1) petition *does not* provide an extension of the mandated CALEA compliance date. Thus, filing a section 109(b)(1) petition does not prevent enforcement of CALEA compliance requirements either by the Commission or by the Department of Justice (DOJ).

Filing Procedure. All CALEA section 107(c)(1) and 109(b)(1) petitions and attesting letters regarding pending section 107(c)(1) petitions filed pursuant to this Public Notice must reference ET Docket No. 04-295.

- Parties must file an original and four copies of each filing. 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). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
- The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 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.
- 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, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington D.C. 20554.

⁷ *CALEA Second Report and Order*, 21 FCC Rcd at 5374 ¶ 30.

⁸ *Id.* at 5373 ¶ 28.

⁹ *Id.* at 5383 ¶ 52.

¹⁰ *Id.* at 5386 ¶ 56.

- The Commission believes that CALEA section 107(c)(1) and section 109(b)(1) petitions and attesting letters are entitled to confidential treatment under the Freedom of Information Act (FOIA) and the Commission's rules.¹¹ Parties filing such documents should clearly mark each filed copy "Confidential - Not for Public Inspection."

Parties also should send a copy of their filings to:

- David Ward, Senior Legal Advisor, Policy Division, Public Safety and Homeland Security Bureau, 445 12th Street, SW, Washington, DC 20554.

Non-confidential documents in ET Docket No. 04-295 may be obtained from Best Copy and Printing, Inc., in person at 445 12th St., S.W., Room CY-B402, Washington, DC 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at FCC@BCPIWEB.COM. Non-classified documents also will be available for public inspection and copying during regular business hours in the FCC Reference Information Center, Room CY-A257, 445 12th St. S.W., Washington, DC 20554, and through the Commission's Electronic Filing System (ECFS) accessible on the Commission's Web site, <http://www.fcc.gov/cgb/ecfs>.

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 & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

For further information regarding this proceeding, contact Thomas J. Beers, Associate Chief, Policy Division, Public Safety and Homeland Security Bureau, (202) 418-0952.

FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT

As required by the Paperwork Reduction act of 1995 (44 U.S.C. § 3507), the FCC is notifying the public that it received OMB approval on December 12, 2006, for the collections of information described in this Public Notice. Public reporting burden for this collection of information is estimated to range from 1 hour to 80 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to Federal Communications Commission, AMD-PERF, Washington, DC 20554, Paperwork Reduction Project (3060-0809), or via the Internet to PRA@fcc.gov. DO NOT SEND COMPLETED APPLICATION FORMS TO THIS ADDRESS.

Under 5 CFR § 1320, an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB Control Number. This collection has been assigned OMB Control Number 3060-0809.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

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¹¹ *Id.* at 5386-87 ¶ 57.