

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of	)	
	)	
Communications Assistance for	)	CC Docket No. 97-213
Law Enforcement Act	)	

**ORDER**

**Adopted:** September 18, 2001

**Released:** September 21, 2001

**By the Commission:** Commissioner Copps issuing a statement.

**I. INTRODUCTION**

1. In this *Order*, we grant in part the relief requested by the Cellular Telecommunications & Internet Association (“CTIA”).<sup>1</sup> As requested by CTIA, we are temporarily suspending the September 30, 2001 compliance date for wireline, cellular, and broadband Personal Communications Services (“PCS”) carriers to implement two Department of Justice (“DoJ”)/Federal Bureau of Investigation (“FBI”) “punch list” electronic surveillance capabilities mandated by the *Third Report and Order* (“*Third R&O*”) in this proceeding.<sup>2</sup> We deny CTIA’s request for a blanket extension of the September 30, 2001 compliance deadline for these carriers to implement a packet-mode communications electronic surveillance capability, also mandated by the *Third R&O*. However, given the imminence of the packet-mode compliance deadline, we grant these carriers until November 19, 2001 either to come into compliance or to seek individual relief.

**II. BACKGROUND**

2. In the *Third R&O*, released in August 1999, the Commission specified technical requirements for wireline, cellular, and broadband PCS carriers to comply with the assistance capability requirements prescribed by the Communications Assistance for Law Enforcement Act of 1994 (“CALEA”).<sup>3</sup> We took this action under Section 107(b) of CALEA<sup>4</sup> in response to petitions filed with us that claimed that industry standards for electronic surveillance failed to satisfy the four general assistance capability requirements in Section 103 of CALEA.<sup>5</sup> Under Section 107(a)(2) of CALEA<sup>6</sup> (the “safe harbor” provision), carriers and manufacturers that comply with industry standards for electronic surveillance are deemed in compliance with their specific responsibilities under Sections 103 and 106 of

<sup>1</sup> At the time CTIA filed its petition, it was known as the “Cellular Telecommunications Industry Association.”

<sup>2</sup> *Third Report and Order*, CC Docket No. 97-213, 14 FCC Rcd 16794 (1999).

<sup>3</sup> Communications Assistance for Law Enforcement Act, Pub. L. No. 103-414, 108 Stat. 4279 (1994) (codified as amended in 18 U.S.C. §§ 2522, 3121, and 47 U.S.C. §§ 229, 1001-1010).

<sup>4</sup> 47 U.S.C. § 1006(b).

<sup>5</sup> 47 U.S.C. § 1002.

<sup>6</sup> 47 U.S.C. § 1006(a)(2).

CALEA.<sup>7</sup> The Commission is authorized, under Section 107(b) of CALEA, in response to a petition from any Government agency or person, to establish, by rule, technical requirements or standards if industry associations or standard-setting organizations fail to issue technical requirements or standards or if any Government agency or person believes that such requirements or standards are deficient.<sup>8</sup>

3. In the *Third R&O*, we required that wireline, cellular, and broadband PCS carriers implement all electronic surveillance capabilities of the industry interim standard, J-STD-025<sup>9</sup> – including two contested features of the interim standard, *i.e.*, a packet-mode communications capability<sup>10</sup> and a location information requirement<sup>11</sup> – and six of nine additional capabilities requested by DoJ/FBI, known as the “punch list” capabilities.<sup>12</sup> While we required a packet-mode capability, we did not adopt specific technical requirements for packet-mode communications. Rather, we permitted carriers to deliver packet-mode data to be delivered to law enforcement agencies (“LEAs”) under the interim standard pending further study of packet-mode communications by the telecommunications industry.<sup>13</sup> We required that the capabilities covered by the “core” interim standard – including all uncontested requirements of J-STD-025, as well as the contested location information requirement – be implemented by June 30, 2000,<sup>14</sup> and that the packet-mode and punch list capabilities be implemented by September 30, 2001.<sup>15</sup>

4. More specifically with respect to a packet-mode communications capability, the industry interim standard does not specify the call identifying information for packet communications, although it does indicate how some information that could be considered call-identifying (*e.g.*, time stamp, physical location of a mobile subject) could be sent with the packets under certain conditions. As a result, call-

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<sup>7</sup> 47 U.S.C. §§ 1002, 1005.

<sup>8</sup> 47 U.S.C. § 1006(b).

<sup>9</sup> The interim standard was jointly published in December 1997 by the Telecommunications Industry Association (TIA) and Committee T1, sponsored by the Alliance for Telecommunications Industry Solutions (ATIS).

<sup>10</sup> Section 3 of J-STD-025 describes packet-mode as a “communication where individual packets or virtual circuits of a communication within a physical circuit are switched or routed by the accessing telecommunication system. Each packet may take a different route through the intervening network(s).”

<sup>11</sup> J-STD-025 includes a parameter that would identify the location of a subject's “mobile terminal” whenever this information is reasonably available at the intercept access point and its delivery to law enforcement is legally authorized. Location information would be available to the law enforcement agency irrespective of whether a call content channel or a call data channel is employed. *See* J-STD-025 at § 6.46 and §§ 5.4.1-5.4.8, Tables 1, 5, 6, and 8.

<sup>12</sup> For an in-depth description of the punch list, including the three capabilities that we denied, *see Third R&O, supra* n.2, at ¶¶ 57-123. Briefly, with respect to the six capabilities that we required, “dialed digit extraction” would provide to LEAs those digits dialed by a subject after the initial call setup is completed; “party hold/join/drop” would provide to LEAs information to identify the active parties to a call; “subject-initiated dialing and signaling” would provide to LEAs access to all dialing and signaling information available from the subject, such as the use of flash-hook and other feature keys; “in-band and out-of-band signaling” would provide to LEAs messages whenever a subject's service sends a tone or other network message to the subject or associate, such as notification that a line is ringing or busy; “subject-initiated conference calls” would provide to LEAs the content of conference calls supported by the subject's service; and “timing information” would provide to LEAs information necessary to correlate call-identifying information with call content.

<sup>13</sup> *Third R&O* at ¶ 1.

<sup>14</sup> *Id.* at ¶¶ 13, 46.

<sup>15</sup> *Id.* at ¶¶ 55, 129.

identifying information and call content are not separated under the interim standard during electronic surveillance. Nevertheless, we decided as a temporary solution that packet-mode communications could be delivered to LEAs under the interim standard, to be used in accordance with the appropriate level of legal authorization.<sup>16</sup> To address privacy implications of the interim standard's packet-mode capability, we requested that the Telecommunications Industry Association ("TIA") submit to us by September 30, 2000 a report detailing a permanent solution for separating call-identifying information from call content.<sup>17</sup> On September 29, 2000, TIA submitted its report to the Commission.<sup>18</sup> In a cover letter to the report, TIA encourages the Commission to establish a procedure for implementing a permanent packet-mode electronic surveillance solution in an efficient and rational manner. The cover letter also states that the consensus among the report's participants was that providing the entire packet stream for a particular subscriber is by far the most cost-effective and technically feasible method for providing access to LEAs, but that manufacturers and carriers are unsure whether to continue expending considerable resources to develop complicated and expensive solutions for packet-mode communications consistent with J-STD-025, if it is possible that those solutions may prove to be only an interim or temporary remedy.<sup>19</sup> The TIA Report does not detail a specific technical solution for separating call-identifying information from call content. Rather, the Report discusses packet-mode technologies generally – including Internet access via a code division multiple access technology known as "cdma2000," an integrated services digital network technology known as "X.25 over ISDN," Internet protocol ("IP"), wireless Internet protocol ("Wireless IP"), asynchronous transfer mode ("ATM"), "frame relay," general packet radio service ("GPRS"), "packet-cable," and cellular digital packet data ("CDPD")<sup>20</sup> – and suggests that the FBI's "Carnivore" technology offers a potential solution for separating call-identifying information from content, yet cites numerous industry concerns with that technology, including liability and privacy.<sup>21</sup>

5. Several parties challenged in the United States Court of Appeals for the District of Columbia Circuit six capabilities required by the *Third R&O*: location information and packet-mode communications, both of which were included in J-STD-025; and dialed digit extraction, party hold/join/drop, subject-initiated dialing and signaling, and in-band and out-of-band signaling, which are four of the six punch list capabilities requested by DoJ/FBI that we added to J-STD-025.<sup>22</sup> In August 2000, the Court vacated and remanded to us for further proceedings those portions of the *Third R&O* pertaining to the four challenged punch list capabilities.<sup>23</sup> The Court upheld our findings in the *Third*

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<sup>16</sup> *Id.* at ¶¶ 55, 56.

<sup>17</sup> *Id.* at ¶ 56.

<sup>18</sup> See "Report to the Federal Communications Commission on Surveillance of Packet-Mode Technologies" ("TIA Report"), September 29, 2000.

<sup>19</sup> See Letter of September 29, 2000 from Matthew J. Flanagan, TIA President, and Grant Seiffert, TIA Vice President, Government Relations, to FCC Chairman William Kennard, at 4.

<sup>20</sup> Some of these packet-mode technologies, as well as additional packet-mode technologies such as short message service ("SMS") for cellular and Personal Communications Services, are discussed in J-STD-025. See J-STD-025 at §§ 4.5.2, 5.4.6, 6.3.6, and B.1.

<sup>21</sup> TIA Report at 11-13.

<sup>22</sup> See Brief of Petitioners United States Telecom Association, Cellular Telecommunications Industry Association, and Center for Democracy and Technology, filed January 20, 2000; and Brief of Petitioners Electronic Privacy Information Center, Electronic Frontier Foundation, and American Civil Liberties Union, filed January 20, 2000.

<sup>23</sup> See *United States Telecom Association v. FCC*, 227 F.3d 450, 463 (DC Cir. 2000) (hereinafter "*Court Remand Decision*"). The *Court Remand Decision* is available at <http://www.fcc.gov/ogc/documents/opinions/2000/99-1442.html>.

R&O regarding location information and packet-mode communications, but with respect to the latter stated: “CALEA authorizes neither the Commission nor the telecommunications industry to modify either the evidentiary standards or procedural safeguards for securing legal authorization to obtain packets from which call content has not been stripped, nor may the Commission require carriers to provide the government with information that is ‘not authorized to be intercepted.’”<sup>24</sup>

6. Following the Court’s decision, CTIA filed a petition to immediately suspend the September 30, 2001 compliance deadline for implementing the two unchallenged punch list capabilities – content of subject-initiated conference calls and timing information – and the packet-mode communications capability.<sup>25</sup> In its petition, CTIA states that the compliance deadline for those capabilities should be suspended to ensure an orderly and cost-efficient implementation of the punch list and packet-mode communications capabilities. With respect to the punch list, CTIA argues that disentangling the four vacated capabilities from the two remaining capabilities would be a complex and inefficient process.<sup>26</sup> CTIA therefore recommends that we suspend the compliance date for the entire punch list pending resolution of what capabilities are required.<sup>27</sup> With respect to packet-mode communications, CTIA argues that the Court found that telecommunications carriers could not lawfully deliver the full content of a packet to a LEA under a “pen register”<sup>28</sup> order.<sup>29</sup> CTIA further argues that we may receive petitions that request that we declare the current packet-mode standard deficient because it fails to protect the privacy of communications not authorized to be intercepted. Accordingly, CTIA argues that it would be prudent for us to suspend the packet-mode compliance deadline until we have all of the information necessary to make a realistic compliance determination.<sup>30</sup>

7. On September 1, 2000, our Office of Engineering and Technology (“OET”) placed the CTIA Petition on *Public Notice*,<sup>31</sup> and on September 15, 2000, OET received comments responding to the CTIA Petition. Subsequently, *ex parte* presentations regarding the CTIA Petition were received.<sup>32</sup> The great majority of parties support grant of the Petition. BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp., and BellSouth Wireless Data, L.P. (“BellSouth”) state that a suspension of the September 30, 2001 deadline for both punch list and packet-mode communications capabilities is warranted in light of the uncertainty created by the Court’s decision.<sup>33</sup> With respect to packet-mode communications, BellSouth concurs with CTIA that the Court found that carriers are prohibited from providing call content to LEAs pursuant to pen register orders.<sup>34</sup> BellSouth

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<sup>24</sup> *Id.* at 465.

<sup>25</sup> See “Petition to Suspend Compliance Date,” filed by CTIA on August 23, 2000.

<sup>26</sup> *Id.* at 5.

<sup>27</sup> *Id.* at 6.

<sup>28</sup> “Pen registers” capture call-identifying information, but not call content, for numbers dialed from the facility that is the subject of lawful interception.

<sup>29</sup> CTIA Petition at 6.

<sup>30</sup> *Id.* at 7.

<sup>31</sup> See “Comment Invited on CTIA Petition to Suspend CALEA Compliance Date,” DA 00-2022.

<sup>32</sup> Commenting parties, including parties making *ex parte* presentations, are listed in the Appendix.

<sup>33</sup> BellSouth Comments at 2.

<sup>34</sup> *Id.* at 7.

therefore contends that carriers cannot use J-STD-025 for packet-mode electronic surveillance, and that a new packet-mode standard must be developed that adequately protects privacy.<sup>35</sup> Cisco Systems (“Cisco”) argues that while header and content information can be separated for Internet Protocol packets, we have never offered a meaningful definition of “call-identifying information” for packet-mode communications and it is therefore unclear what information a carrier may lawfully provide to a LEA under a pen register order.<sup>36</sup> The National Telephone Cooperative Association (“NTCA”) contends that small carriers cannot meet the September 30, 2001 compliance deadline and that without a suspension of that deadline these carriers will be forced to petition the Commission for extensions of time.<sup>37</sup> USTA contends that a suspension of the deadline is warranted both for the punch list and the packet-mode capabilities because of the uncertainty created by the *Court Remand Decision*.<sup>38</sup> USTA further contends that many vendors, and in particular those vendors that serve small and mid-sized wireline carriers, will not have the punch list capabilities available to carriers by September 30, 2001.<sup>39</sup> USTA asserts that if that deadline is not suspended, many of its members would petition the Commission for an extension. Finally, USTA requests that we clarify that any carrier that may be granted an extension beyond September 30, 2001 to meet the core J-STD-025 requirements be declared exempt from meeting that deadline for the punch list and any other capability that is not contained in J-STD-025.<sup>40</sup> None of the petition’s supporters suggest a new compliance date for either the punch list or packet-mode capabilities.

8. SecureCable, Inc.<sup>41</sup> opposes any suspension of the September 30, 2001 compliance deadline because it contends that the Court decision affects only four punch list capabilities. SecureCable therefore argues that there is no basis to suspend the compliance deadline for the other two punch list capabilities and the packet-mode capability.<sup>42</sup>

9. DoJ/FBI contend that an extension of the compliance deadline is warranted only for the punch list capabilities, and recommend that the new deadline for those capabilities be six months from the date of our forthcoming decision that will address the *Court Remand Decision*.<sup>43</sup> DoJ/FBI note that when the Commission extended the general CALEA compliance date from October 25, 1998 to June 30, 2000, it concluded that six months was sufficient time for carriers to purchase, test, and install equipment throughout their networks.<sup>44</sup> DoJ/FBI also contend that a suspension of the compliance deadline for packet-mode communications is unwarranted because the Court upheld our decision with respect to such communications.<sup>45</sup> DoJ/FBI further contend that, contrary to CTIA, the Court reached no conclusion as to whether the delivery of the full content of a packet to a LEA under a pen register order would be

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<sup>35</sup> *Id.* at 8.

<sup>36</sup> Cisco Comments at 5.

<sup>37</sup> NTCA Comments at 3.

<sup>38</sup> USTA *Ex Parte* Presentation, CC Docket No. 97-213, filed April 26, 2001.

<sup>39</sup> *Id.* at 1.

<sup>40</sup> *Id.* at 2.

<sup>41</sup> SecureCable is a telecommunications equipment provider.

<sup>42</sup> SecureCable Comments at 4.

<sup>43</sup> DoJ/FBI Comments at 2-4.

<sup>44</sup> See *Memorandum Opinion and Order*, FCC 98-223, 13 FCC Rcd 17990, 18017 (1998), at ¶ 48.

<sup>45</sup> DoJ/FBI Comments at 5.

unlawful.<sup>46</sup> DoJ/FBI also note that where a Title III court order has been issued, there is no dispute that a telecommunications carrier is obligated to deliver full packet information to a LEA.<sup>47</sup> Additionally, DoJ/FBI contend that a packet-mode electronic surveillance capability is critically important to LEAs and is mandated by CALEA.<sup>48</sup> Moreover, DoJ/FBI assert that some authorized wiretaps have been frustrated by carriers' inability to facilitate surveillance of packet-mode communications. Finally, DoJ/FBI state that they have completed cooperative agreements with five major telecommunications manufacturers for CALEA software solutions that will enable carriers to provide all required CALEA capabilities – including any required punch list capabilities – to LEAs at no charge to carriers. DoJ/FBI contend that these solutions cover more than 90% of the nation's wireline and wireless lines, and that many of the solutions include the capability for carriers to “toggle”<sup>49</sup> individual punch list capabilities.<sup>50</sup>

10. In April 2000, we issued a *Public Notice* providing instructions for those carriers needing to file petitions for extension of the June 30, 2000 deadline for complying with the capability requirements of CALEA section 103.<sup>51</sup> In that *Public Notice*, we noted that section 107(c)(3)<sup>52</sup> authorizes us to extend the compliance deadline for no longer than two years from the date of the petition's grant.<sup>53</sup> We also noted that the FBI has provided each carrier an opportunity to participate in a “Flexible Deployment Program,” under which the FBI has agreed to review a carrier's extension request in light of the priorities of LEAs. We further noted that for carriers serving geographic areas that do not have a history of demand by LEAs for electronic surveillance, the FBI may advise us that extensions of the section 103 compliance deadline do not unduly threaten the public safety. Accordingly, we urged each carrier seeking an extension of the June 30, 2000 CALEA deadline to participate in the Flexible Deployment Program before submitting to us a section 107(c) petition for extension of time to comply.<sup>54</sup> A number of carriers chose to participate in the Flexible Deployment Program, and we have made preliminary determinations to suspend the June 30, 2000 deadline for many of those carriers. On August 15, 2001, our Common Carrier Bureau released an *Order* making final determinations to grant extensions of the June 30, 2000 deadline to several hundred wireline carriers.<sup>55</sup> We anticipate making final determinations on other wireline – as well as wireless – carriers' requests for extensions of that deadline in the near future. We also note that in August 2001 the FBI released a *Second Edition* of its Flexible Deployment Program. This *Second Edition* pertains to packet-mode communications and is designed to

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 6.

<sup>48</sup> DoJ/FBI *Ex Parte* Presentation, CC Docket No. 97-213, filed April 18, 2001, at 2.

<sup>49</sup> “Toggling” is a feature designed into the software that allows a particular capability to be easily switched on or off by a carrier.

<sup>50</sup> DoJ/FBI *Ex Parte* Presentation at 2.

<sup>51</sup> 47 U.S.C. § 1002. The June 30, 2000 deadline for wireline, cellular, and broadband PCS carriers concerned the capabilities covered by the core interim standard – including all uncontested requirements of J-STD-025, as well as the contested location information requirement, *see supra* ¶ 3.

<sup>52</sup> 47 U.S.C. § 1006(c)(3).

<sup>53</sup> *Public Notice*, 15 FCC Rcd at 7484, ¶ 5.

<sup>54</sup> *Id.*, 15 FCC Rcd at 7484, ¶ 6.

<sup>55</sup> *Order*, CC Docket No. 97-213, NSD-L-00-234, DA 01-1902. The maximum extensions granted were to June 30, 2002.

assist carriers in meeting packet-mode requirements mandated by CALEA.<sup>56</sup>

### III. DISCUSSION

11. There is broad agreement among industry and law enforcement that we should suspend the September 30, 2001 compliance deadline for the two unchallenged punch list capabilities, pending a final action by the Commission of what punch list capabilities will be required. We agree with the majority of commenters that retaining the current deadline for two of the punch list capabilities prior to determining the disposition of the four punch list capabilities vacated by the *Court Remand Decision* could result in major inefficiencies for carriers. Moreover, there is insufficient corresponding benefit in implementing these two capabilities by themselves to warrant disruption and costs such a severable implementation would entail. Most carriers use more than one type of switch in their networks, often from different manufacturers. Most manufacturers have developed a CALEA solution that includes all six punch list capabilities that the *Third R&O* required; some manufacturers have included the core interim standard and the punch list capabilities in one software package, others have separated the core interim standard and punch list capabilities into different software packages. Some software packages allow each punch list capability to be toggled, while other software packages do not allow toggling. In either case, carriers have to install and test the full software package. Carriers will have to test software with toggling functions to ensure that toggling off some capabilities does not interfere with the provision of other capabilities. For those software packages that do not allow toggling, carriers would have to implement the whole software package by the current September 30, 2001 deadline, absent an extension from the Commission, if the software could not be modified before then either to remove the four vacated punch list capabilities or to provide a toggle on/off function. While we believe that LEAs will cooperate with carriers to minimize the burden on carriers, we find, under these circumstances, such an approach to be inherently burdensome and inefficient. Furthermore, a temporary suspension of the compliance date for the unchallenged capabilities will ensure that all punch list capabilities that may ultimately be required will proceed on the same compliance schedule. In any event, we anticipate that we would likely receive and grant many individual petitions for extension, which would be an unwarranted exercise and expenditure of resources. While we encourage carriers to make available to LEAs any surveillance capability they have available, we recognize that the deployment of software with the punch list capabilities will vary from carrier to carrier.

12. Accordingly, pursuant to our authority to provide a reasonable time and conditions for compliance with and the transition to any new standard,<sup>57</sup> we are temporarily suspending the current September 30, 2001 deadline for all punch list capabilities, including the two unchallenged punch list capabilities (*i.e.*, subject-initiated conference calls and timing information), pending the Commission's final action on the *Court Remand Decision*. We anticipate that we will establish a new compliance date for all required punch list capabilities in time to allow carriers to be fully CALEA-compliant no later than June 30, 2002. We arrive at this outside target date because we intend to address the *Court Remand Decision* no later than year's end. We intend to act as expeditiously as possible on the remand, before year's end if possible, believing it to be a priority of this agency. The record indicates that carriers can implement any required changes to their software within six months of our decision.<sup>58</sup>

13. With regard to a packet-mode communications electronic surveillance capability, we find no need to extend the September 30, 2001 compliance deadline in the blanket manner requested by CTIA.

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<sup>56</sup> *Flexible Deployment Assistance Guide, Second Edition, Packet-Mode Communications*, OMB Control Number: 1110-0030.

<sup>57</sup> 47 U.S.C. § 1006(b).

<sup>58</sup> *See, e.g.*, ¶ 9, *supra*.

Implementation of this capability is unrelated to the implementation of the punch list capabilities. In fact, only a small percentage of telecommunications carriers use packet-mode technology. For carriers that do not use packet-mode technology, no packet-mode capability is required. However, for carriers that do use that technology, suspending the packet-mode deadline would extend the period of time in which electronic surveillance could be circumvented by use of packet-mode communications. At the outset, we note that the Court affirmed our findings in the *Third R&O* not to remove the packet-mode capability that was included in the industry established safe harbor J-STD-025. As we discussed above, the interim standard does not specify the call identifying information for packet communications. As a result, both call-identifying information and call content could be provided for electronic surveillance under the interim standard. The Court noted that nothing in our treatment of packet-mode communications requires carriers to turn over content information to LEAs absent lawful authorization, and therefore carriers have no reason to believe that they will be forced by our packet-mode decision to submit unauthorized information to LEAs.<sup>59</sup> We agree with DoJ/FBI that while parties may dispute whether a carrier may supply to a LEA the entire packet (*i.e.*, content and call-identifying information) in response to a pen register order, there appears to be no dispute that a carrier must supply the entire packet in response to a Title III order.<sup>60</sup> Thus, the interim standard for the packet capability appears to be appropriate at least in some cases, even though it does not include a standard for separating call-identifying information from the content of the packet.

14. Based on the TIA Report, it appears that there are numerous packet-mode technologies and that the development of packet-mode electronic surveillance standards governing the separation of call-identifying information from content in a manner that fully satisfies privacy concerns for each of these technologies is still in a relatively early stage. Under CALEA, development of technical requirements is left, in the first instance, to the telecommunications industry and LEAs – and not the Commission.<sup>61</sup> The absence of technical standards or requirements for implementing the assistance capability requirements of section 103<sup>62</sup> does not preclude a telecommunications carrier, manufacturer, or support service provider from deploying a technology or service or relieve those entities of their obligations under section 103.<sup>63</sup> As the Court noted in its decision, section 107(b)<sup>64</sup> defines the circumstances under which the Commission is to engage in establishing technical requirements or standards.<sup>65</sup> The Commission may act, in response to a petition, when the industry fails to issue technical requirements or standards or, if it has done so, when parties allege that the standard is deficient. The industry has not yet developed any standard for separating call-identifying information from content for packet technologies, and thus no one has petitioned us alleging deficiencies in such a standard. We also have not received a petition requesting us to establish technical requirements or standards for the separation of packet-mode call-identifying information. We do not construe TIA's transmittal letter to its

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<sup>59</sup> *Court Remand Decision*, 227 F.3d at 465-466.

<sup>60</sup> We make no finding regarding whether a carrier must supply the entire packet to a LEA in response to a pen register order. As the D.C. Circuit stated, CALEA does not authorize the Commission to modify either the evidentiary standards or procedural safeguards for securing legal authorization to obtain the entire packet. *See Court Remand Decision*, 227 F.3d at 465 (*citing* 47 U.S.C. § 1002(a)). As such, this is an issue that is left to the courts to resolve.

<sup>61</sup> 47 U.S.C. §§ 1006(a), (b).

<sup>62</sup> 47 U.S.C. § 1002.

<sup>63</sup> CALEA section 107(a)(3), 47 U.S.C. § 1006(a)(3).

<sup>64</sup> 47 U.S.C. § 1006(b).

<sup>65</sup> *Court Remand Decision*, 227 F.3d at 455.



Report as a request for the Commission to establish a packet-mode standard, but rather as a request that we facilitate the process of establishing such a standard by industry. To the extent TIA and Cisco are requesting guidance regarding the definition of “call-identifying information” with respect to packet-mode communications, our forthcoming decision addressing the *Court Remand Decision* will clarify the definition with respect to the punch list, and the clarification is likely to provide the necessary guidance for the packet-mode context as well. We anticipate a continuing dialogue with the telecommunications industry, LEAs, regulators, and consumers regarding the development of new CALEA standards, which can serve as safe harbors.<sup>66</sup>

15. We recognize that there is no industry standard for separating call-identifying information in the packet-mode context. Nonetheless, as we noted in the *Third R&O*, with many packet technologies it is fairly straightforward to separate some address information from call content.<sup>67</sup> However, in other cases, address information used by one service provider (e.g., an Internet telephony provider) may appear as packet content to another service provider (e.g., the initial phone number dialed by a caller becomes part of the content of a packet when routed by an Internet service provider up the chain of providers that receive the information). We also note that some carriers are using packet-switching technology over “softswitches,”<sup>68</sup> which carriers contend cannot be accessed by LEAs using the methods contemplated in the packet-switching standard under J-STD-025.<sup>69</sup> We understand industry is working with LEAs to establish a CALEA compliance safe harbor for softswitch technology, however, the International Softswitch Consortium has raised concerns that carriers currently using such technology will be unable to meet the September 30, 2001 compliance deadline.<sup>70</sup> We expect that, pending development of any additional industry standards for packet technology, carriers and LEAs will work cooperatively to provide requested surveillance information under lawful authorizations, taking into account current limitations of existing technologies. We emphasize that nothing in the Commission’s decision is intended to modify the evidentiary standards or procedural safeguards for securing a legal authorization to obtain packet information and that the Commission may not “require carriers to provide the government with information that is ‘not authorized to be intercepted.’”<sup>71</sup>

16. We note that carriers that believe that compliance with the assistance capability requirements under section 103<sup>72</sup> is not reasonably achievable through application of packet technology available within the compliance period may individually petition the Commission for an extension of time of the compliance date under CALEA section 107(c).<sup>73</sup> In addition, carriers that believe that compliance with the assistance capability requirements under section 103 is not reasonably achievable with respect to any equipment, facility, or service installed or deployed after January 1, 1995 may petition the Commission for a “Reasonably Achievable” determination with respect to the packet-mode capability

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<sup>66</sup> *Id.*

<sup>67</sup> *Third R&O* at ¶ 55.

<sup>68</sup> According to *Internet Telephony* magazine: “Very broadly, a softswitch provides call routing/call state functions and controls connectivity within IP networks and between IP and the public switched telephone network (PSTN).” See *Internet Telephony*, March 2001, “The Many Faces Of A Softswitch,” by Laura Thompson, at 1.

<sup>69</sup> See *ex parte* communication of May 24, 2001, CC Docket No. 97-21, filed by the International Softswitch Consortium, at 1-2.

<sup>70</sup> *Id.* at 2.

<sup>71</sup> *Court Remand Decision* at 465.

<sup>72</sup> 47 U.S.C. § 1002.

<sup>73</sup> 47 U.S.C. § 1006(c).

through the individual petition process under CALEA section 109(b).<sup>74</sup>

17. While we deny CTIA's § 107(c) petition for a blanket extension for the reasons stated above, we believe that the record supports a brief extension in order to allow carriers additional time for compliance with and transition to the packet-mode standards. Given the imminence of the September 30, 2001 deadline, we believe that a brief extension is necessary to allow carriers additional time to upgrade their systems to incorporate the packet-mode capability or to allow any carriers wishing to avail themselves of the section 107(c) petition procedure a reasonable amount of time to prepare their petitions, including the technical justification required therein. Briefly extending the deadline will also provide any carriers that wish to voluntarily participate in the FBI's Flexible Deployment Program with respect to packet-mode communications the time necessary to prepare the documentation, including technical data relating to the carrier's system, as required under the program and allow Commission staff to announce the section 107(c) filing procedures with respect to packet-mode communications. Accordingly, pursuant to our authority under section 107(b)(5) of CALEA<sup>75</sup> and sections 4(i) and (j) of the Communications Act,<sup>76</sup> we grant, *sua sponte*, an extension until November 19, 2001 for wireline, cellular, and broadband PCS carriers to implement a packet-mode capability.<sup>77</sup> We view this brief extension as extraordinary relief necessary in the interests of fairness and reasonableness and do not expect to grant any further extensions on an industry-wide basis with respect to packet-mode communications. We therefore encourage any carriers unable to meet the November 19, 2001 deadline to seek individual relief under the section 107(c) procedures. In this regard, we direct the Common Carrier Bureau and the Wireless Telecommunications Bureau to release a Public Notice further explaining the section 107(c) petitioning process with respect to packet-mode communications.

#### IV. ORDERING CLAUSE

18. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4, 229, 301, 303, and 332 of the Communications Act of 1934, as amended, and section 107(b) of the Communications Assistance for Law Enforcement Act, 47 U.S.C. §§ 151, 154, 229, 301, 303, 332, and 1006(b), the Petition to Suspend Compliance Date, filed August 23, 2000 by CTIA, is GRANTED IN PART and DENIED IN PART, to the extent discussed herein.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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<sup>74</sup> 47 U.S.C. § 1008(b).

<sup>75</sup> 47 U.S.C. § 1006(b)(5).

<sup>76</sup> 47 U.S.C. §§ 154(i) and (j).

<sup>77</sup> As discussed in n.51, *supra*, the June 30, 2000 deadline for wireline, cellular, and broadband PCS carriers concerned the capabilities covered by the core interim standard – including all uncontested requirements of J-STD-025, as well as the contested location information requirement. For all other carriers (paging, cable, satellite, *etc.*), June 30, 2000 was the deadline to implement *all* CALEA capabilities, including – if required – a packet-mode capability, unless those carriers have independently sought a section 107(c) extension from the Commission.

**APPENDIX: COMMENTING PARTIES TO CTIA PETITION**

Alliance for Telecommunications Industry Solutions  
AT&T Corp.  
AT&T Wireless Group  
BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp., and  
BellSouth Wireless Data, L.P.  
Cisco Systems, Inc.  
Department of Justice and Federal Bureau of Investigation  
International Softswitch Consortium  
Motorola, Inc.  
National Telephone Cooperative Association  
PacWest Telecomm, Inc and the Association for Local Telecommunications Services  
Rural Cellular Association  
SBC Communications, Inc.  
SecureCable, Inc.  
Sprint Corporation  
Telecommunications Industry Association  
Triton PCS Operating Company, LLC  
United States Telecom Association  
Verizon Telephone Companies

## STATEMENT OF COMMISSIONER MICHAEL J. COPPS

**RE: COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT, CC DOCKET NO. 97-213**

Pursuant to Section 107 of the Communications Assistance for Law Enforcement Act (“CALEA”),<sup>78</sup> upon the filing of an appropriate petition, this Commission must specify technical requirements for wireless carriers to comply with the assistance capability requirements prescribed by CALEA. This task is an important responsibility, affecting the ability of law enforcement agencies to have access to critical information and the obligation of wireless carriers to implement systems that will provide that information. In prior proceedings, the Commission has attempted to complete this task. Today, we move ahead to implement the September 30, 2001 compliance deadline for carrier packet-mode communication electronic surveillance capability. We also commit to making the resolution of the remaining issues a priority, while temporarily suspending one of the compliance dates pending such resolution.

Specifically, today’s Order includes a temporary suspension of the September 30, 2001 compliance date for wireless carriers to implement two Department of Justice/Federal Bureau of Investigation “punch list” electronic surveillance capabilities mandated by the Commission in a prior Commission Order.<sup>79</sup> We do so because last year the United States Court of Appeals for the District of Columbia Circuit vacated and remanded to this agency for further proceedings portions of that Order dealing with the other four of the six “punch list” items mandated by the Commission.<sup>80</sup> We conclude that implementing compliance with “punch list” items at different times could result in major inefficiencies for carriers. In suspending this compliance date, we have established outside target dates for completing our actions on the remand proceeding and mandating compliance with these aspects of CALEA.

I believe it is incumbent upon us to act as swiftly as possible on the issues posed by the court’s remand to us. I am pleased that the Order targets a date no later than the end of this year for completion of the remand proceeding and makes this proceeding a priority. I fervently hope, however, that the Commission will give this item the true priority it deserves and move forward on a date earlier than the end of the year. In the interim, I note that the Commission previously has encouraged carriers to cooperate with law enforcement agencies to achieve the capability to provide them with necessary information upon the receipt of appropriate and lawful requests.<sup>81</sup> Now, more than ever, such encouragement appears to be well founded. The events of the past week cogently demonstrate the imperative of bringing these capabilities on line as soon as possible. This is no time for “business as usual” on this issue in either the private or public sectors.

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<sup>78</sup> Pub. L. No. 103-414, 108 Stat. 4279 (1994), codified as amended, 18 U.S.C. §§ 2522, 3121 and 47 U.S.C. §§ 229, 1001-1010.

<sup>79</sup> *Third Report and Order*, CC Docket No. 97-213, 14 FCC Rcd 16794 (1999).

<sup>80</sup> *United States Telecom. Association v. FCC*, 227 F.3d 450, 463 (D.C. Cir. 2000).

<sup>81</sup> *Third Report and Order*, *supra*, at ¶ 101 (“We are confident that carriers and LEAs will work together to ensure that a wiretap is functioning correctly. We also note that there is nothing that would prevent carriers from providing this capability either on a voluntary basis, or with compensation from LEAs”).