

**FOR IMMEDIATE RELEASE**

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**UNITED STATES DEPARTMENT OF JUSTICE, WITH THE FBI AND DEA FILE  
PETITION FOR EXPEDITED RULEMAKING WITH THE FCC REQUESTING  
RESOLUTION TO ISSUES SURROUNDING THE IMPLEMENTATION OF THE  
COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA)**

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Washington, DC - On March 10, 2004, the United States Department of Justice (DOJ), Federal Bureau of Investigation (FBI), and Drug Enforcement Administration (DEA), on behalf of the entire law enforcement community, filed a joint petition before the Federal Communications Commission (FCC) for expedited rulemaking to resolve various outstanding issues associated with the implementation of the Communications Assistance for Law Enforcement Act (CALEA).

Congress enacted CALEA in 1994 to help the nation's law enforcement community maintain its ability to use court-authorized electronic surveillance as an important investigative tool in an era of new telecommunications technologies and services. Today, electronic surveillance plays a vitally important role in law enforcement's ability to ensure national security and public safety.

The petition makes a number of requests of the FCC. "The DOJ, FBI, and DEA all firmly believe the requests made and rationale provided within the petition are reasonable," stated Michael Clifford, Section Chief in charge of the FBI's CALEA implementation efforts. Clifford added that "nothing in the petition can be interpreted as a request for expanding the scope of law enforcement's authority to conduct electronic surveillance. Rather, the petition seeks the FCC clarify the responsibilities of industry; set concrete benchmarks and deadlines for completing those responsibilities; adopt the FCC's pre-existing enforcement authority to ensure compliance; and institute a cost recovery mechanism so neither the industry nor individual law enforcement agencies bear the entire burden of meeting the responsibilities."

Specifically, the petition requests the FCC establish rules that formally identify services and entities covered by CALEA, so both law enforcement and industry are on notice with respect to CALEA obligations and compliance. The petition makes this request because disagreements continue between industry and law enforcement over whether certain services are subject to CALEA. The petition requests the FCC find "broadband access" and "broadband telephony" to be subject to CALEA.

"Broadband access" subscribers have high-speed, or large bandwidth access to the public Internet through any one of a number of different methods (e.g., cable modem). The petition requests service made available by broadband access providers, namely the transmission and/or switching of information, fall within the scope of services covered by CALEA. "Broadband telephony" refers to the transmission or switching of voice communications using broadband facilities. Broadband telephony, because of its similarity to traditional telecommunications and over-whelming economic benefits to the industry, is widely forecasted to replace today's traditional local exchange services.

CALEA does not contain any specific, concrete implementation or compliance plan and it allows carriers to petition the FCC for a limitless number of two-year extensions of the compliance date. The petition requests the FCC create general rules providing for the establishment of benchmarks and deadlines for CALEA compliance for all technologies and services determined, by the FCC, to fall within CALEA's scope. The petition provides for FCC consideration, a detailed framework for a phase-in plan by providing descriptions of benchmarks and expected carrier filings in response to benchmarks. In conjunction with benchmarks and deadlines, the petition requests the FCC establish rules that specifically outline the types of enforcement action it will take against segments of the industry that fail to comply with their CALEA obligations or any CALEA implementation plan adopted by the FCC.

Congress recognized the need for industry to incorporate electronic surveillance into future service offerings, had the foresight to build in a reimbursement mechanism for then existing equipment, and gave industry multiple ways to recover costs associated with future services. However, some carriers have decided to pass on their compliance costs and significantly raise their fees to law enforcement. "If that is allowed to continue, small- and medium-sized law enforcement agencies will lose their ability to conduct electronic surveillance and effectively be priced out of using this critical tool in their ongoing efforts to protect their communities from organized crime and terrorism," warned Clifford. Therefore, the petition requests the FCC specifically find that carriers bear financial responsibility for CALEA implementation. "Only costs associated with the provisioning, or turning-on an intercept, should be passed onto law enforcement," added Clifford. "That's what is allowed under existing statutory language."

In summarizing the petition, Section Chief Clifford pointed out "the petition asks the FCC to resolve four open issues: who is covered by CALEA, how is the FCC going to ensure companies meet their responsibilities, what is the FCC going to do if that doesn't happen, and finally, the petition asks the FCC to address costs associated with compliance." To address concerns that the FBI is requesting the FCC impose too great a burden on industry, Clifford offers, "it is important to remember CALEA contains two provisions that provide an extraordinary level of flexibility. CALEA Section 103 permits a carrier to claim that certain information is not 'reasonably available.' Similarly, CALEA Section 109 gives service providers complete relief from compliance requirements deemed 'not reasonably achievable' by the FCC. The bottom line is that law enforcement must not lose its ability to do lawfully authorized electronic surveillance merely because of changing telecommunications technology."