

Dated: September 8, 1999.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region IV.*

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

#### **PART 300—[AMENDED]**

1. The authority citation for part 300 continues to read as follows:

**Authority:** 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

#### **Appendix B—[Amended]**

2. Table 1 of Appendix B to part 300 is amended by removing the site “Munisport Landfill, North Miami, Florida.”

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### **FEDERAL COMMUNICATIONS COMMISSION**

#### **47 CFR Parts 22, 24, and 64**

[CC Docket No. 97–213, FCC 99–230]

#### **Communications Assistance for Law Enforcement Act**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document adopts technical requirements for wireline, cellular, and broadband Personal Communications Services (PCS) carriers to comply with the assistance capability requirements prescribed by the Communications Assistance for Law Enforcement Act of 1994 (CALEA, or the Act). Specifically, the Commission requires that all capabilities of J–STD–025 (interim standard) and six of nine “punch list” capabilities requested by the Department of Justice (DoJ)/Federal Bureau of Investigation (FBI) be implemented by wireline, cellular, and broadband PCS carriers.

**DATES:** Effective December 23, 1999.

**FOR FURTHER INFORMATION CONTACT:** Rodney Small, Office of Engineering and Technology, (202) 418–2452; internet: rsmall@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s *Third Report and Order* (Third R&O) adopted August 26, 1999, and released August 31, 1999. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street,

SW, Washington, DC, and also may be purchased from the Commission’s duplication contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

#### **Summary of Third R&O**

1. CALEA, enacted in October 1994, was intended to preserve the ability of law enforcement officials to conduct electronic surveillance effectively and efficiently in the face of rapid advances in telecommunications technology. In enacting this statute, however, Congress recognized the need to protect privacy interests within the context of court-authorized electronic surveillance. Thus, in defining the terms and requirements of the Act, Congress sought to balance three important 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.

2. Section 103 of CALEA establishes four general “assistance capability requirements” that carriers must meet to achieve compliance with CALEA. Specifically, section 103 requires a telecommunications carrier to ensure that its equipment, facilities, and services are capable of:

(1) Isolating and enabling the government, pursuant to a lawful authorization, to intercept all wire and electronic communications;

(2) Providing to the government access to call-identifying information that is “reasonably available” to the carrier;

(3) Delivering to the government call content and call-identifying information in an acceptable form and at a remote location; and,

(4) Facilitating government access unobtrusively and in a manner that protects privacy and security.

3. CALEA does not specify how these four requirements are to be met, but section 107(a) specifies a “safe harbor” provision, whereby carriers and manufacturers are deemed CALEA-compliant if they meet publicly available standards adopted by industry. Between 1995 and 1997, Subcommittee TR45.2 of the Telecommunications Industry Association (TIA) developed an interim standard, J–STD–025, to serve as a safe harbor for wireline, cellular, and broadband PCS carriers and manufacturers under section 107(a). That standard defines services and

features required by wireline, cellular, and broadband PCS carriers to support lawfully authorized electronic surveillance, and specifies interfaces necessary to deliver intercepted communications and call-identifying information to a law enforcement agency (LEA). However, two parties filed petitions for rulemaking with the Commission, pursuant to section 107(b) of CALEA, contending that the interim standard was either overinclusive or underinclusive. Specifically, DoJ/FBI argue that the interim standard does not satisfy CALEA requirements because it fails to include the nine essential punch list capabilities, and the Center for Democracy and Technology argues that the standard is overinclusive because it includes packet-mode communications and location information.

4. The *Further Notice of Proposed Rule Making* (Further NPRM), 63 FR 63639, November 16, 1998, in this proceeding addressed these alleged deficiencies in the interim standard. In the *Further NPRM*, the Commission stated that it did not intend to reexamine any of the uncontested technical requirements of the interim standard, but would make determinations only regarding whether the 11 disputed capabilities met the assistance capability requirements specified in section 103 of CALEA.

5. The *Further NPRM* tentatively concluded that the provision by carriers to LEAs of location information and five punch list capabilities is necessary to meet the assistance capability requirements under section 103(a). Those five punch list capabilities are subject-initiated conference calls; party hold, join, drop on conference calls; subject-initiated dialing and signaling information; timing information; and dialed digit extraction (post-cut-through digits). The *Further NPRM* also tentatively concluded that the provision by carriers to LEAs of three punch list capabilities is not necessary to meet the assistance capability requirements under section 103(a). Those capabilities are surveillance status messages, continuity check tones, and feature status messages. Finally, the *Further NPRM* requested comment on the remaining punch list item—in-band and out-of-band signaling—and packet-mode communications issues.

6. The Commission emphasized in the *Further NPRM* that it was directed by the Act to take into account five factors that must be considered under section 107(b) of CALEA. Those factors are: (1) Meeting the assistance capability requirements of section 103 by cost-effective methods; (2) protecting the privacy and security of communications

not authorized to be intercepted; (3) minimizing the cost of CALEA compliance on residential ratepayers; (4) serving the policy of the United States to encourage the provision of new technologies and services to the public; and, (5) providing a reasonable time and conditions for CALEA compliance.

7. The Commission also tentatively concluded in the *Further NPRM* that, if any additional technical requirements were adopted, they could be most efficiently implemented by permitting TIA to modify J-STD-025 in accord with the Commission's determinations. The Commission stated that although TIA may have to undertake additional work to implement those additional requirements, TIA has the experience and resources to develop technical specifications and implement CALEA's requirements most rapidly. Finally, with respect to those additional requirements, the *Further NPRM* stated that the Commission would set a deadline for carrier compliance later than the June 30, 2000 CALEA compliance deadline specified in the *Memorandum Opinion and Order* in this proceeding.

8. In the *Third R&O*, the Commission found no need to reexamine the entire interim standard. The Commission stated that no deficiencies in the interim standard were identified other than with respect to location information, packet-mode communications, and the punch list. Since section 107(b) requires the Commission to resolve specific disputes raised by petition regarding alleged deficiencies in the industry standard, the Commission declined to consider other aspects of that standard not challenged in this proceeding. Moreover, by focusing only on those specific technical issues properly raised before it, the Commission stated that it will achieve greater efficiency and will permit telecommunications manufacturers and carriers to deploy CALEA solutions on a more expedited basis. Accordingly, the Commission found that wireline, cellular, and broadband PCS carriers must comply with all uncontested requirements of the interim standard by June 30, 2000.

9. In the *Third R&O*, the Commission decided that location information must be provided to law enforcement under CALEA's assistance capability requirements for "call-identifying information." CALEA defines call-identifying information as "dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications

carrier." The *Third R&O* concluded that location information identifies the "origin" or "destination" of a communication and thus is covered by CALEA. The *Third R&O*, however, did not adopt a location tracking capability. Rather, it permitted LEAs that have the proper legal authorization to receive from wireline, cellular, and broadband PCS carriers only the location of a cell site at the beginning and termination of a mobile call.

10. With respect to a packet-mode capability, the *Third R&O* decided that no specific technical requirement should be adopted because the approach taken to packet-switching technology in J-STD-025 raises significant privacy concerns, and the record is not sufficiently developed to support proposing any particular technical requirement for packet-mode communications. Under J-STD-025, LEAs would be provided with both call-identifying information and call content even in cases where a LEA is authorized only to receive call-identifying information (i.e., under a pen register). Accordingly, the *Third R&O* invited TIA to study CALEA solutions for packet-mode technology and report to the Commission by September 30, 2000 on steps that can be taken, including amendments to J-STD-025, that will better address privacy concerns. In the interim, the *Third R&O* permitted packet-mode communications, including call-identifying information and call content, to be delivered to LEAs under the interim standard. Further, the *Third R&O* required that packet-mode communications be delivered to LEAs under the interim standard no later than September 30, 2001.

11. With respect to the nine punch list items, the *Third R&O* added to J-STD-025 the five items that were proposed in the *Further NPRM* as capabilities mandated by CALEA, and excluded from the final industry standard the three items that the *Further NPRM* tentatively found were not capabilities mandated by CALEA. The *Further NPRM* also added to J-STD-025 the item on which the Commission requested comment.

12. Specifically, the following punch list items were included in the final industry standard:

- (1) Content of subject-initiated conference calls—Would enable law enforcement to access the content of conference calls supported by the subject's service (including the call content of parties on hold).

13. The *Third R&O* found that CALEA permits law enforcement to access the

content of subject-initiated conference calls. With appropriate lawful authorization, the LEA is entitled to "all wire and electronic communications carried by the carrier within a service area to or from equipment, facilities, or services of a subscriber." When a subject is a participant in a conference call using facilities that have been placed under surveillance pursuant to a court order, the *Third R&O* concluded that CALEA requires delivery to law enforcement of all portions of a call to the extent the carrier's system architecture permits. However, as the Commission noted in the *Further NPRM*, different carriers provide conference calling features in various ways and not all carriers' system architecture is the same. Conference calling features include various types of multi-party calls, such as three-way calling where a bridge is established in the subscriber's serving switch, as well as "meet me" or conference bridge services where a bridge is established at a remote switch of another carrier. In the case of the latter type of bridge calls, when the subject terminates his circuit connection to the conference call, the communication between other participants no longer is to or from the subscriber's equipment, facilities, and services, and may no longer even be carried by the carrier within a service area to or from the subscriber of the carrier. The *Third R&O* concluded that it is not reasonable in such circumstances to require the carrier to provide the communications of other parties continuing on the conference call because to do so would not be a cost-effective method of implementing the conference call intercept and may not protect the privacy and security of communications not authorized to be intercepted.

Finally, the *Third R&O* concluded that the anticipated costs to carriers of adding a conference call capability are not so exorbitant as to require automatic exclusion of the capability. In percentage terms, based on revenue data submitted by five manufacturers, these costs would be 4% of the core J-STD-025 and 9% of the total punch list.

- (2) Party hold, join, drop on conference calls—Messages would be sent to law enforcement that identify the active parties of a call. Specifically, on a conference call, these messages would indicate whether a party is on hold, has joined or has been dropped from the conference call.

14. The *Third R&O* concluded that party hold/join/drop information falls within CALEA's definition of "call-

identifying information" because it is "signaling information that identifies the origin, direction, destination, or termination of each communication generated or received" by the subscriber. Party join information appears to identify the origin of a communication; party drop, the termination of a communication; and party hold, the temporary origin, temporary termination, or re-direction of a communication. This capability also appears to be necessary to enable law enforcement to isolate call-identifying and content information because, without it, a LEA would be unable to determine who is talking to whom, and, more accurately, to focus on the subject's role in the conversation. Further, the important privacy objectives set forth by CALEA are enhanced if law enforcement can better ascertain and isolate communications involving the subject from those involving only innocent third parties.

15. Finally, the *Third R&O* concluded that party hold/join/drop information is reasonably available to the carrier in those cases where the carrier's facilities, equipment or services are involved in providing the service, and that the anticipated costs to carriers of adding this capability are not so exorbitant as to require automatic exclusion of the capability. In percentage terms, based on the manufacturers' aggregate revenue estimates, these costs would be 7% of the core J-STD-025 and 15% of the total punch list. To the extent that customer premises equipment (CPE) is used to provide party hold/join/drop information, the *Third R&O* concluded that such information is not reasonably available to the LEA since no network signal would be generated.

(3) Subject-initiated dialing and signaling information—Access to all dialing and signaling information available from the subject would inform law enforcement of a subject's use of features (such as the use of flash-hook and other feature keys).

16. The *Third R&O* concluded that subject-initiated dialing and signaling information fits within the definition of call-identifying information contained in section 102(2) of CALEA. Call-forwarding signaling information identifies the direction and destination of a call, and call-waiting signaling information identifies the origin and termination of each communication. The *Third R&O* also concluded that access to subject-initiated dialing and signaling information may be necessary in order for the LEA to isolate and correlate call-identifying and call

content information. Knowing what features a subject is using will ensure that the LEA receives information "in a manner that allows it to be associated with the communication to which it pertains." For example, without knowing that a subject has switched over to a call on call-waiting, the LEA may not be able to associate the call-identifying information with the call content to which it pertains and thus could be more likely to mistake one call for another. Finally, the *Third R&O* concluded that the anticipated costs to carriers of adding this capability are not so exorbitant as to require automatic exclusion of the capability. In percentage terms, based on the manufacturers' aggregate revenue estimates, these costs would be 4% of the core J-STD-025 and 8% of the total punch list. To the extent CPE is used to perform the signaling and no network signal is generated, that information is not reasonably available to a carrier, and thus, is not required to be provided.

(4) In-band and out-of-band signaling (notification message)—A message would be sent to law enforcement whenever a subject's service sends a tone or other network message to the subject or associate (e.g., notification that a line is ringing or busy, call waiting signal).

17. The *Third R&O* stated that modern networks are capable of using many types of in-band and out-of-band signals. Certain types of signals, such as ringing and busy signals, clearly fall within the scope of call-identifying information because they indicate information about the termination of a call. Other types of signals, however, may simply be used by carriers for supervision or control of certain functions and features of the network and do not trigger any audible or visual message to the subscriber and, thus, would not be call-identifying information. The *Third R&O* thus concluded that in-band and out-of-band signals that are generated at the intercept access point (IAP) toward the subscriber (e.g., call waiting or stutter dial tone) and that are being used for call processing purposes are call identifying information that is reasonably available to the carrier. Other signals that provide call identifying information (e.g., busy, fast busy, audible ringing tone), although generated elsewhere in the carrier's network, pass through the IAP on their way to the subject even if they are not used for call processing and can be made available without excessive modifications to the network and thus are reasonably available to the carrier.

Finally, the *Third R&O* concluded that the anticipated costs to carriers of adding this capability are not so exorbitant as to require automatic exclusion of the capability. In percentage terms, based on the manufacturers' aggregate revenue estimates, these costs would be 6% of the core J-STD-025 and 14% of the total punch list. To the extent CPE is used to perform the signaling and no network signal is generated, that information is not reasonably available to a carrier, and thus, is not required to be provided.

(5) Timing information—Information would be sent to a LEA permitting it to correlate call-identifying information with the call content of a communications interception.

18. The *Third R&O* concluded that a timing information requirement is an assistance capability requirement of section 103 of CALEA. First, the *Third R&O* found that time stamping is call-identifying information as defined in section 102(2) of CALEA. This information is needed to distinguish among several calls occurring at approximately the same time. In other words, time stamp information is needed to identify "the origin, direction, destination, or termination" of any given call and, thus, fits within the statutory definition of section 102(2). Second, the *Third R&O* found that delivery of time stamp information to the LEA must, pursuant to section 103(a)(2), be provided in such a timely manner to allow that information "to be associated with the communication to which it pertains." Finally, the *Third R&O* found that the anticipated costs to carriers of adding this capability are not so exorbitant as to require automatic exclusion of the capability. In percentage terms, based on the manufacturers' aggregate revenue estimates, these costs would be 2% of the core J-STD-025 and 5% of the total punch list.

(6) Dialed digit extraction—A carrier would provide to a LEA on the call data channel any digits dialed by the subject after connecting to another carrier's service.

19. The *Third R&O* found that some digits dialed by a subject after connecting to a carrier other than the originating carrier are call-identifying information. While a subject may dial digits after the initial call set-up that are not call-identifying—e.g., a bank account number to access his/her bank statement—some digits dialed after connecting to an interexchange carrier identify the "origin, direction, destination or termination" of communications. With respect to

whether this call-identifying information is "reasonably available" to the originating carrier, under the interim standard's definition of "reasonably available call-identifying information" it would not be, because call-identifying information is "reasonably available" only if it is present at an IAP for call processing purposes. However, the *Third R&O* found that this definition should be modified. Specifically, the *Third R&O* found that if call-identifying information is present at an IAP and can be made available without the carrier being unduly burdened with network modifications, that information should be deemed "reasonably available." The record indicates that digits dialed by a subject after connecting to another carrier can be obtained from the originating carrier without that carrier being unduly burdened with network modifications.

20. Additionally, the *Third R&O* noted that there appears to be a consensus that LEAs should be permitted to obtain in some fashion digits dialed by the subject after connecting to another carrier's service. The Personal Communications Industry Association, Ameritech, and BellSouth have proposed alternative methods of extracting such digits, and these methods would minimize the expense to originating carriers. However, each alternative method would shift the cost burden to LEAs, and each would also raise significant privacy concerns.

21. Accordingly, the *Third R&O* found that adopting the *Further NPRM* proposal rather than one of the three alternatives suggested in the comments will best balance the directives of section 107(b) of CALEA that the capability requirements of section 103 be met by cost-effective methods and that the privacy and security of communications not authorized to be intercepted be protected. The *Third R&O* noted that the manufacturers' revenue data indicate that the cost of a dialed digit extraction capability would exceed the cost of any other punch list capability. In percentage terms, based on the manufacturers' aggregate revenue estimates, this cost would be 13% of the core interim standard and 29% of the total punch list. Based on the manufacturers' wireless revenue estimates, this cost would be 17% of the core J-STD-025 and 26% of the total punch list. However, in balancing these costs against other statutory requirements, the *Third R&O* found them not to be so exorbitant as to require automatic exclusion of the capability. Further, it is unclear whether any of the alternative methods proposed would be significantly less expensive;

rather, they would simply shift the cost burden from carriers to LEAs.

22. The following punch list items were excluded from the final industry standard:

- (1) Surveillance status—This capability would require the carrier to send a message to law enforcement to verify that a wiretap has been established and is still functioning correctly.

23. The *Third R&O* concluded that providing surveillance status information does not constitute a technical requirement necessary for meeting CALEA's assistance capability requirements. Although CALEA requires carriers to ensure that authorized wiretaps can be performed in an expeditious manner—and the *Third R&O* found that a surveillance status message could assist carriers and law enforcement in determining the status of such wiretaps—the *Third R&O* also found that this feature does not fall within any of the assistance capability requirements expressly set forth in CALEA. This feature does not appear to be call-identifying information as defined by CALEA, since the information that such a feature would provide would not identify "the origin, direction, destination, or termination of each communication." The FBI's contrary interpretation is that this feature fits within CALEA's requirement that a carrier "shall ensure" that its system is capable of meeting the section 103(a) requirements. The *Third R&O* noted, however, that the plain language of the Act—"a telecommunications carrier shall ensure that its equipment, facilities, or services \* \* \* are capable of" intercepting communications and allowing law enforcement access to call identifying information—appears to mandate compliance with the assistance capability requirements but not to require that such capability be proven or verified on a continual basis.

- (2) Continuity check tone (C-tone)—Electronic signal that would alert law enforcement if the facility used for delivery of call content interception has failed or lost continuity.

24. The *Third R&O* concluded that providing a C-tone does not constitute a CALEA technical requirement. As with the case of surveillance status, above, the *Third R&O* found that this feature could assist law enforcement to determine the status of a wiretap, but it does not fit within the assistance capability requirements expressly set forth in CALEA because the information such a feature would provide would not identify "the origin, direction,

destination, or termination of each communication." Nor does it appear to be required under section 103(a)(1), since it is not a wire or electronic communications carried on a carrier's system. The plain language of the statute mandates compliance with the capability requirements of section 103(a), but does not require that such capability be proven or verified on a continual basis. Ensuring that a wiretap is operational can be done in either a technical or non-technical manner, and section 103(a) does not include "insurance" itself as a capability. Thus, the *Third R&O* concluded that the continuity tone punch list item is not an assistance capability requirement under section 103.

- (3) Feature status—Would affirmatively notify law enforcement when, for the facilities under surveillance, specific subscription-based calling services are added or deleted, even when the subject modifies capabilities remotely through another phone or through an operator.

25. The *Third R&O* concluded that provision of feature status messages does not constitute a CALEA technical requirement. As with the cases of surveillance status messages and continuity tones, the *Third R&O* found that feature status messages could be useful to an LEA, but that provision of these messages from a carrier to an LEA does not fit within the assistance capability requirements expressly set forth in CALEA. First, *Third R&O* stated that it is clear that feature status messages do not constitute call-identifying information because they do not pertain to the actual placement or receipt of calls. Further, feature status messages do not appear to be necessary to intercept either wire or electronic communications carried on a carrier's system. Rather, they would simply aid an LEA in determining how much capacity is required to implement and maintain effective electronic surveillance of a target facility, information that could be useful in assuring that an interception is fully effectuated and the intercepted material delivered as authorized. However, the information that would be provided by feature status messages can be provided by other means, such as a subpoena to the carrier. In any event, the plain language of the Act appears to mandate compliance with the assistance capability requirements, but does not appear to require carriers to implement any specific quality control capabilities to assist law enforcement.

26. Finally, the *Third R&O* found that the new required capabilities can be most efficiently implemented by permitting TIA Subcommittee 45.2 to make the modifications. LEAs, carriers, and manufacturers are voting members of the Subcommittee, and the Subcommittee has the experience and resources in place to resolve these issues quickly. Regarding the specific timing requirements, *Third R&O* found that seven months; *i.e.*, by March 30, 2000, is a reasonable period of time for TIA to complete the necessary changes to J-STD-025. Commission staff will closely monitor the development of the revised standard, but will not participate directly so that the Commission can maintain its impartiality in the event of disputes relative to the revised standard.

27. The *Third R&O* specified that wireline, cellular, and broadband PCS carriers make the six punch list capabilities available to LEAs in the same timeframe as packet-mode communications; *i.e.*, by September 30, 2001. Relative to implementation of the core J-STD-025, this will provide carriers an additional 15 months to implement these capabilities. Because manufacturers have had development of these capabilities under consideration for several years, the *Third R&O* found that this additional time will prove sufficient for the development process to be completed and for carriers to implement these capabilities.

#### Ordering Clauses

28. Accordingly, *it is ordered* that, pursuant to sections 1, 4, 229, 301, 303, and 332 of the Communications Act of 1934, as amended, and 107(b) of the Communications Assistance for Law Enforcement Act, 47 U.S.C. 151, 154, 229, 301, 303, 332, and 1006(b), the *Third Report and Order* and the rules specified herein *are adopted*.

#### Final Regulatory Flexibility Analysis

29. As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further NPRM*.<sup>2</sup> The Commission sought written public comments on the proposals in the *Further NPRM*, including the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

<sup>1</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> 63 FR 63639, November 16, 1998, 13 FCC Rcd 22632 (1998).

<sup>3</sup> See 5 U.S.C. 604.

#### (A) Need for and Purpose of This Action

30. The *Third Report and Order* responds to the legislative mandate contained in the Communications Assistance for Law Enforcement Act, Public Law 103-414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.). The Commission, in compliance with 47 U.S.C. 229, promulgates rules in the *Third Report and Order* to ensure the prompt implementation of section 103 of CALEA. In enacting CALEA, Congress sought to balance three key policies with CALEA: "(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."

31. The rules adopted in this *Third Report and Order* implement Congress's goal to balance the three key policies enumerated above. The objective of the rules is to implement as quickly and effectively as possible the national telecommunications policy for wireline, cellular, and broadband PCS telecommunications carriers to support the lawful electronic surveillance needs of law enforcement agencies.

#### (B) Summary of the Issues Raised by Public Comments Made in Response to the IRFA

32. Summary of Initial Regulatory Flexibility Analysis (IRFA). In the *Further NPRM*, the Commission performed an IRFA and asked for comments that specifically addressed issues raised in the IRFA. No parties filed comments directly in response to the IRFA. In response to non-IRFA comments to the *Further NPRM*, we have modified several of the Commission's proposals, particularly regarding packet switching, conference call content, in-band and out-of-band signaling, and timing information, as discussed above.

#### (C) Description and Estimates of the Number of Entities Affected by This Third Report and Order

33. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the action taken.<sup>4</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>5</sup>

<sup>4</sup> 5 U.S.C. 603(b)(3).

<sup>5</sup> *Id.* 601(6).

In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>6</sup> A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>7</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>8</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>9</sup> And finally, "small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."<sup>10</sup> As of 1992, there were approximately 85,006 such jurisdictions in the United States.<sup>11</sup> This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.<sup>12</sup> The United States Bureau of the Census (Census Bureau) estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. We further describe and estimate the number of small business concerns that may be affected by the actions taken in the *Third Report and Order*.

34. As noted, under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.<sup>13</sup> The SBA has defined a small business for Standard Industrial

<sup>6</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

<sup>7</sup> Small Business Act, 15 U.S.C. 632.

<sup>8</sup> 5 U.S.C. 601(4).

<sup>9</sup> 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

<sup>10</sup> 5 U.S.C. 601(5).

<sup>11</sup> U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

<sup>12</sup> *Id.*

<sup>13</sup> 15 U.S.C. 632. See, e.g., *Brown Transport Truckload, Inc. v. Southern Wipers, Inc.*, 176 B.R. 82 (N.D. Ga. 1994).

Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.<sup>14</sup> We first discuss the number of small telecommunications entities falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules.

35. Total Number of Telecommunications Entities Affected. The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.<sup>15</sup> This number contains a variety of different categories of entities, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."<sup>16</sup> For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the actions taken in this Third Report and Order.

36. The most reliable source of current information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS).<sup>17</sup> According to data in the most recent report, there are 3,604 interstate carriers.<sup>18</sup> These include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange

carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

37. We have included small incumbent local exchange carriers (LECs) in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."<sup>19</sup> The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.<sup>20</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

38. Wireline Carriers and Service Providers (SIC 4813). The Census Bureau reports that there were 2,321 telephone communications companies other than radiotelephone companies in operation for at least one year at the end of 1992.<sup>21</sup> All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone

companies that may be affected by the actions taken in this Third Report and Order.

39. Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, and Resellers. Neither the Commission nor SBA has developed a definition of small LECs, interexchange carriers (IXCs), competitive access providers (CAPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>22</sup> The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS.<sup>23</sup> According to our most recent data, there are 1,410 LECs, 151 IXCs, 129 CAPs, and 351 resellers.<sup>24</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small entity LECs or small incumbent LECs, 151 IXCs, 129 CAPs, and 351 resellers that may be affected by the actions taken in the *Third Report and Order*.

40. Wireless Carriers (SIC 4812). The Census Bureau reports that there were 1,176 radiotelephone (wireless) companies in operation for at least one year at the end of 1992, of which 1,164 had fewer than 1,000 employees.<sup>25</sup> Even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small

<sup>19</sup> 5 U.S.C. 601(3).

<sup>20</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499 (1996), 61 FR 45476, August 29, 1996.

<sup>21</sup> 1992 Census, *supra*, at Firm Size 1-123.

<sup>22</sup> 13 CFR 121.210, SIC Code 4813.

<sup>23</sup> See 47 CFR 64.601 *et seq.*; Carrier Locator at Fig. 1.

<sup>24</sup> Carrier Locator at Fig. 1. The total for resellers includes both toll resellers and local resellers. The TRS category for CAPs also includes competitive local exchange carriers (CLECs) (total of 129 for both).

<sup>25</sup> United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) ("1992 Census").

<sup>14</sup> 13 CFR 121.201.

<sup>15</sup> United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) ("1992 Census").

<sup>16</sup> 15 U.S.C. 632(a)(1).

<sup>17</sup> FCC, Carrier Locator: Interstate Service Providers, Figure 1 (Jan. 1999) (Carrier Locator). See also 47 CFR 64.601-.608.

<sup>18</sup> Carrier Locator at Fig. 1.

entity radiotelephone companies that may be affected by the actions taken in this Third Report and Order.

41. Cellular, PCS, SMR and Other Mobile Service Providers. In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the actions taken in this Second Report and Order, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes PCS, Cellular, and SMR) and Other Mobile Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to these broad subcategories, so we will utilize the closest applicable definition under SBA rules, which is for radiotelephone communications companies.<sup>26</sup> According to our most recent TRS data, 732 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services.<sup>27</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described below, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 732 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the actions taken in this Second Report and Order.

42. Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small business" for Blocks C and F as an entity that has average gross revenues of not more than \$40 million in the three previous calendar years.<sup>28</sup> These regulations defining "small business" in the context of broadband PCS auctions have been approved by SBA.<sup>29</sup> No small businesses within the SBA-approved definition bid

successfully for licenses in Blocks A and B. There have been 237 winning bidders that qualified as small entities in the four auctions that have been held for licenses in Blocks C, D, E and F, all of which may be affected by the actions taken in this Second Report and Order.

43. Cellular Licensees. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Carrier Locator data, 732 carriers reported that they were engaged in the provision of either cellular service or PCS services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 732 small cellular service carriers that may be affected by the actions taken in this Second Report and Order.

*(D) Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

44. No reporting and recordkeeping requirements are imposed on telecommunications carriers, thus burdens on carriers, including small carriers, are not increased as a result of actions taken herein.

Telecommunications carriers, including small carriers, will have to upgrade their network facilities to provide to law enforcement the assistance capability requirements adopted herein. Although compliance with the technical requirements will impose costs on carriers, the record was not sufficient to analyze thoroughly the costs to carriers, including small carriers.

*(E) Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered*

45. The need for the regulations adopted herein is mandated by Federal legislation. In the final regulations, we affirm our proposals in the *Further NPRM* to establish regulations for wireline, cellular, and broadband PCS telecommunications carriers. Costs to

telecommunications carriers will be mitigated in several ways. For example, the final regulations will require telecommunications carrier's to make available to law enforcement call identifying information when it can be done without unduly burdening the carrier with network modifications, thus allowing cost to be a consideration in determining whether the information is reasonably available to the carrier and can be provided to law enforcement. Thus, compliance with the assistance capability requirements of CALEA will be reasonable for all carriers, including small carriers. Also, under CALEA some carriers will be able to request reimbursement from the Department of Justice for network upgrades to comply with the technical requirements adopted herein, and others may be able to defer network upgrades to their normal business cycle under a plan being developed by the Department of Justice.

**Report to Congress**

46. The Commission will send a copy of this FRFA, along with this *Third Report and Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this *Third Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects**

*47 CFR Part 22*

Public mobile services.

*47 CFR Part 24*

Personal communications services.

*47 CFR Part 64*

Miscellaneous rules relating to common carriers.

Federal Communications Commission.

**Magalie Roman Salas,**  
*Secretary.*

**Rule Changes**

For the reasons discussed in the preamble parts 22, 24 and 64 of the Code of Federal Regulations is revised as follows:

**PART 22—PUBLIC MOBILE SERVICES**

1. The authority citation for part 22 continues to read as follows:

**Authority:** 47 U.S.C. 154, 222, 303, 309 and 332.

2. Part 22 is amended to add subpart J to read as follows:

<sup>26</sup> *Id.* To the extent that the Commission has adopted definitions for small entities in connection with the auction of particular wireless licenses, we discuss those definitions below.

<sup>27</sup> Carrier Locator at Fig. 1.

<sup>28</sup> 47 CFR 24.720(b)(1).

<sup>29</sup> Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532 (1994), 59 FR 37566, July 22, 1994.



## Subpart J—Required New Capabilities Pursuant to the Communications Assistance for Law Enforcement Act (CALEA)

Sec.

22.1100 Purpose.

22.1101 Scope.

22.1102 Definitions.

22.1103 Capabilities that must be provided by a cellular telecommunications carrier.

### § 22.1100 Purpose.

Pursuant to the Communications Assistance for Law Enforcement Act (CALEA), Public Law 103-414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.), this subpart contains rules that require a cellular telecommunications carrier to implement certain capabilities to ensure law enforcement access to authorized communications or call-identifying information.

### § 22.1101 Scope.

The definitions included in this subpart shall be used solely for the purpose of implementing CALEA requirements.

### § 22.1102 Definitions.

*Call identifying information.* Call identifying information means dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier. Call identifying information is "reasonably available" to a carrier if it is present at an intercept access point and can be made available without the carrier being unduly burdened with network modifications.

*Collection function.* The location where lawfully authorized intercepted communications and call-identifying information is collected by a law enforcement agency (LEA).

*Content of subject-initiated conference calls.* Capability that permits a LEA to monitor the content of conversations by all parties connected via a conference call when the facilities under surveillance maintain a circuit connection to the call.

*Dialed digit extraction.* Capability that permits a LEA to receive on the call data channel digits dialed by a subject when a call is connected to another carrier's service for processing and routing.

*In-band and out-of-band signaling.* Capability that permits a LEA to be informed when a network message that provides call identifying information (e.g., ringing, busy, call waiting signal, message light) is generated or sent by the IAP switch to a subject using the

facilities under surveillance. Excludes signals generated by customer premises equipment when no network signal is generated.

*Intercept Access Point (IAP).* Intercept access point is a point within a carrier's system where some of the communications or call-identifying information of an intercept subject's equipment, facilities, and services are accessed.

*J-STD-025.* The interim standard developed by the Telecommunications Industry Association and the Alliance for Telecommunications Industry Solutions for wireline, cellular, and broadband PCS carriers. This standard defines services and features to support lawfully authorized electronic surveillance, and specifies interfaces necessary to deliver intercepted communications and call-identifying information to a LEA.

*LEA.* Law enforcement agency; e.g., the Federal Bureau of Investigation or a local police department.

*Party hold, join, drop on conference calls.* Capability that permits a LEA to identify the parties to a conference call conversation at all times.

*Subject-initiated dialing and signaling information.* Capability that permits a LEA to be informed when a subject using the facilities under surveillance uses services that provide call identifying information, such as call forwarding, call waiting, call hold, and three-way calling. Excludes signals generated by customer premises equipment when no network signal is generated.

*Timing information.* Capability that permits a LEA to associate call-identifying information with the content of a call. A call-identifying message must be sent from the carrier's IAP to the LEA's Collection Function within eight seconds of receipt of that message by the IAP at least 95% of the time, and with the call event time-stamped to an accuracy of at least 200 milliseconds.

### § 22.1103 Capabilities that must be provided by a cellular telecommunications carrier.

(a) Except as provided under paragraph (b) of this section, as of June 30, 2000, a cellular telecommunications carrier shall provide to a LEA the assistance capability requirements of CALEA, see 47 U.S.C. 1002. A carrier may satisfy these requirements by complying with publicly available technical requirements or standards adopted by an industry association or standard-setting organization, such as J-STD-025.

(b) As of September 30, 2001, a cellular telecommunications carrier

shall provide to a LEA communications and call-identifying information transported by packet-mode communications and the following capabilities:

- (1) Content of subject-initiated conference calls;
- (2) Party hold, join, drop on conference calls;
- (3) Subject-initiated dialing and signaling information ;
- (4) In-band and out-of-band signaling;
- (5) Timing information;
- (6) Dialed digit extraction.

## PART 24—PERSONAL COMMUNICATIONS SERVICES

3. The authority citation for part 24 continues to read as follows:

**Authority:** 47 U.S.C. 154, 301, 302, 303, 309 and 332.

4. Part 24 is amended to add subpart J to read as follows:

## Subpart J—Required New Capabilities Pursuant to the Communications Assistance for Law Enforcement Act (CALEA)

Sec.

24.900 Purpose.

24.901 Scope.

24.902 Definitions.

24.903 Capabilities that must be provided by a broadcast PCS telecommunications carrier.

### § 24.900 Purpose.

Pursuant to the Communications Assistance for Law Enforcement Act (CALEA), Public Law 103-414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.), this subpart contains rules that require a broadband PCS telecommunications carrier to implement certain capabilities to ensure law enforcement access to authorized communications or call-identifying information.

### § 24.901 Scope.

The definitions included in this subpart shall be used solely for the purpose of implementing CALEA requirements.

### § 24.902 Definitions.

*Call identifying information.* Call identifying information means dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier. Call identifying information is "reasonably available" to a carrier if it is present at an intercept access point and can be made available without the



carrier being unduly burdened with network modifications.

**Collection function.** The location where lawfully authorized intercepted communications and call-identifying information is collected by a law enforcement agency (LEA).

**Content of subject-initiated conference calls.** Capability that permits a LEA to monitor the content of conversations by all parties connected via a conference call when the facilities under surveillance maintain a circuit connection to the call.

**Dialed digit extraction.** Capability that permits a LEA to receive on the call data channel a digits dialed by a subject after a call is connected to another carrier's service for processing and routing.

**IAP.** Intercept access point is a point within a carrier's system where some of the communications or call-identifying information of an intercept subject's equipment, facilities, and services are accessed.

**In-band and out-of-band signaling.** Capability that permits a LEA to be informed when a network message that provides call identifying information (e.g., ringing, busy, call waiting signal, message light) is generated or sent by the IAP switch to a subject using the facilities under surveillance. Excludes signals generated by customer premises equipment when no network signal is generated.

**J-STD-025.** The interim standard developed by the Telecommunications Industry Association and the Alliance for Telecommunications Industry Solutions for wireline, cellular, and broadband PCS carriers. This standard defines services and features to support lawfully authorized electronic surveillance, and specifies interfaces necessary to deliver intercepted communications and call-identifying information to a LEA.

**LEA.** Law enforcement agency; e.g., the Federal Bureau of Investigation or a local police department.

**Party hold, join, drop on conference calls.** Capability that permits a LEA to identify the parties to a conference call conversation at all times.

**Subject-initiated dialing and signaling information.** Capability that permits a LEA to be informed when a subject using the facilities under surveillance uses services that provide call identifying information, such as call forwarding, call waiting, call hold, and three-way calling. Excludes signals generated by customer premises equipment when no network signal is generated.

**Timing information.** Capability that permits a LEA to associate call-identifying information with the content

of a call. A call-identifying message must be sent from the carrier's IAP to the LEA's Collection Function within eight seconds of receipt of that message by the IAP at least 95% of the time, and with the call event time-stamped to an accuracy of at least 200 milliseconds.

**§ 24.903 Capabilities that must be provided by a broadband PCS telecommunications carrier.**

(a) Except as provided under paragraph (b) of this section, as of June 30, 2000, a cellular telecommunications carrier shall provide to a LEA the assistance capability requirements of CALEA, see 47 U.S.C. 1002. A carrier may satisfy these requirements by complying with publicly available technical requirements or standards adopted by an industry association or standard-setting organization, such as J-STD-025.

(b) As of September 30, 2001, a cellular telecommunications carrier shall provide to a LEA communications and call-identifying information transported by packet-mode communications and the following capabilities:

- (1) Content of subject-initiated conference calls;
- (2) Party hold, join, drop on conference calls;
- (3) Subject-initiated dialing and signaling information;
- (4) In-band and out-of-band signaling;
- (5) Timing information;
- (6) Dialed digit extraction.

**PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

5. The authority citation for part 64 is amended to read as follows:

**Authority:** 47 U.S.C. 151, 154, 201, 202, 205, 218–220, and 332 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

6. Part 64 is amended to add Subpart W to read as follows:

**Subpart W—Required New Capabilities Pursuant to the Communications Assistance for Law Enforcement Act (CALEA)**

Sec.	
64.2200	Purpose.
64.2201	Scope.
64.2202	Definitions.
64.2203	Capabilities that must be provided by a wireline telecommunications carrier.

**§ 64.2200 Purpose.**

Pursuant to the Communications Assistance for Law Enforcement Act

(CALEA), Public Law 103–414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.), this subpart contains rules that require a wireline telecommunications carrier to implement certain capabilities to ensure law enforcement access to authorized communications or call-identifying information.

**§ 64.2201 Scope.**

The definitions included in this subpart shall be used solely for the purpose of implementing CALEA requirements.

**§ 64.2202 Definitions.**

**Call identifying information.** Call identifying information means dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier. Call identifying information is “reasonably available” to a carrier if it is present at an intercept access point and can be made available without the carrier being unduly burdened with network modifications.

**Collection function.** The location where lawfully authorized intercepted communications and call-identifying information is collected by a law enforcement agency (LEA).

**Content of subject-initiated conference calls.** Capability that permits a LEA to monitor the content of conversations by all parties connected via a conference call when the facilities under surveillance maintain a circuit connection to the call.

**Dialed digit extraction.** Capability that permits a LEA to receive on the call data channel a digits dialed by a subject after a call is connected to another carrier's service for processing and routing.

**IAP.** Intercept access point is a point within a carrier's system where some of the communications or call-identifying information of an intercept subject's equipment, facilities, and services are accessed.

**In-band and out-of-band signaling.** Capability that permits a LEA to be informed when a network message that provides call identifying information (e.g., ringing, busy, call waiting signal, message light) is generated or sent by the IAP switch to a subject using the facilities under surveillance. Excludes signals generated by customer premises equipment when no network signal is generated.

**J-STD-025.** The interim standard developed by the Telecommunications Industry Association and the Alliance for Telecommunications Industry

Solutions for wireline, cellular, and broadband PCS carriers. This standard defines services and features to support lawfully authorized electronic surveillance, and specifies interfaces necessary to deliver intercepted communications and call-identifying information to a LEA.

*LEA.* Law enforcement agency; e.g., the Federal Bureau of Investigation or a local police department.

*Party hold, join, drop on conference calls.* Capability that permits a LEA to identify the parties to a conference call conversation at all times.

*Subject-initiated dialing and signaling information.* Capability that permits a LEA to be informed when a subject using the facilities under surveillance uses services that provide call identifying information, such as call forwarding, call waiting, call hold, and three-way calling. Excludes signals generated by customer premises equipment when no network signal is generated.

*Timing information.* Capability that permits a LEA to associate call-identifying information with the content of a call. A call-identifying message must be sent from the carrier's IAP to the LEA's Collection Function within eight seconds of receipt of that message by the IAP at least 95% of the time, and with the call event time-stamped to an accuracy of at least 200 milliseconds.

**§ 64.2203 Capabilities that must be provided by a wireline telecommunications carrier.**

(a) Except as provided under paragraph (b) of this section, as of June 30, 2000, a cellular telecommunications carrier shall provide to a LEA the assistance capability requirements of CALEA, see 47 U.S.C. 1002. A carrier may satisfy these requirements by complying with publicly available technical requirements or standards adopted by an industry association or standard-setting organization, such as J-STD-025.

(b) As of September 30, 2001, a cellular telecommunications carrier shall provide to a LEA communications and call-identifying information transported by packet-mode communications and the following capabilities:

- (1) Content of subject-initiated conference calls;
- (2) Party hold, join, drop on conference calls;
- (3) Subject-initiated dialing and signaling information ;
- (4) In-band and out-of-band signaling;
- (5) Timing information;

(6) Dialed digit extraction.

[FR Doc. 99-24896 Filed 9-23-99; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Part 171

[RSPA-99-6195 (Docket No. HM-206D)]

RIN 2137-AD37

#### Hazardous Materials: Limited Extension of Requirements for Labeling Materials Poisonous by Inhalation (PIH); Corrections

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Interim final rule; corrections.

**SUMMARY:** On September 16, 1999, RSPA published an interim final rule which provided a limited exception, until October 1, 2001, from requirements to place the new POISON INHALATION HAZARD or POISON GAS labels on packages that are intended for transportation in international commerce. The exception applies only to Division 2.3 materials and Division 6.1 liquids in Hazard Zone A or B that are loaded into a freight container or closed transport vehicle that is placarded and marked with the identification number, as currently required for those materials. This final rule corrects an inadvertent error in the section on Canadian shipments and packagings which, as published, would only provide relief for shipments of PIH materials transported from Canada.

As modified in this correction, the September 16, 1999 interim final rule is revised to provide for the transportation of packages containing PIH materials between the U.S. and Canada in conformance with the TDG labeling requirements.

**DATES:** *Effective Dates:* This final rule correction is effective on October 1, 1999. The effective date of the interim final rule remains October 1, 1999.

*Comment Date:* Comments must be received by November 15, 1999.

**ADDRESSES:** Address written comments to the Dockets Management System, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at <http://dms.dot.gov>. See September 16 interim final rule for further instructions on submitting comments.

#### FOR FURTHER INFORMATION CONTACT:

Helen L. Engrum, Office of Hazardous Materials Standards, (202) 366-8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:** On September 16, 1999, RSPA published an interim final rule providing a limited exception, until October 1, 2001, from requirements to place the new POISON INHALATION HAZARD or POISON GAS labels on packages containing PIH materials when transported in international commerce in accordance with the requirements prescribed in 49 CFR 171.12 or 49 CFR 171.12a. (64 FR 50260). In the preamble, RSPA stated that the exception would provide for the transportation of PIH materials to and from Canada. RSPA inadvertently did not include a necessary change to 49 CFR 171.12a(a) to provide for shipments transported from the U.S. to Canada. That section is amended to correct the error. In addition, 49 CFR 171.12a(b)(5)(iv), as added at 64 FR 50263, is amended to clarify that packages of PIH materials from or to the U.S. may be transported using this exception.

#### Regulatory Analyses and Notices

##### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This interim final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. A regulatory evaluation prepared for the January 8, 1997 final rule is available in the Docket (HM-206). Implementation of this labeling exception for PIH materials provided by this rulemaking should not result in any additional costs. Any savings associated with avoiding delay or frustration of shipments is considered so minimal as to not warrant revision of the regulatory evaluation.

##### B. Executive Order 12612

The final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism"). Federal hazardous materials transportation law, 49 U.S.C. 5101-5127 contains express preemption provisions at 49 U.S.C. 5125 and expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous materials that cover certain subjects and are not substantively the same as Federal requirements. These subjects are: