

Numbering Council's request to extend the deadlines by which parties must file comments and reply comments in response to the *Further Notice of Proposed Rulemaking* issued in this proceeding on October 9, 1997, IS GRANTED, by extending the deadline for filing comments until March 6, 1998, and by extending the deadline for filing reply comments until April 3, 1998.

Federal Communications Commission.

**Geraldine A. Matise,**

*Chief, Network Services Division Common Carrier Bureau.*

[FR Doc. 97-31248 Filed 11-26-97; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CC Docket No. 97-213, FCC 97-356]

#### Communications Assistance for Law Enforcement Act

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** On October 10, 1997, the Commission released a Notice of Proposed Rulemaking in CC Docket No. 97-213 to implement the portion of the Communications Assistance for Law Enforcement Act that requires Commission rulemaking. This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the public, and other Federal agencies are invited to comment on the proposed

or modified information collections contained in this proceeding.

**DATES:** Comments are due December 12, 1997; Reply Comments are due January 12, 1997. Written comments by the public on the proposed and/or modified information collections are due December 12, 1997. Written comments must be submitted by the OMB on the proposed and/or modified information collections on or before 60 days after the date of publication in the **Federal Register**.

**ADDRESSES:** In addition to filing comments with the Secretary, Federal Communications Commission, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain\_\_t@al.eop.gov.

**FOR FURTHER INFORMATION CONTACT:** David Ward, Network Services Division, Common Carrier Bureau, (202) 418-2320. For additional information concerning the information collections contained in this NPRM contact Judy Boley at 202-418-0214, or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This summarizes the Commission's Notice of Proposed Rulemaking in CC Docket No. 97-213, In the Matter of Communications Assistance for Law Enforcement Act, FCC 97-356, adopted October 2, 1997, and released October 10, 1997, as corrected in Erratum, CC Docket No. 97-213, rel. October 24, 1997. The record in this proceeding is available for inspection and copying during the weekday hours of 9 a.m. to

4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., N.W., Washington, D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 2000 M Street, N.W., Suite 140, Washington, D.C. 20037, phone (202) 857-3800.

#### Paperwork Reduction Act

This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 60 days from the date of publication of this NPRM in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**OMB Approval Number:** None.

**Title:** Communications Assistance for Law Enforcement Act, NPRM.

**CC Docket No:** 97-213.

**Form No.:** N/A.

**Type of Review:** New collection.

**Respondents:** Business or other for profit.

Proposed requirement	Number of respondents	Estimated time per response	Total annual burden hours
Affidavits (proposed Sec. 64.1704(c)) .....	3,500	2.45	8,575
Record keeping (proposed Sec. 64.1704) .....	3,500	4.9	17,150
Compliance Statements (proposed Sec. 64.1704) .....	3,500	1.0	3,500
List of Designated Personnel .....	3,500	5.0	17,500
Total Annual Burden Hours .....	.....	.....	46,725
Estimated Cost per Respondent: \$700.			

#### Needs and Uses

The Communications Assistance for Law Enforcement Act (CALEA) requires the Commission to adopt rules that regulate the conduct and record keeping of lawful electronic surveillance. CALEA also requires the Commission to

adjudicate petitions from telecommunications carriers and interested parties to the extent to which they must comply with CALEA's requirements, capability standards, and the reasonable achievability of law enforcement officials' capability requirements. The information

submitted to the Commission by telecommunications carriers will be used to determine whether or not the telecommunications carriers are in conformance with CALEA's requirements. The information maintained by telecommunications carriers will be used by law enforcement

officials to determine the accountability and accuracy of telecommunications carriers' compliance with lawful electronic surveillance orders.

#### Analysis of Proceeding

1. In the *Notice of Proposed Rulemaking*, CC Docket No. 97-213, the Commission asks for comment on the identity and classes of carriers that should be included or excluded from the Communications Assistance for Law Enforcement Act's (CALEA's) definition of "telecommunications carrier." CALEA only applies to telecommunications carriers. Thus, if a carrier is not classified a telecommunications carrier, it does not have to conform to CALEA's requirements. CALEA grants the Commission the authority to include entities in the definition of "telecommunications carriers." The Commission also asks for comment on the criteria to determine which carriers and classes of carriers meet the definition of telecommunications carrier.

2. CALEA directs the Commission to rule upon petitions from carriers that contend that they cannot "reasonably achieve" compliance with CALEA's capability requirements. CALEA states that petitioners must be reimbursed by the Attorney General for the expense of CALEA compliance if the Commission determines that compliance is not reasonably achievable, or are deemed to be in compliance to the extent that the Attorney General agrees to reimburse the petitioner. In the *Notice of Proposed Rulemaking* (NPRM), the Commission asks for comment with respect to the statutory criteria established for determining whether compliance is "reasonably achievable."

3. CALEA directs the Commission to adopt rules to ensure the system security and integrity of lawful electronic surveillance conducted by telecommunications carriers. In the NPRM, the Commission asks for comment on the policies and procedures that telecommunications carriers must adopt to meet this requirement and on proposed reporting and record keeping rules to accomplish this requirement. The Commission also asks for comment on a proposal that provides small telecommunications carriers with a less burdensome reporting procedure.

4. CALEA contains a deadline when all telecommunications carriers must be in compliance with CALEA's capability requirements. CALEA authorizes the Commission to grant extensions to telecommunications carriers that petition the Commission. In the NPRM,

the Commission asks for comment on the criteria for granting petitions for extensions to the statutory deadline.

#### List of Subjects in 47 CFR Part 64

Common carrier, Reporting and recordkeeping requirements, telecommunications.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

#### Proposed Rules

Title 47 of the Code of Federal Regulations, part 64, is amended as follows:

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

1. The authority citation for part 64 is revised to read as follows:

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

2. Part 64 is proposed to be amended be revising subpart Q to read as follows:

#### Subpart Q—Telecommunications Carrier Interceptions pursuant to the Communications Assistance for Law Enforcement Act (CALEA)

Sec.

64.1700 Purpose.

64.1701 Scope.

64.1702 Definitions.

64.1703 Interception Requirements and Restrictions.

64.1704 Carrier Records.

64.1705 Compliance Statements.

#### § 64.1700 Purpose.

Pursuant to the Communications Assistance for Law Enforcement Act, Pub. L. No. 103-414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.), this subpart contains implementation and compliance rules to govern telecommunications carriers subject to CALEA. These rules are in addition to rules promulgated by the Department of Justice pursuant to CALEA requirements.

#### § 64.1701 Scope.

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

#### § 64.1702 Definitions.

(a) *Telecommunications carrier.* The term "telecommunications carrier" means—

(1) A person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire; and

(2) Includes—

(i) A person or entity engaged in providing commercial mobile service (as defined in Section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)); or

(ii) A person or entity engaged in providing wire or electronic communication switching or transmission service to the extent that the Commission finds that such service is a replacement for a substantial portion of the local telephone exchange service and that it is in the public interest to deem such a person or entity to be a telecommunications carrier for purposes of this title; but

(3) Does not include persons or entities insofar as they are engaged in providing information services.

(b) *Information services.* The term "information services"

(1) Means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications; and

(2) Includes—

(i) A service that permits a customer to retrieve stored information from, or file information for storage in, information storage facilities;

(ii) Electronic publishing; and

(iii) Electronic messaging services; but

(3) Does not include any capability for a telecommunications carrier's internal management, control, or operation of its telecommunications network.

(c) *Appropriate legal authorization.* The term "appropriate legal authorization" means:

(1) A court order signed by a judge of competent jurisdiction authorizing or approving interception of wire or electronic communications; or

(2) A certification in writing by a person specified in 18 U.S.C. 2518(7); or

(3) A certification in writing by the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required.

(d) *Appropriate carrier authorization.* The term "appropriate carrier authorization" means policies adopted by telecommunications carriers to identify carrier employees authorized to assist law enforcement in conducting communications authorizations.

(e) *Third party.* "Third party" means a person other than those authorized to receive a communication pursuant to 47 U.S.C. 605 of the Communications Act.

**§ 64.1703 Interception requirements and restrictions.**

An employee or officer of a telecommunications carrier shall assist in intercepting and disclosing to a third party a wire, oral, or electronic communication or shall provide access to call-identifying information only upon receiving a court order or other lawful authorization.

**§ 64.1704 Carrier records.**

(a) The officers of any telecommunications carrier shall ensure that the carrier maintains records of any assistance provided for the interception and disclosure to third parties of any wire, oral, or electronic communication or of any call-identifying information. The record will be made either contemporaneously with each interception, or not later than 48 hours from the time each interception begins, and shall include:

- (1) The telephone number(s) or circuit number(s) involved;
- (2) The date and time the interception started;
- (3) The date and time the interception stopped;
- (4) The identity of the law enforcement officer presenting the authorization;
- (5) The name of the judge or prosecuting attorney signing the authorization;
- (6) The type of interception (e.g., pen register, trap and trace, "Title III" interception pursuant to 18 U.S.C. 2510 *et seq.* and collateral state statutes, Foreign Intelligence Surveillance Act ("FISA") 50 U.S.C. 1801 *et seq.*); and
- (7) The names of all telecommunications carrier personnel involved in performing, supervising, and internally authorizing, the interception, and the names of those who possessed knowledge of the interception.

(b) A separate record shall be kept of any instances of interception, and of the identities of third parties to which disclosure of call-identifying information is made. In addition to the information listed in paragraphs (a) (1) through (7) of this section, these records will provide a complete discussion of the facts and circumstances surrounding the interception and disclosure. Each record shall be maintained in a secure location accessible only by authorized carrier personnel for a period of ten (10) years from its creation.

(c) The officers of any telecommunications carrier shall assure that any employee, agent, or officer of the carrier engaged in performing authorized interceptions for law enforcement personnel or having access

to such information does not disclose to any other person any information about such activity. Any employee or officer who has access to such information shall sign a statement that provides as follows:

- (1) The telephone number(s) or circuit identification number(s) involved;
- (2) The name of each employee or officer who effected the interception and possessed information concerning its existence, and their respective positions within the telecommunications carrier;
- (3) The date and time the interception started;
- (4) The date and time the interception stopped;
- (5) The type of interception (e.g., pen register, trap and trace, "Title III" interception pursuant to 18 U.S.C. 2510 *et seq.* and collateral state statutes, Foreign Intelligence Surveillance Act ("FISA") 50 U.S.C. 1801 *et seq.*);
- (6) A copy or description of the written authorization for the employee and officer to participate in surveillance activity; and
- (7) A statement that the employee or officer will not disclose information about the interception to any person, not properly authorized by statute or court order.

**§ 64.1705 Compliance statements.**

(a) Each telecommunications carrier having annual revenues from telecommunications operations in excess of the threshold defined in 47 CFR 32.9000 shall file with the Commission a statement of the policies, processes and procedures it uses to comply with the requirements of this subpart. These statements shall be filed with the Secretary, Federal Communications Commission, on or before [Date to be inserted in Final Rule], and shall be captioned, "Interception Procedures" filed pursuant to § 64.1704. Carriers seeking confidential treatment for any part of the statement shall clearly state the authority justifying such treatment pursuant to 47 CFR 0.459 and shall fully document all facts upon which that carrier proposes to rely in its request for confidential treatment.

(b) Any telecommunications carrier having annual revenues from telecommunications operations that do not exceed the threshold defined in 47 CFR 32.9000 may elect:

- (1) To file the statement required in paragraph (a) of this section; or
- (2) To certify that it observes procedures specified in the submission

made pursuant to paragraph (a) of this section.

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**DEPARTMENT OF TRANSPORTATION****Office of the Secretary****49 CFR Part 10**

[Docket No. OST-97-1472; Notice 97-12]

RIN: 2105-AC68

**Privacy Act Implementation: Coast Guard's Marine Safety Information System**

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** DOT proposes to amend its rules implementing the Privacy Act of 1974 to exempt from certain provisions of the Act the Coast Guard's Marine Safety Information System. Public comment is invited.

**DATES:** Comments are due December 29, 1997.

**ADDRESSES:** Comments should be addressed to Documentary Services Division, Attention: Docket Section, Room PL401, Docket OST-97-1472, Department of Transportation, C-55, Washington, DC 20590. Any person wishing acknowledgment that his/her comments have been received should include a self-addressed stamped postcard. Comments received will be available for public inspection and copying in the Documentary Services Division, Room PL401, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC, from 9:00 AM to 5:00 PM ET Monday through Friday except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Robert I. Ross, Office of the General Counsel, C-10, Department of Transportation, Washington, DC 20590, telephone (202) 366-9156. Fax (202) 366-9170.

**SUPPLEMENTARY INFORMATION:****Background**

The Coast Guard's Marine Safety Information System (MSIS) collects selected information on commercial and/or documented vessels operating in US waters, and collects and manages the data needed to monitor the safety performance of maritime vessels and facilities, with which the Coast Guard comes into contact while performing its marine safety functions. It also monitors the identities of individuals and corporations that own or operate these