

U.S. Department of Justice

Criminal Division

Office of Deputy Assistant Attorney General

Washington, D.C. 20530

June 21, 2004

PUBLIC VERSION

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Docket No. 97-213 -- Statement of Non-Support Opposing Sprint Corporation's
Petition for Extension of the Packet-Mode Communications Deadline Under
CALEA Section 107(c)

Dear Secretary Dortch:

Pursuant to 47 U.S.C. § 1006(c)(2), the United States Department of Justice ("DOJ")¹ hereby submits this Statement of Non-Support ("Statement") opposing Sprint Corporation's ("Sprint") petition to extend the CALEA compliance deadline with

¹ In past Commission proceedings, certain DOJ filings have been captioned as joint filings of the United States Department of Justice, the Federal Bureau of Investigation, and the Drug Enforcement Administration. This and future filings, however, will be captioned in only the name of the Department of Justice, which, of course, includes all of its constituent components. This change is a matter of style only, and no substantive inference should be drawn from it.

Marlene H. Dortch, Secretary

June 21, 2004

Page 2

respect to its packet-mode communications services (hereinafter the "Third Petition"),² filed on January 30, 2004.³ Specifically, DOJ opposes the granting of any further extensions of the CALEA packet-mode compliance deadline for Sprint's Ready Link push-to-talk ("PTT") service. Through previous extensions, Sprint has had two years to develop a CALEA solution for its PTT service.

In the August 1999 CALEA Second Report and Order, the Commission held that "push-to-talk dispatch service is subject to CALEA to the extent it is offered in conjunction with interconnected service."⁴ Sprint's PTT service, like the Nextel PTT service discussed in the CALEA Second Report and Order, is offered in conjunction with a voice service interconnected to the public switched telephone network.

² *Sprint Corporation on Behalf of Sprint Spectrum L.P. et. al.*, TRS Nos.: 811753 (*Sprint Spectrum, L.P.*), 819060 (*PhillieCo., L.P.*), 81804 (*SprintCom, Inc.*), 81156 (*American PCS Communications, LLC*), 806727 *Wireless Carrier, CALEA Section 107(c) Petition -- Packet Mode Capabilities, Request for Extension of Time* (filed January 30, 2004).

³ A separate Non-Public Version of this Statement is being filed with a request for confidential treatment pursuant to the Commission's Public Notice issued in this Docket on September 28, 2001. See *The Common Carrier and Wireless Telecommunications Bureaus Establish Procedures for Carriers to Submit or Supplement CALEA Section 107(c) Extension Petitions, Both Generally, and With Respect to Packet Mode and Other Safe Harbor Standards*, Public Notice, DA 01-2243, at ¶ 16 (rel. September 28, 2001).

⁴ *In re Communications Assistance for Law Enforcement Act, Second Report and Order*, FCC 99-229, CC Docket No. 97-213, at ¶ 21 (August 31, 1999) (hereinafter the "CALEA Second Report and Order").

Therefore, regardless of the specific underlying Internet protocol technology used by Sprint to offer its PTT service, such service is subject to CALEA.⁵

In meetings with Sprint in 2002 and 2003, DOJ representatives discussed Sprint's legal obligation, under the CALEA Second Report and Order, to deploy a CALEA solution for its PTT service, and Sprint acknowledged this obligation. Nonetheless, Sprint chose to proceed with its deployment of the PTT service without a CALEA solution in place, and on November 17, 2003, commenced offering the service to the public without a CALEA solution.⁶ Sprint now has over 275,000 PTT customers,⁷ and the absence of a CALEA solution poses a major impediment to federal, state, and local law enforcement investigations. This is precisely the situation that CALEA was enacted to prevent.

⁵ CALEA Second Report and Order at ¶ 27 n.69. As the Commission previously acknowledged, "CALEA, like the Communications Act, is technology neutral. Thus, a carrier's choice of technology when offering common carrier services does not change its obligations under CALEA." *Id.*

⁶ *Sprint Launches Nationwide Two-Way Walkie-Talkie Style Service to Customers With a Quick Way to Communicate One-on-One or in Groups*, available at http://144.226.116.29/PR/CDA/PR_CDA_Press_Releases_Detail/0,3861,1111886,00.html.

⁷ As of May 24, 2004, Sprint had over 275,000 customers using its PTT service. See *Sprint Builds Momentum for Sprint PCS Ready Link, Penetrating New Markets with Broad Selection of Innovative Devices and Affordable Pricing*, available at http://www3.sprint.com/PR/CDA/PR_CDA_Press_Releases_Detail/0,3681,1112059,00.html.

Sprint filed two previous petitions for extension of the packet-mode compliance deadline with the Commission in November 2001 and June 2002.⁸ Sprint received extensions -- the net effect being that Sprint was given two years to design and develop a CALEA solution before it offered the PTT service to the public.

Sprint chose not to develop a CALEA solution for its PTT service during that time. Although Sprint filed a petition for declaratory ruling seeking to classify its third generation ("3G") services, including PTT, as information services exempt from CALEA,⁹ Sprint subsequently committed, in its Second Petition, to develop a CALEA solution for its 3G services by November 19, 2003.¹⁰ In any event, because the Commission has not acted upon the Sprint Petition for Declaratory Ruling, Sprint remains bound by the CALEA obligations for its PTT service pursuant to the CALEA Second Report and Order. Sprint should have been in compliance, at the latest, by

⁸ In 2001, Sprint filed for a two-year extension seeking until November 19, 2003, to comply with the CALEA implementation deadline for its packet-mode services. *Sprint PCS Petition for Extension* (filed November 19, 2001) (hereinafter "Initial Petition"). In an amended petition for extension filed in 2002, Sprint committed to deploying CALEA solutions for its 3G services by November 19, 2003. *See Sprint PCS Amendment to Section 107(c) Petition for an Extension of Time Concerning Packet Mode Capabilities*, at 5 (filed June 28, 2002)(hereinafter "Second Petition").

⁹ *Sprint PCS Petition for Declaratory Ruling Concerning Packet-Mode Networks Used in the Provision of Information Services* (filed September 10, 2001) (hereinafter "Sprint Petition for Declaratory Ruling").

¹⁰ Second Petition at 2, 5.

January 31, 2004, the date the last packet-mode extension granted by the Commission expired.¹¹

In considering Sprint's Third Petition, the Commission may only grant a CALEA extension under CALEA Section 107(c)(1) for equipment, facilities, or services installed prior to the effective date of CALEA Section 103 -- *i.e.*, before October 24, 1998.¹² Sprint provides no evidence that it installed or deployed PTT equipment before this date; therefore, it cannot file for a petition for extension under CALEA Section 107(c)(1).

Further, as the petitioning party, Sprint's fails to prove that CALEA compliance for its PTT service is not "reasonably achievable . . . within the compliance period."¹³ As

¹¹ See *In re Wireline Competition and Wireless Telecommunications Bureaus Announce a Revised Schedule for Consideration of Pending Packet Mode CALEA Section 107(c) Petitions and Related Issues*, Public Notice, CC Docket No. 97-213, DA 03-3722 (rel. November 19, 2003).

¹² Section 107(c)(1) states:

A telecommunications carrier proposing to install or deploy, or having installed or deployed, any equipment, facility, or service *prior to the effective date of section 103* may petition the Commission for 1 or more extensions of the deadline for complying with the assistance capability requirements under Section 103.

47 U.S.C. § 1006(c)(1)(emphasis added). CALEA Section 111, 47 U.S.C. § 1001 note, provides that "[s]ections 103 and 105 of this title shall take effect on the date that is 4 years after the date of enactment of this Act," or October 24, 1998.

¹³ 47 U.S.C. § 1006(c)(2).

a result, there is no factual basis for granting a further extension. The Commission has stated that:

*Petitioning carriers bear the burden of providing the information necessary for the Commission to make this finding. After receiving information from a petitioning carrier and consulting with the FBI, the Commission may grant or deny the petition.*¹⁴

Sprint has failed to meet the burden of proof required to obtain an extension, under Section 107(c)(2) of CALEA, namely showing that a CALEA solution for Sprint's PTT service is "*not* reasonably achievable through application of technology available within the compliance period."¹⁵

Therefore, DOJ requests that the Commission promptly issue an order denying Sprint's Third Petition -- *i.e.*, within the next 30 days -- and immediately direct Sprint to implement a CALEA solution for its PTT service.

¹⁴ See CALEA Section 103 Compliance and Section 107(C) Petitions, Public Notice, 15 FCC Rcd. 7482, 7484 ¶ 5 (2000) (emphasis added). See also 5 U.S.C. § 556(d) ("Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof").

¹⁵ 47 U.S.C. § 1006(c)(2)(emphasis added).

Marlene H. Dortch, Secretary

June 21, 2004

Page 7

Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided herein.

Respectfully submitted,

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Marlene H. Dortch, Secretary

June 21, 2004

Page 8

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