



# NEWS

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action.  
See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).

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**FOR IMMEDIATE RELEASE**  
**August 4, 2004**

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## **FCC ADOPTS *NOTICE OF PROPOSED RULEMAKING AND DECLARATORY RULING* REGARDING COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT**

Washington, DC – The Federal Communications Commission today begins a thorough examination of the appropriate legal and policy framework for implementing the Communications Assistance for Law Enforcement Act (“CALEA”), particularly regarding broadband access and services. It is the Commission’s primary policy goal in this proceeding to ensure that law enforcement agencies (“LEAs”) have all of the resources that CALEA authorizes to combat crime and support Homeland Security. However, the Commission recognizes that LEAs’ needs must be balanced with the competing policies of not impeding the development of new communications services and technologies and protecting customer privacy.

The Commission initiates this proceeding at the request of, and in response to, a Joint Petition filed by the Department of Justice, Federal Bureau of Investigation, and Drug Enforcement Administration (“Law Enforcement”) in March 2004. In its Petition, Law Enforcement states that, although the Commission has taken steps to implement CALEA – which was enacted in 1994 – there remain several outstanding issues that require immediate attention and resolution by the Commission, so that industry and LEAs have clear guidance as the CALEA implementation process moves forward.

In the *Notice of Proposed Rulemaking (Notice)*, the Commission tentatively concludes that CALEA applies to facilities-based providers of any type of broadband Internet access service – including wireline, cable modem, satellite, wireless, and powerline – and to managed or mediated Voice over Internet Protocol (“VoIP”) services. These tentative conclusions are based on a Commission proposal that these services fall under CALEA as “a replacement for a substantial portion of the local telephone exchange service.”

Additionally, the Commission tentatively concludes that it is unnecessary to identify future services and entities subject to CALEA. The Commission recognizes Law Enforcement’s need for certainty regarding the applicability of CALEA to new services and technologies, but anticipates that the Report and Order in this proceeding will provide substantial clarity sufficient to resolve Law Enforcement’s and industry’s uncertainty about future compliance obligations.

The Commission seeks comment on telecommunications carriers’ obligations under section 103 of CALEA and compliance solutions as they relate to broadband Internet access and VoIP. In

particular, the Commission seeks comment on the feasibility of carriers relying on a trusted third party to manage their CALEA obligations and whether standards for packet-mode technologies are deficient and thus preclude carriers from relying on them as safe harbors for complying with CALEA.

With regard to compliance, the Commission proposes mechanisms to ensure that telecommunications carriers comply with CALEA. Specifically, the Commission proposes to restrict the availability of compliance extensions under CALEA section 107(c) and clarifies the role and scope of CALEA section 109, under which carriers may be reimbursed for their CALEA compliance costs. The Commission proposes to afford all carriers with pending petitions a reasonable period of time (*e.g.*, 90 days) in which to comply with, or seek relief from, any determinations that it eventually adopts in this proceeding. Additionally, the Commission considers whether, in addition to the enforcement remedies through the courts available to LEAs under CALEA section 108, it may take separate enforcement action against carriers that fail to comply with CALEA and tentatively finds that it has general authority under the Communications Act to promulgate and enforce CALEA rules against carriers and non-common carriers.

With regard to costs, the Commission tentatively concludes that carriers are responsible for CALEA development and implementation costs for post-January 1, 1995 equipment and facilities; seeks comment on cost recovery issues for wireline, wireless and other carriers; and refers to the Federal-State Separations Joint Board cost recovery issues for carriers subject to Title II of the Communications Act.

Finally, the Commission requests comment on what would be a reasonable amount of time for entities that heretofore have not been subject to CALEA to comply with its requirements, if the Commission ultimately decides that those entities are subject to CALEA.

In the companion *Declaratory Ruling*, the Commission grants in part a Law Enforcement request in the Petition and clarifies that commercial wireless “push-to-talk” services are subject to CALEA, regardless of the technologies that Commercial Mobile Radio Service providers choose to apply in offering them.

Action by the Commission August 4, 2004, by *Notice of Proposed Rulemaking and Declaratory Ruling* in ET Docket No. 04295 (FCC 04-187). Chairman Powell, Commissioners Abernathy and Martin with Commissioner Copps and Adelstein Concurring. Separate statements issued by Chairman Powell, Commissioners Abernathy, Copps, and Adelstein.

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ET Docket No. 04-295

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