

U.S. Department of Justice

Criminal Division

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Office of Assistant Attorney General

Washington, D.C. 20530

August 18, 2004

**PUBLIC VERSION**

**VIA HAND DELIVERY**

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

**Re: Docket No. 97-213** -- Statement of Non-Support Opposing Petition of ALLTEL Communications, Inc. 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") hereby submits this Statement of Non-Support ("Statement")<sup>1</sup> opposing the February 4, 2004 petition of ALLTEL Communications, Inc. ("ALLTEL") to extend the CALEA compliance deadline to January 30, 2006, for its packet-mode communications

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<sup>1</sup> A separate 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, 16 FCC Rcd 17101, at ¶ 16 (rel. Sept. 28, 2001).

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services (hereinafter the "Petition").<sup>2</sup> Specifically, DOJ opposes the granting of any further extensions of the CALEA packet-mode compliance deadline for ALLTEL's "Touch2Talk" push-to-talk ("PTT") service.<sup>3</sup> The Commission held in 1999 in the CALEA Second Report and Order,<sup>4</sup> and reaffirmed in an August 2004 Declaratory Ruling, that PTT service is subject to CALEA "regardless of what newer technologies a CMRS<sup>5</sup> carrier may use in its offering of push-to-talk 'dispatch service.'"<sup>6</sup> Since the CALEA Second Report and Order, ALLTEL had ample time and opportunity to develop and deploy a CALEA-compliant solution for its PTT service. Despite that 1999

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<sup>2</sup> *In the Matter of The Communications Assistance for Law Enforcement Act (CALEA), Section 107(c) Packet Mode Capabilities, ALLTEL Communications, Inc. Petition for Extension of Time* (filed February 4, 2004).

<sup>3</sup> DOJ reserves the right to oppose ALLTEL's CALEA extension request for its other packet-mode services in the future. As the Commission is aware, on February 20, 2004, June 21, 2004, and July 12, 2004, respectively, DOJ filed Statements of Non-Support opposing Verizon Wireless's, Sprint Corporation's, and AT&T Wireless's requests for extensions of the CALEA packet-mode compliance deadline for their PTT services.

<sup>4</sup> *In re Communications Assistance for Law Enforcement Act, Second Report and Order*, 15 FCC Rcd 7105, 7116-17 ¶ 21 (1999) (hereinafter the "CALEA Second Report and Order").

<sup>5</sup> The term "CMRS" refers to commercial mobile radio service.

<sup>6</sup> *In re Communications Assistance for Law Enforcement Act and Broadband Access and Services, Notice of Proposed Rulemaking and Declaratory Ruling*, ET Docket No. 04-295, at ¶ 150 (rel. August 9, 2004) (hereinafter "PTT Declaratory Ruling").

ruling, ALLTEL launched its PTT service in January 2004 with no electronic surveillance solution in place.<sup>7</sup>

In the 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."<sup>8</sup> The PTT Declaratory Ruling reaffirmed this holding and stated that CALEA's applicability to PTT service does not depend "on the particular technology the carrier chooses to apply in offering it."<sup>9</sup> In its Petition before the Commission, ALLTEL argues that "CALEA is not applicable to the packet mode communications services ALLTEL currently offers" because they "are classified as information services."<sup>10</sup> However, ALLTEL'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 ("PSTN"). Moreover, any argument that ALLTEL's PTT service is exempt from CALEA because it is provided using packet-mode technology was expressly rejected by the Commission's

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<sup>7</sup> *ALLTEL offers instant connection with Touch2Talk service*, Press Release (rel. January 20, 2004), available at [http://www.alltel.com/news/news\\_releases/04/jan/n411jan2004a.html](http://www.alltel.com/news/news_releases/04/jan/n411jan2004a.html).

<sup>8</sup> CALEA Second Report and Order at ¶ 21. The Commission also acknowledged that "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.* at 7120 n.69.

<sup>9</sup> PTT Declaratory Ruling at ¶ 150.

<sup>10</sup> *See* Petition at 3.

PTT Declaratory Ruling.<sup>11</sup> Therefore, ALLTEL's packet-mode PTT service, which is offered in conjunction with interconnected PSTN voice service, is subject to CALEA.<sup>12</sup> ALLTEL seeks an extension of time until January 30, 2006, to become CALEA compliant for "all of its packet-mode services," which include its PTT service.<sup>13</sup> The Commission should deny the request for an extension. ALLTEL has failed to demonstrate that it proposed to install or deploy, or actually installed or deployed, any equipment or facilities for its PTT service before October 24, 1998; therefore, the Commission lacks the authority to entertain the extension request under CALEA Section 107(c)(1).<sup>14</sup> Moreover, even if such authority existed, ALLTEL has failed to prove that CALEA compliance for PTT service was "not reasonably achievable . . . within the compliance period" -- *i.e.*, by the time it commenced offering PTT service to the public in January 2004.<sup>15</sup> As a result, the Commission should promptly issue an order -- *i.e.*, within the next 30 days -- denying the Petition and immediately find that ALLTEL's CALEA compliance deadline expired in January 30, 2004.

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<sup>11</sup> See PTT Declaratory Ruling at ¶¶ 2, 150.

<sup>12</sup> CALEA Second Report and Order at 7120 ¶ 27; PTT Declaratory Ruling at ¶ 150.

<sup>13</sup> See Petition at 2.

<sup>14</sup> 47 U.S.C. § 1006(c)(1).

<sup>15</sup> 47 U.S.C. § 1006(c)(2). See CALEA Section 103 Compliance and Section 107(c) Petitions, Public Notice, 15 FCC Rcd 7482, 7484 ¶ 5 (2000); 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.")

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

Respectfully submitted,

**THE UNITED STATES DEPARTMENT OF JUSTICE**

/s/ Laura Parsky

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