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[FR Doc. 04-21388 Filed 9-22-04; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 27, 74, 90 and 101

[WT Docket No. 01-319; DA 04-2591]

Review of Quiet Zones Application Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of June 7, 2004, a document in the Quiet Zones proceeding, WT Docket No. 01-319, which incorrectly indicated that a new or modified information collection exists that requires approval by the Office of Management and Budget ("OMB"), and contained an incorrect **DATES** section. This document corrects the effective date.

DATES: Effective June 7, 2004.

FOR FURTHER INFORMATION CONTACT:

Linda C. Chang, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th St., Washington, DC 20554, (202) 418-0620.

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** of June 7, 2004, (69 FR 17946) regarding the adoption of changes to rules relating to areas known as "Quiet Zones." In FR Doc. 04-7799, published in the **Federal Register** of June 7, 2004, the document incorrectly indicated that a new or modified information collection exists that requires approval by the Office of Management and Budget ("OMB"), and contained an incorrect **DATES** section. This document corrects the effective date.

Dated: September 9, 2004.

Linda C. Chang,

Associate Division Chief, Mobility Division.

[FR Doc. 04-20785 Filed 9-20-04; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[ET Docket No. 04-295; FCC 04-187]

Communications Assistance for Law Enforcement Act

AGENCY: Federal Communications Commission.

ACTION: Declaratory ruling.

SUMMARY: This document issues a *Declaratory Ruling* to clarify that commercial wireless "push-to-talk" services continue to be subject to the 1994 Communications Assistance for Law Enforcement Act ("CALEA"), regardless of the technologies that Commercial Mobile Radio Services ("CMRS") providers choose to apply in offering them. We issue this ruling at the request of, and in response to, a joint petition filed by the Department of Justice, Federal Bureau of Investigation, and the Drug Enforcement Administration (collectively, "Law Enforcement").

EFFECTIVE DATE: September 23, 2004.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418-2454, e-mail: Rodney.Small@fcc.gov, TTY (202) 418-2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Declaratory Ruling*, ET Docket No. 04-295, FCC 04-187, adopted August 4, 2004, and released August 9, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

Summary of the Declaratory Ruling

1. Law Enforcement asserts that an increasing number of wireless carriers offer push-to-talk services this service without admitting that they have related CALEA obligations. We clarify that CMRS carrier offerings of push-to-talk service that are offered in conjunction

with interconnected service to the public switched telephone network ("PSTN"), but may use different technologies, are subject to CALEA requirements.

2. The *Second Report and Order* (*Second R&O*) in CC Docket No. 97-213, 64 FR 55164, October 12, 1999, addressed the dichotomy between push-to-talk "dispatch" services that are interconnected to the PSTN and those that are not. The Commission focused on this difference in the context of first concluding that CMRS providers should be considered telecommunications carriers for the purposes of CALEA. The Commission found that § 102(8)(B)(i) of CALEA, defining "telecommunications carrier" as including "a person or entity engaged in providing commercial mobile service (as defined in section 332(d) of the [Communications Act])" requires that conclusion. See *Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, *Second Report and Order*, 15 FCC Rcd 7105 (2000), 64 FR 55164, October 12, 1999. The Commission further recognized that the definition of commercial mobile service requires interconnected service. Thus, if services such as "traditional" Specialized Mobile Radio provide interconnection to the PSTN, the Commission determined that they satisfy the definition of CMRS and thus, are subject to CALEA. The Commission further found the same definitional approach holds for push-to-talk "dispatch" service, because if it is offered as an interconnected service, "it is a switched service functionally equivalent to a combination of speed dialing and conference calling." If the push-to-talk "dispatch" service otherwise does not interconnect to PSTN, the Commission found that it is not subject to CALEA.

3. We find that this approach continues to be applicable to CMRS offered push-to-talk services that may use different technologies, such as a packet mode network based on more advanced wireless protocols. The Commission noted in the *Second R&O* that CALEA is technology neutral, and "[t]hus, the choice of technology that a carrier makes when offering common carrier services does not change its obligations under CALEA." We find that whether a CMRS carrier's push-to-talk service offering is subject to CALEA depends on the regulatory definition and functional characteristics of that service and not on the particular

technology the carrier chooses to apply in offering it. Therefore, we conclude that regardless of what newer technologies a CMRS carrier may use in its offering of push-to-talk "dispatch service," it continues to be subject to the requirements of CALEA, if the required definitional element for CMRS service is met, *i.e.*, the delivery of the push-to-talk service is offered in conjunction with interconnected service to the PSTN.

4. On the other hand, we reiterate that if the push-to-talk service is limited to a private or "closed" network, and is not offered in conjunction with interconnected service to the PSTN, then, generally, it remains not subject to CALEA. We qualify this approach, however, recognizing that what has been termed "private dispatch services"

may be developed or implemented in a manner that raises issues pertaining to the "Substantial Replacement Provision" of CALEA § 102(8)(B)ii), which is discussed in the Commission's companion *Notice of Proposed Rulemaking* ("NPRM") in this proceeding. For example, an entity might deploy a seemingly "private" or "closed" push-to-talk services that may satisfy all three prongs of the Substantial Replacement Provision such that this service would be subject to CALEA. We find that such instances are within the scope of the *NPRM*, and commenters should address them in that context.

Ordering Clauses

5. Pursuant to sections 1, 4(i), 7(a), 229, 301, 303, and 332 of the

Communications Act of 1934, as amended, and sections 103, 106, 107, and 109 of the Communications Assistance for Law Enforcement Act, 47 U.S.C. 151, 154(i), 157(a), 229, 301, 303, 332, 1002, 1005, 1006, and 1008, the DECLARATORY RULING is hereby ADOPTED.

6. The Commission's Consumer Information and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this DECLARATORY RULING to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04-20706 Filed 9-22-04; 8:45 am]

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