Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Communications Assistance for Law Enforcement Act and Broadband Access and Services	)	ET Docket No. 04-295
	)	
	)	

REPLY COMMENTS OF
THE UNITED STATES DEPARTMENT OF JUSTICE

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SUMMARY

Application of CALEA to Broadband Internet Access and Certain Types of VoIP

The Commission should conclude that CALEA is applicable to providers of broadband Internet access and certain types of voice-over-Internet-protocol ("VoIP") services. The United States Department of Justice ("DOJ") showed, in its initial comments, that there is a need for CALEA to apply to providers of such services. Both broadband Internet access and managed or mediated VoIP satisfy the Substantial Replacement Provision of CALEA's definition of "telecommunications carrier," because they replace a substantial portion of the functionality of local telephone exchange service, and because it is in the public interest for CALEA to apply to providers of such services.

For the reasons discussed in DOJ's comments, subjecting broadband Internet access and managed or mediated VoIP to CALEA would be consistent with CALEA's Information Services Exclusion and with Commission precedents under the Communications Act. Such conclusions would also be consistent with CALEA's exclusion for private networks.

CALEA Technical Capability Issues

Numerous commenters agreed with DOJ that most CALEA capabilities issues raised in the *Notice* should be resolved through the CALEA statutory standard-setting process, and, if necessary, by deficiency petitions, and should not be addressed in this

proceeding. Therefore, the Commission should sever the CALEA technical capability issues from this proceeding.

DOJ, along with other parties, opposed the Commission's proposed "significant modification" rule to determine whether call-identifying information is "reasonably available" under CALEA section 103. Any rule with respect to what is "reasonably available" should focus on modifications at the network design stage and what is technically significant, rather than carrier-specific costs or non-technical factors that arise in separate section 109(b) "reasonably achievable" determinations.

Commenters generally agreed with DOJ's concerns regarding trusted third parties. Accordingly, the Commission should take these concerns into account in any order in this proceeding.

CALEA Section 107(c) and 109(b) Petitions

Several parties agreed with DOJ that the Commission's interpretation of CALEA section 107(c), which precludes extensions for equipment, facilities, or services installed or deployed after October 25, 1998, is correct. This interpretation is consistent with the plain meaning of the statute.

The Commission should adopt the *Notice*'s tentative conclusions regarding CALEA section 109(b) petitions, provided that such petitions are granted only in limited circumstances and only for limited periods of time. The Commission should also adopt its proposal requiring carriers to document their negotiations with equipment vendors in their section 109(b) petitions. Collection of such information is

authorized under CALEA and critical for the Commission to evaluate the merits of section 109(b) petitions.

CALEA Compliance Deadlines

Commenters agreed that the Commission has the statutory authority to impose CALEA compliance deadlines. DOJ concurs with commenters that the *Notice's* proposed 90-day compliance deadline for newly-covered services is too short; the Commission should allow carriers up to 12 months to deploy CALEA-compliant intercept solutions. However, the Commission should not tie the start of the compliance period to the industry's adoption of an applicable standard.

CALEA Enforcement

DOJ and other commenters recognized that the Commission has the authority to adopt and enforce CALEA rules. Specifically, the Commission has the authority to investigate carriers' CALEA compliance under section 229(c) and to penalize violators under section 229(d). Commenters who argued that the Commission lacked such enforcement authority ignored these statutory provisions. Moreover, Congress never intended to impose the CALEA section 108 limitations on the Commission. If Congress had such an intent, it would have included such limitations in sections 229(c) or (d).

Cost and Cost Recovery

Resolving the numerous outstanding issues relating to CALEA cost and cost recovery is critical to the continued, meaningful implementation of CALEA.

The Commission's tentative conclusion that carriers bear financial responsibility for CALEA development and implementation costs for post-January 1, 1995 equipment and facilities is a major step toward resolving a key CALEA cost issue. The Commission's tentative conclusion is well supported by the plain statutory text of CALEA. The commenting parties that opposed the Commission's tentative conclusion have offered nothing that warrants a departure from the position taken by the Commission in the *Notice*. Accordingly, DOJ urges the Commission to adopt the tentative conclusion reached in the *Notice*. DOJ also strongly urges the Commission to adopt rules reflecting that conclusion, in order to provide carriers with greater certainty regarding CALEA development and implementation cost issues.

DOJ encourages the Commission to investigate all viable carrier cost recovery proposals presented in this proceeding. However, in doing so, the Commission should remain mindful that it may not adopt any cost recovery mechanism for CALEA compliance that would shift the cost burden for post-January 1, 1995 equipment, facilities, and services to law enforcement, or otherwise require law enforcement or government funding.

Notwithstanding the Commission's explicit request, only a few commenters provided any specific cost information regarding the scope of CALEA costs. Moreover, information provided by these commenters and discussed in other sources suggests that CALEA costs are not as great as has been portrayed. Without adequate evidence of

the scope of CALEA costs, the Commission should not permit carriers to continue to use cost as an excuse for non-compliance with CALEA.

As DOJ emphasized in its comments, distinguishing between CALEA development and implementation (capital) costs and intercept provisioning charges is critical to resolving CALEA cost issues. Statements by certain commenters that the Commission need not make such a distinction because both costs are recoverable from law enforcement only further illustrate the need for the Commission to resolve this issue. Accordingly, DOJ asks the Commission to make clear that CALEA development and implementation (capital) costs may not be included in carriers' intercept provisioning charges billed to law enforcement.

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REPLY COMMENTS OF THE UNITED STATES DEPARTMENT OF JUSTICE

The United States Department of Justice ("DOJ") respectfully submits these reply comments in response to comments filed on November 8, 2004, pursuant to the *Notice of Proposed Rulemaking* ("*Notice*") released August 9, 2004, in the above-captioned proceeding.[1]

I. The Commission Should Conclude that CALEA Is Applicable to Providers of Broadband Internet Access Service and Certain Types of VoIP.

A. Applying CALEA to Broadband Internet Access and Certain Types of VoIP Carriers Serves the Public Interest and Is Consistent with Congress's Intent.

The record amply supports the applicability of CALEA to broadband Internet access and certain types of VoIP carriers. Law enforcement entities, including the New York State Attorney General and the Texas Department of Public Safety, have made

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[1] *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, Notice of Proposed Rulemaking and Declaratory Ruling, FCC 04-187, 19 FCC Rcd 15676 (rel. Aug. 9, 2004) ("*Notice*"). A list of the commenters in this proceeding and short citations for each appears at Appendix A hereto.

clear the need for CALEA to apply to providers of such services.[2] In addition, members of industry have illustrated the need for CALEA to be applied on a technology-neutral basis,[3] and in particular the technical need for CALEA to apply to providers of certain types of VoIP services, because of the inability of transport providers to interpret packets related to services provided over their facilities.[4]

Contrary to the criticism of some other commenters,[5] the record contains ample support for a Commission conclusion that applying CALEA to broadband Internet access and certain types of VoIP is important for protecting public safety and national security. The use of such services is growing quickly and is replacing the use of telephones for a significant portion of the public.[6] The U.S. Department of Justice (including two federal law enforcement agencies — the Federal Bureau of Investigation and the Drug Enforcement Administration) has stated on the record that law enforcement's ability to carry out critical electronic surveillance is being compromised today by providers who have failed to implement CALEA-compliant intercept

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2 *See* NYAG Comments at 5-11, Exhibit A; Texas DPS Comments at 1-2.

3 *See* Verizon Comments at 10-13; SBC Comments at 7-8; USTA Comments at 4-5; VeriSign Comments ¶ 16.

4 *See* NCTA Comments at 9; Verizon Comments at 7-10; VeriSign Comments ¶ 19.

5 *See, e.g.*, CDT Comments at 4-12; EFF Comments at 4-6.

6 *See* DOJ Comments at 1-6.

capabilities.[7] The New York State Attorney General and the Texas Department of Public Safety have put additional evidence into the record.[8] It is only logical that criminals or anyone hoping to avoid surveillance will use technologies that are more difficult to surveil.[9] It follows that there is a need for Internet access providers and certain types of VoIP carriers to be capable of complying with court orders.

Some parties selectively cited portions of CALEA's legislative history in an attempt to show that Congress would not, in 1994, have intended CALEA to apply to broadband Internet access or VoIP.[10] DOJ's comments showed that the text of CALEA itself does apply to providers of such services.[11] Arguments that Congress intended CALEA to apply only to plain old telephone service ("POTS") are plainly wrong, given that CALEA explicitly applies to both wire communications and electronic

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[7] United States Department of Justice, Federal Bureau of Investigation, and Drug Enforcement Administration, Joint Petition for Expedited Rulemaking, RM-10865 (filed Mar. 10, 2004) at 8-9 ("Petition for CALEA Rulemaking").

[8] *See* NYAG Comments at 5-11, Exhibit A; Texas DPS Comments at 1-2; *see also* NYAG Comments on the Petition for CALEA Rulemaking, RM-10865 (filed Apr. 12, 2004).

[9] *See, e.g.*, Affidavit of J. Christopher Prather ¶¶ 14-15, Exhibit A to NYAG Comments on the Petition for Rulemaking, RM-10865 (filed Apr. 12, 2004).

[10] *See* CDT Comments at 17-21; EDUCAUSE Comments at 7-9.

[11] *See* DOJ Comments at 6-39.

communications.[12] "Electronic communication" explicitly *excludes* any "wire or oral communication."[13]

Industry has also made clear the need for CALEA to be applied evenly regardless of the technology used to transmit or switch communications. Verizon observed that CALEA's definition of "telecommunications carrier" is broader than that in the Communications Act and supported applying CALEA uniformly to all competing providers of broadband access services, regardless of their regulatory classification under the Communications Act.[14] NTCA agreed that Congress's purposes would be served by applying CALEA to facilities-based providers of any type of broadband Internet access services.[15]

B. Use of the Substantial Replacement Provision.

Some commenters criticized the Commission's proposed analysis whereby services that fall within the Substantial Replacement Provision ("SRP") would not be considered "information services" under CALEA. Those comments appear to have misconstrued the Commission's tentative conclusion. The SRP does not turn an information service into a CALEA-covered service in spite of the Information Services

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12 *See* 47 U.S.C. § 1001(8)(A), (B)(ii).

13 18 U.S.C. § 2510(12) (defining "electronic communication"); 47 U.S.C. § 1001(1) (incorporating the terms defined in 18 U.S.C. § 2510 into CALEA).

14 *See* Verizon Comments at 4, 10-13.

15 NTCA Comments at 3.

Exclusion; rather, those provisions must be understood in relation to each other. Any *service* that fits within the SRP must not qualify as an information service under CALEA in the first place.

As DOJ's comments explained, and consistent with the comments of US ISPA,[16] the Commission under CALEA need not and should not follow its practice under the Communications Act of analyzing broadband Internet access services as a whole.[17] Rather, CALEA requires that the Commission determine whether a service includes a transmission or switching component. This construction is supported not only by the clear purpose of CALEA — to maintain law enforcement access to communications technologies — but also by the structure of the definition of "telecommunications carrier." Congress contemplated that a "telecommunications carrier" could provide "information services," and that its provision of information services does not render it entirely exempt from CALEA. A telecommunications carrier is exempt from CALEA only "insofar as" it provides information services.[18] The components of a service that are "the offering of a capability for generating, acquiring, storing, transforming,

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[16] *See* US ISPA Comments at 5-10; *id.* at 6 ("While this 'binary choice' has long been a feature of the Commission's reading of the Communications Act, there is no reason to believe that Congress incorporated such an approach into CALEA." (footnote omitted)).

[17] *See infra* Section I.F.

[18] 47 U.S.C. § 1001(8)(C)(i); *see* DOJ Comments at 24; US ISPA Comments at 9 ("[T]he transmission/content distinction indicates that an entity that is a telecommunications carrier under CALEA also may provide unregulated information services.").

processing, retrieving, utilizing, or making available information via telecommunications" are exempt. If, however, the service provides "wire or electronic communication switching or transmission service,"[19] it must comply with CALEA's requirements to the extent it does so.

As Cingular noted, the SRP allows the Commission to expand the scope of CALEA to entities providing service other than as a common carrier for hire.[20] In that regard, it is analogous to section 254(d) of the Communications Act, which allows the Commission to subject non-common carrier providers of interstate telecommunications to the requirement to "contribute to the preservation and advancement of universal service,"[21] which otherwise applies only to common carriers. As DOJ explained in its comments, the Commission can and should invoke the SRP to make clear that certain categories of entities are subject to CALEA regardless of whether they provide service on a common-carrier basis.[22] But any entity providing broadband Internet access or VoIP as a common carrier for hire is subject to CALEA even in the absence of a Commission determination under the SRP.[23]

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19 47 U.S.C. § 1001(8)(B)(ii).

20 *See* Cingular Comments at 15-17.

21 47 U.S.C. § 254(d).

22 *See* DOJ Comments at 11-12, 29-32.

23 *See* DOJ Comments at 31-32.

C. The Substantial Replacement Provision Is Triggered by Replacement of a Substantial Portion of the Functionality of Local Telephone Exchange Service.

Broadband Internet access replaces a substantial portion of local telephone exchange service because it enables the customer to access a publicly switched network — the Internet — and provides an access conduit to other services, including the Internet and all of the communications services available over the Internet.[24] Managed or mediated VoIP replaces a substantial portion of local telephone exchange service because it often allows the customer to obtain access to the public switched telephone network ("PSTN") and provides the capability of making voice-grade telephone calls.[25] NTCA pointed out that managed VoIP technology "enables individual subscribers to use the Internet to replace the traditional POTS functionality of the local exchange carrier."[26] This illustrates how managed VoIP can replace a *substantial* portion of the service without replacing the entire service.[27]

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[24] *See Notice* ¶ 44; DOJ Comments at 14-15. Level 3's argument that broadband Internet access is not a replacement for telephone service because dial-up Internet access and broadband Internet access are not economic substitutes for each other, *see* Level 3 Comments at 9-11, misses the point. Broadband Internet access is a replacement for *telephone service* that enables subscribers to reach dial-up Internet service providers. It also takes the place of telephone service in providing access to publicly switched networks and other services.

[25] *See* DOJ Comments at 15.

[26] NTCA Comments at 2-3.

[27] *See also* Verizon Comments at 7-8 (stating that VoIP is a replacement for a substantial portion of the local exchange service because it "allows users to make and

Some parties advocated an understanding of the SRP that is less consistent with the language of CALEA and that would defeat the purpose of requiring surveillance-assistance capabilities to be built in rather than requiring retrofitting. DOJ's comments showed that the Commission's functional understanding of the SRP would be most consistent with the language and purpose of the statute, provided that the Commission gives meaning to the word "substantial" as well as to the word "replacement."[28] There is no reason that, as BellSouth suggests, "a service must be capable of replacing all (or at least a majority) of the functionalities of local exchange service"[29] in order for it to replace a *substantial* portion. A more reasonable meaning for "substantial" would be, as DOJ has suggested, any significant portion of the functionality that enables users to

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receive voice calls and therefore is a replacement for the central function of local telephone exchange service").

[28] *See* DOJ Comments at 12-16; *see also* EFF Comments at 10 (arguing that the *Notice* "reads 'substantial' out of the clause, finding it means 'any' portion"); Global Crossing Comments at 6-7 ("[R]eplacing the word 'substantial' with the word 'any' is not 'a permissible construction of the statute' because the term 'substantial portion' sets a high bar that requires the Commission to set some limiting standard.").

[29] *See* BellSouth Comments at 8-9 ("To be considered, for the purposes of CALEA, 'a replacement for a substantial portion of the local exchange service,' a service must be capable of replacing all (or at least a majority) of the functionalities of local exchange service, including, for example, the ability to make local voice calls, access to 911, and access to long distance service. Dial-up Internet access is a single feature of local exchange service and is used almost exclusively to reach information services that are not subject to CALEA.").

make voice-grade telephone calls or of the provision of an access conduit to other services.[30]

Several parties argued that the SRP should be interpreted similarly to provisions in other statutes that they acknowledge are worded differently.[31] As the *Notice* observed, section 332(d)(1) of the Communications Act includes the phrase "effectively available to a substantial portion of the public."[32] Section 251(h)(2) refers to a *carrier* that "has substantially replaced an incumbent local exchange carrier."[33] The phrase in CALEA is "replacement for a substantial portion of the local telephone exchange service."[34] There is no reason that such entirely different phrases must be interpreted identically. CALEA's concept of one service replacing another service is simply not the

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30 *See* DOJ Comments at 14. Global Crossing misunderstands the Commission's proposal. The *Notice* observed that broadband Internet access service replaces "the telephony portion of dial-up Internet access functionality," *Notice* ¶ 44, meaning the service provided by a local exchange carrier that allows subscribers to reach dial-up ISPs over POTS. *See id.* (observing that, "at the time CALEA was enacted," one purpose of the local exchange telephone network was to be "the access conduit to many other services such as long distance services, enhanced services, and the Internet." (footnotes omitted)). The Commission was not suggesting, as Global Crossing contends, that "broadband access services . . . are a replacement for dial-up Internet services" in the sense that would "require[] a finding that dial-up Internet access is a 'substantial portion of the local telephone exchange service.'" Global Crossing Comments at 8.

31 *See, e.g.*, BellSouth Comments at 13-14; CDT Comments at 35; CTIA Comments at 5 & n.10; EDUCAUSE Comments at 18-19; T-Mobile Comments at 10.

32 47 U.S.C. § 332(d)(1); *see Notice* ¶ 44 n.113.

33 47 U.S.C. § 251(h)(2)(B).

34 47 U.S.C. § 1001(8)(B)(ii).

same as other provisions referring to one carrier replacing another carrier. Congress could have used the same language as in these other provisions but did not.

BellSouth referred to another differently worded provision — section 332(c)(3)(A) of the Communications Act — which authorizes the Commission to grant a state permission to regulate CMRS rates if the state demonstrates that CMRS service "is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State."[35] The Commission has stated that that phrase is not satisfied by a showing that a CMRS carrier is providing a substitute for landline service.[36] But the portion of legislative history cited by the Commission states that, for purposes of section 332(c)(3)(A), "the Commission should permit States to regulate radio service providers for basic telephone service if subscribers have no alternative means of obtaining basic telephone service."[37] BellSouth advocated that the Commission undertake "[a] review of market conditions (e.g., number of providers of the particular service at issue, rates charged by these providers,

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35 47 U.S.C. § 332(c)(3)(A); *see* BellSouth Comments at 14.

36 *See Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas Is Subject to Regulation as Local Exchange Service*, Memorandum Opinion and Order, 17 FCC Rcd 14802, 14815 n.98 (2002).

37 H.R. Conf. Rep. No. 103-213, at 493 (1993), *cited in Petition of the State Independent Alliance and the Independent Telecommunications Group*, *supra* note 36, at 14815 n.98.

number of customers, etc.)."[38] Although such an inquiry might make sense in determining whether economic regulation is appropriate, it would make no sense in determining whether providers of a service should be required to build law-enforcement-assistance capabilities into their networks.

Finally, there is no support for the argument that the SRP can be invoked only upon identification of a particular *person or entity* whose service is a replacement for a substantial portion of local exchange service.[39] The SRP plainly requires only that the Commission make a finding as to a particular *service*;[40] any person or entity engaged in providing the identified service would then be a telecommunications carrier under the SRP.

D. "Switching" and "Transmission."

As DOJ showed in its comments, Congress's use of the phrases "wire or electronic communication switching or transmission service"[41] and "transmission or switching of wire or electronic communications"[42] expresses the breadth of CALEA's definition of "telecommunications carrier."[43] CDT's suggestion that the Commission

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38 BellSouth Comments at 15.

39 *See* CDT Comments at 37-38; EFF Comments at 7-8.

40 *See* 47 U.S.C. § 1001(8)(B)(ii) (applying "to the extent that the Commission finds that such *service* is a replacement . . ." (emphasis added)).

41 *See* 47 U.S.C. § 1001(8)(B)(ii).

42 *See* 47 U.S.C. § 1001(8)(A).

43 *See* DOJ Comments at 8-11.

should have used a 1994 edition of *Newton's Telecom Dictionary* rather than a 2003 edition[44] is fanciful. The Commission properly applied the meaning of the term adopted by Congress to today's technologies. The evolution of the definitions in *Newton's* definitions reflects the same understanding that, today, "switching" includes — as the *Notice* said — "routers, softswitches, and other equipment that may provide addressing and intelligence functions for packet-based communications to manage and direct the communications along to their intended destinations."[45]

E. Application of CALEA to "Managed" or "Mediated" VoIP.

The *Notice* tentatively concluded that providers of VoIP services that are managed or mediated should be subject to CALEA under the SRP. Some parties criticized the Commission's use of the terms "managed" and "mediated" as vague or inaccurate,[46] and others propose alternative criteria for distinguishing VoIP that would be covered by CALEA from VoIP that would not be covered.[47] DOJ's comments

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[44] *See* CDT Comments at 33-34; EFF Comments at 16-17 & n.72.

[45] *Notice* ¶ 43. *Compare* Harry Newton, *Newton's Telecom Dictionary*, at 989 (8th ed. 1994) (defining *switch*) *to* Harry Newton, *Newton's Telecom Dictionary*, at 792 (20th ed. 2004) (defining *switch*).

[46] *See, e.g.*, CDT Comments at 41-42.

[47] *See, e.g.*, SBC Comments at 9-10 (arguing that the focus should be on how the end-user uses the service); Verizon Comments at 9-10 (proposing that CALEA should apply to all VoIP services that involve the use of either application servers or networks); US ISPA Comments at 13-16 (arguing that the limits should be defined by the exclusions for information services, including electronic messaging services, and private network services).

supported the framework proposed in the *Notice* with the understanding that all providers performing the functions described in the three business models discussed in the Petition for CALEA Rulemaking would be included, and that the terms "managed" and "mediated," taken together, would refer to a service provider's ongoing involvement in the exchange of information between its users.[48] Any VoIP service provider whose service interconnects with the PSTN would necessarily be included, as would some other providers of VoIP services.[49] DOJ agrees with VeriSign, which stated that the Commission's framework recognizes that the functions of management and mediation are the equivalent of signaling in the PSTN and that, "in most mediated/managed public VoIP implementations, the provider is actually connected to and interoperating with the PSTN signaling infrastructure."[50]

DOJ is open to considering alternative criteria for distinguishing covered carriers from non-covered carriers if their operation can be described in more detail and the distinctions drawn are consistent with the purposes of CALEA and the needs of law enforcement. DOJ agrees with Verizon that it is important for CALEA obligations to apply to VoIP providers as described in DOJ's comments even if they do not control the

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48 *See* DOJ Comments at 32-33; Petition for CALEA Rulemaking at 16-17 n.39.

49 *See* DOJ Comments at 33-34.

50 VeriSign Comments ¶ 6; *see also id.* ¶ 22 (describing several subclasses of managed or mediated VoIP provider, all of which would be included under the Commission's analysis).

physical network over which the VoIP traffic rides. Such a VoIP provider is in a better position than a transport provider to be able to isolate and interpret the packets that it transmits or switches.[51]

F. The Information Services Exclusion.

Commenters that argued that the similar definitions of "information service" in CALEA and the Communications Act mean that broadband Internet access service must be considered an information service under CALEA[52] are incorrect. As DOJ's comments showed, the logic of the Commission's 1998 *Universal Service Report to Congress*[53] and the 2002 *Internet Over Cable Declaratory Ruling*[54] does not carry over to CALEA.[55] The Commission's conclusion in the *Internet Over Cable Declaratory Ruling* was that cable modem service is an information service and is not a telecommunications service.[56] But the Commission in that ruling recognized that Internet access service does

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51 *See* Verizon Comments at 9.

52 *See, e.g.*, BellSouth Comments at 7-10; Cingular Comments at 7-9; Global Crossing Comments at 3-6; Level 3 Comments at 11.

53 *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 (1998) ("*Universal Service Report to Congress*").

54 *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002) ("*Internet Over Cable Declaratory Ruling*"), *aff'd in part, vacated in part, and remanded*, *Brand X Internet Services v. FCC*, 345 F.3d 1120 (9th Cir. 2003) (per curiam), *cert. granted*, 2004 WL 2070879, 2004 WL 2153536, 73 U.S.L.W. 3146 (U.S. Dec. 3, 2004) (Nos. 04-277, 04-281).

55 *See* DOJ Comments at 23-28.

56 *See Internet Over Cable Declaratory Ruling*, 17 FCC Rcd at 4822-23 ¶¶ 38-39.

include transmission and, in fact, includes a telecommunications component.[57] That component is not a "telecommunications service" under the Communications Act,[58] but it does establish that the entity providing the service is "engaged in providing wire or electronic communication transmission or switching service" for purposes of CALEA.[59]

The Commission's observation in the *Notice* that Internet services were, at the time CALEA was enacted, generally provided on a dial-up basis[60] was not, as Cingular suggested, an attempt to create "a distinction between dial-up and non-dial-up information services."[61] It was a recognition that the House Judiciary Committee's enumeration of certain online services that were to be considered information services referred to services that were generally accessed over a telephone line. As the Commission explained, "[t]he LEC providing the local exchange transmission service that enabled the call to that dial-up ISP . . . was covered by CALEA as a telecommunications carrier providing a POTS functionality (a phone call)."[62] Today's broadband Internet access services provide the same service, but with greater bandwidth and an always-on connection. The fact that the providers of those services

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57 *See id.*; *see also* DOJ Comments at 27.

58 This proposition is subject to a Supreme Court decision in the *Brand X* cases. *See supra* note 54.

59 47 U.S.C. § 1001(8)(B)(ii).

60 *See Notice* ¶ 51.

61 Cingular Comments at 9.

are now often vertically integrated with the Internet service provider ("ISP") does not change the fact that they provide the access function.

Nor should the *House Report*'s comparison of "[p]rivate networks such as those used for banking and financial transactions"[63] with publicly switched networks be interpreted as limiting CALEA's applicability to the PSTN. The *House Report* said that "a carrier providing a customer with a service or facility that allows the customer to obtain access to a publicly switched network is responsible for complying with the capability requirements."[64] The PSTN is not the only publicly switched network; the Internet is another. Furthermore, there is no indication that this statement in the *House Report* was intended to be exhaustive.

DOJ agrees with the commenters who argued that information services provided by a telecommunications carrier are exempt from CALEA's requirements.[65] Thus, a provider of broadband Internet access service has no CALEA obligations as to its e-mail storage and retrieval, its Web-page hosting, its DNS-lookup service, or other information services. But the transmission or switching of the user's communications is not one of those exempt services.

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62 *Notice* ¶ 51.

63 H.R. Rep. No. 103-827, *reprinted in* 1994 U.S.C.C.A.N. 3489, 3503 ("*House Report*").

64 *Id.*; *see* Cingular Comments at 9.

65 *See, e.g.*, EDUCAUSE Comments at 4; T-Mobile Comments at 6-7; US ISPA Comments at 5-16.

G. Private Networks.

Contrary to some commenters' suggestions, DOJ does not see the Commission's proposals as inconsistent with the principle that the assistance-capability requirements of CALEA section 103 do not apply to "equipment, facilities, or services that support the transport or switching of communications for private networks."[66] DOJ believes that this exclusion would in fact apply in some of the situations cited by commenters. This does not mean that every service not offered as a common carrier for hire is excluded as a private network, as one party seems to suggest.[67] The SRP explicitly authorizes the Commission to bring within the definition of "telecommunications carrier" entities not acting as a common carrier for hire; that provision would make no sense if all such services were considered private networks under section 103(b)(2)(B). Rather, DOJ believes that a network that allows only internal communications among a limited user base would be considered a private network. A user base should not be considered "limited" if the service is offered to the general public or a substantial

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66 47 U.S.C. § 1002(b)(2)(B).

67 *See* Motorola Comments at 4-6. The statement from the *House Report* cited by Motorola similarly must refer to the portion of the definition of "telecommunications carrier" that applies automatically, in the absence of action by the Commission under the SRP. *See id.* at 4 (citing *House Report*, 1994 U.S.C.C.A.N. at 3498 ("The only entities required to comply with the functional requirements are telecommunications common carriers, the components of the public switched network where law enforcement agencies have always served most of their surveillance orders.")).

portion of the general public.[68] Thus, a service offered to the public over the Internet must not be considered a private network even if it only allows users to communicate with other users of the same service.[69] Furthermore, when a network once considered private becomes so large and open that it essentially becomes a replacement for a substantial portion of the traditional telephone network, it should no longer be considered private.

As applied to universities, colleges, and K-12 institutions, DOJ believes that networks that allow current students and faculty of a single school to communicate only with each other are private networks insofar as they support such internal communications. Such intranets are analogous to private branch exchanges ("PBXs").[70] Such networks are not private networks, however, to the extent that they interconnect with a public network, such as the PSTN or the Internet. That is, facilities supporting the connection of a private network to a public network are required to comply with CALEA. This may mean that the entity providing Internet connectivity to an intranet, even if that entity is an educational institution, must comply with CALEA in its provision of that Internet connectivity just as a PBX must be CALEA-compliant at the

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68 *See* Motorola Comments at 6 n.15.

69 *Contra* CDT Comments at 43 (arguing that Internet-only applications are not covered by CALEA because they create private networks). Note, however, that DOJ does not support applying CALEA to peer-to-peer services. *See* DOJ Comments at 34.

70 *See House Report*, 1994 U.S.C.C.A.N. at 3504 (stating that CALEA does not cover PBXs).

point where it connects to the PSTN. But the entity providing the intranet — even if it is the same entity — need not comply with CALEA as to the facilities that support communications over the intranet.

Certain networks that connect multiple campuses and other entities may also qualify as private networks. DOJ believes that Internet2's Abilene Network, NYSERNet, and the Pacific Northwest gigaPoP, as described in the comments of the EDUCAUSE Coalition,[71] do currently qualify as private networks.

H. Schools and Libraries.

In the *Notice*, the Commission noted that —

> establishments acquiring broadband Internet access to permit their patrons to access the Internet do not appear to be covered by CALEA. Examples of these entities include schools, libraries, hotels, coffee shops, etc. The underlying facilities-based broadband transmission providers that sell the broadband access service to these establishments to enable Internet access for their patrons would, however, be responsible for CALEA obligations under our tentative conclusion and thus Law Enforcement's needs would be addressed through these providers.[72]

The EDUCAUSE Coalition noted that, under this logic, its members (including universities, colleges, K-12 schools, libraries, and other entities) might still be covered because "some of these entities are facilities-based, broadband Internet access providers

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71 *See* EDUCAUSE Comments at 22-25.

72 *Notice* ¶ 48 n.133 (parenthetical and citations omitted).

not only to students and faculty, but also to regional governments, research entities, libraries, hospitals and others."[73]

As discussed by the EDUCAUSE Coalition[74] and CDT,[75] and as DOJ acknowledges herein,[76] some of the networks operated by such institutions may be private networks, which are excluded from section 103's assistance-capability requirements. If a party to this proceeding can articulate a well-defined category of institutions, services, and/or measures taken to protect the public safety and national security concerns of law enforcement that would merit exception from CALEA's requirements, DOJ would be willing to evaluate such a proposal.[77]

I. Small or Rural Carriers.

Some commenters pointed to difficulties that would be faced by small or rural providers of broadband Internet access services in complying with CALEA's

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[73] EDUCAUSE Comments at 21.

[74] *See* EDUCAUSE Comments at 24-25.

[75] *See* CDT Comments at 42-43.

[76] *See supra* Section I.G.

[77] The EDUCAUSE Coalition's proposed exemption of "universities, K-12 institutions and other public entities when they provide broadband Internet access to their faculty, students, researchers and other patrons," EDUCAUSE Comments at 28, is not specific enough for DOJ to support. *See also* EDUCAUSE Comments at summary page ("universities, libraries, research laboratories, K-12 institutions and more"), at 2 ("a broad variety of institutions, including K-12 schools, libraries, and local governments [including] facilities-based library networks that serve the community"), at 26 ("universities and other public entities"). DOJ can only evaluate a request for "a clear

requirements.[78] In our comments, DOJ opposed creating a broad exemption for small or rural entities and stated that exceptions should be made only where the needs of law enforcement and privacy interests would be addressed by other means that are clearly identified and sufficient.[79] VeriSign stated that "[i]t is not apparent . . . how [discrete groups could be exempted] in a manner that does not defeat the purpose of the requirement. VeriSign believes that substantial reliance on Trusted Third Party service bureaus for these marginal or disadvantaged providers meets all public interest objectives."[80] DOJ encourages small and rural providers, service bureaus, and equipment vendors to work together to develop appropriate solutions that meet the needs of law enforcement while considering the different postures of small and rural service providers. To the extent small or rural carriers, and/or service bureaus, develop solutions that may not represent full compliance with CALEA but do meet the needs of law enforcement as described above, DOJ would consider supporting a request for relief under section 102(8)(C)(ii).[81] DOJ will not, however, support a broad exemption

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and specific exemption from any final CALEA ruling," EDUCAUSE Coalition Ex Partes (Nov. 16 & Nov. 18, 2004), if the category of entities to be excluded is clear and specific.

[78] *See* NTCA Comments at 3-5; TCA Comments at 2; AMA TechTel Comments; OPATSCO Comments at 2-5; RTG Comments at 2; RTP Comments; GVNW Comments; Smithville Comments; CRRBCC Comments.

[79] DOJ Comments at 20-21.

[80] VeriSign Comments ¶ 17.

[81] 47 U.S.C. § 1001(8)(C)(ii) (allowing the Commission, after consultation with the Attorney General, to exempt any class or category of telecommunications carriers). A

for any class of carriers under the public-interest clause of the SRP,[82] section 102(8)(C)(ii), section 109(b), or any other provision in the absence of a clear definition of the scope of carriers that would be covered or without clearly identified and sufficient means of addressing the needs of law enforcement and protecting privacy.

II. The Commission Should Sever Most CALEA Technical Capability Issues from This Proceeding and Minimally Address the Capability Term "Reasonably Available."

The *Notice* set forth an ambitious agenda of CALEA implementation issues, including a range of questions about the technical capabilities required under CALEA section 103 for broadband Internet access providers and VoIP providers. It was DOJ's view that such technical matters were too numerous and complex to be resolved adequately within the limited window of this proceeding.[83] DOJ therefore suggested that the Commission should generally permit these matters to be resolved through the statutory standard-setting process, followed, if necessary, by the statutory process of deficiency petitions.[84] The comments reflect widespread agreement with DOJ's views.

"class or category" could include, for example, a well-defined class of carriers that have adopted certain alternative measures to serve the needs of law enforcement.

[82] 47 U.S.C. § 1001(8)(B)(ii) (requiring the Commission to find that "it is in the public interest to deem such a person or entity to be a telecommunications carrier for purposes of [CALEA]" in order to invoke the Substantial Replacement Provision).

[83] DOJ Comments at 39-44.

[84] *Id.*

A. Numerous Commenters Agreed that Most CALEA Capabilities Issues Should Be Resolved Through the Standard-Setting Process and Deficiency Petitions.

The commenters generally opposed the Commission's proposal to resolve CALEA technical issues in the context of this proceeding.

SBC stated that the *Notice* "is not the proper vehicle for the Commission to use in deciding whether a standard is deficient,"[85] and that the "plethora of complex issues concerning the proper application of section 103 to [broadband services] are not going to be resolvable based on the record developed in response to the CALEA NPRM."[86]

According to Verizon, because the definition of CII "presents significant technical complexities and the answers will be service-specific, the Commission should leave to the standards process the technical details and definition of data elements concerning the requirements for call-identifying information."[87] VeriSign added that "what is reasonably available should be decided in the standards communities, rather than the Commission in a regulatory proceeding."[88]

A few commenters actually implied that the introduction of section 103 capability issues in this proceeding reflects an attempt by law enforcement to override

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85 SBC Comments at 21.

86 *Id.* at 15.

87 Verizon Comments at 21.

88 VeriSign Comments at 18.

the normal process of standard-setting and deficiency petitions.[89] DOJ never asked the Commission to incorporate section 103 issues in the *Notice*.

DOJ's comments in this proceeding strongly advocated the same approach as the one voiced by the above-named parties: the Commission should sever the section 103 issues from this proceeding, let the statutory standard-setting process play out, and resolve any residual technical disputes in the context of section 107(b) deficiency petitions.[90]

Based on the above, DOJ concurs with industry's position that the proper way to resolve section 103 technical capability issues under CALEA is through the standard-setting process and deficiency petitions. The Commission should honor this broad consensus and sever the technical issues from this proceeding.[91]

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[89] "Law Enforcement may not ask the Commission to override this process and impose a new system via rulemaking." USTA Comments at 8-9. "The Commission should reaffirm the central role of the standards process and should reject any attempt by law enforcement to control that process." TIA Comments at 9. "Law enforcement alone should not drive the process of determining 103 obligations." SBC Comments at 15.

[90] DOJ Comments at 39-44.

[91] There are a couple of commenters who prefer to resolve certain CALEA technical issues in this proceeding. NCTA asks the Commission to define "access session" and capacity requirements for purposes of applying section 103 to broadband services. NCTA Comments at 13-14. The ACLU calls on the Commission to "review the architecture of different packets and determine what identifying information is common to each and can be extracted without law enforcement's viewing or holding call content information." ACLU Comments at 4. However, these parties offer few specifics on exactly how the Commission should resolve these technical issues. This lack of detail highlights the difficulty of resolving technical issues in the context of the

B. The Comments Did Not Support the Proposed "Significant Modification" Rule as a Means of Defining the Term "Reasonably Available."

The *Notice* proposed that call-identifying information ("CII") should be deemed "reasonably available" under CALEA section 103 if its extraction and delivery to law enforcement would not require the carrier to perform a "significant modification" of its network.[92] DOJ considered the proposed "significant modification" rule insufficiently precise to make the "reasonably available" determination.[93] DOJ also cautioned that any significant modification rule should focus on modification options at the network design stage and should be limited to a consideration of what is technically significant, without regard to carrier-specific costs or non-technical factors that arise in the distinctly separate "reasonably achievable" determination.[94]

The proposed significant modification rule received virtually no support among the commenters. CDT stated that the concept of significant modification is "inapplicable to Internet applications, the design of which may never involve any 'modification' to a 'network.'"[95] TIA said the defensibility of the proposed significant

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instant rulemaking and thereby reinforces the point that such issues should be severed from the proceeding.

92 *Notice* ¶¶ 67-68.

93 DOJ Comments at 44.

94 *Id.* at 45-48

95 CDT Comments at 45.

modification rule depends on what the Commission means by that term.[96] If the term asks what "could" be extracted from a network, TIA adds, it would be "radically inconsistent with CALEA."[97] US ISPA argued for an alternative to the proposed rule that would focus on whether the targeted CII is "used by the carrier in the course of serving the carrier's customers."[98] Based on the above, the proposed significant modification rule is not viewed as an effective tool for deciding which elements of CII should be deemed reasonably available under CALEA.

In a related comment, Motorola suggested that the Commission should conduct the reasonably available analysis by determining what types of CII are available "without system redesign."[99] Motorola provided no legal support for this novel interpretation of the statute. As DOJ noted in its comments, CALEA expressly requires carriers and equipment vendors to ensure that current "and planned" equipment, facilities, and services comply with the capability requirements of CALEA section 103.[100] This plainly means carriers and vendors must incorporate any required CALEA capabilities at the network design stage. The Commission affirmed this principle in its recent decision denying Verizon Wireless's request for extension of the CALEA

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96 TIA Comments at 14.

97 *Id.* at 14-15.

98 US ISPA Comments at 19.

99 Motorola Comments at 18.

100 DOJ Comments at 44-45 and n. 146.

compliance deadline governing its push-to-talk ("PTT") service.[101] The same point was acknowledged in this very proceeding, in Nextel's statement that all PTT-like services should "come to market with a CALEA-compliant intercept solution."[102]

Thus, as long as equipment vendors and carriers fulfill their proactive statutory obligation to develop CALEA solutions at the initial network or service design stage, there should be no need for the Commission to ask whether an item of CII would require the kind of system redesign described by Motorola.

C. Most Commenters Do Not Favor Any Special Legal Status for Trusted Third Party Solution Vendors.

The *Notice* also inquired about the feasibility of using trusted third party solution vendors ("TTPs") to assist with the task of CALEA compliance.[103] In response, DOJ commented that the Commission should neither promote nor restrict the use of TTPs but should merely ensure that they are not used to shift CALEA compliance responsibilities away from telecommunications carriers and equipment vendors.[104] The

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101 *See* Letter from John Muleta, Chief, Wireless Telecommunications Bureau, to John T. Scott, III, DA 04-3589 (Nov. 16, 2004) (stating that "section 106(a) requires a carrier to consult 'in a timely fashion' with manufacturers of its equipment to ensure that 'current *and planned* equipment' comply with CALEA capability requirements" (emphasis in original)).

102 Nextel Comments at 2.

103 *Notice* ¶¶ 69-76.

104 DOJ Comments at 48-52.

commenters generally agreed that TTPs deserve no special legal status. The following reviews the comments on this issue and certain related points.

1. TTPs Should Have No Special Legal Status.

US ISPA acknowledged that TTPs offer potential benefits but stated that they should not have any "special status" under CALEA.[105] SBC advised that the Commission should permit but not require TTPs.[106] T-Mobile considers it "premature" for the Commission to conclude anything about TTPs.[107] Verizon stated that the Commission may not, consistent with CALEA, impose a TTP requirement on carriers.[108] Consistent with the above-described views of DOJ and industry, the Commission's CALEA rules should neither promote nor discourage the use of TTPs.

2. Telecommunications Vendors Must Remain Fully Involved in Designing CALEA Solutions for Their Telecommunications Carrier Customers.

In response to the related question of whether the availability of TTPs should permit telecommunications equipment vendors to withdraw from the CALEA compliance process, Verizon was doubtful.[109] In Verizon's opinion, the creation of the

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105 USISPA Comments at 27.

106 SBC Comments at 18.

107 T-Mobile Comments at 22.

108 Verizon Comments at 24.

109 *Id.*

needed intercept access points requires vendors to develop software to conform to the relevant standards or the insertion of probes.[110]

Even Fiducianet, one of the two TTP commenters, agreed with this view.[111] Fiducianet explained that while its staff works closely with equipment manufacturers and vendors of surveillance support equipment, it "does not itself design or deploy proprietary equipment into the service provider's network for provisioning of electronic surveillance, or mediation, or for delivery of intercepted call-identifying information or call content."[112]

DOJ agrees with these parties that telecommunications vendors must remain fully involved in designing CALEA solutions for their telecommunications carrier customers. In addition, DOJ believes the Commission should be reluctant to shift CALEA responsibilities to entities such as TTPs that are not subject to the statute and therefore not accountable for statutory violations. For all these reasons, the Commission should ensure that telecommunications vendors remain fully involved in the design of CALEA solutions as required by CALEA section 106.

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110 *Id*.

111 Fiducianet Comments at 29.

112 *Id*. at 27.

3. TTPs Should Not Be Used to Determine Whether CII Is Reasonably Available.

The *Notice* expressed the belief that a TTP could extract CII from a carrier's network even if the carrier does not process it, and therefore TTPs could help determine whether CII is reasonably available in a given network.[113] Many parties disagreed.

T-Mobile questioned the Commission's assumption that "the delivery function is the primary limiting factor in providing lawful intercept, when in fact the most dependable leg of the intercept operation is usually the CALEA mediation system and the final delivery leg for call-identifying data destined for the LEA."[114] T-Mobile added that although intercept failures are rare they are usually due to "failed switch software, failed trunk lines for voice channel delivery, or human error in provisioning data and voice paths."[115] Finally, T-Mobile noted that if there are intercept failures in the network core, the TTP would not be able to solve them.[116]

TIA agreed, saying the Commission "should not conclude that particular CII is reasonably available simply because a TTP has announced a willingness to extract it for a price."[117] TIA feared that if the reasonably available determination hinges on what a

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113 *Notice* ¶ 70.

114 T-Mobile Comments at 22.

115 *Id.* at 22-23.

116 *Id.* at 23.

117 TIA Comments at 9.

TTP can extract, TTPs would have "the incentive to adopt capabilities beyond those required by CALEA."[118]

DOJ has the opposite concern: if TTPs decide what is reasonably available, the resulting scope of capabilities may fall short of what is required by CALEA. More fundamentally, DOJ fears that using TTPs to define "reasonably available" would miss the point of the reasonably available analysis, which is to determine what types of CII are available at the service design stage, not at some later operational stage if and when the TTP happens to be retained.[119]

4. TTP Solutions Are Not Comparable to Safe Harbor Solutions.

Another DOJ concern was that TTP solutions might be viewed as adequate substitutes for safe harbor solutions when they do not deliver all the capabilities that might be delivered under a safe harbor solution.[120] T-Mobile does not believe the Commission has the authority under CALEA to find that a TTP solution is equivalent to a safe harbor.[121]

Motorola saw no conflict between TTPs and safe harbors, because TTPs could play a valuable role in developing the solution and because standards bodies are well-

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118 *Id.* at 19.

119 *See* DOJ Comments at 50.

120 *See id.* at 50-51.

121 *See* T-Mobile Comments at 23.

positioned to prepare standard interfaces that allow TTP solutions to work properly.[122] The two TTP commenting parties agreed. VeriSign stated that its solutions would "simply follow the specs in any relevant standard, and if the standard is deemed deficient, the TTP would supplement the standard to alleviate the deficiency."[123] Fiducianet similarly assured that "with or without a TTP, the carrier would conform to the same applicable standard using the same equipment."[124]

The common denominator among these viewpoints is that the Commission should not permit TTP solutions to be inconsistent with safe harbor solutions. Therefore, the Commission should rule that: (1) TTPs solutions are not alternatives to safe harbor solutions; and (2) any TTP solution must meet the same level of compliance as all other solutions for the same service.

5. TTPs Should Not Be Used to Shift Financial Responsibilities from Carriers to Law Enforcement.

DOJ's comments argued that TTPs should not be used to shift financial responsibilities from carriers to law enforcement.[125] TIA asserted that TTPs should be funded or owned by law enforcement to facilitate interactions among carriers,

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122 *See* Motorola Comments at 19.

123 VeriSign Comments at 22.

124 Fiducianet Comments at 26-28.

125 *See* DOJ Comments at 48-52.

manufacturers and law enforcement and help relieve burdens on small law enforcement agencies.[126] SBC, Verizon and US ISPA have agreed.[127]

However, VeriSign and ACLU explained that such an arrangement is not possible, because law enforcement agencies cannot validly outsource their law enforcement functions to non-government entities such as TTPs.[128] GVNW further noted that when it comes to CALEA compliance, "the buck stops with the carrier."[129] Fiducianet added that there is no need for special arrangements to fund TTPs, because "the nominal fees for Fiducianet's services are well within the financial ability of even small or rural service providers."[130]

As DOJ has already explained, CALEA requires carriers to pay their own compliance costs unless their equipment, facilities, or services were installed and deployed on or before to January 1, 1995, pursuant to CALEA section 109.[131] Therefore, for more recent installations, GVNW is correct that the cost obligation falls on the carrier. Next, VeriSign and ACLU are correct that law enforcement may not outsource law enforcement functions to non-governmental entities. In any event, DOJ agrees with

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126 TIA Comments at 19.

127 SBC Comments at 19; Verizon Comments at 24-25; US ISPA Comments at 29.

128 VeriSign Comments at 22; ACLU Comments at 9.

129 GVNW Comments at 10.

130 Fiducianet Comments at 32.

131 DOJ Comments at 82-84.

Fiducianet that the costs of CALEA compliance for VoIP and broadband access carriers are not so great as to justify special Commission relief for their cost recovery. The CALEA cost issue is explored more fully below.

A CALEA-covered carrier enjoys many sources of expertise to bring its system into compliance. It can follow an industry standard, develop a customized solution with its equipment vendor, or collaborate with its vendor and a TTP to install a third-party solution. The fact that the carrier must pay for the solution makes for good public policy, because it gives the carrier an incentive to choose the most cost-effective approach from among the above-listed options.

Any Commission rule that would permit carriers to shift their TTP costs to law enforcement would encourage carriers to migrate to TTPs and thereby remove their healthy incentive to find cost-effective solutions. Even worse, such a rule would leave TTPs unconstrained in the amounts they charge law enforcement, because law enforcement agencies have no ability to comparison shop for the networks where lawful surveillance must be performed.

Some law enforcement agency budgets are already strained by the extremely high "administrative" charges imposed by some carriers. If the Commission adopts a TTP rule permitting carriers to raise those charges even higher, some law enforcement agencies may become financially unable to implement court orders for lawful

surveillance. Such a development would frustrate investigations and jeopardize public safety.

Thus, as a matter of both law and policy, the Commission should ensure that each carrier takes responsibility for the CALEA compliance costs of its own network.

6. Special Security and Privacy Safeguards Are Needed for TTPs.

RTP shared DOJ's concern that, if networks are open to TTPs, it may be difficult to police the type of information that is extracted from the carrier's network.[132] Verizon, US ISPA, ACLU, and the EFF have also agreed that TTPs raise security and privacy concerns.[133]

Fiducianet stated that, in the configuration of its own solutions, it does not monitor the information stream delivered to law enforcement, because the data goes straight from the carrier's premises to law enforcement.[134] Fiducianet added that it complies strictly with all privacy and security protections required by law, as shown by the terms of its contracts.[135] However, Fiducianet did believe there are privacy and

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132 RTP Comments at 12.

133 Verizon Comments at 24; US ISPA Comments at 28; ACLU Comments at 9; EFF Comments at 25-27.

134 Fiducianet Comments at 17.

135 *Id.* at 22-23.

security risks in an external TTP system "where a carrier sends both content and CII to an external mediation device."[136]

For these reasons, the Commission should consider the need for safeguards, at least in the context of external TTP systems, to meet the CALEA standards governing the privacy and security of lawfully intercepted communications.

D. The Record Does Not Support the Proposal to Regard Private Network Security Agreements as Substitutes for CALEA Compliance.

In its comments, DOJ explained the role of satellite network security agreements and advised that these arrangements should not be viewed as substitutes for CALEA compliance.[137] Few other parties commented on the issue.

VeriSign considered the use of network security agreements "a pragmatic and appropriate approach"[138] but did not specifically address the relationship between those agreements and CALEA. DOJ agrees that network security agreements offer pragmatic benefits. However, DOJ continues to believe that, if a carrier subject to a security agreement is also subject to CALEA, the carrier bears an independent responsibility to comply with CALEA. DOJ therefore requests the Commission to memorialize this distinction in any CALEA rules governing satellite carriers.

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136 *Id.* at 34-35.

137 DOJ Comments at 52-53.

138 VeriSign Comments at 27.

SIA asserted there is no need, as a general matter, for the Commission to require fixed satellite service ("FSS") providers of CALEA-covered services to negotiate system-by-system CALEA compliance agreements with law enforcement.[139] In SIA's view, such a requirement would be unnecessarily burdensome, because FSS providers of CALEA-covered services "use standard routers that are identical to those used by terrestrial packet-mode network operators."[140] SIA therefore prefers the option of using safe harbor CALEA compliance standards that apply at the router, except in situations where the FSS provider decides to deploy a different network architecture or a non-standard transmission protocol.[141]

DOJ agrees. The development of safe harbor standards for the above satellite services would ensure CALEA compliance and preserve the important distinction between CALEA obligations and network security agreements.

E. The Consensus of the Comments Is Not to Impose Significant Limits on the Statutory Terms "Industry Association" or "Standard-Setting Organization."

DOJ also responded to questions in the *Notice* about how to define the statutory terms "industry association" and "standard-setting organization."[142] DOJ opposed any definition that would require accreditation by the American National Standards

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139 SIA Comments at 7-9.

140 *Id.* at 8.

141 *Id.* at 8-9.

Institute ("ANSI") but did propose that CALEA standard-setting entities should: (1) be generally recognized as representing segments of the telecommunications industry; (2) expressly state that their purpose is to guide CALEA compliance; and (3) maintain records of the capabilities considered in their standard-setting proceedings.[143]

Various commenters agreed that ANSI accreditation is not necessary for an entity to be deemed a CALEA "industry association" or "standard-setting organization."[144] US ISPA argued that an ANSI accreditation requirement would contradict the language of CALEA, strike down several existing standards such as CableLabs's CALEA specifications, and restrict the future use of the standards process.[145] For these reasons, the Commission should not require CALEA standards-setting entities to obtain ANSI accreditation.

At the same time, DOJ found nothing in the comments that contradicted DOJ's proposal to adopt the three minimal requirements outlined above. Accordingly, the Commission should find that the statutory terms "industry association" and "standard-setting organization" should not be significantly limited but should be minimally defined as recommended by DOJ.

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142 DOJ Comments at 54-56.

143 *Id.*

144 TIA Comments at 12-13; USISPA Comments at 30-31; VeriSign Comments at 24; NCTA Comments at 16-18.

145 US ISPA Comments at 30-31; SIA Comments at 13-16.

III. The Commission Was Correct in Concluding that Section 107(c) Extensions Are Not Available to Cover Equipment, Facilities, or Services Installed or Deployed After October 25, 1998.

In addition to DOJ, several parties[146] agreed with the Commission's interpretation of CALEA section 107(c) as it relates to carriers' extension petitions — i.e., "a section 107(c) extension is not available to cover equipment, facilities, or services installed or deployed after October 25, 1998."[147] CALEA Section 107(c)(1) states that:

> 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.[148]

The effective date of section 103 is October 25, 1998.[149] The Commission's interpretation of this section, limited to the plain meaning of the statute,[150] is reasonable and is the only possible interpretation of this section.

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146 *See* VeriSign Comments at 34; NYAG Comments at 11; OPASTCO Comments at 3.

147 *Notice* ¶ 97.

148 47 U.S.C. § 1006(c)(1) (emphasis added).

149 47 U.S.C. § 1001 note. 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.

150 As the Supreme Court held in *BedRoc Ltd. v. U.S.*, "[t]he preeminent canon of statutory interpretation requires us to 'presume that [the] legislature says in a statute what it means and means in a statute what it says there.' Thus, our inquiry begins with the statutory text, and ends there as well if the text is unambiguous." *BedRoc Ltd., LLC v. U.S.*, 124 S. Ct. 1587, 1593 (2004).

Other parties have argued that the Commission still has the authority to continue to grant CALEA section 107(c) extensions to carriers who installed or deployed facilities after October 25, 1998.[151] This interpretation, however, directly contradicts the plain language of the statute. For example, T-Mobile and Nextel asserted that CALEA section 107(c) does not limit extensions for equipment or services which did not exist prior to 1998 or which carriers did not propose to deploy prior to 1998;[152] their proposed interpretation of CALEA section 107 would render meaningless the "prior to the effective date of section 103" clause that Congress included in section 107(c)(1).[153] Other parties — even opponents of the Commission's tentative conclusion on CALEA section 107(c) — have recognized that Congress placed an explicit time limit on carriers to comply with CALEA.[154]

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151 *See, e.g.*, NTCA Comments at iii, 6-7; Nextel Comments at 10; SBC Comments at 21; Global Crossing Comments at 13-15; T-Mobile Comments at 25; Cingular Comments at 23.

152 T-Mobile Comments at 25; Nextel Comments at 10.

153 47 U.S.C. § 1006(c)(1).

154 *See, e.g.*, SBC Comments at 22. Although SBC argued that the Commission's proposed interpretation of section 107(c) is in "direct contravention of Congressional intent," SBC at 21, SBC then contradicted its own argument by agreeing that Congress imposed a time limitation for CALEA compliance and for extensions. SBC stated that "Congress was open to giving carriers up to six years to implement CALEA (the initial four years to comply plus an additional two years if an extension was necessary)." *Id*.

Another commenter made the argument that the Commission can extend the packet-mode compliance deadline under CALEA section 107(b).[155] This argument is incorrect. In the past, the Commission has granted extensions of the CALEA packet-mode compliance deadline under its CALEA section 107(c) authority and not under section 107(b).[156]

Moreover, the Commission does not have the authority under section 107(b) to extend CALEA compliance deadlines for packet-mode services. In the *CALEA Third Report and Order*, the Commission addressed specific deficiencies arising from the standard J-STD-025.[157] That standard is no longer in dispute by industry or law enforcement. Thus, the Commission would have no authority to establish a future packet-mode compliance deadline by referencing the J-STD-025 deficiency proceeding. Furthermore, since that time, industry has developed separate standards for packet-

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[155] Cingular Comments at 23. Cingular argued that any future extensions of the packet-mode deadline can be granted under CALEA section 107(b) and "thus be viewed, in effect, as a waiver of the Commission's codified rules and further Commission action under Section 107(b)." *Id*.

[156] *See, e.g*., *The 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. Nov. 19, 2003) ("As a result, we have decided to extend the currently preliminary extensions for packet-mode services to January 30, 2004. We caution carriers that we will not routinely grant further blanket extensions ***pursuant to section 107(c)*** . . . .") (emphasis added). *Id*. at 3.

[157] *In re Communications Assistance for Law Enforcement Act*, Third Report and Order, 14 FCC Rcd at 16819 ¶¶ 55-56, *aff'd in part, vacated in part, and remanded*, *USTA v. FCC*, 227 F.3d 450 (D.C. Cir. 2000).

mode services.[158] If a carrier wished to challenge any such standard under CALEA section 107(b), then the Commission would have the authority under CALEA section 107(b)(5) to "provide a reasonable time and conditions for compliance . . . ."[159] Because none of these packet-mode standards has been challenged under CALEA section 107(b), the Commission does not have this authority under section 107(b). The Commission's interpretation of CALEA section 107(c) is a reasonable construction of the statute, and, therefore, the Commission should adopt its section 107(c) tentative conclusions from the *Notice*.

IV. The Commission Should Adopt Its Tentative Conclusions Regarding CALEA Section 109(b) Petitions.

DOJ urged the Commission to adopt the *Notice's* tentative conclusions relating to CALEA section 109(b) petitions, provided that such petitions are only granted in limited circumstances — e.g. to small or rural carriers with no prior history of intercepts — and for limited periods of time.[160] Other parties agreed with DOJ that the Commission should consider giving small or rural carriers limited relief from CALEA section 103 compliance.[161]

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158 *See* DOJ Comments at 65 n.196; *Notice* ¶ 95 n.226.

159 47 U.S.C. § 1006(b)(5).

160 DOJ Comments at 66-71.

161 NTCA Comments at iii, 6-8; TCA Comments at 3, 6; RTP Comments at 4; RCA Comments at 2, 4; RTG Comments at 4-5; OPASTCO Comments at 2-3.

With regard to Commission review of CALEA section 109(b) petitions, USTA agreed with DOJ that the Commission should continue to "consider section 109(b) reasonably achievable petitions on a case-by-case basis."[162] A general grant of CALEA section 109(b) petitions to a group or class of carriers is not permitted under section 109(b). Congress required the Commission to evaluate each carrier's petition on its merits and to apply the relevant factors (A) through (K) in determining whether compliance is "reasonably achievable."[163] This interpretation is supported by CALEA section 109(b)(1), in which Congress states that the Commission must "determine whether compliance would impose significant difficulty or expense ***on the carrier or*** on the users of the ***carrier's systems*** . . . ."[164]

DOJ disagrees with commenters who opposed the Commission's proposal to require carriers to provide detailed information about their discussions and negotiations with switch manufacturers, equipment manufacturers, and third-party

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[162] USTA Comments at 16.

[163] 47 U.S.C. § 1008(b)(1).

[164] *Id*. (emphasis added). Although CALEA section 109(b) permits "any other interested person" to file a petition with the Commission "with respect to any equipment, facility, or service installed or deployed after January 1, 1995," Congress intended to limit the scope of a petition to a single carrier, and not a class of carriers, through the inclusion of the clause "on the carrier or the users of the carrier's systems." *Id*. Congress could have chosen to use the term "carriers" here, but it did not. Furthermore, the facts and circumstances in a petition may be unique to each carrier — e.g., two carriers offering similar services could face divergent compliance issues — and thus make it difficult for the Commission to reach a general conclusion of whether compliance is "reasonably achievable."

CALEA service providers when filing a section 109(b) petition.[165] The Commission was correct to propose that carriers, if they plan to file section 109(b) petitions, should submit evidence of their efforts to develop CALEA solutions with switch manufacturers, equipment manufacturers, and other third-party CALEA service providers.[166]

The Commission has authority to require carriers[167] to provide such documentation under CALEA sections 109(b)(1)(K), 106(a), and 229(a).[168] Section 109(b)(1)(K) gives the Commission the authority to take into account "such other factors as the Commission deems appropriate."[169] Thus, the Commission may require a carrier to submit evidence bolstering its claim that compliance is not "reasonably achievable." Documentation of a carrier's discussions and negotiations with equipment vendors is one indication that a carrier has investigated, in good faith, whether a technical solution is reasonably achievable. Furthermore, CALEA section 106(a) requires carriers to consult with "manufacturers of its telecommunications transmission and switching equipment and its providers of telecommunications support services for the purpose of

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165 *See, e.g.*, NTCA Comments at 9; TCA Comments at 6; USTA Comments at 17.

166 *Notice* ¶ 105.

167 Contrary to the argument of USTA, USTA Comments at 17, the burden of proof under CALEA section 109(b) falls on the petitioning party — i.e., the carrier — and not law enforcement. *See* 5 U.S.C. § 556(d) ("Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.").

168 47 U.S.C. §§ 1008(b)(1)(K), 1005(a), 229(a).

ensuring that current and planned equipment, facilities, and services comply with the capability requirements of section 103 . . . ."[170] The Commission has authority under section 229(a) to require carriers to provide evidence of such section 106(a) consultations as a necessary part of evaluating a carrier's section 109(b) petition.[171]

V. There Is a Broad Consensus Among Commenting Parties that the Commission Has the Authority to Impose CALEA Compliance Deadlines.

Multiple parties agreed with DOJ that the Commission has the statutory authority to impose CALEA compliance deadlines on telecommunications carriers.[172] Of those parties who addressed the Commission's proposal to establish a 90-day packet-mode compliance deadline, the following two critical differences emerged: (1) parties disagreed on the appropriate length of a compliance period; and (2) parties disagreed on the triggering event for the start of the compliance period.

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169 *Id*. § 1008(b)(1)(K).

170 *Id*. § 1007(a).

171 47 U.S.C. § 229(a). As permitted under section 229(a), such a documentation requirement is "necessary [for the Commission] to implement the requirements of the Communications Assistance for Law Enforcement Act" so that it can verify whether a carrier's claims that a solution is not "reasonably achievable" have merit. *Id*.

172 VeriSign Comments at 34; NYAG Comments at 11; RCA Comments at 4; NCTA Comments at 16; Nextel Comments at 10-11; SIA Comments at 18-19; T-Mobile Comments at 25; SBC Comments at 23; Verizon Comments at 18; TIA Comments at 12; BellSouth Comments at 29; US ISPA Comments at 34-37; Cingular Comments at 23; OPASTCO Comments at 3, 4.

With regard to the first issue, some commenters argued that the Commission's proposed 90-day, packet-mode compliance deadline was too short.[173] DOJ agrees that 90 days is not a sufficient time period for a carrier to build and deploy a packet-mode solution from scratch, and that the Commission should modify its proposal so that carriers have up to 12 months to deploy CALEA-compliant intercept solutions.[174] This timeframe is based upon DOJ's real-world experience in working with national carriers who have designed and deployed intercept solutions for packet-mode services in less than one year. DOJ believes that time periods longer than this are unnecessary and risk hindering law enforcement and counter-terrorism investigations. Moreover, the parties

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[173] SBC urged a deadline of 12-18 months for the Commission/industry workshops to occur, and then time for standards bodies to develop the requisite standards (SBC Comments at 23); SIA urged a compliance deadline that is the latest of: (a) the standards organizations' adopting safe harbor safeguards or the Commission resolving a deficiency petition; (b) the Attorney General's issuing a capacity notice; or (c) the Commission's establishing security and integrity rules under section 105 (SIA Comments at 18-19); Verizon urged a compliance deadline after: (a) standards have been adopted; (b) vendors have developed new or modified existing software, equipment, or network elements; and (c) carriers have tested and further developed the solution (Verizon Comments at 18); USTA suggested a deadline for call-content of 18 months from the date that any Commission order is adopted in this proceeding, and after that time, standards would be developed for call-identifying information (USTA Comments at 8-9); US ISPA argued for a deadline of 15 months for call-content and at least three years for call-identifying information (US ISPA Comments at 35, 36, and 37); OPASTCO suggested giving small, incumbent local exchange carriers 180 days to file requests for alternative relief from CALEA compliance (OPASTCO Comments at 3); RCA supported the adoption of a temporary safe harbor period of five years for packet-mode services (RCA Comments at 4); BellSouth advocated a 24-month compliance period for packet-mode services (BellSouth Comments at 29).

[174] DOJ Comments at 57.

advocating much longer compliance timeframes failed to take into account the significant work that has occurred to date on both standards[175] issues and technological intercept solutions for packet-mode services.

The second argument raised by a few commenting parties is that the Commission should not subject carriers to a compliance deadline until after an applicable standard has been adopted.[176] However, CALEA does not permit carriers to avoid their CALEA obligations based on the absence of technical standards.[177] Tying carrier compliance to the adoption of an industry standard is a recipe for potential delay and carrier non-compliance. Because the carriers, equipment manufacturers, and standards-setting organizations control the standards process, a few recalcitrant parties who wish to delay the adoption of a standard, and hence push-back the date of compliance, could delay CALEA compliance for an entire industry.[178] In other contexts, such as E-911 compliance, the Commission did not tie compliance to the development of common standards for delivery of enhanced 911 functionality. Rather, it set hard

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[175] *See* DOJ Comments at 65 n.196 (discussing standards that have been published or are in development for packet-mode services); *Notice* ¶ 95 n.226.

[176] *See* SBC Comments at 23; SIA Comments at 18-19; Verizon Comments at 8-9; TIA Comments at 8; USTA Comments at 14.

[177] *See* 47 U.S.C. § 1006(a)(3).

[178] In the absence of a standard or technical requirements, an interested party under CALEA section 107(b) can petition the Commission to establish such a standard or requirements. 47 U.S.C. § 1006(b). However, this process is cumbersome, time-

deadlines that helped facilitate carrier compliance. The same logic holds true for CALEA compliance.

VI. The Commission Has the Authority to Adopt and Enforce CALEA Rules Under Section 229 of the Communications Act.

As DOJ and other parties stated in their comments in this proceeding, the Commission has the authority under section 229(a) to adopt rules to foster carrier compliance with CALEA.[179] Such rulemaking authority to implement statutory authority is permissible and necessary for the Commission to effectively implement CALEA.[180] Some parties who opposed the Commission's proposal in the *Notice* to enforce CALEA against carriers did acknowledge that the Commission has authority to adopt rules — e.g., for CALEA section 103 — to implement CALEA.[181]

Other commenters, however, asserted that the Commission does not have the authority to enforce CALEA against carriers, because such authority lies exclusively

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consuming, and, as has occurred in the past, any standard adopted by the Commission is subject to legal challenge in federal court.

[179] *See* DOJ Comments at 73-4; NYAG Comments at 12; VeriSign Comments at 36-7.

[180] *Id*.

[181] *See* Nextel Comments at 10-11; Verizon Comments at 25-6. In fact, Verizon acknowledged that the "Commission could adopt the requirements of section 103 as rules . . . ." and "already has available mechanisms to require carriers to comply with its own lawful orders and rules." Verizon Comments at 26.

with the courts under CALEA section 108.[182] On the contrary, the Commission does have the authority to investigate carriers' CALEA compliance with any rules it adopts under section 229(a) and to assess penalties on carriers who fail to comply with such rules. As DOJ stated in its comments, section 229(c) authorizes the Commission to "conduct such investigations as may be necessary to insure compliance by common carriers with the requirements and regulations prescribed under this section," and section 229(d) provides that a violation of rules adopted under section 229(a) is a "violation by the carrier of a rule prescribed by the Commission pursuant to the [Communications] Act."[183] Commenters who argued that Congress did not grant the Commission the authority to enforce CALEA ignored these statutory grants of rulemaking and enforcement authority to the Commission.[184] Congress, in fact, did confer power on the Commission to investigate and impose penalties on carriers who violate its CALEA rules.

A few parties who opposed the Commission's authority to enforce CALEA also note that the Commission's proposed enforcement approach would ignore the statutory

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182 *See* Nextel Comments at 11; SBC Comments at 25; T-Mobile Comments at 26; CDT Comments at 52; TIA Comments at 10; Motorola Comments at 20; BellSouth Comments at 38; USIPA Comments at 41; CTIA Comments at 10.

183 47 U.S.C. §§ 229(c), (d).

184 *See supra* note 182.

defenses available to carriers in a CALEA section 108 enforcement action.[185] However, if Congress had intended that these limitations apply to the Commission, under the Commission's separate enforcement authority under the Communications Act, Congress would have included such express limitations in sections 229(c) or (d). Congress did not, and parties cannot "read" such limitations into sections 229(c) or (d).[186]

VII. Cost and Cost Recovery Issues.

As DOJ stated in its comments, resolution of the numerous outstanding issues concerning CALEA cost and cost recovery is critical to the continued and meaningful implementation of CALEA. DOJ agrees with commenter Corr Wireless that the Commission "needs to clarify the situation [regarding CALEA cost recovery] quickly so that all stakeholders can proceed with a clear knowledge of who is paying and how the costs are assessed."[187] The Commission can provide this critically needed clarity by (1) adopting its tentative conclusion that carriers bear financial responsibility for CALEA development and implementation (i.e. capital) costs for post-January 1, 1995 equipment,

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185 *See* US ISPA Comments at 42-3; Nextel Comments at 11; SBC Comments at 24; CDT Comments at 52; T-Mobile Comments at 26-27; USTA Comments at 11-2; TIA Comments at 5; Motorola Comments at 22; CTIA Comments at 10.

186 *See Rodriquez v. U.S.*, 107 S. Ct. 1391, 1393 (1987) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (internal citations omitted).

facilities, and services, and (2) clarifying that carriers cannot include such costs in their intercept provisioning costs/charges.

A. The Commenting Parties Opposing the Commission's Tentative Conclusion Regarding Responsibility for Post-January 1, 1995 CALEA Development and Implementation Costs Have Offered Nothing that Warrants a Departure from the Commission's Position in the *Notice*.

The Commission tentatively concluded in the *Notice* that, based on CALEA's delineation of responsibility for compliance costs, carriers bear responsibility for CALEA development and implementation costs for post-January 1, 1995 equipment and facilities.[188] Although DOJ and others agreed with the Commission's tentative conclusion and strongly urged the Commission to adopt it in its decision in this proceeding,[189] certain other commenters disagreed with the Commission's tentative conclusion.[190] However, those commenters have offered nothing that warrants a departure from the position taken by the Commission in the *Notice*.

Certain commenters contended that the Commission and DOJ are incorrect in concluding that CALEA places financial responsibility for CALEA development and implementation costs for post-January 1, 1995 equipment and facilities on carriers.[191]

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187 Corr Comments at 10.

188 *Notice* ¶ 125.

189 *See* DOJ Comments at 82-84; NYAG Comments at 12; Subsentio Comments at 9.

190 *See, e.g.*, Cingular Comments at 27; CTIA Comments at 13; Nextel Comments at 4; RTG Comments at 8; SBC Comments at 27.

191 *See, e.g.*, CTIA Comments at 13-15; SBC Comments at 27-28.

They argued that Congress intended for government/law enforcement to pay for both pre- *and* post-January 1, 1995 CALEA development and implementation costs.[192] Contrary to what these commenters suggested, however, Congress did not intend that government and/or federal, state or local law enforcement agencies pay for CALEA development and implementation costs for post-January 1, 1995 equipment, facilities, and services.

As the plain text of CALEA shows, Congress deliberately set up a scheme of government-funded CALEA cost recovery that would apply only to pre-January 1, 1995 equipment, facilities and services.[193] Section 109(a) of CALEA places financial responsibility for CALEA implementation costs for equipment, facilities, and services installed or deployed *on or before* January 1, 1995 on the *federal government*.[194] Section 109(b) of CALEA, on the other hand, places financial responsibility for CALEA implementation costs for equipment, facilities, and services installed or deployed *after* January 1, 1995 on *carriers*.[195] It was for that very reason that nearly all broadband Personal Communications Service switches — which were installed and deployed after

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192 *See* Corr Comments at 11; CTIA Comments at 13-15; Motorola Comments at 24; Nextel Comments at 4-6; SBC Comments at 27-28; TIA Comments at 23; T-Mobile Comments at 18-19.

193 *See* 47 U.S.C. § 1008.

194 47 U.S.C. § 1008(a).

195 47 U.S.C. § 1008(b).

January 1, 1995 — were not eligible for reimbursement from the CALEA telecommunications carrier cost recovery fund. If Congress and CALEA intended, as some commenters have contended, that the government/law enforcement bear the financial burden for *all* CALEA development and implementation costs, there would have been no need for Congress to create a distinction between equipment, facilities, and services installed or deployed *on or before* January 1, 1995 and equipment, facilities, and services installed or deployed *after* that date. But Congress did create that distinction. The Commission's tentative conclusion aptly recognizes both this distinction and the Congressional intent underlying it.

Congress's decision to enact section 229(e) of CALEA also shows that Congress intended for carriers — not government or law enforcement agencies — to pay for CALEA development and implementation for post-January 1, 1995 equipment, facilities, and services. Congress chose to include section 229(e) in CALEA so that carriers would have the ability to fund their compliance with CALEA through their customer rates and charges. The Commission's discussion in the *CALEA Order on Remand* regarding a carrier's ability to petition the Commission pursuant to section 229(e) of CALEA to adjust rates to recover from their customers costs expended in satisfying CALEA's capability requirements further demonstrates this point.[196] If

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[196] *See In the Matter of Communications Assistance for Law Enforcement Act*, Order on Remand, 17 FCC Rcd 6896, 6917-6920 ¶¶ 62-65 (2002) ("*CALEA Order on Remand*").

Congress had intended for government/law enforcement agencies to pay for all CALEA development and implementation (capital) costs, there would have been no need for section 229(e), because carriers would have nothing to recover. Thus, it is clear that Congress intended for carriers, not government/law enforcement, to bear the financial burden of CALEA compliance for post-January 1, 1995 equipment, facilities, and services.

The floor debate on CALEA further confirms that Congress intended that carriers — not government or law enforcement agencies — bear CALEA development and implementation costs for post-January 1, 1995 facilities, equipment, and services. During the debate, members of Congress made clear that the appropriation authorized by the bill was to be used to retrofit pre-CALEA equipment, facilities, and services pursuant to the assistance capability requirements of section 103 of CALEA.[197] These statements reflect Congress's clear recognition that pre-CALEA equipment, facilities, and services might need to be retrofitted in order to comply with CALEA. For that

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[197] *See, e.g.*, 140 Cong. Rec. H 10773, 10780 (Oct. 4, 1994) (statement of Rep. Hyde) (stating that the purpose of the $500 million appropriation authorized by the bill for fiscal years 1995 through 1998 and any additional sums subsequently appropriated are to assist telecommunications carriers in retrofitting existing facilities to bring them into compliance with law enforcement requirements, and that after the four year transition period provided by CALEA, industry will pay to ensure that new equipment and services meet the legislative requirements); 140 Cong. Rec. at 10782 (Oct. 4, 1994) (statement of Rep. Fields) ("This bill will compensate telephone companies for *retrofitting their networks* to allow law enforcement to conduct authorized wiretaps in light of currently available telephone features and services. *In the future, as new technologies come on line, the telephone industry will be responsible for making sure that wiretaps may be conducted*." (emphasis added)).

reason, Congress specifically allocated funds for that purpose.[198] Quite tellingly, however, Congress did *not* allocate any funds to be used by telecommunications carriers to ensure that *post*-January 1, 1995 equipment, facilities, and services would be CALEA compliant. The conclusion to be drawn from Congress's action is that Congress fully intended for carriers to bear CALEA development and implementation costs for post-January 1, 1995 facilities, equipment, and services.

Further refuting the notion that government/law enforcement was intended to fully finance CALEA development and implementation costs for post-January 1, 1995 equipment, facilities, and services, the Commission, itself, observed in the *CALEA Order on Remand* that ". . . there are costs associated with CALEA, and it is clear that Congress anticipated that carriers would bear some of these costs."[199] "Some of these costs" clearly refers to the costs of CALEA development and implementation for post-January 1, 1995 facilities, equipment, and services.

As DOJ stated in its comments, the Commission's tentative conclusion regarding who bears CALEA development and implementation costs for post-January 1, 1995 facilities, equipment, and services is correct and is consistent with CALEA's plain text and Congressional intent. The commenting parties that opposed it have offered no justification for the Commission to reconsider or depart from its tentative conclusion.

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198 *See* 47 U.S.C. § 1009.

199 *CALEA Order on Remand* at 6916 ¶ 59.

Accordingly, the Commission should reject commenters' attempts to rewrite CALEA's cost recovery provisions and should remain faithful to the letter and spirit of the statute by adopting the tentative conclusion reached in the *Notice*.

B. The Comments Filed in This Proceeding Demonstrate that Specific Rules Regarding Carrier Responsibility for CALEA Development and Implementation Costs for Post-January 1, 1995 Equipment and Facilities Are Needed to Ensure Compliance.

The *Notice* asked whether specific rules regarding carriers' responsibility for CALEA development and implementation costs for post-January 1, 1995 equipment and facilities are necessary.[200] The comments filed in this proceeding demonstrate that the answer is a resounding "Yes."

Based on the history of carrier compliance with CALEA and the comments filed in this proceeding,[201] DOJ remains concerned that, even in the face of a clear pronouncement by the Commission that carriers are responsible for CALEA development and implementation costs for post-January 1, 1995 equipment and facilities, carriers may continue to dispute or debate the issue. The New York Attorney General's Office expressed a similar concern about this issue and also urged the

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200 *Notice* ¶ 125.

201 Much of DOJ's continued concern stems from the fact that commenters generally did not address the question of whether or not rules are needed, because they opposed the Commission's tentative conclusion and had already dismissed it as incorrect.

Commission to adopt rules "effecting the intent of Congress that . . . the costs of CALEA compliance are to be borne by the carriers."[202]

Adopting the statutory provisions contained in section 109 of CALEA as Commission rules would provide carriers with greater certainty regarding CALEA development and implementation cost issues, and would also facilitate Commission enforcement, pursuant to CALEA section 229(d), of any violations related to a carrier's financial responsibility for post-January 1, 1995 CALEA development and implementation costs. DOJ also believes that incorporating the statutory obligation into the Commission's rules would have greater impact on spurring CALEA compliance than the statutory language alone. For this reason, DOJ again strongly urges the Commission to adopt specific rules that unequivocally delineate financial responsibility for post-January 1, 1995 CALEA development and implementation costs.

C. The Commission Should Consider All Viable Proposals for Carrier Recovery of CALEA Development and Implementation Costs, but Should Not Adopt Any Proposal that Would Permit Carriers to Recover Such Costs from Law Enforcement.

Many commenters supported the idea of permitting carriers to recover their CALEA development and implementation (capital) costs from their customers through

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[202] NYAG Comments at 12.

adjusted rates or surcharges,[203] and DOJ again encourages the Commission to explore the feasibility of such an approach. At least one commenter representing wireless carriers stated that a national surcharge scheme would be feasible for wireless carriers.[204] However, DOJ strongly opposes the request by commenters such as BellSouth and USTA that carriers be permitted to pass their CALEA compliance costs on to *law enforcement* though adjusted rates or surcharges.[205] Such an approach is inconsistent with CALEA and Congressional intent, given that section 109(b) of CALEA places the financial burden for CALEA compliance for post-January 1, 1995 equipment, facilities, and services on carriers.

Some commenters advocated an approach that would spread the costs of CALEA compliance among the general public.[206] DOJ takes no position on the feasibility or mechanics of this approach but encourages the Commission to investigate the viability of implementing such an approach. In conducting its investigation, however, the Commission must remain mindful that CALEA contains a clear delineation of responsibility for CALEA compliance costs. Accordingly, the

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203 *See, e.g.*, BellSouth Comments at 43; Cingular Comments at 27; Global Crossing Comments at 16; RCA Comments at 2; SBC Comments at 29-30; Subsentio Comments at 10-11; USTA Comments at 10; Verizon Comments at 26.

204 *See* RCA Comments at 2.

205 *See* BellSouth Comments at 43; USTA Comments at 10.

206 *See, e.g.*, BellSouth Comments at 42; Corr Comments at 13; Level 3 Comments at 16-17; RCA Comments at 2-3.

Commission may not adopt any cost recovery mechanism for CALEA compliance that would shift the CALEA development and implementation cost burden for post-January 1, 1995 equipment, facilities, and services to law enforcement. In addition, the Commission should decline to adopt any cost recovery approach that spreads the costs among the general public if it would require law enforcement or government funding.

D. Without Adequate Evidence of the Scope of CALEA Costs, the Commission Should Not Allow Carriers to Continue to Use Cost as an Excuse for Non-Compliance with CALEA.

The *Notice* requested comment on how the Commission should assess the scope of CALEA-related costs in this proceeding, and specifically asked commenting parties to (1) provide information regarding their CALEA implementation costs (including cost calculations and analysis) and (2) identify any conditions or factors that may affect the Commission's ability to determine the true scope of CALEA-related costs.[207]

Notwithstanding the Commission's explicit request, with very limited exception, only a few commenting parties even addressed the issue of the scope of CALEA costs. Of the commenters that did discuss the scope of such costs, most made only generalized statements without providing any cost calculations and/or supporting

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[207] *Notice* ¶ 127.

documentation.[208] Only a few commenters provided any specific cost information regarding the scope of CALEA costs.[209]

1. The Information Provided by Commenters Shows that CALEA Compliance Costs Are Manageable.

Although CALEA compliance is typically portrayed by carriers as highly expensive, information submitted in this proceeding suggests otherwise. In fact, CALEA compliance costs appear to be more than manageable for carriers. The analysis submitted by commenter Subsentio, for example, indicates that the cost per customer, per month for CALEA compliance over a five-year period ranges from approximately thirty-three cents for carriers with 2,000 or fewer subscribers, to thirteen cents for carriers with 5,000 or fewer subscribers, to as little as pennies for carriers with 10,000 or more subscribers.[210]

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[208] *See, e.g.*, AMA TechTel Comments at 8 ("[i]t would cost millions of dollars for AMA TechTel to equip its wireless network and its DSL switches and routers for CALEA compliance"); NTCA Comments at 11 ("[t]he potential cost to make post-1995 equipment CALEA compliant is high . . . "); RTG Comments at 6 ("[w]hile public policy goals such as . . . CALEA . . . are important, they come with high costs . . ."); RTP Comments at 7 (placing responsibility for CALEA compliance solely on the carrier imposes a huge financial burden on rural carriers); Smithville Comments at 1 (referring to compliance with CALEA requirements as expensive); USTA Comments at 9 (referring to the costs associated with CALEA compliance as enormous).

[209] *See, e.g.*, GVNW Comments at Attachment A; Nextel Comments at 4, 7; RTG Comments at 7; RTP Comments at 8-9; Subsentio Comments at 7-8, 10-11; T-Mobile Comments at 14-15, 20.

[210] *See* Subsentio Comments at 8.

DOJ suspects that the purportedly high cost of CALEA compliance for some carriers stems in large part from the fact that equipment vendors often bundle the CALEA feature with other switch features/upgrades, thereby requiring a carrier to purchase an upgrade that includes other (and more costly) features than CALEA in order to obtain the CALEA feature itself. GVNW confirmed DOJ's suspicion in its statement that "while it may be partially correct that the CALEA feature has been provided to carriers by manufacturers at a nominal charge . . . most . . . switch vendors tied the availability of the CALEA feature to the very expensive upgrades of the underlying operating software."[211] As the information provided by GVNW shows, the cost of obtaining the CALEA feature when it is bundled with other features/upgrades is significantly inflated as compared to the price of obtaining the CALEA feature alone.[212] GVNW's information shows that the cost for only the CALEA feature itself is $33,000 or less; when combined with other the features in a bundled offering, however, the price of the upgrade in most cases ranges from two to six times that price.[213]

Although DOJ is sympathetic to carriers that are forced to purchase upgrades that include more than just the CALEA feature in order to become CALEA compliant, carriers remain obligated to comply with CALEA. The Commission should not permit

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211 *See* GVNW Comments at 7-8.

212 *See id.* at Attachment A.

213 *Id.*

vendors to hold carriers hostage and thereby thwart CALEA implementation. DOJ urges the Commission to investigate the vendor practices identified by commenters and to take whatever steps are needed to rectify the situation.

2. Other Sources Suggest that CALEA Compliance Costs Are Not as Great as Has Been Portrayed.

An October 2003 study by the Progress Freedom Foundation ("PFF Study") of the effects of regulatory mandates and taxes on wireless telephony users shows that the cost of CALEA compliance is far less than industry would have the Commission believe and, in fact, is less than compliance with all but one of the major regulatory and tax mandates with which carriers must comply.[214] The PFF Study found that the distribution of costs for the CALEA mandate represents only 2.27 percent of the total costs for all wireless service mandated costs.[215] Only one mandate — number pooling — was slightly less costly at 1.86 percent of the total cost.[216] Conversely, the estimated cost for the wireless industry to comply with the wireless local number portability mandate is more than six and a half times the estimated cost for CALEA compliance,[217] and the estimated cost for compliance with the E-911 mandate is over two and a half

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214 *See Taxes and Regulation: The Effects of Mandates on Wireless Phone Users*, Thomas M. Lenard and Brent D. Mast, Progress on Point, Release 10.18, October 2003. The PFF Study can be viewed on the Progress Freedom Foundation's website at http://www.pff.org/issues-pubs/pops/pop10.18wirelessmandates.pdf.

215 *Id.* at 60, Figure 9.

216 *Id.*

times more than for CALEA.[218] The PFF Study also shows that the surcharge for recovering the estimated cost of CALEA compliance is less than 24 cents per customer per month over a five-year period.[219] The surcharges for recovering the estimated costs for complying with the wireless local number portability and E-911 mandates, on the other hand, are $1.60 and 61.4 cents, respectively.[220]

A January 2004 Kagan World Media Report ("Kagan Report") also shows that the costs to implement CALEA may not be as substantial as some have claimed. The Kagan Report indicates that "[VoIP] return on investment poses an attractive scenario" even when the cost associated with CALEA compliance is factored into the total softswitch price.[221] The analyst who authored the report recently estimated that supporting CALEA in the softswitch accounts for approximately six percent of the total per customer, per month cost. The Kagan Report estimates a cable VoIP subscribership level of zero for 2003 but projects that cable VoIP subscribership will increase to 13.3

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217 *Id.* at 2-3, 11-22, 59.

218 *Id.* at 2-3, 38, 59.

219 *Id*. at 2-3, 29, 59.

220 *Id.* at 2-3, 11-22, 38, 59.

221 *See Cable VoIP Outlook: Q1'04 Sector Update*, Analyst Report, Kagan World Media (Jan. 2004) at 8. The softswitch includes call server, media gateway, media gateway controller, signaling gateway, media server, RKS, and CALEA. *See id.* As of end of 2003, the total cost of the softswitch was fifty dollars per subscriber per month. *Id*.

million in 2008.[222] As the number of cable VoIP subscribers increases, the total cost of the softswitch per subscriber per month will decrease. Thus, the cost of supporting CALEA in the softswitch will likewise decrease.

3. Carriers Should Not Be Allowed to Use Lack of Government Funding as an Excuse for Non-Compliance with CALEA.

Carriers often characterize CALEA as an unfunded mandate and use the lack of government funding as an excuse for their non-compliance.[223] However, other regulatory mandates to which carriers are subject — such as local number portability and E-911 — are likewise unfunded. Yet most carriers (whether they want to or not) comply with their local number portability and E-911 obligations. The same cannot be said for CALEA, which has largely been given short-shrift.

It is worth emphasizing that CALEA is not a new mandate that Congress or the Commission is proposing to impose on carriers; CALEA has been in place for over ten years and, in fact, predates both the local number portability and E-911 mandates. Moreover, it is somewhat unfair to characterize CALEA as "unfunded." While compliance costs for post-January 1, 1995 equipment, facilities, and services are not directly funded by Congress or the government, carriers have had the ability to "fund"

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[222] *See* Kagan Report at 17. The Kagan Report projects cable VoIP subscribership will reach 400,000 in 2004, 1.9 million in 2005, 5.6 million in 2006, and 9.8 million in 2007. *Id.*

their compliance with CALEA pursuant to section 229(e). Accordingly, the Commission should not permit carriers to use a perceived lack of funding as an excuse for non-compliance.

E. The Comments Filed in This Proceeding Make Clear that the Commission Must Distinguish Between CALEA Implementation Costs and CALEA Intercept Costs.

Certain commenters argued that the Commission need not distinguish between CALEA implementation costs and CALEA intercept costs, because both are recoverable from law enforcement.[224] Statements like this make it all the more clear that the Commission must distinguish between these two very separate categories of costs.

As DOJ explained in its comments, the costs expended for making modifications to equipment, facilities, or services pursuant to the assistance capability requirements of CALEA section 103 and to develop, install, and deploy CALEA-based intercept solutions that comply with the assistance capability requirements of CALEA section 103 are considered *CALEA capital costs*; while the costs associated with the function of enabling an intercept to be accomplished using a CALEA-based intercept solution are considered *intercept provisioning costs*.[225] As discussed in DOJ's comments and herein, section 109(b) of CALEA makes clear that CALEA-covered carriers, not

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[223] *See, e.g.*, RTG Comments at 7. It is worth noting that there is an inherent contradiction between carriers' claim that Congress's intent was for law enforcement to pay for CALEA compliance and their claim that it is an unfunded mandate.

[224] *See* Nextel Comments at 5; T-Mobile Comments at 18.

government/law enforcement agencies, are responsible for CALEA capital costs for post-January 1, 1995 equipment and facilities. Permitting carriers to recover CALEA capital costs for post-January 1, 1995 equipment, facilities, and services from law enforcement would essentially allow carriers to do an "end-run" around the provisions of section 109(b) and Congressional intent. DOJ reiterates that the Commission cannot establish a cost recovery system for intercept provisioning that is inconsistent with CALEA and Congressional intent.

Some carriers pointed to Title III of the Omnibus Crime Control and Safe Streets Act ("OCCSSA")[226] to argue that they can charge law enforcement for capital costs. While DOJ disputes that interpretation of Title III, the purpose of this proceeding is for the Commission to address the application of CALEA; section 109(b) of CALEA clearly delineates that financial responsibility for CALEA development and implementation costs for post-January 1, 1995 equipment, facilities, and services lies with carriers. Adjudication of Title III should be left to federal courts to decide in the context of specific court orders.

Accordingly, the Commission should clarify that carriers may not include their CALEA capital costs in their intercept provisioning costs/charges. DOJ also reiterates its request that the Commission make this clarification in the form of a rule specifying

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225 *See* DOJ Comments at 87-94.

226 Pub. L. No. 90-351, 82 Stat. 212 (1968).

that CALEA capital costs cannot be included in carriers' intercept provisioning costs/charges, in order to avoid any further confusion regarding this issue.

F. Industry's Assessment of the Magnitude of Law Enforcement's Wiretap Costs Is Inaccurate.

CTIA, on behalf of its wireless carrier constituency, has attempted to trivialize the magnitude of law enforcement's wiretap costs in order to justify the inclusion of CALEA capital costs in carriers' intercept provisioning charges.[227] However, CTIA has only told part of the wiretap cost story in its comments.

CALEA applies to wiretaps conducted by federal, state, and local law enforcement. While CTIA correctly cited the 2003 Wiretap Report's statements concerning the slight decrease in the average cost of a federal wiretap in 2003, CTIA left out some key and telling information concerning the true state of wiretap costs.[228] First, the number of wiretaps conducted by state and local law enforcement in 2003 was substantially higher than those conducted by federal law enforcement.[229] Second, the average cost of intercept devices installed in 2003 increased by fourteen percent over the

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227 *See* CTIA Comments at 20.

228 It is worth noting that although the average cost of a federal wiretap did slightly decrease in 2003, the cost still averages over $70,000 per intercept order. *See* The 2003 Wiretap Report, Administrative Office of the United States Courts (rel. Apr. 30, 2004) at 7 ("2003 Wiretap Report"). This amount can hardly be characterized as trivial.

229 *See* 2003 Wiretap Report at 7. It should be noted that the number of annual state and local criminal wiretaps has historically outnumbered the number of federal criminal wiretaps conducted annually.

average cost in 2002.[230] Third, the *average* cost of a state wiretap skyrocketed by thirty-five percent in 2003 from approximately $40,000 in 2002 to over $54,000 in 2003.[231] In numerous counties, the average per-order cost of a state-level wiretap was far greater.[232] Moreover, the average wiretap cost for 2003 was at the highest level ever since CALEA's enactment.[233]

Law enforcement agencies already bear the burden of paying carriers for the costs associated with provisioning an intercept, and, as the Texas Department of Public Safety points out in its comments, "the cost to law enforcement to conduct electronic surveillance has drastically increased over the past several years."[234] The already high wiretap costs will surge higher if carriers are permitted — in direct contravention of the statute and Congressional intent — to include CALEA capital costs for post-January 1, 1995 equipment, facilities, and services in their wiretap charges. Thus, it is critical for the Commission not only to adopt its tentative conclusion that carriers bear financial responsibility for CALEA development and implementation costs for post-January 1, 1995 equipment, facilities, and services, but also to make clear in adopting that

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230 *See id.* at 11.

231 *See id.*

232 *See* 2003 Wiretap Report at Table 5.

233 *See* 2003 Wiretap Report at 11.

234 Texas DPS Comments at 1.

conclusion that carriers cannot pass those costs through to law enforcement by including them in their intercept charges.

G. CALEA-Related Services.

Like DOJ, the commenters that addressed the question of "CALEA-related services" also appeared to be unclear about what the Commission meant by this phrase.[235] These commenting parties generally took the position that, to the extent that "CALEA-related services" include or relate to CALEA capital (implementation and compliance) costs, carriers should be permitted to adjust their charges for intercept provisioning to cover such costs.[236] DOJ strongly opposes such an interpretation of the phrase "CALEA-related services." DOJ reiterates that, in light of the clear delineation in section 109(b) of CALEA, to the extent that "CALEA-related services" include or relate to CALEA capital (implementation and compliance) costs, carriers should *not* be permitted to adjust their charges for intercept provisioning to cover such costs.

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235 *See, e.g.*, CTIA Comments at 17.

236 *See, e.g., id.* 17-18; Nextel Comments at 5-6.

CONCLUSION

As DOJ stressed in its comments, there have been significant changes in telecommunications technology since CALEA was enacted over ten years ago. Yet law enforcement's mission — to protect America and its citizens from terrorists and other criminals — has not changed. What has changed is law enforcement's ability to accomplish its mission in the face of rapidly advancing technology. CALEA was intended to enable law enforcement to keep up with these advancements, and the Commission should ensure that its implementation of CALEA continues to serve the interests of law enforcement and national security. In particular, the Commission should adopt rules and policies that keep CALEA viable in the face of the monumental shift of the telecommunications industry from circuit-switched to IP-based broadband technologies.

DOJ reiterates its support for the tentative conclusions reached by the Commission in the *Notice* regarding CALEA coverage of broadband Internet access and certain types of VoIP, compliance deadlines, section 107(c) and 109(b) petitions, and financial responsibility for CALEA development and implementation costs for post-January 1, 1995 equipment and facilities. As shown in DOJ's comments, there is strong statutory and public-interest support for these tentative conclusions, and the commenting parties have offered no meaningful basis for the Commission to reconsider or depart from them.

Dated: December 21, 2004

Respectfully submitted,

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APPENDIX A

List of Commenting Parties in ET Docket No. 04-295
and Abbreviations

American Civil Liberties Union (ACLU)
AMA TechTel Communications, LLC (AMA TechTel)
BellSouth Corporation (BellSouth)
CTIA – The Wireless Association (CTIA)
Cingular Wireless LLC (Cingular)
Coalition for Reasonable Rural Broadband CALEA Compliance (CRRBCC)
Corr Wireless Communications, LLC (Corr)
Digital Research Communications (DRC)
Donald Clark Jackson
Earthlink, Inc. (Earthlink)
EDUCAUSE Coalition (EDUCAUSE)
Electronic Frontier Foundation (EFF)
European Telecommunications Standards Institute (ETSI)
Fiducianet, Inc. (Fiducianet)
Global Crossing of North America (Global Crossing)
GVNW Consulting, Inc. (GVNW)
Industry and Public Interest Joint Commenters (CDT)
Level 3 Communications, LLC (Level 3)
MaineStreet Communications (MaineStreet)
Motorola, Inc. (Motorola)
National Cable & Telecommunications Association (NCTA)
National Telecommunications Cooperative Association (NTCA)
New York Attorney General Eliot Spitzer (NYAG)
Nextel Communications, Inc. (Nextel)
Nuvio Corporation (Nuvio)
Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
Rural Cellular Association (RCA)
Rural Telecommunications Group, Inc. (RTG)
Rural Telecommunications Providers (RTP)
Satellite Industry Association (SIA)
SBC Communications (SBC)
Smithville Telephone Company (Smithville)
Subsentio, Inc. (Subsentio)
TCA, Inc. - Telecom Consulting Associates (TCA)

Telecommunications Industry Association (TIA)
Texas Department of Public Safety (Texas DPS)
T-Mobile USA, Inc. (T-Mobile)
United States Telecom Association (USTA)
United States Department of Justice (DOJ)
US Internet Service Provider Association (US ISPA)
VeriSign, Inc. (VeriSign)
Verizon (Verizon)
Yahoo! Inc. (Yahoo)