

**STATEMENT OF  
CHAIRMAN KEVIN J. MARTIN**

*Re: Communications Assistance for Law Enforcement Act and Broadband Access and Services (ET Docket No. 04-295)*

Enabling law enforcement to ensure our safety and security is of paramount importance. Last August, the Commission took an important step forward by concluding that VoIP and facilities-based broadband Internet access providers have CALEA obligations, giving law enforcement the necessary tools to keep pace with rapid technological change. Today's Order provides further clarity to carriers and other new technology service providers regarding the implementation of their law enforcement obligations.

The Order we adopt today is, as we forecast last year, a second step toward implementing CALEA obligations. We address important issues under CALEA such as cost recovery, compliance processes, and enforcement, providing further clarity for entities subject to CALEA to continue to work toward full CALEA compliance. I remain committed to ensuring that these providers take all necessary actions to incorporate surveillance capabilities into their networks in a timely fashion. Further we will continue to work to address and overcome any challenges that stand in the way of effective lawful electronic surveillance.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

Re: *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, Second Report and Order and Memorandum Opinion and Order (ET Docket No. 04-295, RM-10865)

As I have often said, the first obligation of a public servant is the safety of the people. In our case here at the FCC, our controlling statute makes that as explicit as it could possibly be—we are charged to “make available . . . a rapid, efficient, Nation-wide and world-wide wire and radio communication service . . . for the purpose of the national defense” and “for the purpose of promoting safety of life and property.” The implementation and oversight of CALEA is an important part of that duty. By ensuring that law enforcement authorities have access to the resources CALEA authorizes, this Commission supports efforts to protect the public safety and homeland security of the United States and its people. Because we have a responsibility to assist those whose job it is to protect us from harm, I support today’s decision.

Today’s decision addresses a number of outstanding issues regarding CALEA implementation. The item cleans up some of the ambiguities left open from our earlier efforts. Notably, we clarify the role that the experts in industry standard-setting bodies will play by working in concert with law enforcement and other interested parties to craft technical standards for critical terms like “call-identifying information.” This is truly urgent work, and I thank those who are participating in the process and urge them to keep this the top priority item it must be both to get the job done and to avoid the Commission having to intrude itself in the process. We also clarify that trusted third parties are a legitimate way for carriers to manage their CALEA obligations. The record shows TTP availability and capability to perform a number of services to advance CALEA compliance. Trusted third party participation should also mean more cost-effective options for compliance, particularly for smaller carriers.

As all who have followed our CALEA proceedings know, this is ongoing and difficult work. As I have remarked before, the challenge is complicated by the Commission’s theory of substantial replacement that collapsed the statutory dichotomy between information services and telecommunications services in a stretch that invited time-consuming and unneeded legal complications. Finally, as this order notes, there is still clarity to be provided. For example, numerous institutions of higher learning have expressed concern that language in our earlier order could be read as extending CALEA obligations to the private networks of universities, libraries and some others in ways possibly at odds with the statutory text. All those agencies and offices of government involved in CALEA implementation should work together to provide clarity here and to avoid confusion—and potentially significant expenses—for these institutions.

I commend the Chairman for his dedication to law enforcement and his continuing work on public safety and homeland security, and I thank the Bureau for all its hard work in getting this item to us for action today.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Communications Assistance for Law Enforcement Act and Broadband Access and Services, RM-10865, ET Docket 04-295, Second Report and Order and Memorandum Opinion and Order (May 3, 2006).*

There is no higher calling for us at the Commission than preserving public safety and homeland security, so I support our efforts to provide guidance on the legal framework for the Communications Assistance for Law Enforcement Act (CALEA) and the obligations of facilities-based broadband providers and interconnected VoIP providers under that statute.

CALEA provides an important tool for law enforcement by requiring telecommunications carriers to build into their networks technical capabilities to assist law enforcement with authorized intercepts of communications and call-identifying information. In August of last year, the Commission determined that facilities-based broadband providers and interconnected VoIP providers are subject to CALEA. With this Order, we take additional steps to meet the unique needs of our nation's first responders and law enforcement officials. I am particularly encouraged by the Order's finding that broadband and VoIP providers may use so-called "trusted third parties" to extract the information necessary to comply with CALEA, particularly given the potential that this approach holds for smaller providers.

We move the ball forward today, but there remains important work ahead for industry, law enforcement, and the Commission, alike. Particularly given CALEA's reliance on industry organizations to take a lead role on these issue and the tight deadlines for compliance, it will be critical for all parties to work expeditiously, creatively and cooperatively if we are to meet the multi-faceted goals of CALEA. This Order directs carriers to file detailed reports on the status of their compliance efforts. I look forward to seeing the results of these reports so that we can track industry progress and take any additional actions or address remaining issues necessary.

I would like to thank the staff from our Office of Engineering and Technology and the Wireline Competition Bureau for their hard work on this item. I look forward to working with my colleagues and the broader community as we continue our efforts to faithfully implement CALEA.

**STATEMENT OF  
COMMISSIONER DEBORAH TAYLOR TATE**

Re: *Communications Assistance for Law Enforcement Act and Broadband Access and Services (ET Docket No. 04-295).*

As is often the case, we are called on by many parties to weigh their individual interests -- in this case the interest of the safety and security of our citizens -- against the potential costs and possible difficulties of ensuring that safety. Our number one priority at this point in our nation's history must be our national security -- the safety of every American.

First, let me say that having worked with both Vanderbilt University and Belmont University, and as a parent of three college aged children, I am loathe to take any action that unfairly shifts a heavy financial burden onto students or parents of students in today's colleges and universities. However concerned I may be, though, I am not persuaded merely by largely speculative allegations that the financial burden on the higher education community could total billions of dollars.<sup>1</sup> Moreover, it is not sound analysis to rely on vague assertions regarding the costs per student of CALEA compliance for IP services, when those assertions were made prior to, or without regard to, our acknowledgement that the use of a Trusted Third Party (TTP) could be an economically feasible alternative to meet CALEA's requirements. Indeed, one potential TTP asserted that the cost per IP service subscriber, based on large-scale shared implementation costs could be as low as "1 cent per subscriber per month or less."<sup>2</sup>

It is also important for these institutions to remember what we have said about educational networks' compliance. The last sentence of footnote 100 of our First Report and Order says: "To the extent . . . that these private [educational] networks are interconnected with a public network, either the PSTN or the Internet, providers of the facilities that support the connection of the private network to a public network are subject to CALEA under the SRP." This language means that although educational networks generally fall under CALEA's exemption for private networks, the facilities connecting these private networks to the public Internet must be CALEA compliant.

A number of colleges and universities, however, have expressed concern that this language could be read to require them to modify their entire networks, at significant expense. We have explained that this concern is misplaced. Our brief to the D.C. Circuit in the CALEA appeal, filed on February 27, 2006, states (at pp. 39-40):

Petitioners' professed fear that a private network would become subject to CALEA "throughout [the] entire private network" if the establishment creating the network provided its own connection between that network and the Internet is unfounded. The [First Report and Order] states that only the connection point between the private and public networks is subject to CALEA. This is true

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<sup>1</sup> See Comments of the Higher Education Coalition, November 14, 2005, at 9.

<sup>2</sup> Comments of Subsentio, Inc., November 11, 2005; see also Comments of VeriSign, December 21, 2005, at 4.

whether that connection point is provided by a commercial Internet access provider or by the private network operator itself.

Most importantly, even if compliance costs were to fall on an educational institution, rather than the commercial provider of the connection point to the public switched network, CALEA itself allows for consideration of the identified costs of CALEA compliance and financial resources of a covered carrier in the criteria for review of a Section 109 request. Thus Congress, in crafting CALEA, provided an avenue for relief from potential harm by making available section 109 relief.

I understand and appreciate the concerns of America's colleges and universities, but I am also mindful of the balancing of interests at stake here, and the need to place great weight on the factors of public safety and national security.

With regard to clarifying that section 109 is the only statutory provision under which carriers can seek to recover CALEA compliance costs, some might argue that traditional switched services carriers have sought to recover not only wiretap provisioning costs, but also CALEA capital costs through individual wiretap charges. The Department of Justice, however, has consistently held the position here that only costs specific to provisioning the requested wiretap are recoverable in these charges. To the extent that elimination of CALEA capital costs from wiretap charges enables law enforcement more effectively to utilize CALEA wiretaps, our clarification serves to further public safety and national security interests.

Finally, I support the affirmation of the original May 14, 2007 deadline for VoIP and Broadband Internet providers to become CALEA compliant, as well as our finding that it is premature for this agency to pre-empt the ongoing industry process of developing additional standards for IP-based services. There is no indication in the record that any party has filed a deficiency petition under section 107(b) of CALEA with regard to the developing standards. Moreover, I do not find a basis in the statute for the issuance of an extension.

As to the assertion of commenters that section 109(b) authorizes us to grant an extension of the obligation of carriers to become CALEA compliant, I do not think it is the FCC's job to "rewrite" the statute by using section 109(b) of CALEA to provide an extension for equipment, facilities, or services deployed on or after October 25, 1998,<sup>3</sup> when such equipment, facilities, or services are not eligible for an extension under section 107(c). Nor am I convinced that our broad authority under 229(a), the provision that grants us the authority to implement CALEA, provides us broader authority to grant extensions than the specifically limited authority Congress has stated in section 107(c) of the statute.

Congress has provided clear guidance in the plain language of CALEA, and we must read CALEA's requirements in a technology neutral manner. Our action today is not expanding the reach of the statute, but simply clarifying our interpretation of the statute in order to meet its goals and to further the interests of public safety and national security.

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<sup>3</sup> As noted in our Order, most packet-mode technologies were deployed after section 107(c)(1)'s expiration date, October 25, 1998.