



**U.S. Department of Justice**

Federal Bureau of Investigation

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*CALEA Implementation Unit  
14800 Conference Center Drive, Suite 300  
Chantilly, Virginia 20151*

December 4, 2003

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

Re: Notice of *Ex Parte* Presentation  
(CC Docket Nos. 02-33, 95-20 and 98-10; CS Docket No. 02-52)

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.106(b), the Federal Bureau of Investigation ("FBI") hereby submits notice of an *ex parte* meeting on December 3, 2003.

The FBI representative who attended the meeting was Martin J. King of the FBI's Office of General Counsel. Also participating in the meeting on behalf of the FBI were Joel M. Margolis, Valerie M. Furman and Kevin D. Minsky, consultants to the FBI's CALEA Implementation Unit.

The Commission staff members who attended at the meeting were Julius Knapp of the Office of Engineering and Technology, J. Scott Marcus of the Office of Strategic Planning, Cathy Zima and Thomas J. Beers of the Wireline Competition Bureau, and Stanley Wiggins and John Spencer of the Wireless Telecommunications Bureau.

The purpose of the meeting was to discuss the Communications Assistance for Law Enforcement Act (“CALEA”), 47 C.F.R. § 1001 *et seq.*, in the context of the above-referenced dockets.<sup>1</sup> The FBI presented a regulatory analysis of Internet access providers that would enable the Commission to preserve the ability of law enforcement to conduct lawful electronic surveillance on Internet access service and thereby fulfill the Commission’s CALEA implementation responsibilities under Section 229 of the Communications Act of 1934, as amended (“Communications Act”).<sup>2</sup>

In particular, the FBI reiterated its view that Internet access constitutes a telecommunications service, or at a minimum, contains a transport component that constitutes a telecommunications service. In addition, the FBI stated that any Internet access provider offering “switching or transmission” as a common carrier for hire qualifies as a “telecommunications carrier” under the unique definition of “telecommunications carrier” set forth at Section 102(8)(A) of CALEA.<sup>3</sup> The FBI further observed that in other Commission proceedings, including the *CALEA Second Report and Order*, the *Secondary Markets Order*, and the recent order issued in the E911 docket, the Commission has consistently applied CALEA and other Title II mandates to entities such as resellers and other entities that act as common carriers, even where those entities were not already classified as “licensees” subject to Title II of the Communications Act.<sup>4</sup>

<sup>1</sup> See *In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002); *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002).

<sup>2</sup> 47 U.S.C. § 229.

<sup>3</sup> 47 U.S.C. § 1001(8)(A).

<sup>4</sup> *In The Matter of Communications Assistance for Law Enforcement Act*, Second Report and Order, 15 FCC Rcd 7105 (1999) at ¶¶ 17-18, 24; *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 00-230, FCC 03-113 (rel. Oct. 6, 2003) at ¶¶ 121-122; *In the Matter of In the Matter of Revision of the Commission’s Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems; Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements; Petition of the National Telecommunications and Information Administration to Amend Part 25 of the Commission’s Rules to Establish Emissions Limits for Mobile and Portable Earth Stations Operating in the 1610-1660.5 MHz Band*, Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 94-102 and IB Docket No. 99-67, FCC 03-290 (rel. Dec. 1, 2003) at ¶¶ 26, 93, 96.

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Respectfully submitted,  
THE FEDERAL BUREAU OF INVESTIGATION

/s/ Martin J. King

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