



U.S. Department of Justice

Federal Bureau of Investigation

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

November 25, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th 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 November 24, 2003.

The FBI representatives who attended the meeting were Supervisory Special Agent Gregory M. Milonovich of the FBI's CALEA Implementation Unit and 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, Geraldine Matisse, Jerome Stanshine and Jeffrey Goldthorp of the Office of Engineering and Technology, J. Scott Marcus of the Office of Strategic Planning, Susan Aaron of the Office of the General Counsel, Cathy Zima, David Ward, Thomas J. Beers, Michael Goldstein, and Alan Feldman of the Wireline Competition Bureau, and Stanley Wiggins, William Lane, 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.¹ The attached memorandum summarizes the substance of the meeting.²

¹ 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).

² At the request of members of the FCC’s staff, Mr. Milonovich also provided the Commission with a brief update regarding a recently-issued FBI publication that details law enforcement’s electronic surveillance needs for public Internet protocol network access service (PIPNAS).

Marlene H. Dortch, Secretary
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November 25, 2003
Page 3

Respectfully submitted,
THE FEDERAL BUREAU OF INVESTIGATION

/s/ Gregory M. Milonovich

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**SUMMARY OF POINTS MADE
IN FEDERAL BUREAU OF INVESTIGATION
NOVEMBER 24, 2003 EX PARTE PRESENTATION**

- The purpose of the Communications Assistance for Law Enforcement Act (“CALEA”), 47 C.F.R. § 1001 *et seq.*, is to ensure that lawful electronic surveillance keeps pace with changes in telecommunications technology as telecommunications services migrate to new technologies.
- CALEA’s application is technology neutral.
- Internet access service is an important emerging technology used for electronic communication.
- Internet access service can be used to deliver a wide variety of communications, including voice-over-internet-protocol (“VOIP”) service, which is functionally identical to traditional telephony, and is expected to replace the existing circuit switched network.
- The Commission has already prepared itself to apply CALEA to emerging technologies by stating in the *CALEA Second Report and Order* that it would preserve the CALEA definitions of “telecommunications service” and “information service,” despite the independent purposes of the Communications Act.
- The Commission is required by Section 229 of the Communications Act, 47 C.F.R. § 229, to make all rules necessary to fulfill the statutory goals of CALEA.
- The intent of CALEA is to require the Commission to adopt rules making Internet access service providers subject to CALEA.
- There are multiple legal theories under which the Commission can preserve the CALEA classification scheme and ensure CALEA coverage of Internet access service:
 - The Commission can classify Internet access service as a “telecommunications service”;
 - The Commission can find — consistent with both its prior pronouncement that CALEA covers digital subscriber line service as a joint use facility and the Ninth Circuit Court’s recent holding in the *Brand X* case — that Internet access contains both a “telecommunications service” and an “information service.”
 - The Commission can classify Internet access service providers as CALEA “telecommunications carrier.”

- The CALEA definition of “telecommunications carrier” is different from and broader than the Communications Act definition of that term, thus permitting a different and broader interpretation.
- CALEA never classified Internet access service as an “information service.”
- The CALEA definition of “information service,” combined with CALEA’s legislative history, indicates Internet access service should be covered by the statute.
- No matter what theory the Commission chooses to use to fulfill its obligation to preserve the CALEA definitions, it may not classify Internet access service as a pure “information service” because that could arguably overturn the CALEA definitions and impermissibly interpret CALEA in a manner that would defeat its purpose.
- Any ruling that permits Internet access service providers to escape their CALEA responsibilities would frustrate the ability of law enforcement agents to keep pace with this emerging technology.
 - By implication, such a ruling could ultimately block law enforcement from conducting CALEA-enabled lawful electronic surveillance on the Internet-based communications services of the future.
- Given Chairman Powell’s statement that Homeland Security is at the forefront of his policy goals for the Commission, ensuring CALEA coverage of Internet access should be his top priority in the pending Internet access proceedings.