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## FCC ADOPTS ORDER TO ENABLE LAW ENFORCEMENT TO ACCESS CERTAIN BROADBAND AND VoIP PROVIDERS

Washington, DC – The Federal Communications Commission today adopted a *Second Report and Order and Memorandum Opinion and Order* (*Order*) that addresses several issues regarding implementation of the Communications Assistance for Law Enforcement Act (CALEA), enacted in 1994. The primary goal of the *Order* is to ensure that Law Enforcement Agencies (LEAs) have all of the resources that CALEA authorizes to combat crime and support homeland security, particularly with regard to facilities-based broadband Internet access providers and interconnected voice over Internet protocol (VOIP) providers. The *Order* balances the needs of Law Enforcement with the competing aims of encouraging the development of new communications services and technologies and protecting customer privacy.

The current CALEA proceeding was initiated in response to a Joint Petition filed by the Department of Justice, Federal Bureau of Investigation, and Drug Enforcement Administration in March 2004. These parties asked the Commission to address several issues so that industry and Law Enforcement would have clear guidance as CALEA implementation moves forward. The *First Report and Order* in this proceeding concluded that facilities-based broadband Internet access and interconnected VOIP providers were covered by CALEA. This *Order* addresses remaining issues raised in this proceeding and provides certainty that will help achieve CALEA compliance, particularly for packet-mode technologies.

First, the *Order* affirms that the CALEA compliance deadline for facilities-based broadband Internet access and interconnected VoIP services will be May 14, 2007, as established by the *First Report and Order* in this proceeding. The *Order* concludes that this deadline gives providers of these services sufficient time to develop compliance solutions, and notes that standards developments for these services are already well underway.

Second, the *Order* clarifies that this May 14, 2007 compliance date will apply to all facilities-based broadband Internet access and interconnected VoIP providers. Applying the same compliance date to all providers will eliminate any possible confusion about the applicability of the deadline, avoid any skewing effect on competition, and prevent migration of criminal activity onto networks with delayed compliance dates.

Third, the *Order* explains that, absent the filing of a petition that assistance capability standards are deficient, it would be premature for the Commission to intervene in the ongoing process by which telecommunications standards-setting bodies, acting in concert with LEAs and other interested persons, are developing assistance capability standards.

Fourth, the *Order* permits telecommunications carriers the option of using Trusted Third Parties (TTPs) to assist in meeting their CALEA obligations and providing LEAs the electronic surveillance information those agencies require in an acceptable format. The record indicates that TTPs are available to provide a variety of services for CALEA compliance to carriers, including processing requests for intercepts, conducting electronic surveillance, and delivering relevant information to LEAs. The *Order* makes clear that, if a carrier chooses to use a TTP, the carrier remains responsible for ensuring the timely delivery of call-identifying information and call content information to a LEA and for protecting subscriber privacy, as required by CALEA.

Fifth, the *Order* restricts the availability of compliance extensions under CALEA section 107(c) to equipment, facilities and services deployed prior to October 25, 1998 and clarifies the role and scope of CALEA section 109(b), under which carriers may be reimbursed for their CALEA compliance costs. More specifically, the *Order* find that sections 107(c) and 109(b) of CALEA provide only limited relief from compliance requirements.

Sixth, the *Order* finds that the Commission may, in addition to law enforcement remedies available through the courts, take separate enforcement action under section 229(a) of the Communications Act against carriers that fail to comply with CALEA.

Seventh, the *Order* concludes that carriers are responsible for CALEA development and implementation costs for post-January 1, 1995 equipment and facilities, and declines to adopt a national surcharge to recover CALEA costs. The *Order* finds that it would not serve the public interest to implement a national surcharge because such a mechanism would increase the administrative burden placed upon the carriers and provide little incentive for them to minimize their costs.

Finally, the *Order* requires all carriers providing facilities-based broadband Internet access and interconnected VoIP service to submit interim reports to the Commission to ensure that they will be CALEA-compliant by May 14, 2007, and also requires all facilities-based broadband Internet access and interconnected VoIP providers to whom CALEA obligations were applied in the *First Report and Order* to come into compliance with the system security requirements in the Commission's rules within 90 days of the effective date of this Order.

Action by the Commission May 3, 2006, by *Second Report and Order and Memorandum Opinion and Order* (FCC 06-56). Chairman Martin, Commissioners Copps, Adelstein, and Tate.

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