

**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 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

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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.

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.