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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Communications Assistance for Law) CC Docket No. 97-213
Enforcement Act)

**COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION**

The United States Telephone Association (USTA) respectfully submits its comments in the above-referenced proceeding. USTA is the principal trade association of the local exchange carrier (LEC) industry. Its members provide over 98 percent of the incumbent LEC-provided access lines in the U.S. All of USTA's member companies are subject to the requirements of the Communications Assistance for Law Enforcement Act (CALEA).

In a Public Notice released April 20, 1998, the Commission has asked for comment on how the Commission can most quickly and efficiently extend the October 25, 1998 CALEA compliance deadline, assuming that such an extension is warranted.¹ USTA strongly urges the Commission to issue a blanket two year extension of the compliance date pursuant to Section 107(c)(3)(B) of CALEA.²

¹In the Matter of: Communications Assistance for Law Enforcement Act, *Public Notice*, CC Docket No. 97-213, DA 98-762 (rel. April 20, 1998).

²While CALEA allows for two year extensions, the Commission should exercise its authority to grant extensions at least until the hardware and software necessary to comply with (continued...)

On April 24, 1998, USTA filed a Petition for Extension of the compliance date on behalf of its members companies. While USTA was aware of the *Public Notice*, USTA believed that such action was necessary to alert the Commission to the grave concerns of the nation's local exchange carriers regarding the implementation of CALEA. All of USTA's member companies are subject to CALEA.³ All of USTA's members face the risk of enforcement actions pursuant to Section 108. USTA strongly believes that telecommunications carriers should not have to face the possibility of defending against an enforcement action brought by the U.S. government when they have agreed to an interim standard which fully complies with the requirements of CALEA in spite of law enforcement efforts to delay the standard in violation of Section 103(b) of CALEA. The interim standard has been the subject of two deficiency petitions.

Telecommunications carriers have also had to wait for a capacity notice which was three years overdue and which still requires clarification. Obviously, Commission action to reduce the risk which telecommunications will face and to provide guidance regarding the implementation of CALEA is necessary.

²(...continued)
the capacity requirements are commercially available.

³USTA's approximately 1,000 members include the largest publicly-held U.S. local telephone companies serving millions of customers, about twenty-five mid-sized companies serving between 25,000 and two million customers and hundreds of small telephone companies, most of which are rural, family-owned businesses typically with less than 5,000 customers or cooperatives owned by their customers.

As explained in USTA's petition, as well as in other petitions for extension which have also been filed at the Commission, an extension of the compliance date is clearly warranted.⁴ Section 107 of CALEA provides the Commission with the authority to grant an extension of time if the Commission determines that compliance with the assistance capability requirements under section 103 is not reasonably available through application of technology available within the compliance period. The hardware and software necessary to comply with the capacity requirements of CALEA are not commercially available and will not be commercially available and deployed by October 25, 1998.⁵

The record currently before the Commission in this docket plainly substantiates that fact.⁶ The Federal Bureau of Investigation (FBI) reported to Congress that a complete switch-based solution for CALEA compliance would not be available before the year 2000.⁷ Two of the largest switch manufacturers have requested an extension of time to comply with CALEA

⁴See, Petitions for Extension of Time filed by AT&T Wireless, Lucent Technologies and Ericsson, Inc. on March 31, 1998, Ameritech on April 24, 1998, Powertel on April 23, 1998 and AirTouch Paging on May 4, 1998.

⁵USTA notes that pursuant to Section 109(a) and (d) equipment installed or deployed before January 1, 1995 is grand fathered and is deemed in compliance if the Attorney General has not agreed to pay for all reasonable costs directly associated with modifications necessary to bring any such equipment, facility or service into compliance. USTA, in a joint petition filed April 9, 1998 with the Cellular Telecommunications Industry Association and the Personal Communications Industry Association, has requested that the Commission initiate a Section 109 proceeding to determine whether compliance is reasonably achievable for equipment installed or deployed after January 1, 1995. As stated in prior comments, USTA believes that compliance is not reasonably achievable for the reasons stated above and given the definitions utilized by the FBI of "installed or deployed" and "significant upgrade or modification".

⁶See, comments of Telecommunications Industry Association filed December 12, 1997

⁷Communications Assistance for Law Enforcement Act (CALEA) Implementation Report, Federal Bureau of Investigation of the Department of Justice, January 26, 1998.

because they are unable to manufacture and implement a solution which meets the requirements of Section 103. Thus, there is no disagreement among telecommunications carriers, manufacturers and the FBI that compliance with CALEA is not possible by October 25, 1998.

As USTA has pointed out, the standards process was delayed by law enforcement's opposition to any standard which did not include the so-called punch list items even though such actions violated Section 103 of CALEA and the fact that the punch list items are clearly outside the scope of CALEA. Telecommunications carriers did approve an interim standard, which is fully compliant with CALEA. Law enforcement has continued its opposition and has filed a petition requesting that the Commission declare the interim standard deficient because it does not include the punch list items. Another deficiency petition was filed by the Center for Democracy and Technology claiming that the interim standard fails to adequately protect the privacy of communications not authorized to be intercepted. Given this uncertainty regarding the status of the interim standard, it is unreasonable to expect further development of equipment given the risk and expense involved.

In addition, although CALEA requires that a Notice of Capacity requirements be issued within one year of enactment, the notice was actually released three years late and still requires clarification on a number of major issues. The uncertainty which surrounds the standard and the capacity requirements justify grant of an extension.

While CALEA clearly provides the Commission with the authority to grant an extension and the record before the Commission clearly indicates that such an extension is required, the Commission has also requested comment on how such an extension should be applied. The factors described above explaining that an extension should be granted apply equally to all

telecommunications carriers.⁸ Therefore, USTA would urge the Commission to extend the compliance date for all affected entities. Such an approach would clearly reduce the administrative burdens on both telecommunications carriers and on the Commission. There are approximately 1,400 local telephone companies, virtually all of which are telecommunications carriers defined in Section 102(8)(A). In addition, there are competitive local exchange carriers, competitive access providers, interexchange carriers, cellular carriers, PCS carriers and other telecommunications providers which may be included in the definition. The administrative burden of attempting to address individual petitions filed by all of these entities, including seeking public comment on each request, would be overwhelming and would waste limited Commission resources. Reducing unreasonable and unnecessary administrative burdens is in the public interest.

The Commission has acted in the past to provide blanket relief from the application of statutory requirements.⁹ In CC Docket No. 96-128, the Common Carrier Bureau provided blanket relief to avoid a significant administrative impact and further delay of statutory requirements. USTA believes that a blanket extension will serve a similar purpose here. Avoiding administrative burdens and providing additional time to clarify the issues raised herein

⁸USTA noted in its petition that while the major switch manufacturer have been actively involved in efforts to implement CALEA, USTA's smaller telephone company members deploy a wide variety of switches with vastly differing capabilities. These carriers lack the financial resources to make switch upgrades, much less replace their switches if upgrades are not technically feasible.

⁹Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, *Memorandum Opinion and Order*, (rel. Mar. 9, 1998).

would serve the public interest.

Based on the forgoing, USTA strongly urges the Commission to extend the compliance date for all telecommunications carriers pursuant to Section 107(c)(3)(B) of CALEA. Further, USTA's petition for extension filed on behalf of its member telephone companies is already on the record. If the Commission declines to grant the relief recommended herein, USTA requests expeditious consideration of its petition.

Respectfully submitted

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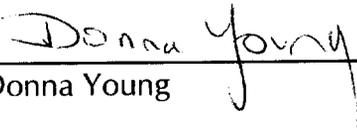
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May 8, 1998

CERTIFICATE OF SERVICE

I, Donna Young, do certify that on May 8, 1998, copies of the accompanying comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.



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