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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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

**REPLY COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION**

The United States Telephone Association (USTA) respectfully submits its reply to the comments filed on May 8, 1998 in the above-referenced proceeding.

The record in this proceeding provides overwhelming evidence that an extension of the October 25, 1998 CALEA compliance deadline is necessary and can best be accomplished by issuing a blanket extension which applies to all affected parties. Not surprisingly, only one party, the Department of Justice/Federal Bureau of Investigation (DOJ/FBI), suggested that such an extension should not be granted. However, even the DOJ/FBI do not dispute the fact that 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. Thus, pursuant to Section 107, the Commission should grant an extension of time because compliance with the assistance capability requirements under Section 103 is not reasonably available through application of technology available within the compliance period. USTA will address the DOJ/FBI comments in the remainder of its reply.

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Contrary to the assertions of the DOJ/FBI, the Commission has the authority to grant an industry-wide extension of the statutory compliance date. The plain language of Section 107(c)(3)(B) certainly grants the Commission the authority to grant individual petitions. There is ample precedent to support USTA's standing to seek an extension on behalf of its member companies. In *Hunt v. Washington State Apple Advertising Comm'n.*, 432 U.S. 333 (1977), the U.S. Supreme Court determined that an association has standing to redress its members' injuries when its members would otherwise have standing to sue in their own right; the interests it seeks to protect are germane to the organization's purpose; and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. Such is the case here where individual carriers certainly have the right to seek an extension, protecting its members from enforcement actions is germane to the purpose of the Association and the absence of commercially available CALEA solutions applies to all of its members, thus individual participation is not required.

Further, as discussed by other parties, Section 107(c)(2) does not limit the Commission's authority to grant extensions based on individual carrier petitions. In addition, the Commission has authority under Section 301 to prescribe such rules as are necessary to implement CALEA and under Section 4(I) of the Communications Act to perform such acts as are necessary in the execution of its functions.

Many parties filed individual petitions for an extension with their comments in this proceeding. It makes much more sense to conserve resources and grant a blanket extension rather than seek comment and make case-by-case determinations on literally thousands of carrier and manufacturer requests. For, even though the telecommunications industry is not monolithic,

the fact is that no party has indicated that it will be in compliance with CALEA on October 25, 1998 and every party agrees that an extension is required because of the undisputed lack of commercially available technology. It is a waste of resources to require the Commission to review thousands of identical petitions. As USTA indicated in its comments, in the past, the Commission has acted to provide blanket relief from the applications of statutory requirements to avoid a significant administrative impact and further delay of statutory requirements. A blanket extension of the CALEA compliance date will serve a similar purpose here.

The DOJ/FBI is correct in stating that the language of Section 103 does not impose unfair burdens on telecommunications carriers and petitioning parties have not so argued. Rather, as is repeatedly recounted in the record before the Commission, it is the DOJ/FBI's misinterpretations of that and other Sections of CALEA which have and will create the largest burdens on telecommunications carriers and which have led to the delay in the implementation of CALEA compliant standards which in turn has delayed the design, development and manufacture of equipment to meet those standards. The DOJ/FBI's recalcitrance regarding the inclusion of nine additional items in the standard is well documented in the record.¹ Their continuing dispute with the industry is now before the Commission in the form of a deficiency petition. Another deficiency petition was filed by the Center for Democracy and Technology. These petitions will

¹Despite the DOJ/FBI's inference that the additional items are necessary to stem criminal activity in the areas of organized crime, drug trafficking, violent crime and domestic terrorism, such a direct link has never been substantiated. Regardless, USTA's members have no intention of thwarting the DOJ/FBI's abilities in that regard. However, the DOJ/FBI must face the fact that CALEA only requires telecommunications carriers to provide capabilities which are reasonably available to preserve the DOJ/FBI's current surveillance capability and to be compensated for the costs. The statute does not require telecommunications carriers to redesign their networks or to provide the DOJ/FBI with new surveillance capability.

further delay implementation. Even if the Commission can reach a determination on these petitions before October 25, 1998, manufacturers have stated in the record that they require at least two years from the time the standard is finalized to develop, design and deploy compliant equipment. The DOJ/FBI simply ignore that fact, and instead argue, quite incredibly, that a standard is not required. It is difficult to respond to such an impractical argument. However, USTA is confident that the Commission understands the importance of developing an industry-approved standard to ensure uniformity in compliance and integrity in application of CALEA solutions.

The DOJ/FBI suggests that if carriers and manufacturers will sign so-called forbearance agreements, the DOJ/FBI will not pursue enforcement actions. Of course, the DOJ/FBI have made it clear that the forbearance agreement must include the nine additional items. This does not provide much relief for carriers who apparently would be required to choose between providing the nine additional items or preparing to defend against an enforcement action. CALEA does not give the DOJ/FBI the authority to require such agreements and the Commission must not countenance any action by the DOJ/FBI in which carriers are intimidated or coerced into signing such agreements.

It is clear from the record that the Commission has the authority to grant an extension for all entities subject to CALEA and that the delay in implementing CALEA warrants such an extension. USTA urges the Commission to grant such relief, or in the alternative, grant its petition for extension filed on behalf of its members.

Respectfully submitted,

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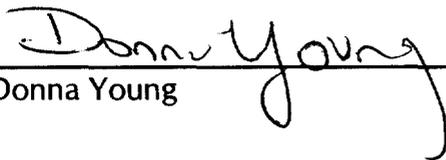
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CERTIFICATE OF SERVICE

I, Donna Young, do certify that on May 15, 1998, copies of the accompanying reply 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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