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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

BELLSOUTH REPLY

BellSouth Corporation, on behalf of its affiliated companies,[1] files its reply to the comments filed in response to the Public Notice released in this docket on May 7, 1999.[2] While BellSouth agrees with the Commission's Office of Engineering Technology (OET) and all commenters that there are flaws in the data, BellSouth disagrees with Omnipoint's position that the Commission should not draw any conclusions or make any decisions based on the manufacturer's data.[3] Specifically, the Commission should conclude that (1) the data, however flawed, indicate that the total cost of the punch list capabilities will be unreasonably high; (2) the costs of dialed digit extraction capabilities far exceed its benefits, especially when the FBI has other alternatives to obtain such data; and (3) the manufacturers' data represents only a portion of the total cost of CALEA compliance.

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1 BellSouth Telecommunications, Inc., BellSouth Cellular Corp., BellSouth Wireless Data, L.P., and affiliated companies.

2 *Comment Sought on CALEA Revenue Estimates of Five Manufacturers,* CC Docket 97-213, Public Notice DA 99-863 (May 7, 1999) (Public Notice). Comments were filed by AirTouch Communications, Bell Atlantic, BellSouth Corporation, Cellular Telecommunications Industry Association (CTIA), FBI, OmniPoint Communications, Personal Communications Industry Association (PCIA), PrimeCo Personal Communications, RCS Communications Group, SBC Communications, Sprint PCS, Texas Advisory Commission, US West, United States Telephone Association (USTA).

3 OmniPoint Comments at 4.

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However flawed, the Commission must consider the manufacturer's data in the context of deciding its pending Further Notice of Proposed Rulemaking.[4] It should therefore reject the arguments of the FBI. The FBI continues to argue for a much more limited consideration of costs than either the statute or its drafters intended. The essence of the government's argument is that cost is only relevant in considering whether a technical solution for any given assistance capability feature is more or less cost effective than an alternative solution for the same feature. Because the aggregated revenue figures address "only a single means of curing the deficiencies identified by the government" they are not, according to the FBI, relevant.[5] Congress did not instruct the FCC, however, to consider relative costs of CALEA compliance as opposed to absolute costs of CALEA compliance. Indeed, Section 107 requires that Section 103's capability requirements be met by cost-effective means such that if a capability cannot be provided by a cost-effective method, the Commission cannot require it all.[6] Congress had no intention of taxing the telecommunications industry or consumers with all of the costs of building and maintaining the FBI's dream surveillance system.

The FBI concedes that it resorts to speculation when it attacks the revenue data as overstating the cost of CALEA compliance.[7] The government's main argument is that the revenues cannot reflect negotiated prices, and negotiated prices could range up to 90% lower than list prices. CALEA, as interpreted by the FBI, however, is not "business as usual" for the telecommunications industry. According to the FBI, there are absolute assistance capability

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4 Communications Assistance for Law Enforcement Act, *Further Notice of Proposed Rulemaking,* 13 FCC Rcd 22632 (1998). *See* CTIA Comments at 1-2, BellSouth Comments at 1-2.

5 FBI Comments at 4.

6 CTIA Comments at 1.

7 FBI Comments at 5.

functions that must be provided by carriers to the FBI regardless of the cost. These capability functions must be designed, built, purchased, installed, tested and deployed ubiquitously in essentially a year on pain of civil, and possibly criminal, government enforcement actions.[8] Carriers stand to be penalized in their markets if CALEA solutions inhibit the continued development and deployment of innovative telecommunications services. Strict compliance, zero tolerance, and grave liability issues do not facilitate carrier negotiation of lower manufacturer's prices. In short, the FBI's public position on capacity, assistance capabilities and cost recovery have given manufacturers even more significant bargaining power than they possess with respect to other government mandated network changes.

The FBI misses the mark when it claims that BellSouth's estimated costs of compliance with the punch list items ($182 million) exceeds by $35 million the manufacturers estimate of the costs that will be incurred by all of these five manufacturers' wireline customers combined cost data. BellSouth Telecommunication's (BST) cost for the J-STD-025 with punch list at capacity is $528.9 million.[9] BellSouth's wireless affiliates estimate that it will cost anywhere

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[8] The current compliance deadline is June 30, 2000. As SBC notes, it generally requires 12 to 18 months to deploy a new generic. SBC Comments at 2. If it is technically feasible to meet the new deadline, additional labor will have to be assigned and trained.

[9] BellSouth Comments (filed Dec. 14, 1998) at 4-6, n.7. BST cost estimates for an integrated switch-based CALEA solution include the costs associated with the deployment of twelve (12) generic upgrades. Interim switch generic upgrades required to provide a long-term database method of number portability or to make BST switches Year 2000 compliant were not included in the estimates. BST's estimates were assembled utilizing historical and specific costs for the activities inclusive of Project Management, Documentation, Method and Procedure Development, Bellcore Funding, Central Office Switch Order Preparation, Project Scheduling, Switch Generic and Switch Feature Testing, Technical Support, Switch Translations, Switch Generic Load Efforts, Switch Generic Load Costs (both software and hardware), BST and Vendor Engineering and Installation Costs, Law Enforcement Agency Link Circuit Costs, Surveillance Administration Costs, and Maintenance and Administrative Upgrades to Systems. *Id.*

between $40-$50 million to comply with the J-STD-025 alone.[10] In addition, BST estimates that even with the manufacturer's buyout assumed by OET, it will incur $449 million in CALEA compliance costs.

The FBI fails to recognize that the carriers will assume substantial costs above those portrayed in the manufacturers' data. As BellSouth explained in its comments, the manufacturers' cost data represent only the tip of the iceberg.[11] BellSouth will have other equipment and installation costs associated with CALEA upgrades and compliance that brings the total cost of CALEA compliance far above the totals set forth in the Public Notice. As USTA notes, the manufacturers' data are in fact "very conservative, but provide a basis for understanding how expensive implementation of CALEA will be."[12] Carriers will incur additional software and hardware costs to *support* the software functions and delivery of surveillance as well as training and installation.[13] Cost will be higher where the capability is provided over several software loads, and where additional software loads must be purchased due to switch vintage, while hardware costs will vary widely depending upon the architecture of the switch.[14] SBC anticipates that it will be required to deploy 900 generic upgrades, as well as associated gating hardware, with regard to one manufacturer alone.[15]

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10 BellSouth will need 18-24 months after the June 30, 2000, deadline to deploy the capabilities within its network following vendor delivery. BellSouth Comments (Dec. 14, 1998) at 5-6.

11 BellSouth Comments at 3.

12 USTA Comments at 2.

13 *Id.*

14 *Id.* at 2-3.

15 SBC Comments at 2.

Nearly every party agrees with the OET's critical assessment of the manufacturer's data, and some add valuable insight into the data deficiencies.[16] Yet the only fundamental disagreement is whether the aggregated revenue figures are over (FBI) or under (the telecommunications industry) the actual cost to the industry. The weight of the comments establish the conclusion reached by Airtouch:

> While there would be significant problems with relying on the aggregate data as evidence of what the actual total costs will be, the data do serve to establish a floor and provide relevant evidence for a Commission determination in this proceeding that the punch list items are too costly and do not meet CALEA requirements.[17]

CTIA provides a valuable analysis of its own manufacturer's survey as well as that of OET, and concludes the survey estimates are very close and uniformly demonstrate the significant costs of CALEA compliance on the wireless industry.[18]

As Bell Atlantic states, the $121 million that OET reports as the cost of the Wish List's dialed digit extraction capability feature would pay for more content channels than law enforcement could ever use.[19] Bell Atlantic notes that this figure may be understated because dialed digit extraction can involve significant hardware additions and OET indicates that hardware costs were not uniformly included in its estimates.[20] Indeed, USTA states that dialed digit extraction is extremely hardware intensive, and therefore the cost of this time will be much higher than for other punchlist items.[21] Even under the FBI's relative cost analysis, PCIA has

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16 BellSouth Comments at 2-3; OmniPoint Comments at 2-3; PCIA Comments at 3; PrimeCo Comments at 3; Sprint Comments at 3; and USTA Comments at 2.

17 AirTouch Comments at 3. *See also* BellSouth Comments at 3; PrimeCo Comments at 3; SBC Comments at 1; USTA Comments at 2; and US West Comments at 2.

18 CTIA Comments, *passim.*

19 Bell Atlantic Comments at 1.

20 *Id.* at n. 2.

21 USTA Comments at 3.

demonstrated that existing alternatives under the J standard preclude, as a matter of law, dialed-digit extraction from the scope of CALEA.[22]

CONCLUSION

Even in the face of the flaws and data gaps identified by OET and the parties to this proceeding, the Commission can reasonably conclude the FBI wish list will add significantly and unreasonably to the total costs of CALEA compliance. The Commission should revise its tentative conclusions concerning dialed-digit extraction and the other remaining wish list capabilities.

Respectfully submitted,

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[22] PCIA Comments at 4.

CERTIFICATE OF SERVICE

I do hereby certify that I have this 27th day of May, 1999, served the following parties to this action with a copy of the foregoing *BELLSOUTH REPLY*, reference CC Docket No. 97-213, by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.

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