

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

In the Matter of

Communications Assistance
for Law Enforcement Act

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CC Docket No. 97-213

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OPPOSITION

BellSouth Corporation, on behalf of its affiliated companies,¹ files its Opposition to the Department of Justice and Federal Bureau of Investigation Petition for Reconsideration² (DOJ/FBI Petition) of the Office of Engineering and Technology Order,³ granting confidential treatment to cost data submitted by five telecommunications equipment manufacturers. The DOJ/FBI claims that costs are not central to CALEA compliance and thus the manufacturers' request for confidentiality should be disregarded. Like CTIA, BellSouth opposes the DOJ/FBI's attempt to re-argue the substantive issues regarding the scope and relevance of Section 107(b) factors.⁴

The DOJ/FBI alleges that Congress has made clear that cost considerations are not central to identifying the specific communications assistance capabilities that CALEA

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

² *Communications Assistance for Law Enforcement Act*, CC Docket 97-213, DOJ/FBI Petition for Reconsideration (filed March 31, 1999) at 3 (DOJ/FBI Petition).

³ *Communications Assistance for Law Enforcement Act*, CC Docket 97-213, Order, DA 99-412 (released March 2, 1999).

⁴ *Communications Assistance for Law Enforcement Act*, CC Docket 97-213, Opposition of Cellular Telecommunications Industry Association to the Department of Justice Motion for Reconsideration of the Commission's Confidentiality Order (filed April 9, 1999) at 2.

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requires.⁵ However, a letter recently submitted to the Commission by four members of Congress states that Section 107 of CALEA expressly requires the FCC to consider cost as a factor in determining CALEA technical standards.⁶ Indeed, four of the five criteria established by Congress under Section 107(b) relate to cost considerations: the standards “*must meet the assistance capability requirements of Section 1002 of this title [Section 103 of CALEA] by cost-effective methods;*” the standards must “*minimize the cost of such compliance on rate payers;*” the standards must serve the policy of the United States to encourage the provision of new technologies and services to the public (high cost standards would undermine policy by discouraging the provision of new technologies and services); and the standards must provide a reasonable time and conditions for compliance with and the transition to the new standard (an unreasonable time would undermine cost-effective deployment, maximize ratepayer exposure to the costs of compliance, and interfere with the provision of new technologies and services).

Cost considerations, such as the revenue estimates filed by the manufacturers,⁷ permeate CALEA and are an essential component in any determination of how Section 103’s assistance capability requirements are to be met:

CALEA does not specify how these requirements are to be met. Rather, the Act requires carriers, *in consultation with manufacturers*, to ensure that their equipment, facilities, or services can comply with the requirements set out in section 103. *Manufacturers* are required to make available the features and modifications that are necessary to comply with the capability requirements “on a reasonably timely basis *and at a reasonable cost.*” The Attorney General is to consult with the telecommunications industry, users, and state utility commissions

⁵ DOJ/FBI Petition at 3.

⁶ Letter from Rep. Bob Goodlatte, Rep. John Conyers, Rep. Zoe Lofgren, Rep. Bob Barr to William E. Kennard, Chairman, FCC (dated February 25, 1999) at 1.

⁷ The manufacturers did not supply profit data, only revenue data.

to "ensure the efficient and industry-wide implementation of the assistance capability requirements."⁸

The DOJ/FBI Petition states that since cost is not a consideration under Section 107, there is no need to entertain the submission of confidential cost data.⁹ However, in order to achieve CALEA compliance at a reasonable cost to carriers, and ultimately to carriers' customers, the Commission must rely on cost data to make its decisions.

CONCLUSION

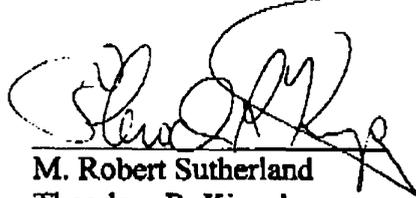
The DOJ/FBI is wrong in its assertion that cost is not a central factor in the implementation of CALEA.

Respectfully submitted,

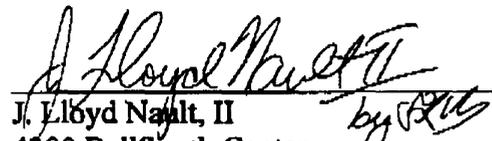
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Date: June 23, 1999

⁸ *Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, Memorandum Opinion and Order, FCC 98-223 (September 11, 1998), ¶ 3 (emphasis added, footnotes omitted).

⁹ DOJ/FBI Petition at 4.

CERTIFICATE OF SERVICE

I do hereby certify that I have this 23rd day of June, 1999, served the following parties to this action with a copy of the foregoing *OPPOSITION*, 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 as set forth below.

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