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CALEA Implementation Section
14800 Conference Center Drive, Suite 300
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April 18, 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TWB-204
Washington D.C. 20554

EX PARTE OR LATE FILED

Re: Ex Parte Presentation
In the Matter Of: Communications Assistance for Law Enforcement Act
CC Docket No. 97-213

Dear Ms. Salas:

On April 17, 2001, representatives of the Department of Justice, Federal Bureau of Investigation, and the Hudson County, New Jersey Prosecutor's Office (collectively "the government") met with representatives of the Federal Communications Commission (FCC) to discuss the above-referenced matter. A list of the attendees is attached hereto. The matters discussed by the parties are described below.

The government reiterated its prior Comments regarding the four "punch list" capabilities vacated in USTA v. FCC, 227 F.3d 450 (D.C. Cir. 2000), and emphasized the need for the FCC to reinstate these capabilities. The government further urged the Commission to act on the remand issues as quickly as possible. Currently, carriers are subject to a deadline of September 30, 2001, to implement the two punch list capabilities that were not vacated by the Court of Appeals. If the Commission chooses to extend that deadline temporarily, it is imperative that the extension be brief and that the Commission set a specific date for compliance with all of the punch list capabilities rather than simply suspending compliance indefinitely pending completion of the remand proceeding.

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The parties discussed the dialed-digit-extraction capability and the nature of the Court of Appeals' instructions to the FCC to consider its "privacy" implications. The government again stressed the overwhelming significance of this particular punch list capability to effective law enforcement. The government also explained that, as discussed in the government's prior Comments, Congress was aware of the potential for an authorized "pen register" type surveillance to result in the incidental delivery to law enforcement of dialed digits that are not "call identifying information." Congress' solution was not to preclude carriers from implementing the capability to properly report to law enforcement all dialed digits, but to enact the provision found in 18 U.S.C. § 3121(c), placing the burden on law enforcement agencies to use technology reasonably available to them to confine recording and decoding to "dialing and signaling information utilized in call processing." As the government has previously commented, this provision would make no sense if the pen register statute precluded carriers from delivering post-cut-through dialed digits to law enforcement in the first place.

The government confirmed that it has completed cooperative agreements with five major telecommunications equipment manufacturers for CALEA software solutions that, once fully installed, would enable a carrier to provide both the "core" J-STD-025 capabilities and all 6 punch list items. These solutions would cover over 90% of the nation's wireline and wireless switches for a cost to the government of under \$400 million, and the agreements provide that carriers will receive the solutions free of additional charge from the manufacturers. Many of these CALEA solutions include the capability for carriers to toggle individual punch list capabilities on or off. Hence, a carrier with reservations about the requisite level of legal authority needed before activating a surveillance feature, such as dialed-digit-extraction, will have the technical ability to "turn off" that feature.

The parties discussed the September 30, 2001 deadline for carriers to implement the existing packet mode surveillance provisions of J-STD-025, and the government strongly urged the FCC to leave this deadline in place. Notwithstanding the legal arguments advanced by other parties regarding the asserted need for carriers to "filter" packet streams in pen register / trap and trace cases, it is *undisputed* by any party that carriers must have the capability to provide for lawful interception of a subject's full packet stream in cases where a "Title III" interception is authorized. This interception capability is critically important to law enforcement agencies and mandated by CALEA. According to the Hudson County representative, some authorized wiretaps have been frustrated by carriers' inability to facilitate surveillance of packet-mode communications.

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The government reaffirmed its prior Comments that the recent Court of Appeals decision created no legal barriers to carriers' implementing this "full packet" surveillance capability for use either in Title III cases or in pen register/trap-and-trace cases, because the Court affirmed the FCC's decisions regarding packet mode communications in the "Third Report and Order" and did not hold that a Title III order is necessary for delivery of full packets. The government observed that it can use its own filtering techniques in pen register/trap-and-trace cases, whenever possible, or in the event later court decisions require carriers to employ filtering, the government will work with carriers to develop appropriate solutions, but in no event could such potential future court decisions ever relieve carriers of their basic obligation under Section 103 of CALEA to provide for the government's ability to lawfully intercept the full packet stream associated with an intercept subject's communications. Moreover, carriers must incur any expenses associated with developing a full packet stream surveillance capability notwithstanding whether or not they are eventually required to incur additional expenses in developing a filtering capability for pen register/trap-and-trace cases.

Copies of this letter are being sent to the individual Commission staff.

Sincerely,



Michael P. Clifford
Section Chief
CALEA Implementation Section

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Mr. Small, FCC/OET
Mr. Stanshine, FCC/OET
Mr. Ward, FCC/CCB
Ms. Kimmel, FCC/WTB
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4/17/01

**CALEA Meeting
FBI-DOJ-FCC**

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