

add/remove a party to a call. As discussed in paragraph nine, *supra*, the Court found that the *Third R&O* did not adequately explain the basis for its conclusion that this capability constituted call-identifying information nor how granting LEAs this capability would satisfy CALEA's requirements by cost-effective methods.

105. *Comments.* CDT states that CALEA requires only that carriers give LEAs the specific telephone numbers associated with a call. CDT contends that if a subscriber switches from one call to another using call waiting, there are two calls in progress, and that switching back-and-forth between calls does not constitute termination of the first call.²⁴³ CDT further contends that, under the *Third R&O's* interpretation of call waiting, there would be two "origins" of the same call – the originating phone number and the flash signal used by the subscriber to resume a conversation with the originating caller. Finally, CDT contends that a subscriber's activation of call forwarding service does not identify the origin, direction, destination, or termination of a communication because no communication has taken place.²⁴⁴ CTIA makes similar comments regarding call waiting and call forwarding. Specifically, CTIA states that although call waiting involves two phone calls, each with an origin and termination, it does not involve the origin and termination of a new communication every time a party switches from one call to another. CTIA further states that activation of call forwarding does not necessarily identify any particular call within the meaning of CALEA, given that a subscriber may activate call forwarding without ever forwarding any call. Finally, CTIA states that the concern that use of call forwarding might hide from LEAs the called telephone number was addressed in J-STD-025 by providing the telephone numbers identifying the direction and termination of forwarded calls.²⁴⁵

106. BellSouth states that subject-initiated dialing and signaling information is not call-identifying information. BellSouth argues that J-STD-025 requires carriers to deliver to LEAs telephone numbers that are related to the origination or destination of a call, and that a subject-initiated dialing and signaling capability would provide information that has nothing to do with the routing of a call.²⁴⁶ BellSouth further argues that, under J-STD-025, carriers report the resultant status change that occurs in the call rather than the stimulus itself, but that the information provided by J-STD-025 is similar to what would be provided by subject-initiated dialing and signaling information.²⁴⁷ BellSouth also contends that such information is not reasonably available because there are significant technical issues that make a subject-initiated dialing and signaling capability difficult to achieve. For example, BellSouth states that in some switch implementations, detection and collection of off-hook and digit information occur in a line module that is separate and distinct from the main processor of the switch. Accordingly, BellSouth maintains that making this information available to the main processor so that it can be sent to LEAs may require fundamental modifications to switch architecture that are not only technically challenging but also costly.²⁴⁸

107. DoJ/FBI state that subject-initiated dialing and signaling information is generated by use of such services as call forwarding, call waiting, call hold, and three-way calling, and that, to the extent these services have been available in the past, LEAs have had access to such information. DoJ/FBI contend that CALEA's definition of call-identifying information encompasses subject-initiated dialing and signaling information because such information identifies the direction or destination of communications.²⁴⁹ DoJ/FBI further contend that BellSouth is incorrect when it claims that the dialing

²⁴³ CDT Comments at 10.

²⁴⁴ *Id.* at 11.

²⁴⁵ CTIA Comments at 14-15.

²⁴⁶ BellSouth Comments at 16.

²⁴⁷ *Id.* at 17.

²⁴⁸ *Id.* at 17-18.

²⁴⁹ DoJ/FBI Comments at 23-25.

in the type of cost-comparison analysis discussed in Section III B, *supra*. However, we note that several mechanisms – including the FBI reimbursement program – do serve to minimize the cost of providing this capability. In the *Third R&O*, we found that five major telecommunications manufacturers anticipated total revenues from carriers purchasing a party hold/join/drop message capability of \$64 million.²³⁸ Further, as noted above, the FBI's buyout and flexible deployment programs, coupled with five manufacturers incorporating all punch list capabilities into one software upgrade, will lessen software costs significantly, and including or not including a party hold/join/drop message capability may not significantly change carriers' costs. For these reasons, we find that the cost to carriers of implementing this capability would be minimized and that requiring the capability would be cost-effective.

101. We also find that authorizing a party hold/join/drop capability is unlikely to significantly affect residential ratepayers. The factors we previously identified as minimizing the cost for residential ratepayers – including the FBI buyout and flexible deployment programs – will be applicable to party hold/join/drop. Moreover, we note that carriers will be able to spread costs across a large ratepayer base and there is no indication that the costs of party hold/join/drop will be disproportionately borne by residential ratepayers. Even if wireline carriers were forced to bear costs as great as the \$22 million for this capability estimated by five major telecommunications manufacturers²³⁹ and these costs were passed on to residential ratepayers as a one-time charge, the charge per residential ratepayer would average much less than one dollar.²⁴⁰ Alternatively, a \$22 million charge to wireline carriers, if converted to a rate increase to almost 100 million residential ratepayers, would average only about a penny per month per ratepayer.²⁴¹

102. Finally, we find that authorizing a party hold/join/drop electronic surveillance capability would be in conformance with the second prong of Section 107(b) of CALEA.²⁴² We see no significant privacy issues arising from grant to LEAs of a party hold/join/drop capability, no party to this proceeding challenged the *Third R&O*'s decision with respect to that capability on privacy grounds, and the Court did not cite privacy as a basis for remanding to the Commission the *Third R&O*'s decision with respect to that capability. Therefore, we do not address this factor further.

103. Accordingly, in view of the fact that we conclude that party hold/join/drop information constitutes call-identifying information and that authorizing a party hold/join/drop electronic surveillance capability would be in conformance with Section 107(b) of CALEA, we find that a party hold/join/drop capability is a technical requirement that meets the assistance capability requirements of Section 103 of CALEA.

E. Subject-Initiated Dialing and Signaling Information

104. This capability would permit the LEA to be informed when a subject sends signals or digits to the network. This capability would require the telecommunications carrier to deliver a message to the LEA, for each communication initiated by the subject, informing the LEA whenever the subject has invoked a feature during a call, including features that would place a party on hold, transfer a call, forward a call, or

²³⁸ *Third R&O*, *supra* n.2, at Appendix B. Figure is for wireline and wireless carriers.

²³⁹ *Id.* Figure is for wireline carriers only.

²⁴⁰ Based on 96-98 million U.S. households with wireline telephone service, the cost would average 22-23 cents per subscribing household. See n.153, *supra*.

²⁴¹ Specifically, a \$22 million charge to carriers, converted to a rate increase to 96-98 million residential ratepayers, would average 1.0-1.1 cents per month per ratepayer using a relatively rapid amortization period of two years and a relatively high discount rate of 12%; and would average 0.4 cents per month per ratepayer using a relatively slow amortization period of 5 years and a relatively low discount rate of 6%.

²⁴² See ¶ 8, *supra*.

and signaling activity initiated by pressing a flash hook or feature key is unrelated to call routing. DoJ/FBI assert that the resulting signals are transmitted to the carrier's switch to enable the switch to control the various legs of the call and route the communication properly. DoJ/FBI also assert that BellSouth is incorrect that similar information is already provided to LEAs under J-STD-025 because that standard does not capture all of the call-identifying information that is generated when a subject engages in dialing and signaling activity. DoJ/FBI acknowledge that there may be specific instances in which a particular subject-initiated dialing or signaling action can be detected or inferred through the messages provided by J-STD-025, but maintain that will often not be the case.²⁵⁰ DoJ/FBI reference their earlier reply comments in this proceeding, in which they argued that the "Change" message of J-STD-025 is inadequate to capture subject-initiated dialing and signaling activity when the subject presses the flash hook to move back and forth between two legs of a call. DoJ/FBI therefore maintain that J-STD-025 does not ensure that LEAs will receive critical information about the direction and destination of each communication within a multi-leg call.²⁵¹ DoJ/FBI also maintain that the information that LEAs would derive from a subject's dialing and signaling activity is not redundant with the information that LEAs would derive from party hold/join/drop messages because such activity may be either pre-cut-through or post-cut-through and may be transmitted either in-band or out-of-band. DoJ/FBI contend that, while some subject initiated dialing and signaling activity may result in party hold/join/drop messages, much of it will not.²⁵²

108. Discussion. We find that authorizing a subject-initiated dialing and signaling electronic surveillance capability would be in conformance with Sections 102(2) and 103(a) of CALEA. We conclude that this capability constitutes call-identifying information because it provides information regarding the party or place to which a forwarded call is redirected and because it provides information regarding a waiting calling party. We also conclude that access to subject-initiated dialing and signaling information may be necessary for the LEA to isolate and correlate call-identifying and call content information. Knowing what features a subject is using will ensure that the LEA receives information in a manner that allows each feature to be timely associated with the communication to which it pertains. For example, without knowing that a subject has switched over to a call on call-waiting, the LEA may not be able to associate the call-identifying information with the call content to which it pertains and thus could be more likely to mistake one call for another. Further, we conclude that signals such as on-hook, off-hook, and flash-hook signals, which are generated by a subject, are reasonably available to the carrier because they must be processed at the carrier's Intercept Access Point. DTMF signals generated by a subject that must be processed at the Intercept Access Point also are reasonably available to the carrier; however, some DTMF signals generated by the subject are post-cut-through digits, and those signals are covered under dialed digit extraction. We note that there are some functions that are sometimes performed by the network and that at other times are performed by customer premises equipment. When customer premises equipment is used to perform any of the functions described herein and no network signal is generated, that information is not reasonably available to a carrier, and thus is not required to be provided.

109. Additionally, we note that commenters have presented no alternative ways of obtaining all the information encompassed by this capability. We have found J-STD-025 deficient insofar as it will not guarantee the delivery of all "call-identifying information," and therefore reject those comments that contend that J-STD-025 is an alternative to the provision of subject-initiated dialing and signaling information. For example, J-STD-025 does not provide all call-identifying information that is generated when a subject engages in dialing and signaling activity, such as when the subject uses the flash hook to

²⁵⁰ DoJ/FBI Reply Comments at 14-15.

²⁵¹ DoJ/FBI "Reply Comments Regarding Standards for Assistance Capability Requirements," CC Docket No. 97-213, filed June 12, 1998, at 48-49.

²⁵² DoJ/FBI "Reply Comments Regarding Further Notice of Proposed Rulemaking," CC Docket No. 97-213, filed January 27, 1999, at 46-47.

move back and forth between two legs of a multi-leg call. Further, while there may be some overlap between a subject-initiated dialing and signaling information capability and other punch list capabilities, it appears that a subject-initiated dialing and signaling information capability provides some unique call-identifying information; e.g., this capability would permit a LEA to know when services such as call forwarding and call return are being used by the subject.

110. We now turn to the cost considerations under Section 107(b)(1) and (3) of CALEA. First, we must find that subject-initiated dialing and signaling meets CALEA's capability requirements "by cost-effective methods."²⁵³ Because there are no alternative means of accomplishing this objective, we cannot engage in the type of cost-comparison analysis discussed in Section III B, *supra*. However, we note that several mechanisms – including the FBI reimbursement program – do serve to minimize the cost of providing this capability. In the *Third R&O*, we found that five major telecommunications manufacturers anticipated total revenues from carriers purchasing a subject-initiated dialing and signaling capability of just \$35 million.²⁵⁴ Further, as noted above, the FBI's buyout and flexible deployment programs, coupled with five manufacturers' incorporation of all punch list capabilities into one software upgrade, will lessen software costs significantly, and including or not including a subject-initiated dialing and signaling capability in the manufacturers' software package may not significantly change carriers' costs. For these reasons, we find that the cost to carriers of implementing this capability would be minimized and that requiring the capability would be cost-effective.

111. We also find that authorizing a subject-initiated dialing and signaling capability is unlikely to significantly affect residential ratepayers. The factors we previously identified as minimizing the cost for residential ratepayers – including the FBI buyout and flexible deployment programs – will be applicable to subject-initiated dialing and signaling. Moreover, we note that carriers will be able to spread costs across a large ratepayer base and there is no indication that the costs of subject-initiated dialing and signaling will be disproportionately borne by residential (versus other classes of) ratepayers. Even if wireline carriers were forced to bear costs as great as the \$8 million for this capability estimated by five major telecommunications manufacturers²⁵⁵ and these costs were passed on to residential ratepayers as a one-time charge, the cost per residential ratepayer would average only a few pennies.²⁵⁶ Alternatively, an \$8 million charge to wireline carriers, if converted to a rate increase to almost 100 million residential ratepayers, would average less than a penny per month per ratepayer.²⁵⁷

112. Finally, we find that authorizing a subject-initiated dialing and signaling information electronic surveillance capability would be in conformance with the second prong of Section 107(b) of CALEA.²⁵⁸ We see no significant privacy issues arising from grant to LEAs of a subject-initiated dialing and signaling information capability, no party to this proceeding challenged the *Third R&O*'s decision with respect to that capability on privacy grounds, and the Court did not cite privacy as a basis for remanding to the Commission the *Third R&O*'s decision with respect to that capability. Therefore, we do not address this factor further.

²⁵³ 47 U.S.C. § 1006(b).

²⁵⁴ *Third R&O*, *supra* n.2, at Appendix B. Figure is for wireline and wireless carriers.

²⁵⁵ *Id.* Figure is for wireline carriers only.

²⁵⁶ Based on 96-98 million U.S. households with wireline telephone service, the cost would average 8 cents per subscribing household. *See* n.153, *supra*.

²⁵⁷ Specifically, an \$8 million charge to carriers, converted to a rate increase to 96-98 million residential ratepayers, would average 0.4 cents per month per ratepayer using a relatively rapid amortization period of two years and a relatively high discount rate of 12%; and would average 0.2 cents per month per ratepayer using a relatively slow amortization period of 5 years and a relatively low discount rate of 6%.

²⁵⁸ *See* ¶ 8, *supra*.

113. Accordingly, in view of the fact that we conclude that subject-initiated dialing and signaling information constitutes call-identifying information and that authorizing a subject-initiated dialing and signaling electronic surveillance capability would be in conformance with Section 107(b) of CALEA, we find that a subject-initiated dialing and signaling capability is a technical requirement that meets the assistance capability requirements of Section 103 of CALEA.

F. In-Band and Out-of-Band Signaling Information

114. This capability would enable a telecommunications carrier to send a notification message to the LEA when any call-identifying network signal (e.g., audible ringing tone, busy, call waiting signal, message light trigger) is sent to a subject. For example, if someone leaves a voice mail message on the subject's phone, the notification to the LEA would indicate the type of call-identifying network signal sent to the subject (e.g., stutter dial tone, message light trigger). For calls the subject originates, a notification message would also indicate whether the subject ended a call when the line was ringing, busy (a busy line or busy trunk), or before the network could complete the call. As discussed in paragraph nine, *supra*, the Court found that the *Third R&O* did not adequately explain the basis for its conclusion that this capability constituted call-identifying information nor how granting LEAs this capability would satisfy CALEA's requirements by cost-effective methods.

115. *Comments.* Cingular states that most in-band and out-of-band signaling information is not related to call routing and, moreover, cannot be detected from the network or the originating or terminating switches. Cingular therefore argues that in-band and out-of-band network signaling information is not reasonably available to carriers. Cingular further argues that, to the extent these signals can be audibly detected, they can already be obtained through a properly authorized Title III intercept. Finally, Cingular argues that implementing an in-band and out-of-band network signaling information capability would require the widespread deployment of signal detection equipment, at significant cost to residential ratepayers.²⁵⁹

116. USTA states that in-band and out-of-band signaling information is not used to process or route calls and, in most cases, does not constitute communications. Instead, USTA maintains, such information is associated with call attempts that do not result in a communication, such as a busy signal. USTA also maintains that J-STD-025 already provides in-band and out-of-band signaling information, including a termination message that indicates whenever a call is incoming to a subject and includes the directory number of the calling party, if available to the network. USTA therefore concludes that an in-band and out-of-band signaling information capability is unnecessary and not cost effective.²⁶⁰

117. DoJ/FBI state that in-band and out-of-band network signaling information has traditionally been available to LEAs and constitutes call-identifying information under J-STD-025's definition, which includes unsuccessful call attempts as well as completed calls. DoJ/FBI contend that network signaling information may identify how a call attempt is terminated (e.g., a call attempt that results in a busy signal indicates that the call attempt is being terminated in a different manner from a call attempt that results in ringing); or may identify the direction of a call attempt by the subject's facilities (e.g., a stutter tone may identify the redirection of an incoming call to the subject's voice mail box).²⁶¹

118. In reply comments, DoJ/FBI contend that the suggestion of commenting parties that signals generated during unsuccessful call attempts do not involve communications is incorrect. DoJ/FBI note that J-STD-025 provides a Termination Attempt message to LEAs to report every incoming circuit-

²⁵⁹ Cingular Comments at 10.

²⁶⁰ USTA Comments at 9.

²⁶¹ DoJ/FBI Comments at 26-27.

mode call attempt to the intercept subject, and assert that, if the definition of “call-identifying information” were construed to exclude unsuccessful call attempts, LEAs would be denied access even to the telephone numbers associated with such attempts. DoJ/FBI also assert that commenters are incorrect that this capability is duplicative of J-STD-025’s existing message set. DoJ/FBI reference their earlier reply comments in this proceeding, in which they argued that the J-Standard does not require carriers to provide LEAs with notification of network-generated call progress signals.²⁶² DoJ/FBI note that the J-Standard requires delivery of call content only between call completion and call release, and that there is no requirement that call content be delivered on incoming calls before they are answered. Therefore, they argue that tones such as busy signals will not be delivered to LEAs without an in-band and out-of-band signaling capability.²⁶³ DoJ/FBI also argue that the J-Standard’s Termination Attempt message is an inadequate substitute for both audible tones and alphanumeric display information. For example, DoJ/FBI contend that an alphanumeric display may notify the subject that a call has been redirected to the subscriber’s voice mail box, and none of the J-Standard’s messages would disclose that a voice mail message has been left for the subject.²⁶⁴ DoJ/FBI conclude that carriers must be capable of providing to LEAs network signals that originate in their own networks, but do not have to provide signals that originate in other carriers’ networks.²⁶⁵

119. Decision. We find that authorizing in-band and out-of-band signaling information electronic surveillance capability for call-identifying information that is based on network signals that originate on carriers’ own networks would be in conformance with Sections 102(2) and 103(a) of CALEA. While certain types of signals used by carriers for supervision or control do not trigger any audible or visual message to the subscriber and are therefore not call-identifying information, other types of signals – such as ringing and busy tones – are call-identifying information under our revised definitions because they convey information about the termination of a call. For example, when a subject calls another party, until the called party answers the subject’s communications path is terminated at an audible ringing tone generator. However, if the called party is engaged in another conversation and does not have call waiting, the subject’s communications path is terminated at a busy signal generator. Thus, even for calls from the subject that are never answered, the fact that the subject hears busy or audible ringing signal provides call-identifying information that is not provided to law enforcement via other means.

120. We disagree with USTA that the J-Standard provides adequate in-band and out-of-band signaling information. As DoJ/FBI note, there are both audible signals and alphanumeric display information that the J-Standard does not provide that convey call-identifying information. The fact that a call attempt does not result in a conversation because the line is busy or because the called party does not answer does not mean that no “communication” has taken place.

121. In-band and out-of-band signals that are generated at the carrier’s Intercept Access Point toward the subscriber are handled by the carrier and are clearly available to the carrier at an Intercept Access Point. As discussed *supra*, we conclude that these in-band and out-of-band signals convey call-identifying information. We further note that, because carriers already deliver this information to subscribers, we see no reason why such in-band and out-of-band signaling information cannot also be made available to LEAs without significantly modifying the carrier’s network. Thus, in-band and out-of-band signaling information is “reasonably available.”²⁶⁶ Additionally, we note that commenters have presented no alternative ways of

²⁶² DoJ/FBI “Reply Comments Regarding Standards for Assistance Capability Requirements,” *supra* n.251, at 55.

²⁶³ *Id.* at 57.

²⁶⁴ *Id.* at 58-59.

²⁶⁵ DoJ/FBI Reply Comments at 15-16.

²⁶⁶ There is nothing in the record to refute our conclusion that this information can be made available without a carrier being unduly burdened with network modifications. See also *Third R&O*, *supra* n.2, at ¶¶ 28-29; *supra* n.206 and accompanying text.

obtaining all the information encompassed by this capability. While the J-Standard provides some of the information encompassed by this capability, the J-Standard does not provide all such information, including an indication of whether an unanswered call from the subject to another party results in a busy or ringing signal.

122. We now turn to the cost considerations under Section 107(b)(1) and (3) of CALEA. First, we must find that in-band and out-of-band signaling information meets CALEA's capability requirements "by cost-effective methods."²⁶⁷ Because there are no alternative means of accomplishing this objective, we cannot engage in the type of cost-comparison analysis discussed in Section III B, *supra*. However, we note that several mechanisms – including the FBI reimbursement program – do serve to minimize the cost of providing this capability. In the *Third R&O*, we found that five major telecommunications manufacturers anticipated total revenues from carriers purchasing an in-band and out-of-band signaling information capability of \$57 million.²⁶⁸ As noted above, the FBI's buyout and flexible deployment programs, coupled with five manufacturers incorporating all punch list capabilities into one software upgrade, will lessen software costs significantly. Also, we again note that including or not including an in-band and out-of-band signaling information capability may not significantly change carriers' costs. For these reasons, we find that the cost to carriers of implementing this capability would be minimized and that requiring the capability would be cost-effective.

123. We also find that authorizing an in-band and out-of-band signaling information capability is unlikely to significantly affect residential ratepayers. The factors we previously identified as minimizing the cost for residential ratepayers – including the FBI buyout and flexible deployment programs – will be applicable to in-band and out-of-band signaling information. Moreover, we note that carriers will be able to spread costs across a large ratepayer base and there is no indication that the costs of in-band and out-of-band signaling information will be disproportionately borne by residential (versus other classes of) ratepayers. Even if wireline carriers were forced to bear costs as great as the \$27 million for this capability estimated by five major telecommunications manufacturers²⁶⁹ and these costs were passed on to residential ratepayers as a one-time charge, the cost per residential ratepayer would average much less than one dollar.²⁷⁰ Alternatively, a \$27 million charge to carriers, if converted to a rate increase to almost 100 million residential ratepayers, would average only about a penny per month per ratepayer.²⁷¹

124. Finally, we find that authorizing an in-band and out-of-band signaling information electronic surveillance capability would be in conformance with the second prong of Section 107(b) of CALEA.²⁷² We see no significant privacy issues arising from grant to LEAs of an in-band and out-of-band signaling information capability, no party to this proceeding challenged the *Third R&O's* decision with respect to that capability on privacy grounds, and the Court did not cite privacy as a basis for remanding to the Commission the *Third R&O's* decision with respect to that capability. Therefore, we do not address this factor further.

²⁶⁷ 47 U.S.C. § 1006(b).

²⁶⁸ *Third R&O*, *supra* n.2, at Appendix B. Figure is for wireline and wireless carriers.

²⁶⁹ *Id.* Figure is for wireline carriers only.

²⁷⁰ Based on 96-98 million U.S. households with wireline telephone service, the cost would average 28 cents per subscribing household. See n.153, *supra*.

²⁷¹ Specifically, a \$27 million charge to carriers, converted to a rate increase to 96-98 million residential ratepayers, would average 1.3 cents per month per ratepayer using a relatively rapid amortization period of two years and a relatively high discount rate of 12%; and would average 0.5 cents per month per ratepayer using a relatively slow amortization period of 5 years and a relatively low discount rate of 6%.

²⁷² See ¶ 8, *supra*.

125. Accordingly, in view of the fact that we conclude that in-band and out-of-band signaling information constitutes call-identifying information and that authorizing an in-band and out-of-band signaling information electronic surveillance capability would be in conformance with Section 107(b) of CALEA, we find that an in-band and out-of-band signaling information capability is a technical requirement that meets the assistance capability requirements of Section 103 of CALEA.

G. CALEA Section 107(b)(4)

126. Although Section 107(b)(4) – *i.e.*, serve the policy of the United States to encourage the provision of new technologies and services to the public – was not briefed to or addressed by the Court in its *Remand Decision*, we briefly address this factor in accordance with our statutory directive under CALEA. As described in the legislative history, one of the key concerns in enacting CALEA was “the goal of ensuring that the telecommunications industry was not hindered in the rapid development and deployment of the new services and technologies that continue to benefit and revolutionize society.”²⁷³ Aside from one suggestion that the cost of compliance would divert capital from new technology deployment,²⁷⁴ no commenter has argued – nor is there anything in the record to suggest – that inclusion of the four punch list requirements would impede in any way the provision of new telecommunications technologies or services to the public or would delay in any manner the course or current pace of technology. Rather, the punch list requirements represent a technical solution that interfaces with the carriers’ own network designs to provide LEAs with interception access and the capability to intercept wire and electronic communications. Additionally, as noted above, for the majority of switches, carriers will be permitted under the FBI’s flexible deployment program to implement any required punch list capabilities coincident with routine switch upgrades.²⁷⁵ Moreover, we do not believe Section 107(b)(4) was intended to bar a feature simply because it imposes costs on telecommunications companies and thereby might affect their other spending. The two express references to costs in Section 107(b) (*i.e.*, cost effectiveness and minimizing impact on residential ratepayers) consider cost in a relative, not an absolute, sense. Accordingly, we do not believe paragraph (b)(4) was intended to prohibit any feature because the cost might have some impact on telecommunications companies’ other spending. Given this, we find that adoption of the punch list requirements is consistent with the United States’ policy of encouraging the provision of new technologies and services to the public

H. Punch List Compliance Date

127. Section 107(b)(5) of CALEA requires that the Commission “provide a reasonable time and conditions for compliance with and the transition to any new standard, including defining the obligations of telecommunications carriers under Section 103 during any transition period.”²⁷⁶ The *Third R&O* required that the six punch list capabilities be implemented by wireline, cellular, and broadband PCS carriers by September 30, 2001 and – as discussed in paragraph 60, *supra* – five telecommunications switch manufacturers have incorporated all of these capabilities into one software upgrade. In the *Order* in this proceeding, which suspended the September 30, 2001 deadline for all punch list capabilities, including the two unchallenged capabilities (*i.e.*, subject-initiated conference calls and timing information), we indicated that we anticipated establishing June 30, 2002 as the new compliance date for all required punch list capabilities as we expected to address the Court’s *Remand Decision* by year’s end and given that the record indicates that carriers can implement any required changes to their software

²⁷³ House Report No. 103-827, at 3493.

²⁷⁴ USTA Comments, at 13.

²⁷⁵ See ¶ 60, *supra*.

²⁷⁶ 47 U.S.C. § 1006(b)(5).

within six months of our decision.²⁷⁷ We find it reasonable to require wireline, cellular, and broadband PCS carriers to implement all punch list capabilities by June 30, 2002, and conclude that the June 30, 2002 deadline will satisfy Section 107(b)(5).²⁷⁸ At the initial stages of CALEA implementation, the Commission found that carriers could put into effect any required changes to their network within six months of its decision.²⁷⁹ We recognize that this is a more aggressive timetable than the six months we anticipated earlier. We believe that this accelerated compliance schedule is reasonable for this stage of the CALEA implementation, as carriers have been aware of the CALEA capabilities under consideration in the instant *Order on Remand* since October 2000.²⁸⁰ In addition, the record indicates that much of the software required to implement the punch list items has already been developed, which should significantly speed implementation.²⁸¹ Finally, carriers have much greater experience in meeting CALEA's capability requirements than they had in 1998. Together, these factors make a shorter implementation timetable reasonable.

128. We note that carriers who are unable to comply may seek relief under the applicable provisions of CALEA.²⁸² The Wireline Competition Bureau (formerly, the Common Carrier Bureau) and the Wireless Telecommunications Bureau previously issued a *Public Notice* outlining the petitioning process for telecommunications carriers seeking relief under Section 107(c) for an extension of the CALEA compliance deadline.²⁸³ Carriers seeking relief from the June 30, 2002 compliance date should follow the procedures outlined in that *Public Notice*. We further note that, in most cases, extensions that the Commission has already granted will apply to the capabilities we are requiring in this *Order on*

²⁷⁷ *Order, supra* n.17, at ¶ 12.

²⁷⁸ Because the pleading cycle closed prior to the Commission's decision to suspend the compliance deadline, commenters generally request relief from the original September 30, 2001 deadline as opposed to identifying a specific time period that they believed would be "reasonable." *See, e.g.*, AT&T Reply Comments at 9. However, one commenter – KMC Telecom – specifically requested that the Commission adopt a June 30, 2002 date. KMC Telecom Reply Comments at 4.

²⁷⁹ *Order, supra* n.17, at ¶¶ 9, 12. The Commission reached this decision after considering comments that said it could take longer for large carriers to deploy CALEA-compliant switches and concluding that, among other things, a six-month time period was "sufficient and reasonable given the urgency of ensuring law enforcement access to CALEA's capabilities." Petition for Extension of the Compliance Date under Section 107 of the Communications Assistance for Law Enforcement Act, *Memorandum Opinion and Order*, 13 FCC Rcd 17990, 18017-18 ¶¶ 48-49.

²⁸⁰ *See Public Notice, supra* n.19.

²⁸¹ *See* ¶ 60, *supra*.

²⁸² We again note that a carrier is not required to make any equipment, facility, or service deployed on or before January 1, 1995 CALEA-compliant unless the Attorney General has agreed to pay the carrier the reasonable costs directly associated with such modifications; or unless the equipment, facility, or service has been replaced, significantly upgraded, or undergone major modification. *See* 47 U.S.C. § 1008(c)(3). To the extent that a carrier believes that implementing any required capability is not reasonably achievable for cost or other reasons with respect to any equipment, facility, or service deployed after January 1, 1995, the carrier may petition the Commission under Section 109(b) of CALEA for a determination. If the Commission determines that the capability is not reasonably achievable, then the carrier will not have to make the modifications, unless the Attorney General agrees to pay the additional costs of making the capability requirements reasonably achievable and enters into such an agreement with the carrier. 47 U.S.C. § 1008 (b)(2). *See also* ¶¶ 60-61, *supra*.

²⁸³ The Common Carrier and Wireless Telecommunications Bureaus Establish Procedures for Carriers to Submit or Supplement CALEA Section 107(c) Extension Petitions, Both Generally and With Respect to Packet-Mode and Other Safe Harbor Standards, *Public Notice*, 16 FCC Rcd 17,101 (CCB WTB 2001) (*Extension Petition Procedures Public Notice*). Carriers should be aware that the CALEA Implementation Section (CIS) of FBI may periodically update its Flexible Assistance Guides. *See e.g.*, U.S. Dept. of Justice, FBI, CIS, Flexible Deployment Assistance Guide (Jan. 2000); Deployment Assistance Guide (Jan. 2000); and Flexible Deployment Assistance Guide, Second Edition, Packet-Mode Communications (Aug. 2001). *See also* www.askcalea.net.

Remand.²⁸⁴ As the Wireline Competition and Wireless Telecommunications Bureaus have previously stated: "Unless the Commission action [granting an extension] specifies otherwise, the extension applies to all assistance capability functions, including punch list and packet-mode capabilities, at the listed facilities."²⁸⁵

129. Therefore, we are lifting the suspension of the punch list compliance deadline, and specifying the revised punch list compliance deadline as June 30, 2002. Given that the Commission has rendered its final decision with regard to the challenged punch list features, we expect all carriers to be either fully CALEA-compliant by that date or to have a pending or granted petition seeking relief from compliance with that date that was filed with the Commission under the procedures described above.

IV. SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS

(A) Need for and Purpose of this Action

130. As required by the Regulatory Flexibility Act (RFA),²⁸⁶ the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the *Further NPRM*.²⁸⁷ The Commission sought written public comments on the proposals in the *Further NPRM*, including the IRFA. In the *Third R&O*, the Commission adopted a Final Regulatory Flexibility Analysis (FRFA).²⁸⁸ As part of the instant *Order on Remand*, we have prepared this Supplemental FRFA to conform to the RFA.²⁸⁹

131. The *Third R&O* responded to the legislative mandate contained in the Communications Assistance for Law Enforcement Act, Pub. L. No. 103-414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.). The Commission, in compliance with 47 U.S.C. § 229, promulgates rules in this *Order on Remand* to ensure the prompt implementation of section 103 of CALEA. This action simply responds to an Order of the United States Court of Appeals for the District of Columbia Circuit (the "Court") and puts into effect rules we originally evaluated as part of the FRFA in the *Third R&O*. Also, as noted, we have already done a FRFA for the rules at issue in the *Third R&O*.

132. In enacting CALEA, Congress sought to balance three key policies with CALEA: "(1) to preserve a narrowly focused capability for law enforcement agencies to carry out properly authorized intercepts; (2) to protect privacy in the face of increasingly powerful and personally revealing technologies; and (3) to avoid impeding the development of new communications services and technologies."²⁹⁰ The rules adopted in this *Order on Remand* implement Congress's goal to balance the three key policies enumerated above. The objective of the rules is to implement as quickly and effectively as possible the national telecommunications policy for wireline, cellular, and broadband PCS telecommunications carriers to support the lawful electronic surveillance needs of law enforcement

²⁸⁴ Preliminary determinations of pending petitions also will apply to the capabilities we are requiring in this *Order on Remand*.

²⁸⁵ *Extension Petition Procedures Public Notice* at 16 FCC Rcd 17103 ¶ 8.

²⁸⁶ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

²⁸⁷ Communications Assistance for Law Enforcement Act, *Further Notice of Proposed Rulemaking*, 13 FCC Rcd 22632, 22695-703 (1998).

²⁸⁸ Communications Assistance for Law Enforcement Act, *Third Report and Order*, CC Docket No. 97-213, 14 FCC Rcd 16794, 16852-59 (1999).

²⁸⁹ See 5 U.S.C. § 604.

²⁹⁰ H.R. Rep. No. 103-827, 103rd Cong., 2d Sess (1994) at 13.

agencies in a manner that is responsive to the Court's remand of the *Third R&O*.

(B) Summary of the Issues Raised by Public Comments

133. In the *Further NPRM*, the Commission performed an IRFA and asked for comments that specifically addressed issues raised in the IRFA. No parties filed comments directly in response to the IRFA. Similarly, as part of the pleading cycle that followed the Court's remand of the *Third R&O*, no parties filed comments directly in response to the IRFA or the FRFA. In response to non-RFA comments filed in this docket, the Commission modified several of the proposals made in the *Further NPRM*. These modifications include changes to packet switching, conference call content, in-band and out-of-band signaling, and timing information, as first discussed in the *Third R&O*.

134. The Commission's effort to update the record in response to the Court's Remand Order resulted in additional non-RFA comments. The Rural Cellular Association (RCA) asserts that the costs of additional communications assistance capabilities would impose undue cost burdens on and jeopardize the efficient planning and development of facilities by small and rural carriers.²⁹¹ Similarly, the National Telephone Cooperative Association (NTCA) claims that any regulation which requires carriers to deploy or upgrade facilities disproportionately affects small and rural carriers.²⁹²

(C) Description and Estimate of the Number of Entities Affected

135. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the action taken.²⁹³ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²⁹⁴ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.²⁹⁵ A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).²⁹⁶ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."²⁹⁷ Nationwide, as of 1992, there were approximately 275,801 small organizations.²⁹⁸ Finally, "small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."²⁹⁹ As of 1992, there were approximately 85,006 such jurisdictions in the United States.³⁰⁰ This number includes

²⁹¹ Rural Cellular Association Comments at 7.

²⁹² National Telephone Cooperative Association Comments at 5.

²⁹³ 5 U.S.C. § 603(b)(3).

²⁹⁴ *Id.*, § 601(6).

²⁹⁵ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

²⁹⁶ Small Business Act, 15 U.S.C. § 632.

²⁹⁷ 5 U.S.C. § 601(4).

²⁹⁸ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

²⁹⁹ 5 U.S.C. 601(5).

³⁰⁰ U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.³⁰¹ The United States Bureau of the Census (Census Bureau) estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

136. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Provider Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS).³⁰² According to data in the most recent report, there are 5,679 interstate service providers.³⁰³ These providers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

137. We have included small incumbent local exchange carriers (LECs)³⁰⁴ in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."³⁰⁵ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.³⁰⁶ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

138. *Total Number of Telecommunications Entities Affected.* The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.³⁰⁷ This number contains a variety of different categories of entities, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."³⁰⁸ For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent

³⁰¹ *Id.*

³⁰² FCC, Common Carrier Bureau, Industry Analysis Division, *Telecommunications Provider Locator*, Tables 1-2 (November 2001) (*Provider Locator*). This report is available on-line at:

http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Locator/locat01.pdf

See also 47 C.F.R. § 64.601 *et seq.*

³⁰³ *Provider Locator* at Table 1.

³⁰⁴ See 47 U.S.C. 251(h) (defining "incumbent local exchange carrier").

³⁰⁵ 15 U.S.C. § 632.

³⁰⁶ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

³⁰⁷ United States Dept. of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment of Firm Size*, at Firm Size 1-123 (1995) ("1992 Census").

³⁰⁸ 15 U.S.C. § 632(a)(1).

LECs that may be affected by the actions taken in this *Order on Remand*.

139. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for wired telecommunications carriers. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.³⁰⁹ According to the SBA's definition, such a small business telephone company is one employing no more than 1,500 persons.³¹⁰ All but 26 of the 2,321 wireline companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Even if all 26 of the remaining companies had more than 1,500 employees, there would still be 2,295 wireline companies that might qualify as small entities. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Therefore, we estimate that fewer than 2,295 communications wireline companies are small entities that may be affected by these rules.

140. *Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers.* Neither the Commission nor the SBA has developed a specific size standard definition for small LECs, competitive access providers (CAPS), interexchange carriers (IXCs), operator service providers (OSPs), payphone providers, or resellers. The closest applicable size standard for these carrier-types under SBA rules is for wired telecommunications carriers and telecommunications resellers.³¹¹ The most reliable source of information that we know regarding the number of these carriers nationwide appears to be the data that we collect annually in connection with the TRS.³¹² According to our most recent data, there are 1,329 LECs, 532 CAPs, 229 IXCs, 22 OSPs, 936 payphone providers, and 710 resellers.³¹³ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Therefore, we estimate that there are fewer than 1,329 small entity LECs or small incumbent LECs, 532 CAPs, 229 IXCs, 22 OSPs, 936 payphone providers, and 710 resellers that may be affected by these rules.

141. *Wireless Carriers.* The applicable definition of a small entity wireless carrier is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. The Census Bureau reports that there were 1,176 radiotelephone (wireless) companies in operation for at least one year at the end of 1992, of which 1,164 had fewer than 1,000 employees.³¹⁴ Even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. It seems certain that some of these carriers are not independently owned and operated. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the actions taken in this *Order on Remand*.

142. *Cellular, PCS, SMR and Other Mobile Service Providers.* The most reliable source of

³⁰⁹ 1992 Census at Firm Size 1-123 (based on previous SIC codes).

³¹⁰ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 513310. The category of Telecommunications Resellers, NAICS code 513330 also has an associated business size standard of 1,500 or fewer employees.

³¹¹ 13 C.F.R. § 121.201, NAICS codes 513310 and 513330.

³¹² See 47 C.F.R. § 64.601 *et seq.*; *Provider Locator* at Table 1.

³¹³ *Provider Locator* at Table 1. The total for resellers includes both toll resellers and local resellers.

³¹⁴ 1992 Census at Firm Size 1-123.

current information from which we can draw an estimate of the number of small business commercial wireless entities appears to be data the Commission published annually in its Trends in Telephone Service report.³¹⁵ According to the most recent Trends Report, 806 carriers reported that they were engaged in the provision of cellular service, PCS services, or SMR telephony services, which are placed together in the data.³¹⁶ Moreover, 323 such licensees in combination with their affiliates have 1,500 or fewer employees and thus qualify as “small businesses” under the above definition. Thus, we estimate that there are 323 or fewer small wireless service providers that may be affected by the rules we adopt in this proceeding.

(D) *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.*

143. No reporting and recordkeeping requirements are imposed on telecommunications carriers. Telecommunications carriers, including small carriers, will have to upgrade their network facilities to provide to law enforcement the assistance capability requirements adopted herein. Although compliance with the technical requirements will impose costs on carriers, we have examined means by which these costs will be minimized (such as by federal cost-reimbursement mechanisms and the ability of carriers to charge for the provision of assistance capability services). The most detailed and reliable cost estimates for carriers to implement the assistance capability features we require herein are \$159 million total for wireless carriers and \$117 million for wireline carriers, including small entities. However, as discussed in paragraph 65, *supra*, we expect the actual costs borne by carriers to be substantially lower after the application of the cost-minimization provisions discussed above.

(E) *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.*

144. The need for the regulations adopted herein is mandated by Federal legislation. In the regulations we adopt, we affirm our proposals in the *Further NPRM* to establish regulations for wireline, cellular, and broadband PCS telecommunications carriers. Costs to telecommunications carriers will be mitigated in several ways. For example, the final regulations require telecommunications carriers to make available to law enforcement call identifying information when it can be done without unduly burdening the carrier with network modifications, thus allowing cost to be a consideration in determining whether the information is “reasonably available” to the carrier and can be provided to law enforcement. Thus, compliance with the assistance capability requirements of CALEA will be reasonable for all carriers, including small carriers.³¹⁷ Also, under CALEA, some carriers will be able to request reimbursement from the Department of Justice for network upgrades to comply with the technical requirements adopted herein, and others may defer network upgrades to their normal business cycle.³¹⁸

145. We believe that these provisions can serve to mitigate any additional cost burdens that would otherwise be borne by small carriers. The Commission considered several alternatives advanced by commenters in the proceeding – including not requiring the assistance capabilities adopted herein – but rejected them after concluding that they would not meet the statutory requirements of CALEA. We note that the statutory mandate under CALEA requires all carriers to provide assistance capabilities, and this includes small entities.³¹⁹ Thus, we must rely on cost-mitigation procedures to address NTCA’s assertion

³¹⁵ Trends in Telephone Service, Common Carrier Bureau, Industry Analysis Division (Aug. 2001) (“Trends Report”). This report is available on-line at: http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend801.pdf

³¹⁶ Trends Report, Table 5.3.

³¹⁷ See n.147, *supra*, and accompanying text.

³¹⁸ See ¶ 60, *supra*.

³¹⁹ See ¶ 2, *supra*.

that any regulation that requires carriers to deploy or upgrade facilities will disproportionately affect small carriers.

Report to Congress

146. The Commission will send a copy of this Supplemental FRFA, along with this Order on Remand, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of this *Order on Remand*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Order on Remand*, including the Supplemental FRFA, will also be published in the Federal Register. See 5 U.S.C. § 604(b).

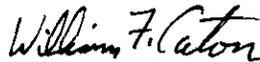
V. ORDERING CLAUSES

147. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4, 229, 301, 303, and 332 of the Communications Act of 1934, as amended, and Section 107(b) of the Communications Assistance for Law Enforcement Act, 47 U.S.C. §§ 151, 154, 229, 301, 303, 332, and 1006(b), this *Order on Remand* and the rules specified in Appendix A ARE ADOPTED.

148. IT IS FURTHER ORDERED that the rules set forth in Appendix A WILL BECOME EFFECTIVE 30 days after publication in the Federal Register.

149. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Order on Remand, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary



APPENDIX A: FINAL RULES

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

PART 22- PUBLIC MOBILE SERVICES

A. Part 22 of the Code of Federal Regulations is amended as follows:

1. The authority citation in Part 22 continues to read:

AUTHORITY: 47 U.S.C. 154, 222, 303, 309 and 332.

2. Sections 22.1102 and 22.1103 are revised to read as follows:

§ 22.1102 Definitions.

* * *

Origin. A party initiating a call (e.g., a calling party), or a place from which a call is initiated.

Termination. A party or place at the end of a communication path (e.g. the called or call-receiving party, or the switch of a party that has placed another party on hold).

Direction. A party or place to which a call is re-directed or the party or place from which it came, either incoming or outgoing (e.g., a redirected-to party or redirected-from party).

Destination. A party or place to which a call is being made (e.g., the called party).

§ 22.1103 Capabilities that must be provided by a cellular telecommunications carrier.

(a) * * *

(b) As of November 19, 2001, a cellular telecommunications carrier shall provide to a LEA communications and call-identifying information transported by packet-mode communications.

(c) As of June 30, 2002, a cellular telecommunications carrier shall provide to a LEA the following capabilities:

- (1) Content of subject-initiated conference calls;
- (2) Party hold, join, drop on conference calls;
- (3) Subject-initiated dialing and signaling information;
- (4) In-band and out-of-band signaling;
- (5) Timing information;
- (6) Dialed digit extraction, with a toggle feature that can activate/deactivate this capability.

PART 24- PERSONAL COMMUNICATIONS SERVICES

B. Part 24 of the Code of Federal Regulations is amended as follows:

1. The authority citation in Part 24 continues to read:

AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

2. Sections 24.902 and 24.903 are amended to read as follows:

§ 24.902 Definitions.

* * *

Origin. A party initiating a call (e.g., a calling party), or a place from which a call is initiated.

Termination. A party or place at the end of a communication path (e.g. the called or call-receiving party, or the switch of a party that has placed another party on hold).

Direction. A party or place to which a call is re-directed or the party or place from which it came, either incoming or outgoing (e.g., a redirected-to party or redirected-from party).

Destination. A party or place to which a call is being made (e.g., the called party).

§ 24.903 Capabilities that must be provided by a broadband PCS telecommunications carrier.

(a) * * *

(b) As of November 19, 2001, a broadband PCS telecommunications carrier shall provide to a LEA communications and call-identifying information transported by packet-mode communications.

(c) As of June 30, 2002, a broadband PCS telecommunications carrier shall provide to a LEA the following capabilities:

- (1) Content of subject-initiated conference calls;
- (2) Party hold, join, drop on conference calls;
- (3) Subject-initiated dialing and signaling information;
- (4) In-band and out-of-band signaling;
- (5) Timing information;
- (6) Dialed digit extraction, with a toggle feature that can activate/deactivate this capability.

PART 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

C. Part 64 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 64 is amended to read as follows:

AUTHORITY: 47 U.S.C. §§ 151, 154, 201, 202, 205, 218-220, and 332 unless otherwise noted. Interpret or apply §§ 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. §§ 201-204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Sections 64.2202 and 64.2203 are amended to read as follows:

§ 64.2202 Definitions.

* * *

Origin. A party initiating a call (e.g., a calling party), or a place from which a call is initiated.

Termination. A party or place at the end of a communication path (e.g. the called or call-receiving party, or the switch of a party that has placed another party on hold).

Direction. A party or place to which a call is re-directed or the party or place from which it came, either incoming or outgoing (e.g., a redirected-to party or redirected-from party).

Destination. A party or place to which a call is being made (e.g., the called party).

§ 64.2203 Capabilities that must be provided by a wireline telecommunications carrier.

(a) * * *

(b) As of November 19, 2001, a wireline telecommunications carrier shall provide to a LEA communications and call-identifying information transported by packet-mode communications.

(c) As of June 30, 2002, a wireline telecommunications carrier shall provide to a LEA the following capabilities:

- (1) Content of subject-initiated conference calls;
- (2) Party hold, join, drop on conference calls;
- (3) Subject-initiated dialing and signaling information;
- (4) In-band and out-of-band signaling;
- (5) Timing information;
- (6) Dialed digit extraction, with a toggle feature that can activate/deactivate this capability.

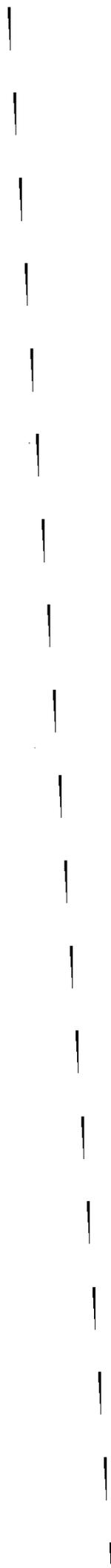


APPENDIX B: COMMENTING PARTIES TO PUBLIC NOTICE OF OCTOBER 17, 2000Comments

AT&T Corp. and AT&T Wireless Group
BellSouth Corporation
Cellular Telecommunications and Internet Association
Center for Democracy and Technology
Cingular Wireless LLC
Cisco Systems, Inc.
Department of Justice and Federal Bureau of Investigation
Personal Communications Industry Association
Rural Cellular Association
SBC Communications, Inc.
Telecommunications Industry Association
United States Telecom Association
Verizon Telephone Companies

Reply Comments

AT&T Corp. and AT&T Wireless Group
BellSouth Corporation
Cellular Telecommunications and Internet Association
Cingular Wireless LLC
Department of Justice and Federal Bureau of Investigation
KMC Telecom
National Telephone Cooperative Association
United States Telecom Association
WorldCom, Inc.



**STATEMENT OF COMMISSIONER
MICHAEL J. COPPS**

RE: Communications Assistance for Law Enforcement.

I support the Commission's actions today. Our responsibilities under Section 107 of the Communications Assistance for Law Enforcement Act ("CALEA") are critical, and I am pleased that the Commission was able to move from our September 18, 2001 Order to today's Order so rapidly. Our actions today will help law enforcement agencies ("LEAs") and the wireless industry make progress in better equipping LEAs to collect call-identifying information.

While I support today's action, I am concerned about two aspects of the Order. First, as the Order notes, we must "establish standards that 'meet the assistance capability requirements of Section 103 by cost effective methods'³²⁰ and 'minimize the cost of such compliance on residential ratepayers.'³²¹" The Remand Order states that the Third R&O "made no attempt to compare the cost of implementing the punch list capabilities with the cost of obtaining the same information through alternative means, nor did it explain how it measured cost-effectiveness. Although it mentioned residential ratepayers, it never explained what impact its Order would have on residential rates."³²²

In today's Order, with an explanation of our reasoning, we conclude that the same capabilities that we have identified in our previous Order and the same means of implementing these capabilities are cost-effective and serve to minimize costs on residential ratepayers.

I remain concerned, however, that CALEA-related costs for these government mandates will be high for residential customers and wireless providers, especially for rural providers. Carriers and consumers have only one recourse when faced with these costs – they may petition the Commission under Section 109(b)(1) and demonstrate that compliance with the new assistance capabilities is not "reasonably achievable." The Commission must then consider "the effect on rates for basic residential telephone service" as part of determining whether the capabilities are reasonably achievable for that carrier.

My second issue of concern is privacy. CALEA requires any Commission rule to "protect the privacy and security of communications not authorized to be intercepted." The Court noted in the *Remand Decision* that in justifying its decision: "The Commission spoke of law enforcement's need to obtain post-cut-through dialed digits and of the cost of providing them, but it never explained, as CALEA requires, how its rule will 'protect the privacy and security of communications not authorized to be intercepted.'³²³ The Court also stated that the Commission's rejection of alternatives to its post-cut-through dialed digit decision was based not on technological infeasibility, but because the alternatives "'would shift the cost burden from the originating carrier to the LEA,' 'could be time-consuming,' and might burden law enforcement's ability 'to conduct electronic surveillance effectively and efficiently.'³²⁴ The Court stated that this was "an entirely unsatisfactory response."³²⁵

³²⁰ 47 U.S.C. § 1006(b)(1) (emphasis added).

³²¹ 47 U.S.C. § 1006(b)(3).

³²² *United States Telecom. Assoc. v. FCC*, 227 F.3d 450, 461 (DC Cir. 2000) (hereafter "*Remand Decision*").

³²³ *Remand Decision* at 462.

³²⁴ *Id.*

³²⁵ *Id.*

Congress insisted that we protect individual privacy in CALEA. The Court told us that we must explain how our rule does this, and not accept a solution that fails to protect privacy merely because of costs, time burdens, or difficulties LEAs might encounter from a rule that is more privacy protective. This is an extremely difficult task for the Commission. I would be more satisfied if we had a post-cut-through dialed digit technology available to us that provides LEAs with call-identifying information while protecting other information. Unfortunately, we do not, so we have chosen a technology that ensures that LEAs will receive the information they need, and rely on the fact that a court must decide whether a pen register warrant or a Title III warrant is the appropriate legal authority when that information is mixed with non-call-identifying information. Given our options at this time, I believe that this is the best choice available to us.