



U.S. Department of Justice

Criminal Division

*Office of the Deputy Assistant Attorney General**Washington, D.C. 20530*

February 4, 2004

Via Facsimile [(202) 418-2822] & U.S. Mail

John A. Rogovin
General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CALEA Rulemaking

Dear John

On behalf of the Department of Justice, I would like to reiterate our desire to resolve the CALEA issues that we have discussed in a comprehensive, expeditious, and amicable way. Moreover, it is not my desire to address these issues in the press, and I consider it regrettable that articles appeared last week that were prompted by Pat Kelley's letter.

While it would obviously be our preference that the FCC decide these issues prior to considering other broadband proceedings, we recognize that this is not practical, and have no desire to prevent the FCC from doing its work. We expect that the FCC will commence rulemaking proceedings on CALEA-related matters in response to our petition in the near future, and that the FCC will publish notice, which your staff is currently drafting.

We request that any regulatory decisions made regarding such services be made subject to the eventual outcome of that proceeding, including retroactive application to existing services. As you are aware, we are currently drafting a request for a proposed CALEA rulemaking, and expect to have it filed shortly. We also expect that the FCC staff will recommend to the Commission that (1) the notice of rulemaking itself tentatively concludes that CALEA applies to broadband Internet access services, including VOIP whether provided over DSL or cable modem, and (2) all intervening rulings by the Commission contain language expressly reserving judgment on the applicability of CALEA. With this understanding, we are comfortable with the agency moving forward with declaratory rulings and other work in this area.