BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
United States Department of Justice,	)	RM-10865
Federal Bureau of Investigation and	)	
Drug Enforcement Administration	)	
	)	
Joint Petition for Rulemaking to Resolve Various	)	
Outstanding Issues Concerning the Implementation	)	
of the Communications Assistance of Law	)	
Enforcement Act	)	

REPLY COMMENTS OF TIME WARNER TELECOM, INC.

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April 27, 2004

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Time Warner Telecom, Inc. ("TWTC"), by its attorneys, hereby submits these brief reply comments in the above-captioned proceeding.

In their Joint Petition for Rulemaking to Resolve Various Outstanding Issues Concerning the Implementation of the Communications Assistance for Law Enforcement Act ("CALEA"), the Department of Justice, Federal Bureau of Investigation, and Drug Enforcement Administration ("the Petitioners") request that the Commission issue a declaratory ruling "clarifying" that broadband access and broadband voice applications (*i.e.,* VoIP) are subject to CALEA requirements. The Petitioners also request that the FCC release a notice of proposed rulemaking ("NPRM") concurrently with the declaratory ruling in which the Commission would seek comment on: (1) identifying the services and entities subject to CALEA requirements; (2) adopting a framework by which to identify future CALEA-covered services and entities; (3) establishing benchmarks and deadlines for CALEA compliance for packet-mode and future CALEA-covered technologies; and (4) clarifying the cost methodology and financial responsibility of complying with CALEA.

TWTC agrees with many commenters that a declaratory ruling is an improper procedural vehicle for determining whether CALEA applies to broadband access and VoIP services.[1] Serious disputes exist concerning which VoIP services should be classified as information services and which information services, if any, are subject to CALEA. These issues require more than a mere "clarification" of existing FCC policy. Rather, they require the creation of a full and complete record open to public comment in the Commission's VoIP rulemaking (addressing the regulatory classification of VoIP services) and a separate CALEA rulemaking (addressing the circumstances in which CALEA applies to information services). A declaratory ruling is also unnecessary because the industry has been using its best efforts to collaborate voluntarily with law enforcement and manufacturers to facilitate efficient compliance with intercept orders, regardless of the regulatory classification of a particular service. Like other commenters, TWTC has been actively collaborating with its vendors to create solutions to enable its IP-based and circuit-switched networks to comply with CALEA requirements.[2] These efforts have resulted in considerable progress thus far and promise to yield higher levels of compliance going forward.

In considering the application of CALEA in its rulemaking proceeding, the FCC also should strongly weigh the impact of its actions on regulated entities when making a decision concerning the Petitioners' proposed compliance schemes and timetables. Mandating aggressive and inflexible benchmarks and implementation processes forces carriers to expend an enormous

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[1] *See, e.g.,* AT&T Comments at 1, 3; BellSouth Comments at 5-8; Cellular Telecommunications and Internet Association ("CTIA") Comments at 15; Information Technology Industry Council ("ITIC") Comments at 2; and Sprint Comments at 2-3.

[2] A number of commenters described their collaborative efforts to develop CALEA solutions, sometimes for technologies not even mandated to conform to the statute. *See, e.g.*, BellSouth Comments at 22-26; and the Voice on the Net ("VON") Coalition Comments at 15.

amount of resources. Such requirements can also impose entry barriers that delay or prevent new carriers from entering the marketplace. Further, as explained by Verizon and SBC, no industry standards currently exist for packet-switched technologies.[3] As a result, TWTC, like Verizon, believes that the Petitioners' proposals that manufacturers develop and make available solutions within six-months that carriers would have to certify conform to a previously-adopted intercept standard is impractical.[4] It is essential that the FCC adopt a realistic timetable in which manufacturers and carriers are expected to develop and make available CALEA intercept solutions.

In addition, like the Telecommunications Industry Association ("TIA") and other commenters, TWTC strongly believes that industry should continue to take the lead in establishing standards for CALEA compliance.[5] The standards-setting process is critical to the flexible, cost effective, and successful implementation of CALEA. A change in the current regime of industry-led standards-setting would be premature at best because Petitioners have failed to demonstrate that the current system is failing. The current approach should not be abandoned until Petitioners articulate reasons why the current regime is deficient. A change to the standards-setting process can only be accomplished after full rulemaking, and there is at this point no basis for reaching any tentative conclusions in an NPRM regarding proposed changes to setting standards.

Finally, the Commission must ensure that the application of CALEA does not skew market outcomes by imposing significant compliance costs on only a subset of competing voice

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[3] *See* Verizon Comments at 17-18 and SBC Comments at 13.

[4] *See* Verizon Comments at 19.

[5] *See, e.g.,* CTIA Comments at 16, 18; ITIC Comments at 13-14; and Telecommunications Industry Association Comments at 2, 9-10.

services. This may require, if permissible, that CALEA apply to information services. These services utilize switching or IP-transmission and are often substitutes for voice offerings that are already subject to CALEA.

In sum, the FCC should initiate a rulemaking proceeding to address these and other outstanding issues concerning CALEA implementation.

Respectfully submitted,

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