Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Communications Assistance for	)	ET Docket No. 04-295
Law Enforcement Act and	)	
Broadband Access and Services	)	RM-10865

COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in the above-noted proceeding.[1] The NPRM is examining the scope of the Communications Assistance for Law Enforcement Act's (CALEA) applicability to packet mode services, such as broadband Internet access, and implementation and enforcement issues.

OPASTCO is a national trade association representing over 560 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37). In addition to serving as incumbent local exchange carriers (ILECs), nearly all OPASTCO members provide packet-based data services, including high-speed and broadband services, to rural consumers.

[1] *Communications Assistance for Law Enforcement Act and Broadband Access and Services,* ET Docket No. 04-295, Notice of Proposed Rulemaking and Declaratory Ruling, RM-10865 (rel. Aug. 9, 2004)

II. THE COMMISSION SHOULD GRANT AFFECTED SMALL ILECS EXTENSIONS FOR ALTERNATIVE RELIEF REQUESTS AND ESTABLISH A BLANKET TRANSITION PERIOD FOR THEM

The NPRM tentatively concludes that carriers that have installed or deployed equipment, facilities or services after October 25, 1998 may be subject to enforcement action for non-compliance with CALEA as it may apply to packet-based services, even if technical standards or solutions that would enable compliance do not exist.[2] Further, the Commission recognizes that under its tentative interpretations, carriers petitioning for extensions based on a lack of industry standards or solutions would "face a high burden," and would "need to demonstrate why they could not negotiate system-specific CALEA solutions with manufacturers or with third-party CALEA service providers."[3]

However, OPASTCO is gratified that the Commission recognizes that these tentative interpretations "could create potentially heavy burdens for small and rural carriers in particular."[4] Rural ILECs have virtually no market power, making it far more difficult for them to negotiate specific CALEA solutions with manufacturers and third-party providers. Manufacturers and third-party CALEA service providers will naturally tend to the needs of their largest customers first. Solutions that may be crafted for larger providers will not necessarily be appropriate for small carriers. Therefore, extensions for small, rural ILECs should be granted more readily than for other providers.

The Commission recognizes that the NPRM's tentative interpretation of section 107(c) represents a change in the Commission's approach to this section, as it could

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(NPRM).

[2] NPRM, paras. 98-99.

[3] *Ibid.*, para. 98.

[4] *Id.*, para. 100.

impact carriers that installed or deployed equipment after October 25, 1998.[5] As a result, the NPRM proposes granting carriers with packet-mode 107(c) petitions currently on file 90 days to submit alternative relief requests.[6] However, small ILECs lack the resources of large carriers, and many will find it far more difficult and taxing to produce alternative relief requests within a 90 day window.

Therefore, small ILECs should have significantly more time to file requests for alternative relief in the event the NPRM's proposed interpretation of section 107(c) is adopted. OPASTCO suggests 180 days is more appropriate for small ILECs. OPASTCO also supports the notion of a blanket transition period for affected carriers to become CALEA compliant for packet mode, at least in the case of small ILECs.[7]

It should be recognized that many small ILECs that provide advanced services are already in compliance with CALEA. The number that are not compliant is small and continues to decline. Additionally, rural ILECs on the whole have received very few intercept requests from law enforcement agencies (LEAs), and most have received none at all. While this is not to say that such requests will never come, there is no demonstrable need to place the same heavy compliance burdens and demanding timetables on small ILECs that are placed on large carriers. Granting small ILECs longer amounts of time to file requests for alternative relief, as well as establishing a blanket transition period for them, will not conflict with the ability of LEAs to conduct necessary intercepts in the short term. By the same token, recognizing the distinct circumstances of small ILECs through these temporary means does not imply that small ILECs may delay

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[5] *Id.*, para. 101.
[6] *Id.*
[7] *Id.*

compliance indefinitely. A blanket transition would also help to alleviate the Commission's legitimate concerns about cost and cost-recovery issues for small and rural carriers.[8]

A. The Telecommunications Act Of 1996 And The Regulatory Flexibility Act Both Provide The Commission With The Authority To Grant Blanket Transition Periods to Small ILECs

The NPRM asks what authority the Commission has to grant a blanket transition period.[9] In the case of small ILECs serving rural areas, there are at least two sources of such authority: Section 706 of the Telecommunications Act of 1996 (1996 Act), and the Regulatory Flexibility Act (RFA).

First, the Commission is charged under section 706 of the 1996 Act to encourage the deployment of advanced telecommunications capability to all Americans through, among other things, "regulating methods that remove barriers to infrastructure investment."[10] One of the greatest barriers to investment for small carriers is regulatory uncertainty. By assuring small ILECs that they will be permitted to achieve compliance with CALEA in a manner that does not impose undue and disproportionate burdens on them, the Commission will avoid erecting an additional obstacle to investment.

Another source of the Commission's authority to grant blanket transition periods for small ILECs can be found in the Regulatory Flexibility Act.[11] Although the NPRM's Initial Regulatory Flexibility Analysis (IRFA)[12] does not specifically mention this

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[8] *Id.*, para. 131. *See also* para. 136, which notes that larger, nationwide wireless carriers "are better able to implement regulatory requirements than smaller, rural carriers" (cite omitted). The same comparison holds true for wireline carriers.
[9] *Id.*, para. 101.
[10] 47 U.S.C. § 706(a).
[11] *See generally*, 5 U.S.C. §§601 - 612.
[12] NPRM, Appendix B.

alternative, the IRFA does note that agencies should consider, for example, the establishment of differing compliance requirements "or timetables that take into account the resources available to small entities."[13] Given the general lack of intercept requests received by small ILECs, granting a reasonable blanket transition period would provide them with more regulatory certainty, without compromising the ability of LEAs to conduct investigations.

III. CONCLUSION

The Commission should grant small ILECs extended periods of time to file for alternative relief requests under CALEA, and provide them with a blanket transition period to achieve CALEA compliance with respect to packet-mode services. Such action would avoid imposing undue burdens and costs on small carriers, while reducing regulatory uncertainty that can hinder the continued deployment of broadband services to rural consumers.

[13] *Id.*, Sec. E, "Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered."

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Stephen Pastorkovich, hereby certify that a copy of the reply comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 8th day of November, 2004, to those listed on the attached sheet.

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