

**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)	RM-10865
Broadband Access and Services)	

**REPLY COMMENTS
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA)¹ submits these reply comments in response to the Commission’s Notice of Proposed Rulemaking released August 4, 2004.² These comments are limited in scope to addressing and agreeing with those comments that argue that rural carriers and their consumers should not bear the entire cost of complying with the mandates of the Communications Assistance for Law Enforcement Act (CALEA).

As an initial matter, NTCA points out that several parties agreed with the main points of NTCA’s comments. The rural carriers were unanimous in their opposition to the Commission’s proposal to do away with §107(c) extensions for rural carriers

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents nearly 600 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA’s members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² Communications Assistance for Law Enforcement Act and Broadband Access and Services, ET Docket No. 04-295, RM-10865 (rel. August 9, 2004) (NPRM).

struggling to comply with CALEA.³ The extensions have proven to be a successful and practical means of obtaining full CALEA compliance. Several parties also agreed that §109(b) petitions must be reasonably achievable.⁴ The criteria by which the Commission judges the petitions should recognize that rural carriers have neither the market power nor the resources to influence manufacturer's technology development.

Several rural groups also brought up the issue of cost recovery.⁵ As they point out, the costs of CALEA compliance should not be forced on rural carriers and their customers. Rural carriers are, by their nature, small businesses. Some of NTCA's member companies serve less than 100 subscribers. Excluding the 20 members with more than 20,000 lines, the average company has 3,800 subscribers. While many CALEA implementation costs are similar no matter the size of the company, rural carriers do not have the luxury of spreading the costs over millions of subscribers like the large companies. In many cases the per-subscriber CALEA implementation cost is several hundreds of dollars.⁶ Rules that place the burden of CALEA implementation solely on the carriers' shoulders creates a disproportionate and unfair burden on small carriers and their customers. NTCA joins other parties in opposing the Commission's tentative conclusion that carriers are solely responsible for the costs associated with CALEA implementation.

³ See, e.g., comments of Rural Telecommunications Group (RTG), Rural Telecommunications Providers (RTP), Telecom Consulting Associations (TCA), Rural Cellular Association (RCA), GVNW, and Coalition for Reasonable Rural Broadband CALEA Compliance.

⁴ See, comments of RTG, RTP, GVNW, and Coalition for Reasonable Rural Broadband CALEA Compliance

⁵ See, comments of RTG, RTP, TCA, and Smithville Telephone Company

⁶ RTG and RTP offer evidence of the disproportionate burden CALEA implementation places on small carriers. See RTG comments, p. 5; RTP comments, p. 8.

Rather than thrust the entire burden of CALEA implementation on the backs of rural carriers, the Commission should recommend that law enforcement bear at least some of the costs. Alternatively, the Commission should find that the costs are recoverable from the universal service mechanisms and that the funding is not portable.

The Commission's focus on how CALEA implementation should be paid for emphasizes the need for appropriate avenues of relief for small carriers. The Commission must continue to make §107(c) petitions available to small carriers or, at the very least, relax the standards for §109(b) petitions. CALEA implementation is a costly endeavor. Many rural carriers have experienced few, if any, requests for CALEA-type intercepts. A cost-benefit analysis and a proper analysis under the Regulatory Flexibility Act leads to the inescapable conclusion that relief for rural carriers is appropriate and necessary.⁷ To determine otherwise is economically irresponsible.

The RFA requires that the Commission consider less burdensome alternatives appropriate to the size of covered entities. In this case, the Commission has the opportunity to: (1) suggest that law enforcement bear the added costs of rural company compliance; (2) determine that rural companies may recover the CALEA implementation costs directly from universal service through a non-portable mechanism; (3) apply relaxed standards for §109(b) petitions; and (4) continue to make §107(c) petitions available to small carriers.

⁷ See, NTCA's Comments in Response to the Notice of Proposed Rulemaking and the Initial Regulatory Flexibility Analysis.

CONCLUSION

NTCA believes that full CALEA compliance is an important public policy. However, the law must continue to be implemented in a way that minimizes the negative impact on rural carriers and their customers. Rural carriers cannot afford to bear the entire cost of CALEA implementation without any reasonable avenue of relief. NTCA opposes the Commission's tentative conclusions that carriers are solely responsible for the costs associated with CALEA implementation. NTCA also asserts that §107(c) extensions continue to be a necessary and integral part of the transition to CALEA compliance. Section 109(b) petitions should likewise be judged according to appropriate criteria that recognize the realities of serving rural America. The Commission must not rescind appropriate avenues of relief and impose disproportionate burdens in an attempt to force carriers into CALEA compliance.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in ET Docket No. 04-295, RM-10865, FCC 04-187 was served on this 21st day of December 2004 by first-class, U.S. Mail, postage prepaid, to the following persons.

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