

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

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



COMMENTS

I. Introduction.

In these Comments, ACA responds to the following questions posed in the Commission's *Further Notice of Proposed Rulemaking*.¹

- What procedures should the Commission adopt to implement CALEA's exemption provision for small and rural providers?
- Should the Commission implement less extensive CALEA requirements for small and rural providers?²

ACA's Comments show that Commission precedent supports regulatory relief for small and smaller-market operators, and recommends that the Commission adopt a

¹ *In the Matter of Communications Assistance for Law Enforcement Act and Broadband Access and Services, First Report and Order and Further Notice of Proposed Rulemaking*, ET Docket No. 04-295 (rel. September 23, 2005).

² *Id.* at ¶ 48.

streamlined process under which small and smaller-market operators could petition for exemption from the Commission's CALEA requirements. Alternatively, the Commission should adopt less extensive CALEA requirements for small and smaller-market operators.

American Cable Association. ACA represents nearly 1,100 small and medium-sized cable companies that serve about 8 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states, and in virtually every congressional district. The companies range from family-run cable businesses serving a single town to multiple system operators with small systems in small markets. About half of ACA's members serve fewer than 1,000 subscribers. All ACA members face the challenges of building, operating, and upgrading broadband networks in lower density markets. ACA members are at the forefront of smaller-market broadband deployment.

Almost 75% of ACA's members have deployed broadband to their small-market and rural subscribers, and an increasing number of ACA's members are now providing VoIP services in these markets. The Commission risks hobbling rural broadband deployment if small and smaller-market providers are required to finance the Commission's CALEA requirements. Accordingly, ACA recommends that the Commission adopt a streamlined process under which small and small-market operators can petition for exemption from the CALEA requirements. Alternatively, ACA recommends that the Commission impose lesser requirements on small and smaller-market operators.

II. The Commission should adopt a streamlined process under which small and smaller-market operators can petition for exemption from the CALEA requirements.

Precedent for regulatory relief. Congress and the Commission have consistently expressed special concern for small cable systems and the public interest in maintaining a viable small cable sector in smaller and rural markets.

The 1992 Cable Act and the 1996 Telecommunications Act both contain Congress' express recognition of the public interest in a viable small cable sector through inclusion of specific small cable provisions.³ Likewise, extensive Commission action has demonstrated the importance to the public interest of maintaining viable smaller cable companies and the need to provide regulatory relief to further this public interest.⁴

In its *Small System Order*, the Commission analyzed the economic, physical, and financial characteristics of cable systems above and below 15,000 subscribers and determined that there were significant differences between these two groups, while finding that systems serving fewer than 15,000 subscribers "face many of the same

³ See, e.g., 47 USC § 543(i) ("In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers."); Section 301(c) 1996 Telecommunications Act (providing greater deregulation for small systems), codified at 47 USC § 543(m).

⁴ For a summary of these efforts in the context of rate regulation, see *In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration* 10 FCC Rcd. 7393, at 7401-7402 and 7420 (1995) ("*Small System Order*"); for special small cable leased access rules, see *In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Leased Commercial Access, Second Report and Order and Second Order on Reconsideration of the First Report and Order*, 12 FCC Rcd. 5267 at 5331-5332, 5333 (1997).

challenges that systems of 1,000 or fewer subscribers do in providing cable service.”⁵ Accordingly, the Commission extended badly needed relief to such systems.⁶

Similarly, the Commission has recognized the increased financial burdens faced by cable systems serving smaller markets. Most recently, the Commission has recognized that the cost of EAS compliance continues to be out of reach for many smaller-market systems, and has extended the EAS compliance deadline to March 1, 2006 for many operators with smaller-market systems.⁷

As shown below, the financial burden placed on small operators and smaller-market systems by the Commission’s CALEA requirements could be geometrically greater than the approximately \$10,000 per system cost of EAS compliance. If small operators and operators with smaller market systems are not able to obtain exemptions from the Commission’s CALEA rules, broadband deployment in rural areas will be significantly slowed, or may even be shut down.

The cost and technological challenge of CALEA compliance. Because the concept of broadband access and VoIP CALEA compliance is so new, precise cost estimates of compliance are not readily available. That said, it is clear that costs will far exceed the per-system cost of EAS compliance for both broadband access and VoIP services.

⁵ *Small System Order* at ¶¶ 25-27.

⁶ *Id.* at ¶ 38.

⁷ See *In the Matter of Petitions for Waiver of the Emergency Alert System Rules filed by Various Cable Television Systems, Order*, File No. EB-05-HS-034, DA 05-2493 (rel. September 23, 2005) at § 9.

Many cable operators provide broadband access services using CableLabs' DOCSIS protocol.⁸ CableLabs has produced a set of specifications for CALEA compliance that provide a "safe harbor" for those operators in compliance with the specifications.⁹ Based on industry estimates, it will cost a cable operator thousands of dollars per headend to install equipment meeting these specifications. For decentralized systems, the cost multiplies with each additional node. Cable operators not using DOCSIS will need to develop a customized solution for CALEA. For many small or smaller market operators, a customized CALEA solution will be technologically daunting, and will certainly be even more expensive than installing equipment meeting the DOCSIS standards.

For VoIP services, fewer operators will need exemptions. Larger-market cable operators often use a third-party provider like Level3 or Net2Phone to provide VoIP services, and these third-party providers generally assume responsibility for VoIP compliance. Some smaller-market operators use third-party providers too, but these providers are not always a viable choice: Third-party providers often do not have interconnection agreements or POPs in the small towns served by many ACA members, and in some cases their services are priced out of reach for small town subscribers. Accordingly, a limited number of smaller-market cable operators are, or

⁸ DOCSIS stands for "Data Over Cable Service Interface Specification." DOCSIS is a set of standards produced by CableLabs that defines methods and procedures for use of cable networks to provide information services.

⁹ See *Packet Cable 1.5 Specifications, Electronic Surveillance, PKT-SP-ESP1.5-I01-050128*, at <http://www.packetcable.com/downloads/specs/PKT-SP-ESP1.5-I01-050128.pdf> (viewed November 8, 2005).

will be, providing VoIP services in tandem with a rural telco. These operators send their VoIP traffic to the telco's POP, where it is gatewayed to the PSTN. In these situations, the telco may or may not provide CALEA compliance. Accordingly, without an exemption from the CALEA regulations, some smaller-market cable operators will either need to build their own CALEA solution for their VoIP services, or discontinue their VoIP services. As the Commission has recognized in dozens of EAS waiver orders,¹⁰ many smaller-market operators cannot support this kind of expense. If the Commission does not provide these operators with a process for obtaining exemptions from the CALEA rules, these operators may be forced to shut their VoIP services down.

Exemption procedure. There is ample precedent for adopting an exemption procedure for broadband access and VoIP providers. The Commission has previously recognized the burdens that CALEA compliance may impose on providers, and has provided streamlined relief procedures. For example, in 2000, the Commission provided a streamlined petition process for filing for extensions of the CALEA compliance deadline after discovering that CALEA-compliant equipment and software was not as readily available as the industry had anticipated.¹¹ The Commission provided petitioners a form petition and a detailed list of the information that they would

¹⁰ See, e.g., *In the Matter of Carson Communications, L.L.C. Request for Waiver of Section 11.11(a) of the Commission's Rules*, Order, 17 FCC Rcd. 10,431 (2002); *In the Matter of WMW Cable Television Co. Request for Waiver of Section 11.11(a) of the Commission's Rules*, Order, 17 FCC Rcd. 10,444 (2002); *In the Matter of Cunningham Communications, Inc. Request for Waiver of Section 11.11(a) of the Commission's Rules*, Order, 17 FCC Rcd. 10,435 (2002); and *In the Matter of Souris River Television, Inc. Request for Waiver of Section 11.11(a) of the Commission's Rules*, Order, 17 FCC Rcd. 10,438 (2002)

¹¹ See *CALEA Section 103 Compliance and Section 107(c) Petitions, Public Notice*, CC Docket No. 97-213 (rel. April 25, 2000) at ¶ 1.

have to provide to be eligible for an extension. The Commission should institute a similar petition procedure for small and smaller-market operators to obtain exemptions from the CALEA requirements so that these operators can continue providing broadband and VoIP services to their subscribers.

II. If the Commission does not implement an exemption process, it should adopt less extensive rules for small and smaller-market operators.

If the Commission does not implement an exemption process, it should adopt less extensive CALEA rules for small and smaller-market operators. The rules for small and smaller-market operators should include a longer implementation timeframe. This would allow time for CALEA technology to develop further and for compliance costs to come down. Eliminating some of the CALEA “punch list” requirements would also reduce the technological difficulty and cost of compliance. The Commission’s EAS rules provide precedent for such relief.¹²

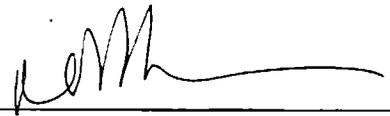
III. Conclusion.

ACA’s members have taken the lead in deploying broadband to smaller and rural markets. This deployment could be slowed or reversed if the Commission does not provide for financial or technological hardship exemptions from its CALEA rules for small and smaller-market operators. Alternatively, the Commission should ease the burden of compliance by adopting less burdensome CALEA rules for these providers.

¹² See 47 CFR §11.51(g) and (h).

Respectfully submitted,

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