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

TO: The Commission

REPLY COMMENTS OF THE COALITION FOR REASONABLE RURAL BROADBAND CALEA

The Coalition for Reasonable Rural Broadband CALEA[1] ("Coalition") hereby submits its reply comments with respect to the Commission's First Report and Order and Further Notice of Proposed Rulemaking (Communications Assistance for Law Enforcement Act and Broadband Access and Services), FCC 05-153, released September 23, 2005 ("FNPRM").

The Coalition is comprised of rural telephone companies that have made (plus a state rural telephone company association whose members have made) substantial investments in broadband facilities, and that desire to continue to deploy and operate affordable broadband facilities and services where feasible in their rural service areas. All are providing Digital Subscriber Line ("DSL") facilities and services over which more and more of their rural customers access the Internet, and otherwise send and receive packet-mode messages.

Coalition members have made major investments in software and/or hardware to comply with Communications Assistance for Law Enforcement Act ("CALEA") surveillance capability

[1] The Coalition is comprised of the following rural telephone companies and associations: CC Communications; D&E Communications; Dell Telephone Cooperative, Inc.; Electra Telephone Company; Harrisonville Telephone Company; Haxtun Telephone Company; McCook Cooperative Telephone Company; MoKan Dial, Inc. and its affiliate MoKan Communications; Northeast Florida Telephone Company and its affiliate NEFCOM Communications; Prairie Grove Telephone Co.; South Dakota Telecommunications Association; South Slope Cooperative Telephone Co.; St. John Cooperative Telephone and Telegraph Company; Tatum Telephone Company; UBTA-UBET Communications; Waitsfield-Fayston Telephone Co., Inc.; and Walnut Hill Telephone Company.

requirements for their traditional circuit-switched facilities, even though most Coalition members have operated for many decades without ever receiving a single wiretap request from federal or state law enforcement authorities[2] and expect to retire their existing circuit switches without ever receiving one. Before imposing CALEA surveillance capability requirements and costs upon rural telephone companies and other small rural carriers with respect to their broadband facilities, the Commission and the Federal Bureau of Investigation ("FBI") should determine exactly what law enforcement needs from rural carriers and how such needs can be satisfied in a reasonable, efficient and cost-effective manner.

I

What Are the Nature and Cost Of the Packet-Mode CALEA Requirements That Apply to Rural Carriers?

Coalition members, like other rural telephone companies, are public-spirited corporate citizens that serve their local communities well, and that are perfectly willing to cooperate with federal, state and local law enforcement to protect national security and public safety. However, at this time, Coalition members do not know: (a) what hardware and/or software (if any) they need to deploy to provide broadband CALEA surveillance capabilities; (b) how much such equipment will cost; and (c) how such costs will be recovered during a future when technology and market forces are changing and the size and survival of traditional access and universal service revenue streams is in doubt.

There appear to be claims that some packet-mode CALEA standards have been developed or are being developed. For the typical rural telephone company with a small staff and no significant research and development capability, these industry standards debates and

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[2] In a few instances, Coalition members have received trap and trace requests from local courts or law enforcement officials in local harassment or divorce cases.

development processes are largely beyond the scope of their ability to participate or influence. What they need is for broadband CALEA standards to be adopted and accepted by law enforcement, equipment vendors and the larger urban carriers; and then to be integrated into affordable and commercially available CALEA hardware and/or software upgrades that are compatible with the soft switches, routers and/or digital subscriber line access multiplexers ("DSLAMs") over which they provide broadband services.

At this time, the Coalition is not aware of any such commercially available CALEA hardware or software upgrades for their broadband equipment. It does not even know whether additional equipment is needed for broadband CALEA compliance, or whether it is feasible to install and run something like the DCS1000 (formerly Carnivore) packet sniffing program on most or all existing rural routers without upgrading them. If additional hardware and/or software is necessary, the Coalition does not know what equipment makes, models or generics are broadband CALEA-compliant, when they are likely to become commercially available, or how much they will cost.

Section 106(b) of CALEA, 47 U.S.C. §1005(b), requires manufacturers of telecommunications transmission or switching equipment to make available, on a reasonably timely basis and at a reasonable charge, such features or modifications to such equipment as are necessary to permit carriers using the equipment to comply with CALEA capability requirements. Section 108 of CALEA, 47 U.S.C. §1007, gives the federal courts jurisdiction to enforce CALEA requirements against equipment manufacturers, and to set timetables and conditions for compliance.

Before addressing exemptions and cost recovery, the Commission and FBI should first push for the adoption of a set of comprehensive and technically feasible broadband CALEA

capability standards, and then utilize CALEA Sections 106(b) and 108 (if necessary) to require broadband equipment vendors to incorporate such standards into reasonably priced hardware and/or software upgrades that can be used with existing and future soft switches, routers and/or DSLAMs. If such upgrades are readily available at affordable prices, implementation and cost recovery issues may be minimal or non-existent. However, if such upgrades prove to be difficult and/or expensive to obtain or to implement, exemptions and cost recovery will be very significant issues.

II

Rural Carrier Exemption

If the cost of broadband CALEA compliance is substantial, the Commission should exempt rural telephone companies and other rural broadband providers from CALEA capability requirements. Such exemption is warranted because: (1) there is little need for electronic surveillance of ongoing security threats or criminal conspiracies in Rural America; (2) the scattered few security threats or criminal conspiracies that may arise in Rural America can be addressed more effectively and efficiently by targeted compliance than by ubiquitous CALEA implementation; and (3) changing technology makes ubiquitous rural CALEA implementation unduly expensive and wasteful, and can impair national security and public safety in the long run.

Lack of Need. The September 11 terrorist cells, organized crime, drug dealers and similar ongoing conspiracies have operated primarily within the anonymity of the nation's metropolitan areas. Terrorists and organized criminals can more readily plan, move about, strike and blend back into the environment in urban and suburban neighborhoods, apartments, hotels and motels where many people are strangers, and are reluctant or afraid to inquire into the

business of others. In stark contrast, rural communities are still small enough that most residents know virtually everyone else as well as everyone else's business. Whereas an occasional lone wolf might be able to hide a criminal past or present from his rural neighbors for awhile, small groups of newcomers engaging in unusual or suspicious behavior are not likely to remain unnoticed for long in a rural area. As a consequence, terrorist groups and organized crime have not found Rural America to be an attractive hiding place, and most rural telephone companies have operated for 50-to-100 years or more without receiving a single wiretap, pen register, or trap and trace request from federal or state law enforcement.

Contrary to the claim of Verizon,[3] exemption of rural telephone companies from broadband CALEA capability requirements would not encourage terrorists and other organized criminals to migrate to rural areas that were insulated from CALEA. One must recognize that CALEA-enabled electronic surveillance is not the only form of surveillance and detection. A terrorist cell or criminal organization is not likely to move to a rural community to avoid CALEA if its every action will be watched instead by state and local police as well as by dozens of suspicious local residents. In fact, a rural telephone company exemption from broadband CALEA requirements would assist law enforcement in the unlikely event that it actually encouraged some terrorists and criminals to move to rural communities where they could be more readily discovered and observed.

Scattered Rural Threats. A general CALEA exemption for rural telephone companies and other rural broadband providers could be conditioned to require CALEA compliance in those few and scattered circumstances where electronic surveillance may be necessary (e.g., in rural areas where alleged members of certain white power, militia, survivalist or other groups

[3] "Comments of Verizon on the Commission's Further Notice of Proposed Rulemaking," ET Docket No. 04-295, November 14, 2005, at p. 7.

threatening violence or government overthrow are located). Such limited and targeted CALEA compliance might be accomplished via temporary surveillance upgrades (e.g., law enforcement supplies a licensed copy of the appropriate CALEA software generic and deletes it when surveillance is completed) and could be financed by industry or government funds. Even if 10, or 20, or even 50 rural carriers had to pay for permanent CALEA upgrades for their broadband facilities, this would still be more efficient and economical than forcing all 1,100 rural telephone companies and hundreds of other rural carriers to install ubiquitous broadband CALEA capabilities.

Changing Technology. Past compliance with circuit-switched CALEA requirements demonstrate the futility and wastefulness of requiring all carriers to make CALEA upgrades that are needed and used predominately in a handful of urban areas. Even though they previously had never received an electronic surveillance request, a substantial majority of the 1,100 rural telephone companies were forced to spend a total of millions (possibly, billions) of dollars on CALEA-required switch replacements or switch upgrades, and still have not subsequently received an electronic surveillance request from law enforcement. Some equipment vendors used the circuit-switched CALEA requirements to force carriers to purchase upgrade packages or additional bundled upgrade features, at costs of additional tens and hundreds of thousands of dollars per carrier. These massive CALEA-related costs have ultimately been borne by subscribers to telecommunications services, without any perceptible increase in national security or public safety. And now that the process of nationwide circuit-switched CALEA compliance has been largely completed, it appears that substantial traffic is shifting from circuit-switched facilities to broadband networks and that the FBI is now much more concerned that terrorists and criminals are using broadband networks to communicate.

Moreover, broadband technology is not yet settled, and can be expected to change significantly during the foreseeable future. Broadband equipment vendors continue to come and go (or merge), and broadband transmission speeds and services continue to increase. It is not clear at this time whether the DSL platforms used by most rural telephone companies will be a long-term or a short-term solution. Just as has happened with CALEA compliance in the circuit-switched sector, it is quite likely that the Commission could require thousands of rural service providers to spend millions or billions of dollars to upgrade their existing DSL facilities to install CALEA capabilities for which there is no perceptible need, and find at the conclusion of the implementation process that the technology has once again shifted and that new facilities or services are offering terrorists and criminals yet another way (which must then be plugged by another round of CALEA upgrades) to evade CALEA-compliant circuit-switched and DSL facilities.

Rural Exemption. Rather than repeating the same wasteful process of blanket nationwide CALEA compliance in the broadband sector, the Commission should look hard at costs and benefits, and consider more reasonable broadband CALEA capability compliance plans that provide substantially equivalent national security and public safety protections.

A conditional exemption of rural telephone companies and other rural carriers from broadband CALEA requirements is a straightforward and administratively efficient solution. A rural telephone company [as defined by Section 3(37) of the Communications Act] would not be subject to broadband CALEA capability requirements unless and until the Commission, after receiving a specific request from the FBI, contacted the designated carrier and ordered it to cooperate with the FBI or other designated law enforcement to install broadband CALEA capabilities within a reasonable time period. To facilitate such installations, the Commission and

the FBI should require broadband equipment vendors, under CALEA Section 106(b), to maintain an inventory of CALEA-compliant hardware and/or software that can be shipped immediately to a rural carrier ordered to comply with CALEA, and to provide any and all technical assistance needed by such carrier to install the CALEA upgrades and render them operational. The cost of such targeted rural CALEA compliance could be paid from general taxpayer funds (if Congress authorized such a rural CALEA fund), or from an industry fund (which would be much less expensive than funding blanket rural CALEA compliance), or by the affected rural carriers themselves.

Alternative. In the alternative, the Commission could establish a simple and inexpensive CALEA Section 107(c) extension process[4] for rural broadband providers. The process could be modeled upon the CALEA Section 107(c) extension process for circuit-switched CALEA as it has evolved. CALEA Section 107(c) can be read to apply to equipment, facilities or services installed or deployed (or proposed to be installed or deployed) prior to the date that CALEA Section 103 became effective with respect to such equipment, facilities or services. With respect to broadband CALEA requirements, this effective date appears to be the November 14, 2005 effective date of the FNPRM.[5]

Specifically, the Commission could require rural telephone companies and other rural broadband providers unable to meet broadband CALEA capability requirements for economic or technical reasons to file with the FBI a template identifying their broadband equipment (by location, hardware make and model, software generic and contact person), and to file with the

[4] Requests for CALEA Section 109(b) waivers are subject to a statutory $5,000 filing fee and a substantial burden of proof. They are not attractive candidates for a simple, efficient and inexpensive rural extension process.

[5] Prior to the FNPRM, there was considerable uncertainty among broadband equipment vendors and broadband carriers as to the appropriate definition of "telecommunications" under CALEA and the Communications Act, as well as the applicability to broadband services of the "information services" exclusion in CALEA Section 103(b)(2).

Commission a simple one or two sentence request for extension (plus a copy of the template). Requesting carriers would be required to file accurate templates, and to revise them whenever they made changes in hardware, software or locations. The Commission and the FBI would hold the pending extension requests and templates on file unless and until the FBI found it necessary to have a particular rural carrier implement CALEA for broadband surveillance purposes. In those instances, the Commission would then contact the rural carrier, deny its pending extension request, and order the carrier to cooperate with the FBI to acquire and install the necessary hardware and/or software upgrades. As with the conditional rural exemption proposed above, the Commission and the FBI could facilitate CALEA implementation and ease the burden upon affected rural carriers by requiring broadband equipment vendors to maintain an inventory of CALEA-compliant hardware and/or software, and by implementing a cost recovery mechanism using general taxpayer or industry funds.

III

Conclusion

Before addressing exemptions and extensions, the Commission should first determine what broadband CALEA surveillance standards are acceptable and feasible for law enforcement and carriers, and use its CALEA Section 106(b) authority to require equipment vendors to implement such standards on a timely basis in reasonably priced hardware and/or software. (if such equipment is necessary to comply with the standards). Only if and when CALEA-compliant broadband becomes commercially available will it become clear whether rural telephone companies and other carriers require broadband CALEA exemptions or extensions.

If broadband CALEA implementation requires expensive equipment upgrades like circuit-switched CALEA implementation, the Commission should not repeat the wasteful and

expensive effort of requiring circuit-switched CALEA implementation throughout Rural America. Rural communities do not offer favorable operating conditions for terrorists, organized criminals and other traditional targets of electronic surveillance, and most rural telephone companies have never received a request for electronic surveillance from federal or state law enforcement. Moreover, changing technology is likely to render ubiquitous broadband CALEA implementation obsolete and ineffective before it is completed.

The most effective and efficient approach is to target broadband CALEA implementation to those few rural areas where it is specifically needed by law enforcement. This can be accomplished by a conditional exemption for rural carriers, or by a simplified extension process. In both instances, rural carriers would not be required to implement broadband CALEA upgrades unless and until the FBI determined they were needed for immediate surveillance. CALEA equipment inventories and/or government or industry funds could be employed to ease the economic burden on those few rural carriers that may actually have to implement broadband CALEA capabilities under a targeted system.

Respectfully submitted,
COALITION FOR REASONABLE RURAL BROADBAND CALEA

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