

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

In the Matter of)	
)	ET Docket No. 04-295
USTelecom Association Petition for)	DA 05-3153
Reconsideration and Clarification re:)	
CALEA and Broadband Access and Services)	
Proceeding)	

**JOINT COMMENTS
of the
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
and the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES**

The National Telecommunications Cooperative Association (“NTCA”)¹ and the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”)² (collectively, “Associations”) hereby submit these joint comments in the above-noted proceeding. The Associations support the USTelecom petition and urge the Commission to stay the commencement of the 18-month Communications Assistance for Law Enforcement Act (“CALEA”) compliance deadline

¹ NTCA is a national industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 560 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 provider 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. NTCA’s members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² OPASTCO is a national trade association representing over 560 small ILECs serving rural areas of the United States. Its members, including both commercial companies and cooperatives, together serve more than 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. § 153(37). OPASTCO members offer a wide array of communications services to rural consumers in addition to the traditional telephone services they provide as ILECs. These include dial-up Internet access, high-speed and advanced services, mobile wireless services, competitive local exchange service, long distance resale, and video services.

that began on November 14, 2005. The compliance deadline should instead begin on the effective date of the Commission's forthcoming order on CALEA capability requirements for broadband and VoIP providers and its decision on whether small and rural facilities-based broadband Internet access providers should be exempt from CALEA. Rural ILEC broadband providers should not be forced to expend scarce resources in order to comply with a statute that may not be applicable and without any meaningful guidance as to their compliance obligations.

In its recent CALEA Order,³ the Commission determined that the requirements of CALEA apply to facilities-based providers of broadband Internet access services as well as to providers of interconnected VoIP services.⁴ In that Order, the Commission only addressed the legal question of whether CALEA applied to these service providers, stating that it would issue a subsequent order to address "important questions regarding the ability of broadband Internet access providers and VoIP providers to provide all of the capabilities that are required by section 103 of CALEA, including what those capability requirements mean in a broadband environment."⁵ In conjunction with the Order, the Commission also issued a Further Notice of Proposed Rulemaking questioning whether small and rural facilities-based broadband Internet access providers should be exempt from the CALEA.⁶

In comments filed with the Commission on November 14, 2005, the Associations stated that the Commission should exempt from CALEA the facilities-based broadband

³ *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989 (2005) (CALEA Order).

⁴ *Id.* ¶ 46.

⁵ *Id.*

⁶ *Id.* ¶ 49.

Internet access services of all rural telephone companies.⁷ The Associations pointed out that upgrading existing systems for CALEA compliance is an expensive endeavor and that intercepts in rural America are few and far between. The Associations urged the Commission to perform a cost-benefit analysis and instead focus its attention on determining to what extent CALEA should apply to the applications that utilize rural ILECs' broadband infrastructure. In the event that the Commission declined to exempt small ILEC facilities based broadband providers from CALEA, the Associations argued for less burdensome CALEA requirements and simplified procedures to apply for extensions of time to comply.

The Associations urge the Commission to stay commencement of the CALEA compliance deadline until the effective date of the forthcoming orders. Without answers to basic questions about the applicability of CALEA, or the scope of potential compliance obligations, the present compliance deadline is unreasonable. As it currently stands, rural ILEC broadband Internet access providers do not know if they will be subject to CALEA, and if they are subject to the law's requirements, they lack meaningful direction on how to comply. This forces rural ILECs to expend scarce capital resources on compliance, without specific guidance as to the scope of their CALEA obligations, with the prospect of those funds being wasted if the Commission later determines that rural ILEC broadband providers should be exempt. The deadline for rural ILEC compliance should

⁷ *Joint Comments of the Associations*, ET Docket No. 04-295, RM-10865 (filed November 14, 2005).

be no less than 18 months from the time these important CALEA compliance questions are answered.

Respectfully submitted,

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January 19, 2006

CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Joint Comments of the National Telecommunications Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies in ET Docket No. 04-295, DA 05-3153 was served on this 19th day of January 2006 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons.

/s/ Gail Malloy

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