

**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	)	
Services	)	RM-10865
	)	

**VeriSign, Inc.**

**Reply to Comments**

**United States Telecom Association Petition for Reconsideration  
and for Clarification of the *CALEA Applicability Order***

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1. On 5 August 2005, the Commission adopted its *First Order* in this proceeding.<sup>1</sup> On 14 November, the United States Telecom Association (USTA) filed with the Commission a *Petition for Reconsideration and for Clarification of the CALEA Applicability Order (USTA Petition)* in this proceeding, requesting that the Commission: 1) "...should reconsider its decision to start the 18-month clock on November 14, 2005....[i]nstead, the Commission should start that clock on the effective date of its forthcoming order on CALEA capability requirements for broadband and VoIP providers, and 2) "...spell out the specific broadband access services that are “newly covered services” subject to the 18-month compliance timetable.”<sup>2</sup> On 4 January 2006, notice of the petition was published in the Federal Register, and comments were filed on 19 January 2006.<sup>3</sup> VeriSign, Inc., (VeriSign) hereby replies to those comments.

## **I. COMMENTORS IGNORE THE CALEA COLLABORATIVE PROCESS, AS WELL AS THE AMPLE SPECIFICATIONS FOR REQUIRED CAPABILITIES AND THEIR READY AVAILABILITY TODAY**

2. The small collection of parties supporting the USTA petition all pursued the same assertions that defy the plain language of CALEA and the facts in the proceeding – arguing that insufficient technical information existed for them to comply, and that the Commission was required to provide that information.<sup>4</sup> Variants on this theme included claims that the Commission’s lack of detailed specifications was “vesting of too much authority in law enforcement decisions.”<sup>5</sup>

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<sup>1</sup> See *First Report and Order and Further Notice of Proposed Rulemaking* in the Matter of Communications Assistance for Law Enforcement Act and Broadband and Access Services in ET Docket No. 04-295, RM-10865, Doc. FCC 05-153, 20 FCC Rcd 14989 (23 Sept 2005) (“First Order”).

<sup>2</sup> *USTA Petition* at 3.

<sup>3</sup> See 71 Fed. Reg. 345.

<sup>4</sup> See *Comments of the American Civil Liberties Union in Support of the United States Telecom Association’s Petition for Reconsideration and for Clarification of the CALEA Applicability Order*; *Comments of CTIA-The Wireless Association [ACLU Comments]*; *Comments of Global Crossing North America, Inc.*; *Joint Comments of the National Telecommunications Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies*; *Comments of the Satellite Industry Association on USTA Petition for Reconsideration*; *Comments of the Telecommunications Industry Association in Support of the United States Telecommunication Association Petition for Reconsideration of the CALEA Applicability Order [TIA Comments]*.

<sup>5</sup> ACLU Comments at 2.

3. All of these assertions ignore several years of extensive industry collaborative activity together with the FBI that has ensued to define the CALEA Sec. 103 capabilities for broadband and VoIP providers and turn them into detailed standards that have subsequently been implemented by vendors, service bureaus, and providers in products and services in the marketplace. Both VeriSign and DOJ in their opposing comments to the *USTA Petition* provided extensive details clarifying the record, and pointed out that there is no broadband or VoIP provider who cannot become fully compliant today – much less by 17 May 2007 – with the simple implementation of readily available products or the procurement of a cost-effective, competitive CALEA third party service bureau offerings such as those provided by VeriSign.<sup>6</sup>

4. After four years of collaboration between industry and law enforcement, followed by 18 months and two commenting cycles in the instant proceeding, it is time to get on with implementing the narrow and carefully determined steps to institute CALEA-based forensic capabilities. Substantial investments have been made within the industry to achieve this compliance capacity for providers, and a compliance date beyond 17 May 2007 represents an unnecessary delay in implementing these critical capabilities in the nation's IP-enabled public network infrastructure.

## **II. CALEA CAPABILITY IMPLEMENTATIONS SHOULD BEGIN ENSUING NOW, NOT AFTER THE TECHNOLOGY IS IN WIDESPREAD USE**

5. One commenting party sought to advance the novel argument that the Commission should “captur[e] a date reflective of when the technology actually is in widespread use, rather than initial deployment, [which] would provide appropriate time for the standards process to function and promote the introduction into the market of innovative products and services.”<sup>7</sup>

6. In addition to ignoring the long-existing CALEA standards process, as well as implementations of those standards that has had no effect on innovative products and

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<sup>6</sup> See *Opposition of VeriSign, Inc. - United States Telecom Association Petition for Reconsideration and for Clarification of the CALEA Applicability Order; Opposition of the United States Department of Justice to Petition for Reconsideration Filed by the United States Telecom Association.*

<sup>7</sup> *TIA Comments* at 3.

services, it seems like bad public policy making to wait for technology to be in widespread use before requiring CALEA forensics capabilities. In light of the rapid transition of the public telecommunication infrastructure to IP-enabled systems and VoIP now underway, it would be especially inappropriate for the Commission to delay implementing the *First Order* CALEA requirements. At this point in the ongoing technological transition, it is relatively easy and inexpensive for vendors to include the required network forensic features in the new systems being built, and for service providers to implement the capabilities to meet CALEA mandates. The ensuing 18-month period is precisely when it makes good public policy sense to uniformly implement the capabilities. Delaying implementation of the CALEA capabilities would potentially result in more costly retrofitting of systems to become compliant at a later date.

7. As VeriSign noted in its *Opposition* to the USTA Petition, the Commission's 18 month deadline for a digital forensics law enforcement support capability - imposed nearly 8 years after the technology first began to be standardized for introduction as part of the national public telecommunication infrastructure, three years after commercial solutions appeared in the marketplace, and at a point where use of the technology in U.S. households is projected to grow from 400,000 in 2004 to 12.1 million in 2009<sup>8</sup> - is highly appropriate. Indeed, exercising Title I authority, the Commission has adopted public safety E911 capability requirements within much shorter timeframes.<sup>9</sup> Whether the capability requirements are for public safety, preventing cyberstalking, forensic support for law enforcement, infrastructure protection, consumer protection, or national security/emergency preparedness, such actions are consistent with the Commission's authority accorded by Congress and affirmed by the Court.<sup>10</sup>

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<sup>8</sup> See *Broadband Telephony: Leveraging Voice Over IP to Facilitate Competitive Voice Services*, Jupiter Research, Oct 2004. See also, Cybertelecom, VoIP Statistics <<http://www.cybertelecom.org/data/voip.htm>>

<sup>9</sup> See *First Report and Order and Notice of Proposed Rulemaking*, In the Matters of IP-Enabled Services (WC Docket No. 04-36) and E911 Requirements for IP-Enabled Service Providers (WC Docket No. 05-196), Doc. FCC 05-116, 3 June 2005.

<sup>10</sup> See *id.* at para. 4; *National Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 125 S. Ct. 2688 (2005) (hereinafter referred to as *Brand-X*).

### **III. THE *USTA PETITION* TO DELAY AVAILABILITY OF CRITICAL FORENSIC CAPABILITIES SHOULD BE DENIED**

8. The Commission should deny the *USTA Petition* with respect to any delay in the existing 18 month compliance deadline. Furthermore, a delay in the implementation deadline of another six to twelve months beyond the 18 months already established, flies in the face of clear intent of Congress in recently enacting the *Prevent Cyberstalking* provisions that provide both the authority to the FCC and the necessary forensics to law enforcement for all IP-enabled technologies to enforce the applicable law.<sup>11</sup>

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<sup>11</sup> See H.R. 3402, *Violence Against Women and Department of Justice Reauthorization Act of 2005* (Enrolled as Agreed to or Passed by Both House and Senate), Public Law No. 109-162; President Signs H.R. 3402, the "Violence Against Women and Department of Justice Reauthorization Act of 2005," Office of the Press Secretary, The White House, Jan 5, 2006. See also, House Report 109-233 - Department of Justice Appropriations Authorization Act, Fiscal Years 2006 Through 2009.