

LEAs.¹⁶ Further, we noted that external TTP systems “might provide economies of scale for small carriers.”¹⁷ Therefore, we believe that a revised IRFA is not necessary on any of these issues.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules.¹⁸ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.²⁰ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).²¹

1. Telecommunications Service Entities

a. Wireline Carriers and Service Providers

8. *Small Incumbent Local Exchange Carriers (LECs).* We have included small incumbent LECs present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”²² Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.²³ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁴ According to Commission data,²⁵ 1,303

¹⁶ *Id.* 19 FCC Rcd at 15714-16, paras. 69-76.

¹⁷ *Id.* 19 FCC Rcd at 15715, para. 72.

¹⁸ 5 U.S.C. §§ 603(b)(3), 604(a)(3).

¹⁹ 5 U.S.C. § 601(6).

²⁰ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

²¹ 15 U.S.C. § 632.

²² 15 U.S.C. § 632.

²³ Letter from Jere W. Glover, Chief Counsel for Advocacy, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

²⁴ 13 C.F.R. § 121.201, NAICS code 517110.

carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.²⁶

10. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁷ According to Commission data,²⁸ 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are "Shared-Tenant Service Providers," and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are "Other Local Service Providers." Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.²⁹

11. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁰ According to Commission data,³¹ 654 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 652 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.³²

²⁵ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5-5 (June 2004) ("Trends in Telephone Service").

²⁶ See U.S. Census Bureau, 2002 Economic Census, Industry Series: "Information," Table 2, Comparative Statistics for the United States (1997 NAICS Basis): 2002 and 1997, NAICS code 513310 (issued Nov. 2004). The preliminary data indicate that the total number of "establishments" increased from 20,815 to 27,891. In this context, the number of establishments is a less helpful indicator of small business prevalence than is the number of "firms," because the latter number takes into account the concept of common ownership or control.

²⁷ 13 C.F.R. § 121.201, NAICS code 517110.

²⁸ "Trends in Telephone Service" at Table 5.3.

²⁹ See *supra* n.26.

³⁰ 13 C.F.R. § 121.201, NAICS code 517110.

³¹ "Trends in Telephone Service" at Table 5.3.

³² See *supra* n.26.

12. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³³ According to Commission data,³⁴ 316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.³⁵

13. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁶ According to Commission data,³⁷ 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.³⁸

14. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁹ According to Commission data,⁴⁰ 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, 88 are estimated to have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that all or the majority of prepaid calling card providers are small entities that may be affected by our action.

b. Wireless Telecommunications Service Providers

15. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

16. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"⁴¹ and "Cellular and Other Wireless

³³ 13 C.F.R. § 121.201, NAICS code 517110.

³⁴ "Trends in Telephone Service" at Table 5.3.

³⁵ See *supra* n.26.

³⁶ 13 C.F.R. § 121.201, NAICS code 517110.

³⁷ "Trends in Telephone Service" at Table 5.3.

³⁸ See *supra* n.26.

³⁹ 13 C.F.R. § 121.201, NAICS code 517310.

⁴⁰ "Trends in Telephone Service" at Table 5.3.

⁴¹ 13 C.F.R. § 121.201, NAICS code 517211.

Telecommunications.”⁴² Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.⁴³ Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.⁴⁴ Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.⁴⁵ Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.⁴⁶ Thus, under this second category and size standard, the majority of firms can, again, be considered small. In addition, limited preliminary census data for 2002 indicate that the total number of paging providers decreased approximately 51 percent from 1997 to 2002.⁴⁷ In addition, limited preliminary census data for 2002 indicate that the total number of cellular and other wireless telecommunications carriers increased approximately 321 percent from 1997 to 2002.⁴⁸

17. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category “Cellular and Other Wireless Telecommunications.”⁴⁹ Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.⁵⁰ Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.⁵¹ Thus, under this category and size standard, the great majority of firms can be considered small. Also, according to Commission data, 437 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services,

⁴² 13 C.F.R. § 121.201, NAICS code 517212.

⁴³ U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

⁴⁴ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1000 employees or more.”

⁴⁵ U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

⁴⁶ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1000 employees or more.”

⁴⁷ See U.S. Census Bureau, 2002 Economic Census, Industry Series: “Information,” Table 2, Comparative Statistics for the United States (1997 NAICS Basis): 2002 and 1997, NAICS code 513321 (issued Nov. 2004). The preliminary data indicate that the total number of “establishments” decreased from 3,427 to 1,664. In this context, the number of establishments is a less helpful indicator of small business prevalence than is the number of “firms,” because the latter number takes into account the concept of common ownership or control.

⁴⁸ See U.S. Census Bureau, 2002 Economic Census, Industry Series: “Information,” Table 2, Comparative Statistics for the United States (1997 NAICS Basis): 2002 and 1997, NAICS code 513322 (issued Nov. 2004). The preliminary data indicate that the total number of “establishments” increased from 2,959 to 9,511. In this context, the number of establishments is a less helpful indicator of small business prevalence than is the number of “firms,” because the latter number takes into account the concept of common ownership or control.

⁴⁹ 13 C.F.R. § 121.201, NAICS code 517212.

⁵⁰ U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

⁵¹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1000 employees or more.”

which are placed together in the data.⁵² We have estimated that 260 of these are small, under the SBA small business size standard.⁵³

18. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census category, "Cellular and Other Wireless Telecommunications."⁵⁴ Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.⁵⁵ Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.⁵⁶ Thus, under this category and associated small business size standard, the majority of firms can be considered small.

19. In the Paging *Third Report and Order*, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁵⁷ A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.⁵⁸ The SBA has approved these small business size standards.⁵⁹ An auction of Metropolitan Economic Area licenses closed on March 2, 2000.⁶⁰ Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. Also, according to Commission data, 375 carriers reported that they were engaged in the provision of paging and messaging services.⁶¹ Of those, we estimate that 370 are small, under the SBA-approved small business size standard.

20. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction.⁶² A "small business" is an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these

⁵² "Trends in Telephone Service" at Table 5.3.

⁵³ *Id.*

⁵⁴ 13 C.F.R. § 121.201, NAICS code 517212.

⁵⁵ U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

⁵⁶ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

⁵⁷ *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, *Third Report and Order and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 10943, 11068-70, paras. 291-295, 62 FR 16004 (Apr. 3, 1997).

⁵⁸ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (Dec. 2, 1998) (SBA Dec. 2, 1998 letter).

⁵⁹ *Id.*

⁶⁰ Public Notice, "929 and 931 MHz Paging Auction Closes," DA 00-508, March 6, 2000.

⁶¹ "Trends in Telephone Service" at Table 5.3.

⁶² Public Notice, "Auction of Wireless Communications Services, Auction Notes and Filing Requirements for 128 WCS Licenses Scheduled for April 15, 1997," DA 97-386, Feb. 21, 1997.

small business size standards.⁶³ The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as “very small business” entities, and one that qualified as a “small business” entity.

21. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications” services.⁶⁴ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁶⁵ According to Commission data, 437 carriers reported that they were engaged in the provision of wireless telephony.⁶⁶ We have estimated that 260 of these are small under the SBA small business size standard.

22. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.⁶⁷ For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁶⁸ These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.⁶⁹ No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.⁷⁰ On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

c. Satellite Telecommunications Service Providers

23. Satellite telecommunications service providers include satellite operators and earth station operators. The Commission has not developed a definition of small entities applicable to such operators. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable

⁶³ SBA Dec. 2, 1998 letter, *supra* n.58.

⁶⁴ 13 C.F.R. § 121.201, NAICS code 517212.

⁶⁵ *Id.*

⁶⁶ “Trends in Telephone Service” at Table 5.3.

⁶⁷ See *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, *Report and Order*, 11 FCC Rcd 7824, 61 FR 33859 (July 1, 1996) (*PCS Order*); see also 47 C.F.R. § 24.720(b).

⁶⁸ See *PCS Order*, 11 FCC Rcd 7824.

⁶⁹ See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5332, 59 FR 37566 (July 22, 1994).

⁷⁰ FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. Jan. 14, 1997); see also *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, WT Docket No. 97-82, *Second Report and Order*, 12 FCC Rcd 16436, 62 FR 55348 (Oct. 24, 1997).

to *Satellite Telecommunications*. This definition provides that a small entity is expressed as one with \$13.5 million or less in annual receipts.⁷¹ 1997 Census Bureau data indicate that, for 1997, 273 satellite communication firms had annual receipts of under \$10 million. In addition, 24 firms had receipts for that year of \$10 million to \$24,999,990.

2. Cable and OVS Operators

24. *Cable and Other Program Distribution*. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material."⁷² The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having \$13.5 million or less in annual receipts.⁷³ According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.⁷⁴ Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.⁷⁵ Thus, under this size standard, the majority of firms can be considered small.

25. *Cable Companies and Systems*. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.⁷⁶ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.⁷⁷ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.⁷⁸ Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.⁷⁹ Thus, under this second size standard, most cable systems are small.

26. *Cable System Operators*. The Communications Act of 1934, as amended, also contains a size

⁷¹ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517410.

⁷² U.S. Census Bureau, 2002 NAICS Definitions, "517510 Cable and Other Program Distribution"; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁷³ 13 C.F.R. § 121.201, NAICS code 517510.

⁷⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

⁷⁵ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

⁷⁶ 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

⁷⁷ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

⁷⁸ 47 C.F.R. § 76.901(c).

⁷⁹ Warren Communications News, *Television & Cable Factbook 2006*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”⁸⁰ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.⁸¹ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.⁸² We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,⁸³ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small and

27. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.⁸⁴ The SBA has created a small business size standard for Cable and Other Program Distribution.⁸⁵ This standard provides that a small entity is one with \$12.5 million or less in annual receipts. The Commission has certified a large number of OVS operators, and some of these are currently providing service.⁸⁶ Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that it does not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS. Given this fact, the Commission concludes that those entities might qualify as small businesses, and therefore may be affected by the rules and policies adopted herein.

3. Internet and other Information Service Providers

28. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs “provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.”⁸⁷ Under the SBA size standard, such a business is small if it has average annual receipts of \$23 million or less.⁸⁸ According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.⁸⁹ Of these, 2,437 firms had annual receipts of under \$10 million, and 47

⁸⁰ 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

⁸¹ 47 C.F.R. § 76.901(f); see Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

⁸² These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

⁸³ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. See 47 C.F.R. § 76.909(b).

⁸⁴ See 47 U.S.C. § 573.

⁸⁵ 13 C.F.R. § 121.201, NAICS code 518111.

⁸⁶ See <http://www.fcc.gov/mb/ovs/csovsarc.html> and <http://www.fcc.gov/mb/ovs/csovsccr.html> (each visited in April 2006).

⁸⁷ U.S. Census Bureau, “2002 NAICS Definitions: 518111 Internet Service Providers” (Feb. 2004) <www.census.gov>.

⁸⁸ 13 C.F.R. § 121.201, NAICS code 514191, “On-Line Information Services.”

⁸⁹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 518111 (issued November 2005).

firms had receipts of \$10 million or more but less than \$25 million.⁹⁰ Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

29. *All Other Information Services.* “This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).”⁹¹ Our action pertains to VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts.⁹² According to Census Bureau data for 1997, there were 195 firms in this category that operated for the entire year.⁹³ Of these, 172 had annual receipts of under \$5 million, and an additional nine firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

30. This *Second R&O* requires that facilities-based broadband Internet access providers and providers of interconnected VoIP submit monitoring reports to the Commission to ensure their CALEA compliance by the May 14, 2007 deadline established by the *First R&O*. The *Second R&O* also requires that, within 90 days of its effective date, facilities-based broadband Internet access providers and providers of interconnected VoIP who were newly-identified in the *First R&O* as subject to CALEA submit system security statements to the Commission. Additionally, the *Second R&O* requires that each carrier that has a CALEA section 107(c) petition on file with the Commission submit to us a letter documenting that the carrier’s equipment, facility, or service qualifies for section 107(c) relief under the October 25, 1998 cutoff for such relief. The *Second R&O* contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. They will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

31. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁹⁴

⁹⁰ *Id.* An additional 45 firms had annual receipts of \$25 million or more.

⁹¹ U.S. Census Bureau, “2002 NAICS Definitions: 519190 All Other Information Services” (Feb. 2004) <www.census.gov>.

⁹² 13 C.F.R. § 121.201, NAICS code 519190.

⁹³ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 514199 (issued Oct. 2000). This category was created for the 2002 Economic Census by taking a portion of the superseded 1997 category, “All Other Information Services,” NAICS code 514199. The data cited in the text above are derived from the superseded category.

⁹⁴ 5 U.S.C. § 603(c).

32. The need for the regulations adopted herein is mandated by Federal legislation. In the *Second R&O*, we find that, under the express terms of the CALEA statute, all carriers subject to CALEA are obliged to become CALEA-compliant without exception. However, in the previously-issued *Further Notice of Proposed Rulemaking* in this proceeding (a companion document to the *First R&O*), we are considering two alternatives: (1) exempting from CALEA certain classes or categories of facilities-based broadband Internet access providers – notably small and rural providers and providers of broadband networks for educational and research institutions, and (2) requiring something less than full CALEA compliance for certain classes or categories of providers, including smaller providers.⁹⁵

33. In the *Second R&O*, we find that, within 90 days of the effective date of the *Second R&O*, facilities-based broadband Internet access providers and providers of interconnected VoIP who were newly-identified in the *First R&O* as subject to CALEA must submit system security statements to the Commission. Ensuring that any interception of a carrier's communications or access to call-identifying information can be activated only in accordance with a court order or other lawful authorization and with the affirmative intervention of an employee of the carrier acting in accordance with regulations prescribed by the Commission is required by section 105 of CALEA and section 229(b) of the Communications Act.⁹⁶ Further, system security compliance within 90 days is specified for telecommunications carriers in section 64.2105 of the Commission's rules.⁹⁷ While we considered the alternative of modifying this 90-day compliance period for facilities-based broadband Internet access providers and providers of interconnected VoIP who were newly-identified in the *First R&O* as subject to CALEA, we concluded that would result in disparate treatment of these newly-identified providers.

34. In the *Second R&O*, we also find that sections 107(c) and 109(b) of CALEA provide only limited and temporary relief from compliance requirements, and that they are complementary provisions that serve different purposes, which are, respectively: (1) extension of the CALEA section 103 compliance deadline; and, (2) recovery of CALEA-imposed costs. We considered the alternative of a less stringent interpretation of these two sections, but concluded that, in designing them, Congress carefully balanced a reasonable compliance period against a firm deadline. Accordingly, we conclude that the statutory language does not permit us to adopt a less stringent interpretation. However, we note that section 109(b) lists 11 criteria for determining whether CALEA compliance is "reasonably achievable" by a particular telecommunications carrier, and one of these criteria is "[t]he financial resources of the telecommunications carrier."⁹⁸ Accordingly, small carriers may petition for relief under this CALEA section, thus possibly mitigating, in some cases, the economic burden of compliance with rules adopted herein.

35. In the *Second R&O*, we also find that, in addition to the enforcement remedies through the courts available to LEAs under CALEA section 108, we may take separate enforcement action under section 229(a) of the Communications Act against carriers that fail to comply with the CALEA statute. We considered an alternative, recommended by some commenters, that authority to enforce CALEA lies exclusively with the courts, but we conclude that we have the authority to prescribe CALEA rules and investigate the compliance of those carriers and providers subject to such rules. We also conclude that there should be no disparate treatment of small entities with regard to CALEA enforcement because this would be inconsistent with the statute.

⁹⁵ *First R&O* at 20 FCC Rcd 15013-14, paras. 48-52.

⁹⁶ 47 U.S.C. §§ 1004 and 229(b), respectively.

⁹⁷ 47 C.F.R. § 64.2105. We note that this section of the rules is herein being transferred to section 1.20005, 47 C.F.R. § 1.20005.

⁹⁸ 47 U.S.C. § 1008(b)(1)(H).

36. Finally, in the *Second R&O*, we find that carriers must generally pay for CALEA development and implementation costs incurred after January 1, 1995, but we acknowledge that they may recover costs from other sources, such as from their subscribers. Some commenters argue that carriers with small subscriber bases are less able to bear the costs of CALEA implementation; however, to the extent CALEA costs prohibit these carriers from reasonably achieving CALEA compliance, we again note that CALEA section 109(b) provides a remedy.⁹⁹ The carriers can seek a determination from the Commission that CALEA compliance is not reasonably achievable, and, upon such a determination, the Attorney General may agree to pay the costs of compliance for these carriers, or the carriers will be deemed to be in compliance.¹⁰⁰ We believe our approach represents a reasonable accommodation for small carriers.

F. Report to Congress

37. The Commission will send a copy of the *Second R&O and MO&O*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.¹⁰¹ In addition, the Commission will send a copy of the *Second R&O and MO&O* and FRFA to the Chief Counsel for Advocacy of the SBA. A copy of the *Second R&O and MO&O* and FRFA (or summaries thereof) will also be published in the Federal Register.¹⁰²

⁹⁹ 47 U.S.C. § 1008(b).

¹⁰⁰ 47 U.S.C. § 1008(b)(2).

¹⁰¹ See 5 U.S.C. § 801(a)(1)(A).

¹⁰² See 5 U.S.C. § 604(b).

APPENDIX D STANDARDS FOR PACKET-MODE TECHNOLOGIES

This Appendix updates corresponding Appendix D of the *Notice*.¹⁰³ The discussion below is informational only, and does not represent Commission views regarding any of the packet-mode standards.

A. Standards for packet content

Subcommittee TR45.2 of the TIA developed standard J-STD-025, *Lawfully Authorized Electronic Surveillance*, to serve as a "safe harbor" for wireline, cellular, and broadband PCS carriers and manufacturers under section 107(a) of CALEA. J-STD-025 was jointly published in December 1997 by TIA and Committee T1 (the latter sponsored by the Alliance for Telecommunications Industry Solutions). J-STD-025 defines services and features required by wireline, cellular, and broadband PCS carriers to support lawfully authorized electronic surveillance, and specifies the interfaces for delivering the intercepted communications (*i.e.*, content) and call-identifying information to a LEA. J-STD-025 also includes standards for some packet-mode communications capability (content only)¹⁰⁴ and a location information requirement.¹⁰⁵ The publishers of the J-Standard subsequently revised it into J-STD-025-A (Revision A of the J-Standard) to incorporate the changes adopted by the Commission in its initial CALEA proceeding to include the six DOJ/FBI "punch list" capabilities.¹⁰⁶ J-STD-025-A was issued in May 2000 and became an American National Standard on April 16, 2003.

J-STD-025, J-STD-025-A, and J-STD-025-B (described below) require that a Packet Data intercept access point¹⁰⁷ shall access data packets sent or received by the equipment, facilities, or services of an intercept subject when a packet-mode data service is provided and that packets shall be sent to a LEA when they are intercepted. TIA states that for low-volume communications (*e.g.*, short messaging service, or "SMS"), the content may be included in a packet envelope message that may be provided to the LEA in a CII channel, but for high-volume communications (*e.g.*, most packet data applications) the entire packet stream must be provided to the LEA in a content channel. A Packet Data intercept access point provides access to one or more of the following packet-mode data services:

- ISDN user-to-user signaling;
- ISDN D-channel X.25 packet services;

¹⁰³ *Notice* at 15764.

¹⁰⁴ Section 3 of J-STD-025 describes packet-mode as a "communication where individual packets or virtual circuits of a communication within a physical circuit are switched or routed by the accessing telecommunication system. Each packet may take a different route through the intervening network(s)."

¹⁰⁵ J-STD-025 includes a parameter that would identify the location of a subject's "mobile terminal" whenever this information is reasonably available at the Intercept Access Point and its delivery to law enforcement is legally authorized. Location information would be available to the law enforcement agency irrespective of whether a call content channel or a call data channel is employed. See J-STD-025 at § 6.4.6 and §§ 5.4.1-5.4.8, Tables 1, 5, 6, and 8.

¹⁰⁶ See *Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, 14 FCC Rcd 16794 (1999).

¹⁰⁷ The intercept access point is the point within a telecommunication system where communications or call-identifying information of an intercept subject's equipment, facilities and services are accessed.

- *SMS for cellular and PCS (e.g., Narrowband Advanced Mobile Phone System, TIA/EIA-41, PCS1900, or Global Systems for Mobile Communications (“GSM”)-based technologies);*
- *Wireless packet-mode data services (e.g., Cellular Digital Packet Data, CDMA, Time Division Multiple Access, PCS1900, or GSM-based packet-mode data services);*
- *X.25 services;*
- *IP services;*
- *Paging (one-way or two-way); and*
- *Packet-mode data services using traffic channels.*

B. Standards for packet call-identifying information

This section reviews various existing standards and technical requirements for providing packet call-identifying information to LEAs. Each standard is written to apply to a specific set of packet services or technology, or specific combinations of services and technologies, since what is reasonably available call-identifying information may vary by service and technology.

(1) TIA, ATIS, and J-STD-025-B

Subsequent to its issuance of J-STD-025-A, TIA produced J-STD-025-B, another revision of the J-Standard. The purpose of the J-STD-025-B revision was to add requirements for support of packet mode call-identifying information. J-STD-025-B was approved as a TIA standard and an ATIS trial use standard in January 2004.¹⁰⁸

J-STD-025-B provides standards in three areas, two for wireless carriers and one for wireline carriers. First, it includes its own text for surveillance of Internet access services using cdma2000^{®109} technology, which is used by many commercial wireless service providers. Second, it references in the current trial use standard to 3rd Generation Partnership Project (“3GPP”) specifications for surveillance of both Internet access and voice over packet using UMTS wireless technology.¹¹⁰ The 3GPP specifications are aligned with ATIS standard T1.724, and it is expected that the final version of J-STD-025-B will refer directly to T1.724 instead of the 3GPP specifications.¹¹¹ In January 2004, ANSI approved ATIS standard T1.724-2004, *UMTS Handover Interface for Lawful Interception*. T1.724 supports surveillance of both Internet access services and Session Initiation Protocol (“SIP”)-based multimedia (including voice) over packet services using UMTS or General Packet Radio Service technology.

Finally, J-STD-025-B references to ATIS standard T1.678 for surveillance of voice over packet services provided over wireline. In January 2004 ANSI approved ATIS standard T1.678-2004, *Lawfully Authorized Electronic Surveillance (“LAES”) for Voice over Packet Technologies in Wireline Telecommunications Networks*. T1.678 supports surveillance of VoIP arrangements using two call set-up protocols: SIP and H.323-based VoIP services.

¹⁰⁸ We observed in the *Notice* that TIA had indicated its intent to develop another revision to the J-Standard, titled J-STD-025-C; see *Notice* at 15765, n.419. However, TIA has not recently indicated that this release is still planned.

¹⁰⁹ cdma2000 is a registered trademark of TIA.

¹¹⁰ 3G TS 33.108, 3rd Generation Partnership Project: *Technical Specification Group Services and System Aspects: 3G Security; Handover interface for Lawful Interception*.

¹¹¹ Presentation by Nortel Networks to the FCC, March 25, 2004.

As mentioned above, J-STD-025-B refers to ATIS standard T1.678 for providing LEAs with access to call-identifying information on voice over packet services provided over wireline. In addition, J-STD-025-B refers to international standards aligned with ATIS standard T1.724 for providing LEAs with access to call-identifying information on both Internet access and voice over packet using UMTS wireless technology.

(2) Cable Television Laboratories (CableLabs®) specification¹¹²

As discussed in the *Notice*, CableLabs®, starting in 1999, has issued specifications for lawfully authorized electronic surveillance for cable operators using systems compliant with CableLabs® PacketCable™¹¹³ specifications for multi-media services such as IP telephony.¹¹³ Version I01 of the PacketCable™ 1.5 Electronic Surveillance Specification (PKT-SP-ESP1.5-I01-050128) was released on January 28, 2005 and is the latest specification, superseding all previous documents.¹¹⁴

¹¹² CableLabs® is a trademark of Cable Television Laboratories, Inc.

¹¹³ *Notice* at 15766-67.

¹¹⁴ CableLabs® has continued to work with LEAs to improve its specifications for lawfully authorized electronic surveillance. As discussed in the *Notice* (at 15766-67), Version I01 of the PacketCable™ Electronic Surveillance Specification (PKT-SP-ESP-I01-991229) was released on December 29th, 1999. Version I02 was issued on August 1, 2003. Based on FBI input, Version I03 was released on January 13th, 2004. Version I04 was released on July 23rd, 2004. The FBI has continued to work with the CableLabs® team, resulting in the current ESP1.5-I01 release.

APPENDIX E
SECTION 109(B)(1) PETITIONS FOR COST-SHIFTING RELIEF:
FILING INSTRUCTIONS

I. PURPOSE

CALEA section 109(b) permits a telecommunications carrier covered by CALEA to file a petition with the FCC and an application with the Department of Justice (DOJ) to request that DOJ pay the costs of the carrier's CALEA compliance (cost-shifting relief) with respect to any equipment, facility or service installed or deployed after January 1, 1995. First, the carrier must file a section 109(b)(1) petition with the FCC and prove that, based on one or more of the criteria set forth in section 109(b)(1)(A)-(K), implementation of at least one particular solution that would comply with a particular section 103 capability requirement is not "reasonably achievable." The filing instructions for this section 109(b)(1) petition are set forth in this appendix. Second, if the Commission grants a section 109(b)(1) petition, the carrier must then apply to DOJ, pursuant to section 109(b)(2), to pay the reasonable costs of compliance for one of the solutions proposed in the section 109(b)(1) petition. DOJ may then either pay the reasonable costs of compliance or deny the application. If DOJ denies the section 109(b)(2) application, then the carrier is deemed to be CALEA compliant for the facilities, networks, and services (services) described in the section 109(b)(1) petition until those services are replaced, significantly upgraded or otherwise undergo a major modification.

II. EFFECT OF FILING

The Commission shall rule on the petition within one year after the date such petition was filed. The filing of a petition does not toll the effective date that a carrier must become CALEA-compliant or shield a carrier from CALEA enforcement by law enforcement.

III. FILING INSTRUCTIONS AND PROCEDURES

A. Where to File and Number of Copies

All petitioners must file an original and two copies addressed to:

Secretary
Federal Communications Commission
ATTN: CALEA 109(b)(1)
445 12th Street, S.W.
Washington, D.C. 20554

B. Filing Copies with the FBI

A carrier shall also send one copy of the petition to:

CALEA Implementation Unit
14800 Conference Center Drive, Suite 300
Chantilly, Virginia 20151-0450.

C. Confidentiality Process

All filings, orders and any other information provided in a section 109(b)(1) proceeding shall be treated as presumptively confidential pursuant to section 0.457(g) of the Commission's rules,¹¹⁵ and must be filed under seal by the petitioner. Petitioners must mark the top of each page of their petitions: "Confidential – Not for Public Inspection." Persons seeking access to any information from a section 109(b)(1) proceeding must request such access pursuant to section 0.461 of the Commission's rules.¹¹⁶

IV. Required Petitioner Identification Information

- A. Name of carrier, address, and name of carrier contact person.
- B. Form 499A file number for petitioner (if applicable).
- C. Petitioner FCC Registration Number and/or Tax Payer Identification Number.
- D. The information required in paragraphs A-C shall be provided on page one of the petition.

V. FORMAT OF SECTION 109(b)(1) PETITIONS

A. Include an executive summary at the beginning of each petition that, in one to two paragraphs only, summarizes the petitioner's arguments.

B. Include a Table of Contents that clearly indicates to the reader where to find the (1) facilities, networks, and services (services) at issue, (2) the CALEA section 103 capability requirement(s) at issue, (3) the petitioner's proposed solution(s), including a cost analysis of the solution(s), to satisfy the section 103 capability requirement(s) at issue, (4) the section 109(b)(1) criterion under which the petitioner will argue that compliance is not reasonably achievable, and (5) petitioner's due diligence showing.

VI. CONTENT OF SECTION 109(b)(1) PETITIONS

- A. **Identification Of Specific Facilities, Networks And Services (Services) And CALEA Section 103 Capability Requirements**
 - 1. Identify the facilities, networks, and services (services) that are the subject of the petition.
 - 2. Identify which CALEA section 103 capability requirement(s) is the subject of the petition.

¹¹⁵ 47 C.F.R. § 0.457(g).

¹¹⁶ 47 C.F.R. § 0.461.

B. Identification Of A Solution Or Solutions That, If Implemented, Would Make The Service At Issue Compliant With The Applicable CALEA Section 103 Capability Requirement(s)

1. The petition must present at least one solution for which the petitioner argues the costs should be shifted to DOJ. The petition must include evidence that the petitioner engaged in due diligence to identify a reasonably achievable solution, but that, despite this due diligence, the solution or solutions presented in the petition are not reasonably achievable by the petitioner. This due diligence standard is set forth in more detail in Section III.B.2.c. of this *Second R&O*. At a minimum, a petitioner must present evidence of a specific CALEA solution, of the petitioner's due diligence efforts to make this solution reasonably achievable, and how the petitioner ultimately determined that it could not implement the specified CALEA solution without incurring "significant difficulty or expense." To the extent more than one CALEA solution is available, the petitioner must identify each of these solutions and demonstrate that petitioner exercised due diligence in examining each of those solutions and why it determined that none of them was reasonably achievable.

2. Due diligence will be measured by a carrier's resources, and the number of solutions a carrier should present in its petition shall be proportionate to the amount of a carrier's resources. Due to their greater resources, larger carriers shall be expected to examine and propose more solutions in their petitions in order to demonstrate that the costs of a CALEA solution are not reasonably achievable for those carriers and therefore should be shifted to DOJ. Smaller carriers need not examine as many solutions in their petitions, but must examine as many solutions as their resources permit.

3. To the extent that other solutions exist in the marketplace, such as a solution offered by a third-party provider, that are less expensive than the solutions proffered in a petition, the petitioner must explain why the less expensive solutions are not reasonably achievable pursuant to a cost analysis, as described in more detail below.

C. Special Instructions for Packet Services Claims of Not Reasonably Achievable

1. Identify each packet service to be covered by this petition and the date that service was initially offered to the public.

2. For each packet service, identify and list all intercept access points to which this petition applies. (These should be the intercept access points associated with the least cost solution, as discussed in paragraphs 4-5 below.) Provide the name of the manufacturer, the model, and the type of network equipment (*e.g.*, router, DSLAM, ATM switch, soft switch, SIP server, or IP-PSTN gateway, CMTS (cable modem termination system), CMS (call management system), media gateway, or media gateway controller) currently in use at each access point. Also provide the date of initial installation of the equipment in the service provider's network, the generic software release currently loaded on the equipment and the date of its installation in the service provider's network.

Description of Alternative CALEA Solutions and Cost Analysis

3. For each packet service, identify the applicable industry surveillance standards or specifications (*e.g.*, TIA J-STD-025-A, TIA J-STD-025-B, ANSI T1.678, ANSI T1.724, and PACKETCABLE PKT-SP-ESP1.5-I01-050128) to which the service provider intends to conform. If no applicable standard exists, and the service provider intends to implement a custom solution, indicate "custom solution" and go to 4, below.

4. For each packet service, identify and describe each CALEA solution the service provider has considered. As part of the discussion of each solution, describe the type and function(s) of network equipment used at the intercept access points, and provide a count of such equipment by manufacturer name and model. Also, include a discussion and count of equipment or software upgrades and additional components such as mediation devices and/or probes that are required to implement each solution. Indicate if solutions involve the use of a trusted third party CALEA service provider, association or cooperative, and identify the functions the third party provider is expected to perform. Identify the least expensive solution or solutions.

5. Provide estimates of the capital cost (*i.e.*, the engineered, furnished, and installed ("EF&I") costs of hardware and software) of implementing each considered solution in the service provider's network. Where applicable, include the estimated costs of using a third party CALEA service provider. Support cost estimates with manufacturer/third party provider documentation. Also provide estimates of operations costs. Demonstrate how each estimate was derived in a manner that permits the results to be verified and duplicated. Provide a detailed cost estimate for the least expensive solution, and enough information regarding the other solutions to verify that they are not the least expensive solutions.¹¹⁷ Express the estimated total cost of each alternative solution in terms of one-time costs plus recurring costs for a specified number of years. Calculate the present value of each alternative in today's (date of petition) dollars. State the discount rate used and the rationale for its selection, and the length of the study period.

D. Special Instructions for Circuit Services Claims of Not Reasonably Achievable

1. The petition should identify, where applicable:
 - a. The date the switch was initially installed in the service provider's network and the installation date of the most recent software generic; and
 - b. The identity of the carrier's switching equipment (by manufacturer; type and model; software version or generic currently operating; and Common Language Location Identification (CLLI) Code and geographic areas served).

Description of Alternative CALEA Solutions and Cost Analysis

2. Describe each CALEA solution the service provider has considered and identify the least expensive solution(s). For each solution considered, include a discussion and count of required equipment or software upgrades and additional components such as adjunct processors that are required to implement section 103 assistance capabilities.¹¹⁸ Indicate if the solutions involve the use of a trusted third party CALEA service provider, association or cooperative, and the functions the third party provider is expected to perform.

3. Provide estimates of the capital cost (*i.e.*, the engineered, furnished, and installed ("EF&I") costs of hardware and/or software) of implementing each solution described above in the

¹¹⁷ For example, two solutions may have intercept access points at the same physical location. However, the first solution may require the installation of a \$10,000 probe at each access point, while the second solution may require the installation of software at each access point at the cost of \$3000 per access point. Assuming all other costs are the same for the two solutions, the software solution is clearly the lower cost.

¹¹⁸ 47 U.S.C. § 1002. See also *Lawfully Authorized Electronic Surveillance Joint Standard*, J-STD-025-B (TIA December, 2003).

service provider's network. Where applicable, include the estimated costs of using a trusted third party CALEA service provider. Support all estimates with manufacturer/third party service provider documentation. Also provide estimates of operations costs for each solution. Demonstrate how each estimate was derived in a manner that permits the results to be verified and duplicated. Provide a detailed cost estimate for the least expensive solution, and enough information regarding the other solutions to demonstrate that they are not the least expensive solution.¹¹⁹ Express the estimated total cost of each alternative solution in terms of one-time costs plus recurring costs for a specified number of years. Calculate the present value of each alternative in today's (date of petition) dollars. State the discount rate used and the rationale for its selection, and the length of the study period.

E. Arguments That CALEA Compliance Is Not Reasonably Achievable On Grounds Of Cost

1. Explain and produce evidence how the identified solution or, in the case of multiple solutions, how all solutions would impose a "significant difficulty or expense" on the petitioner as that phrase is defined in the eleven statutory criteria set forth in CALEA section 109(b)(1)(A)-(K). See paragraph 54 of this *Second R&O* for further guidance on these eleven statutory criteria. All arguments must clearly identify and relate to one of these eleven statutory criteria.

2. If petitioner argues that the least expensive solution or solutions imposes a significant expense, indicate the impact of implementing the least expensive solution by providing the number of packet customers and the number of circuit customers served by the service provider in each of the past five years, and by comparing the estimated total cost of the least cost CALEA solution to the service provider's capital budget for the next five years. Costs must be stringently documented. See Section III.D. of this *Second R&O* for further guidance on cost issues and requirements for documentation.

3. Identify the resources available to the carrier to attain CALEA compliance for each service listed in the petition. Examples of resources include estimates for capital expenditures approved, rejected or modified by the state regulatory authorities, the petitioner's capital budget, and long-term capital requirements projected by the petitioner. Explain how the petitioner introduced CALEA compliance costs into its network planning product development cycle.

4. Identify efforts by the petitioner to obtain additional resources to become CALEA compliant. Examples of evidence of these efforts include petitions filed by a carrier with the state public utility commission to add CALEA compliance costs to the revenue requirement if the carrier is subject to rate of return regulation, or petitions to add CALEA compliance costs to the exogenous cost category if the carrier is subject to price cap regulation. Further examples could include efforts to obtain funding from the federal Rural Utility Service (RUS) from private sources.

5. Provide the number of non-CALEA law enforcement requests received by the carrier in each of the last five years for the following: (a) packet-mode content wiretaps; (b) circuit-mode content wiretaps; (c) packet-mode pen register and trap-and-trace wiretaps; and (d) circuit-mode pen register and trap and trace wiretaps. In addition, provide the number of CALEA law enforcement requests received by the carrier in each of the last three years for the following: (a) packet-mode content wiretaps; (b)

¹¹⁹ For example, two solutions may have intercept access points at the same physical location. However, the first solution may require the installation of a \$10,000 probe at each access point, while the second solution may require the installation of software at each access point at the cost of \$3000 per access point. Assuming all other costs are the same for the two solutions, the software solution is clearly the lower cost.

circuit-mode content wiretaps; (c) packet-mode pen register and trap-and-trace wiretaps; and (d) circuit-mode pen register and trap-and-trace wiretaps.

F. Arguments that CALEA Compliance Is Not Reasonably Achievable On Grounds Other Than Cost

1. If petitioner seeks relief on grounds other than cost, petitioner must produce verified evidence to support an argument that it is entitled to relief under any of the non-cost criteria of paragraphs (A) to (K) of section 109(b)(1), as further explained in paragraph 54 of this *Second R&O*.

APPENDIX F
SECTION 107(C) PETITIONS FOR EXTENSIONS OF TIME:
FILING INSTRUCTIONS

I. Purpose and Scope

CALEA section 107(c)(1) permits a petitioner to apply for an extension of time, up to two years from the date that the petition is filed, to come into compliance with a particular CALEA section 103 capability requirement.

Under section 107(c)(1), a petitioner may seek an extension of time only for equipment, facilities, or services ("services") installed or deployed prior to October 25, 1998.

II. Effect of Filing

A section 107(c)(1) extension petition shall be deemed provisionally granted for two years unless the Commission rules otherwise. The filing of a section 107(c)(1) petition tolls the deadline for CALEA compliance.

III. Filing Instructions and Procedures

A. Where to File and Number of Copies

The petitioner shall file one original petition and two copies with the:

Secretary
Federal Communications Commission
ATTN: CALEA 107(c)(1)
445 12th Street, S.W.
Washington, D.C. 20554

B. File One Copy With The FBI

The petitioner, whether or not it chooses to participate in the FBI CALEA Implementation Unit's Flexible Deployment Program, shall at the same time send one copy of its FCC petition and one copy of any other documents that it files in that FCC petition's docket to:

CALEA Implementation Unit
14800 Conference Center Drive, Suite 300
Chantilly, Virginia 20151-0450

C. Letters To And From The FBI's CALEA Implementation Unit Must Be Filed With The FCC

If the petitioner applies to participate in the FBI's Flexible Deployment Program, the petitioner shall attach a copy of the Flexible Deployment Template required by the FBI to its FCC petition. In addition, the petitioner shall file copies of the Receipt Notification Letter and either the Letter of Support or Letter of Non-support that it receives from the FBI with the FCC pursuant to the instructions in paragraph A above. For instructions on how to participate in the FBI's Flexible Deployment Program, see <http://askcalea.net/docs/flexguide4.pdf> (last visited in May 2006).

D. Confidentiality Process

All filings, orders and any other information provided in a section 107(c)(1) proceeding shall be treated as presumptively confidential pursuant to section 0.457(g) of the Commission's rules,¹²⁰ and must be filed under seal by the petitioner. Petitioners must mark the top of each page of their petitions: "Confidential – Not for Public Inspection." Persons seeking access to any information from a section 107(c)(1) proceeding must request such access pursuant to section 0.461 of the Commission's rules.¹²¹

IV. Required Petitioner Identification Information

- A. Name of carrier, address, and name of carrier contact person.
- B. Form 499A file number for petitioner (if applicable).
- C. Petitioner FCC Registration Number ("FRN").
- D. The information required in paragraphs A-C shall be provided on page one of the petition.

V. FORMAT OF SECTION 107 PETITIONS

A. Include an executive summary at the beginning of each petition that, in one to two paragraphs only, summarizes the petitioner's arguments.

B. Include a Table of Contents that clearly indicates to the reader where to find the (1) specific facilities, services and equipment at issue, (2) capability requirements at issue, (3) arguments why the petitioner needs an extension of time, (4) proposed solution, including a cost analysis, and (5) petitioner's due diligence showing.

VI. CONTENT OF SECTION 107 PETITIONS**A. Identification of Equipment, Facilities, and Services; CALEA Section 103 Capability Requirement; and Compliance Date**

- 1. Identify the "equipment, facility or service" ("service") that is the subject of the petition.
- 2. Certify that the service was deployed prior to October 25, 1998.
- 3. Identify which CALEA section 103 capability requirement (or requirements) is the subject of the petition.

¹²⁰ 47 C.F.R. § 0.457(g).

¹²¹ 47 C.F.R. § 0.461.

4. Identify the date, not to exceed two years from the date that the petition is filed, that the service at issue in the petition will be compliant with the applicable CALEA section 103 capability requirements.¹²²

B. Evidence

1. A petitioner must support all assertions with evidence, either in the form of documents or in signed declarations.

C. Circuit Services

1. The petition should identify, where applicable:

a. The date the switch was initially installed in the service provider's network and the installation date of the most recent software generic; and

b. The identity of the carrier's switching equipment (by manufacturer; type and model; software version or generic currently operating; and Common Language Location Identification (CLLI) Code and geographic areas served).

2. Description of CALEA Solution(s) and Cost Analysis

a. Describe the CALEA solution(s) the service provider intends to implement by switch type (manufacturer and model). Include a discussion of required equipment and/or software upgrades and additional components such as adjunct processors that are required to implement section 103 assistance capabilities.¹²³ Indicate if the solution(s) involve the use of a third party CALEA service provider, association or cooperative, and the functions the third party provider is expected to perform.

b. If cost is not a reason for requiring an extension, skip this paragraph. Otherwise, provide estimates of the capital cost (*i.e.*, the engineered, furnished, and installed ("EF&I") costs of hardware and/or software) of implementing the solutions in the service provider's network, by switch type. Where applicable, include the estimated costs of using a third party CALEA service provider. Support all estimates with manufacturer/service provider documentation. Also provide estimates of operations costs. Demonstrate how each estimate was derived in a manner that permits the results to be verified and duplicated. Express the estimated total cost of each alternative solution in terms of one-time costs plus recurring costs for a specified number of years. Calculate the present value of each alternative in today's (date of petition) dollars. State the discount rate used and the rationale for its selection, and the length of the study period.

¹²² Although section 107(c)(1) permits extensions of time for only two years, under certain narrow circumstances, a petitioner may indicate in its petition why it intends to file a second petition for an extension of time at the conclusion of the first petition's two-year extension period.

¹²³ 47 U.S.C. § 1002. See also *Lawfully Authorized Electronic Surveillance Joint Standard*, J-STD-025-B (TIA December, 2003).

D. Packet Services

1. For each packet service covered by this extension request, identify and list all intercept access points to which this petition applies. Provide the name of the manufacturer, the model, and the type of network equipment (*e.g.*, router, DSLAM, ATM switch, soft switch, SIP server, or IP-PSTN gateway, CMTS (cable modem termination system), CMS (call management system), media gateway, or media gateway controller) currently in use at each access point. Also provide the date of initial installation of the equipment in the service provider's network, the generic software release currently loaded on the equipment and the date of its installation in the service provider's network.

2. Description of CALEA Solution(s) and Cost Analysis

a. For each packet service covered by the extension petition, identify the applicable industry surveillance standards or specifications (*e.g.*, TIA J-STD-025-A, TIA J-STD-025-B, ANSI T1.678, ANSI T1.724, and PACKETCABLE PKT-SP-ESP1.5-I01-050128) to which the service provider intends to conform. If no applicable standard exists, and the service provider intends to implement a custom solution, indicate "custom solution" and proceed to the next paragraph.

b. For each packet service identified in this petition, identify and describe the CALEA solution service provider plans to implement. As part of the discussion of each solution, describe the function(s) of the network equipment used at the intercept access points, and provide a count of such equipment by manufacturer name and model. Also, include a discussion and count of equipment or software upgrades and additional components such as mediation devices and/or probes that are required to implement each solution. Indicate if a solution involves the use of a trusted third party CALEA service provider, association or cooperative, and identify the functions the third party provider is expected to perform.

c. If cost is not a reason for requiring an extension, skip this paragraph. Otherwise, provide estimates of the capital cost (*i.e.*, the engineered, furnished, and installed ("EF&I") costs of hardware and/or software) of implementing each solution in the service provider's network. Where applicable, include the estimated costs of using a trusted third party CALEA service provider. Support cost estimates with manufacturer/third party provider documentation. Also provide estimates of operations costs. Demonstrate how each estimate was derived in a manner that permits the results to be verified and duplicated. Express the estimated total cost of each alternative solution in terms of one-time costs plus recurring costs for a specified number of years. Calculate the present value of each alternative in today's (date of petition) dollars. State the discount rate used and the rationale for its selection, and the length of the study period.

3. For each packet service identified in the petition, the petition must include evidence that third party solutions were solicited from all available vendors and then compared with the other solutions provided above.

E. Arguments For Why Petition Should be Granted

1. The petitioner must present evidence for why it merits an extension of time to bring the service at issue into compliance with the applicable section 103 CALEA capability requirement(s).

2. If petitioner argues that it is entitled to relief based on cost, provide detailed and specific evidence of the impact of the cost by comparing the estimated total cost of the CALEA solution to the service provider's capital budget for the next five years.

3. *Provide the number of packet customers and the number of circuit customers served by the service provider in each of the past five years.*

4. Identify the resources available to the carrier to attain CALEA compliance for each service listed in the petition. Examples of resources include estimates for capital expenditures approved, rejected or modified by the state regulatory authorities, the petitioner's capital budget, and long-term capital requirements projected by the petitioner. Explain how the petitioner introduced CALEA compliance costs into its network planning product development cycle.

5. Identify efforts by the petitioner to obtain additional resources to become CALEA compliant. Examples of evidence of these efforts include petitions filed by a carrier with the state public utility commission to add CALEA compliance costs to the revenue requirement if the carrier is subject to rate of return regulation, or petitions to add CALEA compliance costs to the exogenous cost category if the carrier is subject to price cap regulation. Further examples could include efforts to obtain funding from the federal Rural Utility Service (RUS) from private sources.

6. Provide the number of non-CALEA law enforcement requests received by the carrier in each of the last five years for the following: (a) packet-mode content wiretaps; (b) circuit-mode content wiretaps; (c) packet-mode pen register and trap-and-trace wiretaps; and (d) circuit-mode pen register and trap and trace wiretaps. In addition, provide the number of CALEA law enforcement requests received by the carrier in each of the last three years for the following: (a) packet-mode content wiretaps; (b) circuit-mode content wiretaps; (c) packet-mode pen register and trap-and-trace wiretaps; and (d) circuit-mode pen register and trap-and-trace wiretaps.

F. Due Diligence Showing

1. For circuit services, petitioner must demonstrate that it exercised due diligence since June 30, 2002, to achieve a CALEA-compliant solution.¹²⁴

2. For packet services, petitioner must demonstrate that it exercised due diligence since November 19, 2001, to achieve a CALEA-compliant solution.¹²⁵

¹²⁴ See *infra* Section III.B., para. 35 (discussing how this due diligence showing must be met).

¹²⁵ See *infra* Section III.B., para. 37 (discussing how this due diligence showing must be met).

APPENDIX G
SAMPLE MONITORING REPORT (FORM XXX)

CALEA Implementation Report for Broadband and VoIP Services

Name
State
Affiliate Name(s)
Parent Company

Contact Information:

First Name Last Name
Title
Address 1
Address 2
City State Zip
Phone
Fax
Email

Network will be in compliance by 5/14/07

Network Facilities Affected:

Wireline
Terrestrial Wireless
Cable
Satellite

Compliance Method:

Industry Standard(s)
Proprietary/Custom Solution
DOJ Consultation
Trusted Third Party Used
Name of Trusted Third Party

Network will not be in compliance by 5/14/07

Network Facilities Affected:

Wireline
Terrestrial Wireless
Cable
Satellite

Expected Compliance Date

Reason for delay:

Equipment
Project delay
Other (specify)
Mediation actions taken (specify):

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: Communications Assistance for Law Enforcement Act and Broadband Access and Services (ET Docket No. 04-295)

Enabling law enforcement to ensure our safety and security is of paramount importance. Last August, the Commission took an important step forward by concluding that VoIP and facilities-based broadband Internet access providers have CALEA obligations, giving law enforcement the necessary tools to keep pace with rapid technological change. Today's Order provides further clarity to carriers and other new technology service providers regarding the implementation of their law enforcement obligations.

The Order we adopt today is, as we forecast last year, a second step toward implementing CALEA obligations. We address important issues under CALEA such as cost recovery, compliance processes, and enforcement, providing further clarity for entities subject to CALEA to continue to work toward full CALEA compliance. I remain committed to ensuring that these providers take all necessary actions to incorporate surveillance capabilities into their networks in a timely fashion. Further we will continue to work to address and overcome any challenges that stand in the way of effective lawful electronic surveillance.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, Second Report and Order and Memorandum Opinion and Order (ET Docket No. 04-295, RM-10865)

As I have often said, the first obligation of a public servant is the safety of the people. In our case here at the FCC, our controlling statute makes that as explicit as it could possibly be—we are charged to “make available . . . a rapid, efficient, Nation-wide and world-wide wire and radio communication service . . . for the purpose of the national defense” and “for the purpose of promoting safety of life and property.” The implementation and oversight of CALEA is an important part of that duty. By ensuring that law enforcement authorities have access to the resources CALEA authorizes, this Commission supports efforts to protect the public safety and homeland security of the United States and its people. Because we have a responsibility to assist those whose job it is to protect us from harm, I support today’s decision.

Today’s decision addresses a number of outstanding issues regarding CALEA implementation. The item cleans up some of the ambiguities left open from our earlier efforts. Notably, we clarify the role that the experts in industry standard-setting bodies will play by working in concert with law enforcement and other interested parties to craft technical standards for critical terms like “call-identifying information.” This is truly urgent work, and I thank those who are participating in the process and urge them to keep this the top priority item it must be both to get the job done and to avoid the Commission having to intrude itself in the process. We also clarify that trusted third parties are a legitimate way for carriers to manage their CALEA obligations. The record shows TTP availability and capability to perform a number of services to advance CALEA compliance. Trusted third party participation should also mean more cost-effective options for compliance, particularly for smaller carriers.

As all who have followed our CALEA proceedings know, this is ongoing and difficult work. As I have remarked before, the challenge is complicated by the Commission’s theory of substantial replacement that collapsed the statutory dichotomy between information services and telecommunications services in a stretch that invited time-consuming and unneeded legal complications. Finally, as this order notes, there is still clarity to be provided. For example, numerous institutions of higher learning have expressed concern that language in our earlier order could be read as extending CALEA obligations to the private networks of universities, libraries and some others in ways possibly at odds with the statutory text. All those agencies and offices of government involved in CALEA implementation should work together to provide clarity here and to avoid confusion—and potentially significant expenses—for these institutions.

I commend the Chairman for his dedication to law enforcement and his continuing work on public safety and homeland security, and I thank the Bureau for all its hard work in getting this item to us for action today.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Communications Assistance for Law Enforcement Act and Broadband Access and Services, RM-10865, ET Docket 04-295, Second Report and Order and Memorandum Opinion and Order (May 3, 2006).

There is no higher calling for us at the Commission than preserving public safety and homeland security, so I support our efforts to provide guidance on the legal framework for the Communications Assistance for Law Enforcement Act (CALEA) and the obligations of facilities-based broadband providers and interconnected VoIP providers under that statute.

CALEA provides an important tool for law enforcement by requiring telecommunications carriers to build into their networks technical capabilities to assist law enforcement with authorized intercepts of communications and call-identifying information. In August of last year, the Commission determined that facilities-based broadband providers and interconnected VoIP providers are subject to CALEA. With this Order, we take additional steps to meet the unique needs of our nation's first responders and law enforcement officials. I am particularly encouraged by the Order's finding that broadband and VoIP providers may use so-called "trusted third parties" to extract the information necessary to comply with CALEA, particularly given the potential that this approach holds for smaller providers.

We move the ball forward today, but there remains important work ahead for industry, law enforcement, and the Commission, alike. Particularly given CALEA's reliance on industry organizations to take a lead role on these issue and the tight deadlines for compliance, it will be critical for all parties to work expeditiously, creatively and cooperatively if we are to meet the multi-faceted goals of CALEA. This Order directs carriers to file detailed reports on the status of their compliance efforts. I look forward to seeing the results of these reports so that we can track industry progress and take any additional actions or address remaining issues necessary.

I would like to thank the staff from our Office of Engineering and Technology and the Wireline Competition Bureau for their hard work on this item. I look forward to working with my colleagues and the broader community as we continue our efforts to faithfully implement CALEA.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: *Communications Assistance for Law Enforcement Act and Broadband Access and Services (ET Docket No. 04-295).*

As is often the case, we are called on by many parties to weigh their individual interests - in this case the interest of the safety and security of our citizens -- against the potential costs and possible difficulties of ensuring that safety. Our number one priority at this point in our nation's history must be our national security -- the safety of every American.

First, let me say that having worked with both Vanderbilt University and Belmont University, and as a parent of three college aged children, I am loathe to take any action that unfairly shifts a heavy financial burden onto students or parents of students in today's colleges and universities. However concerned I may be, though, I am not persuaded merely by largely speculative allegations that the financial burden on the higher education community could total billions of dollars.¹²⁶ Moreover, it is not sound analysis to rely on vague assertions regarding the costs per student of CALEA compliance for IP services, when those assertions were made prior to, or without regard to, our acknowledgement that the use of a Trusted Third Party (TTP) could be an economically feasible alternative to meet CALEA's requirements. Indeed, one potential TTP asserted that the cost per IP service subscriber, based on large-scale shared implementation costs could be as low as "1 cent per subscriber per month or less."¹²⁷

It is also important for these institutions to remember what we have said about educational networks' compliance. The last sentence of footnote 100 of our First Report and Order says: "To the extent . . . that these private [educational] networks are interconnected with a public network, either the PSTN or the Internet, providers of the facilities that support the connection of the private network to a public network are subject to CALEA under the SRP." This language means that although educational networks generally fall under CALEA's exemption for private networks, the facilities connecting these private networks to the public Internet must be CALEA compliant.

A number of colleges and universities, however, have expressed concern that this language could be read to require them to modify their entire networks, at significant expense. We have explained that this concern is misplaced. Our brief to the D.C. Circuit in the CALEA appeal, filed on February 27, 2006, states (at pp. 39-40):

Petitioners' professed fear that a private network would become subject to CALEA "throughout [the] entire private network" if the establishment creating the network provided its own connection between that network and the Internet is unfounded. The [First Report and Order] states that only the connection point between the private and public networks is subject to CALEA. This is true whether that connection point is provided by a commercial Internet access provider or by the private network operator itself.

¹²⁶ See Comments of the Higher Education Coalition, November 14, 2005, at 9.

¹²⁷ Comments of Subsentio, Inc., November 11, 2005; see also Comments of VeriSign, December 21, 2005, at 4.

Most importantly, even if compliance costs were to fall on an educational institution, rather than the commercial provider of the connection point to the public switched network, CALEA itself allows for consideration of the identified costs of CALEA compliance and financial resources of a covered carrier in the criteria for review of a Section 109 request. Thus Congress, in crafting CALEA, provided an avenue for relief from potential harm by making available section 109 relief.

I understand and appreciate the concerns of America's colleges and universities, but I am also mindful of the balancing of interests at stake here, and the need to place great weight on the factors of public safety and national security.

With regard to clarifying that section 109 is the only statutory provision under which carriers can seek to recover CALEA compliance costs, some might argue that traditional switched services carriers have sought to recover not only wiretap provisioning costs, but also CALEA capital costs through individual wiretap charges. The Department of Justice, however, has consistently held the position here that only costs specific to provisioning the requested wiretap are recoverable in these charges. To the extent that elimination of CALEA capital costs from wiretap charges enables law enforcement more effectively to utilize CALEA wiretaps, our clarification serves to further public safety and national security interests.

Finally, I support the affirmation of the original May 14, 2007 deadline for VoIP and Broadband Internet providers to become CALEA compliant, as well as our finding that it is premature for this agency to pre-empt the ongoing industry process of developing additional standards for IP-based services. There is no indication in the record that any party has filed a deficiency petition under section 107(b) of CALEA with regard to the developing standards. Moreover, I do not find a basis in the statute for the issuance of an extension.

As to the assertion of commenters that section 109(b) authorizes us to grant an extension of the obligation of carriers to become CALEA compliant, I do not think it is the FCC's job to "rewrite" the statute by using section 109(b) of CALEA to provide an extension for equipment, facilities, or services deployed on or after October 25, 1998,¹²⁸ when such equipment, facilities, or services are not eligible for an extension under section 107(c). Nor am I convinced that our broad authority under 229(a), the provision that grants us the authority to implement CALEA, provides us broader authority to grant extensions than the specifically limited authority Congress has stated in section 107(c) of the statute.

Congress has provided clear guidance in the plain language of CALEA, and we must read CALEA's requirements in a technology neutral manner. Our action today is not expanding the reach of the statute, but simply clarifying our interpretation of the statute in order to meet its goals and to further the interests of public safety and national security.

¹²⁸ As noted in our Order, most packet-mode technologies were deployed after section 107(c)(1)'s expiration date, October 25, 1998.