Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of: United States Department of Justice, Federal Bureau of Investigation, and Drug Enforcement Administration Joint Petition for Rulemaking to Resolve Various Outstanding Issues concerning the Implementation of the Communications Assistance for Law Enforcement Act	RM-10865

COMMENTS OF THE VOICE ON THE NET COALITION

The Voice on the Net ("VON") Coalition[1] files these Comments in response to the above-referenced joint petition ("Petition") of the United States Department of Justice, the Federal Bureau of Investigation, and the Drug Enforcement Administration (collectively, "Law Enforcement"). Law Enforcement's Petition asks the FCC to issue a declaratory judgment stating that at least three forms of voice over IP ("VoIP")[2] services are covered by the Communications Assistance for Law Enforcement Act ("CALEA")[3] and to initiate an expedited

[1] The VON Coalition consists of companies that are developing and offering voice products and services for use on the Internet and Internet Protocol ("IP") networks. Largely through the efforts of VON Coalition members, including AT&T, BMX, Callipso, Convedia, Covad, IceNet, iBasis, Intel, Intrado, ITXC, MCI, PointOne, Texas Instruments, VocalData, and Voiceglo.com, packet-switched voice services are emerging as an exciting new technology benefiting consumers throughout the world. Since its inception, the VON Coalition has consistently advocated that federal and state regulators maintain current policies of refraining from extending legacy regulations to Internet services, including VoIP. More information about the VON Coalition can be obtained at the following website: http://www.von.org.

[2] VoIP providers enable the transmission of voice over the Internet through the use of packet technologies as opposed to the circuit switching methods used by telecommunications carriers.

[3] See Petition at n. 39.

rulemaking proceeding to resolve various outstanding issues associated with the implementation of CALEA.[4]

I. Introduction and Summary

In its Petition, Law Enforcement asks the FCC to issue a declaratory ruling that would substantially expand the scope of CALEA to apply to VoIP services, and to then establish a new regulatory compliance and enforcement scheme that imposes deadlines by which VoIP providers must implement CALEA intercept capabilities for their existing service and requires all VoIP services developed in the future to have CALEA capabilities that have been reviewed and approved by Law Enforcement before deployment.

The VON Coalition acknowledges society's interest in ensuring Law Enforcement is able to investigate and prevent crime using electronic surveillance, but believes the actions requested by Law Enforcement (i) would frustrate Congress's intent to ensure CALEA does not have a chilling effect on innovation or delay deployment of new and existing VoIP technologies, (ii) would expand CALEA to include broad categories of existing and future services that Congress did not intend to be within its scope, and (iii) are unnecessary given Law Enforcement's existing capabilities to access VoIP traffic and the degree of voluntary cooperation that VoIP providers offer Law Enforcement to address access problems that do arise. Accordingly, the VON Coalition urges the FCC to dismiss Law Enforcement's Petition, or in the alternative, to refrain from making the declaratory ruling requested by Law Enforcement before issuing a Notice of Proposed Rulemaking ("NPRM") to explore the complex legal and policy issues raised by the Petition.

[4] Communications Assistance for Law Enforcement Act, Pub. L. 103-414, 108 Stat. 4279 (1994) (codified, as amended, at 18 U.S.C. § 2522 and 47 U.S.C. §§ 229, 1001, *et seq*.).

II. Expanding CALEA to Apply to VoIP Services and Establishing the New Regulations Requested by Law Enforcement Would Have a Chilling Effect on Innovation and Delay the Deployment of New VoIP Technologies

One of Congress's primary objectives when drafting CALEA was to ensure that CALEA would not impede the development and deployment of new technologies, equipment, and services.[5] Expanding CALEA coverage to VoIP applications and services, and creating a new regulatory scheme to enforce compliance, would frustrate this objective by (i) creating financial barriers for VoIP providers seeking to enter or remain competitive in the voice services market, (ii) providing foreign VoIP providers with a financial and speed-to-market advantage over domestic providers, and (iii) imposing new requirements and bureaucracy that will delay the deployment of new technologies. In effect, adopting Law Enforcement's proposal would create exactly the types of impediments to innovation that Congress intended to avoid by excluding VoIP and other information services from CALEA coverage.

A. The FCC has Consistently Affirmed the Importance of Allowing VoIP Services to Evolve in an Unregulated Environment

The FCC has consistently affirmed a "hands-off" regulatory policy toward VoIP services that reflects Congress's desire to avoid regulations that impede the innovation of VoIP and other information services. The FCC articulated its policy in its 1998 *Universal Service Report to Congress*, which discusses various scenarios for what it called "IP telephony."[6] The *Report to*

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[5] H.R. REP. 103-827(I) (Oct. 4, 1994) ("*CALEA Legislative History*") at 13.

[6] *Federal-State Joint Board on Universal Service,* Report to Congress, 13 FCC Rcd 11501, ¶¶ 83-93, 98 (1998) (*"Report to Congress"*) (also referred to as the "Stevens Report"). The *Report to Congress* addressed many of the issues raised in a 1996 petition for rulemaking asking that IP telephony software and hardware providers be classified as common carriers. *Id.* at ¶ 83 n. 172; *see America's Carriers Telecommunications Association, Provision of Interstate and International Interexchange Telecommunications Service via the "Internet" by Non-Tariffed, Uncertified Entities, Petition for Declaratory Ruling, Special Relief, and Institution of a Rulemaking,* RM-8775 (filed March 4, 1996).

Congress discusses the difficulty of categorizing VoIP and the extent to which many of its deployments have characteristics of unregulated, information services.[7] As a result, the FCC expressly deferred any definitive pronouncements regarding VoIP, including phone-to-phone VoIP. *Report to Congress* ¶ 83. As the FCC explained, "[w]e recognize that new Internet-based services are emerging, and that our application of statutory terms must take into account such technological developments. . . . We do not believe . . . that it is appropriate to make any definitive pronouncements [regarding VoIP] in the absence of a more complete record focused on individual service offerings." *Id.* ¶ 90. Likewise, after determining that pulver.com's FWD offering was an information service, the FCC stated that its decision "formalize[d] [its] policy of nonregulation to ensure that Internet applications remain insulated from unnecessary and harmful economic regulation at both the federal and state levels." *FWD Order* at ¶ 1.

On the international stage, the FCC has consistently and repeatedly voiced its support for the non-regulation of advanced technologies, including VoIP. For example, FCC Chairman Powell urged attendees at the International Telecommunications Union's Second Global Symposium for Regulators to give "broadband and digital technologies" a minimally regulated environment "that is nurturing and will allow them to blossom and develop into the great platform that we envision."[8] Referring specifically to VoIP, Chairman Powell noted that "[i]n

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[7] As noted in a 1999 FCC Working Paper, "[a]s more services are offered that use the Internet Protocol in a packet-switched environment, it becomes increasingly difficult to determine where the telecommunications service ends and the information service begins." Oxman, Jason, *The FCC and the Unregulation of the Internet*, OPP Working Paper No. 31, at p. 22. "Despite this difficulty, however, it remains important for the FCC to maintain the unregulated status of data services offered over telecommunications facilities." *Id.*

[8] *Remarks of FCC Chairman Michael K. Powell*, ITU 2nd Global Symposium for Regulators, Geneva, Switzerland (December 4, 2001).

the United States we have yet to choose to regulate IP telephony and are confident of that decision. We do not assume it is simply a new form of an old friend."[9]

Recognizing the importance of VoIP issues to all carriers, not just wireline telecommunications carriers, the FCC held a forum on December 1, 2003 to explore VoIP issues.[10] During the forum, Chairman Powell and his fellow Commissioners voiced concern with regulating VoIP:

> Chairman Powell: "As one who believes unflinchingly in maintaining an Internet free from government regulation, I believe that IP-based services such as VOIP should evolve in a regulation-free zone. No regulator, either federal or state, should tread into this area without an absolutely compelling justification for doing so. Innovation and capital investment depend on this premise. . . . We must resist the impulse to respond to this change by exporting old regulatory structures into the new IP-space."[11]
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> Commissioner Copps: "It's incumbent on us to identify good policy going forward and not just shoehorn VoIP into statutory terms or regulatory pigeon-holes without adequate justification. It's no slam-dunk that the old rules even apply."[12]

In March 2004, the FCC issued an NPRM to explore the appropriate regulatory treatment for VoIP. In the NPRM, the FCC states that IP-enabled "services have arisen in an environment largely free of government regulation, and the great majority, we expect, should remain unregulated." *FCC VoIP NPRM* ¶ 35.

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[9] *Id.*

[10] *News Release, FCC to Begin Internet Telephony Proceedings* (November 6, 2003).

[11] *Opening Statement of Chairman Michael K. Powell at FCC VoIP Forum*, Washington, DC (December 1, 2003) (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-241775A1.doc).

[12] *Opening Statement of Commissioner Michael J. Copps at FCC VoIP Forum*, Washington, DC (December 1, 2003) (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-241765A1.doc).

B. The FCC's "Hands-Off" Regulatory Policy for VoIP Continues to Facilitate the Development and Deployment New VoIP Capacity and Functionality

Propelled to a large extent by the FCC's long-standing policy of keeping VoIP services unregulated, VoIP entrepreneurs have developed and deployed innovative VoIP applications that are driving down telecommunications costs and increasing consumer options and access to services. For example, in the United States, hundreds of thousands of low-income immigrants have used VoIP to dramatically lower the cost of communicating with friends and relatives outside of the United States, through either personal computer-based VoIP or VoIP used by prepaid calling card companies. Phone-to-gateway network configurations provide those without a computer or broadband service what is often their only access to the benefits of the Internet. Likewise, in certain foreign markets, VoIP has been a leading force for lowering costs to consumers, increasing competition, and increasing deployment of broadband. VON Coalition members have persuasively invoked the United States regulatory model in lobbying overseas governments, such that in former monopoly markets the first steps toward deregulation have included implementing low-cost VoIP. For example, one VON Coalition member enabled a local carrier in Bolivia to take advantage of deregulation and, with no capital expenditure, become a domestic and international long distance carrier on the day Bolivia deregulated its telephony markets. Less than two years later, that carrier now has more than 40% market share in several regions of the country and averages 10-15% market share country-wide. Consumer rates for voice communications in Bolivia have been reduced 40% in a year.

VoIP is also seeing growth in deployment by enterprises for their internal networks.[13] Corporations and other large institutions are adding voice capability to their Internet connections

[13] A number of resources discuss business issues and technology considerations associated with enterprise deployment of VoIP. For example, the consulting firm Gartner has developed a five-

and data networks in order to save money and increase efficiency. For example, the United States Department of Commerce added voice capability to its data network. Deployment in the enterprise environment ranges from point solutions, which involve the installation of key applications to address pressing problems, to network upgrades and more global solutions intended to establish a unified network capable of carrying data and voice traffic.

Finally, a new group of entrepreneurs has begun offering innovative voice applications to residential and small business consumers who have broadband connections, including unlimited local and long-distance calling and on-line call logs. With Free World Dialup ("FWD") 3.0, for example, users of different broadband technologies (cable, DSL, Ethernet, satellite, etc.) can place calls over the Internet to other FWD members without ever accessing the PSTN. Unlike a traditional calling arrangement in which long distance calls generate usage-sensitive charges, FWD subscribers use a broadband connection and VoIP capability to make calls for free. The extraordinary success of Yahoo Japan's voice over broadband service is confirmation of the potential for voice applications to drive the deployment of broadband and for broadband customers to use their high-speed connections for voice communications.[14]

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layer model to assist enterprises planning to implement VoIP and IP telephony. *See* "Voice over IP: A Layered Look," (July 25, 2003), available at http://www4.gartner.com/pages/story.php.id.9324.s.8.jsp.

[14] *See* "Yahoo! BB Comprehensive Broadband Service Progress Report," (Oct. 7, 2003) (Yahoo IP telephony service "BB Phone" users exceed three million mark), available at http://www.softbank.co.jp/en/newsrelese/2003release/e031007_2.htm. Commercial service was launched on April 25, 2002; approximately one year later the number of users broke the two million mark.

These innovations evolved within an Internet environment that is open and unregulated. It is this openness that facilitates and encourages continued innovation on the Internet.[15] As computer processing power and network capacity increase, if left along, VoIP products and services will continue to evolve and make voice communications more innovative, affordable, and universal.

C. Imposing CALEA Regulations on VoIP Services Will Have a Chilling Effect on VoIP Innovation and Delay Deployment of New Technologies

Although VoIP usage is increasing in the United States, VoIP remains a nascent industry. For example, Vonage, one of the most successful VoIP providers, currently serves fewer than 150,000 customer's worldwide.[16] Even if all of Vonage's customer were in the United States, which they presumably are not, they would make up less than one percent of the 182.8 million local access lines that existed in the United States as of June 30, 2003.[17] It is important to allow VoIP services to continue evolving in an unregulated environment with as few impediments as possible, at least until VoIP services are able to displace a meaningful portion of the PSTN lines controlled by incumbent local exchange carriers. Rather than facilitate this evolution as Congress intended, the actions proposed by Law Enforcement would have a chilling effect on innovation and would delay the development and deployment of VoIP services in at least three significant ways.

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[15] *See, e.g.,* Isenberg, David, "The Dawn of the Stupid Network," *ACM Networker 2.1,* at 24-31 (February/March 1998), available at http://www.isen.com/papers/Dawnstupid.html. In contrast, the PSTN is a closed system in which it is impossible for innovative developers to build new applications. *See FCC VoIP NPRM* at n.13 ("[W]hile a century of PSTN development has given rise to relatively few opportunities for user customization, a mere decade of widespread commercial use has produced a dizzying array of IP-enabled services.").

[16] Vonage claims on its website to have "more than 125,000 customer's worldwide." See http://www.vonage.com/corporate/press_index.php?PR=2004_03_26_0.

[17] FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of June 30, 2003* (Dec. 2003) at Table 1.

First, cost-effective solutions do not exist to satisfy all of the intercept requirements requested by Law Enforcement, and the cost and feasibility of such solutions for VoIP services developed in the future are unknown. VoIP services are provided over an infrastructure that is fundamentally different from a circuit-switched telephone network and include a wide variety of continually changing network architectures, technologies, and applications. Law Enforcement's Petition asks the FCC to ignore these differences and to funnel a diverse array of existing and future VoIP providers and services into a single regulatory scheme designed for traditional telecommunications carriers. Under this scheme, VoIP providers would be required to implement technology that translates data streams, to which Law Enforcement currently has access, into the format of a PSTN communication,[18] without regard to whether the cost of such technology and the personal privacy issues that may be implicated are justified by the incremental benefit to Law Enforcement.

Requiring VoIP providers to implement CALEA capabilities without regard to whether cost-effective technologies exist is not permitted by clear language in CALEA,[19] and would frustrate Congress's intent to remove impediments to innovation by imposing substantial development and implementation costs on VoIP providers. These added costs have the potential to chill innovation of new technologies (each of which may require a new CALEA solution) and impose additional barriers to providers aspiring to enter the voice communications industry. This might occur for several reasons: (i) Providers will have difficulty testing the marketplace with new products to evaluate their effectiveness or assess consumer demand until they

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[18] *See* Petition at n. 55.

[19] *See* 47 U.S.C.§ 1007(c)(2) (a telecommunications carrier need not comply with a CALEA assistance capability requirement if the Commission has determined that compliance is not reasonably achievable, unless the Attorney General has agreed to pay the cost of such compliance).

implement a CALEA-compliant solution acceptable to Law Enforcement; (ii) providers would be required to incur additional development costs prior to deploying their offerings and generating revenue from consumers, which might have an especially adverse effect on small businesses with limited access to investment capital; and (iii) the costs of developing and implementing CALEA solutions are unknown for some existing VoIP applications, and for all future technologies, and in some cases may be unreasonably high when compared to the revenue they can generate or the assistance they provide to Law Enforcement.

Second, requiring CALEA capabilities, and pre-clearance of VoIP technologies before deployment, may reduce the ability of providers in the United States to compete with foreign providers that are not subject to the same regulations. One of the inherent characteristics of some forms of VoIP is that they are entirely geographically neutral. There may be no dedicated transmission facility required; there may be no facilities required to be located locally. Internet traffic can travel anywhere in the world with no material difference in cost, and facilities which act on the call can be (and are) located anywhere. Law Enforcement's proposal would provide foreign providers with a speed-to-market and financial advantage that may allow them to claim a larger share of the global VoIP market. Providers in the United States would be required to delay deployment of their services until they are able to develop, deploy, and obtain pre-clearance of CALEA capabilities, and then to increase the charges for their services in order to recover the cost of such capabilities.[20]

Third, Law Enforcement's proposed regulatory scheme would delay and potentially prohibit the deployment of new VoIP technologies. An entrepreneur that develops a new VoIP

[20] Imposing CALEA regulations on VoIP "by classifying it as a "telecommunications service" will also make it difficult to continue advocating abroad against its regulation as a telecommunications service.

application may not be able to deploy it until new CALEA capabilities are developed, regardless of whether the capabilities are technically feasible or cost effective. Even after implementing CALEA capabilities, deployment might then be delayed for years if the entrepreneur and Law Enforcement disagree about the applicable industry standards or the functionality or effectiveness of the CALEA capabilities. These delays are exactly the situations Congress intended to prevent. CALEA expressly provides that Law Enforcement may not dictate system design or bar the introduction of new features and technologies.[21] Congress considered and rejected a version of CALEA that would have barred the introduction of services or features that could not be intercepted by Law Enforcement.[22] The version of CALEA that was enacted allows only the courts to bar the introduction of technology, and only (i) where Law Enforcement has no other means reasonably available to conduct interception and (ii) if compliance with the standards is achievable through the application of available technology.[23]

In summary, the FCC's policy of allowing VoIP to evolve in an unregulated environment has resulted in the development and deployment of innovative VoIP applications that offer consumers additional voice communications capacity and functionality at a reduced cost. The VoIP industry is growing rapidly but is still at a nascent stage when compared to the traditional circuit-switched telecommunications industry. Propelled in part by the government's policy of keeping VoIP services unregulated, VoIP developers and providers are continuing to invest heavily in VoIP technology with the goal of developing and deploying new applications that

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[21] 47 U.S.C. § 1002(b)(1)(B).

[22] *CALEA Legislative History* at 19 ("The bill expressly provides that law enforcement may not dictate system design features and may not bar introduction of new features and technologies … . This is the exact opposite of the original versions of the legislation, which would have barred introduction of services or feature that could not be tapped.").

[23] 47 U.S.C.§§ 1007(a).

allow them to provide better and more competitive products and services. For the reasons described above, imposing CALEA regulations on VoIP has the potential to stifle this investment and impose significant impediments to continued innovation and deployment of new VoIP technologies.

III. The Broad Expansion of CALEA Requested by Law Enforcement is Not Permitted by the Language of the Statute

Even if it were possible to expand CALEA to include some VoIP services without substantially impeding the innovation that Congress intended to protect, the comprehensive breadth of the expansion requested by Law Enforcement is not permitted by the language of the statute. CALEA was enacted by Congress to preserve a narrowly focused capability for Law Enforcement to carry out properly authorized intercepts of certain telecommunications services.[24] When drafting CALEA, Congress carefully balanced the interests of Law Enforcement against the need to protect privacy in the face of increasingly powerful and personally revealing technologies and to avoid impeding the development of new communications services and technologies.[25] After much deliberation, Congress elected to narrowly tailor the scope of CALEA to include telecommunication carriers, and then only to the extent they provide telecommunication services. Law Enforcement's Petition seeks to expand the scope of CALEA to encompass not only telecommunication carriers, but also the whole universe of broadband access and broadband telephony providers.

The legislative history demonstrates clearly Congress's intent that CALEA not apply to new and innovative technologies such as VoIP. Congress intended to exclude equipment, facilities, or services used to support private networks, equipment, facilities, or services used to

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[24] *CALEA Legislative History* at 13.

[25] *Id*.

interconnect telecommunications carriers, and information services,[26] and specifically noted that these exclusions were meant to cover PBXs, ATM networks, and Internet service providers such as Prodigy and America-On-Line from CALEA coverage.[27] As legislative history makes clear, Congress considered expanding CALEA to apply to all providers of electronic communications services,[28] but rejected that approach after determining that such a broad approach was neither practical nor justified by any law enforcement need."[29] This history indicates that Congress's exclusion of VoIP services and other information services from CALEA was done intentionally after careful consideration of all the interests involved.

IV. Expanding Coverage of CALEA to VoIP Services and the Creation of New Regulations is Unnecessary

Expansion of CALEA to VoIP services and the creation of new benchmarks, deadlines, and pre-clearance regulations is unnecessary at this time given (i) Law Enforcement's existing capability and authority to intercept VoIP communications and (ii) the level of cooperation and assistance Law Enforcement currently receives from VoIP providers.

A. Law Enforcement Has Existing Capabilities and Authority to Intercept VoIP Communications

In excluding VoIP and other information services from CALEA, Congress determined Law Enforcement's needs would be adequately served under statutes such as the Foreign Intelligence Surveillance Act of 1978 ("FISA"),[30] Electronic Communications Privacy Act of

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[26] 47 U.S.C. § 1002(b)(2).

[27] *CALEA Legislative History* at 18.

[28] *Id.*

[29] *Id.*

[30] 50 U.S.C. §§ 1801-1843.

1986 ("ECPA"),[31] and Title III of the Omnibus Crime Control and Safe Streets Act of 1968 ("Title III"),[32] each of which has been bolstered recently by the Patriot Act of 2001 ("Patriot Act")[33]. In making this determination, it noted that entities with service offerings outside the scope of CALEA would still be required to cooperate when presented with wiretap orders, but would not be required to design their systems to comply with CALEA's capability requirements.[34] This is exactly what is happening today. VoIP providers have historically complied with intercept orders authorized under FISA, ECPA, Title III, and the Patriot Act and intend to continue doing so in the future. Requiring VoIP providers to now design their systems to comply with CALEA's capability requirements would effectively nullify the exclusions Congress built into the statute and substantially alter the balance of interests Congress intended to establish.

Moreover, although it would make Law Enforcement's job easier, Law Enforcement does not need VoIP providers to implement additional CALEA-like capabilities. Law Enforcement currently has the capability to intercept the data streams that VoIP providers would be required to provide under CALEA. Though the data streams are not presented in the same format as the information that can be obtained from the PSTN, Law Enforcement has the capability to pull the information it is authorized to obtain from such data streams.

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[31] Pub. L. No. 99-508, 100 Sta. 1848 (1986).

[32] Pub. L. No. 90-351, 82 Stat. 212 (1968).

[33] Pub. L. 107-56, 115 Stat. 272 (2001). Congress was clear to state that the USA PATRIOT Act was not intended to amend CALEA or "impose any additional technical obligation or requirement on a provider of wire or electronic communication service or other person to furnish facilities or technical assistance." *Id.*, 115 Stat. at 292, § 222.

[34] *CALEA Legislative History* at 18.

B. VoIP Providers Have Demonstrated a Willingness to Work with Law Enforcement Despite the Lack of CALEA Coverage

VoIP service providers and equipment manufacturers have historically cooperated with Law Enforcement in several ways and will continue to do so in the future without additional regulation. For example, VoIP service providers and equipment manufacturers are already voluntarily working to build interception capabilities into VoIP equipment and service offerings where possible. Cisco is beginning to market VoIP gateways that support CALEA-like capabilities.[35] Cable system manufacturers are building equipment that supports CALEA-like compliance.[36] As indicated in Law Enforcement's Comments on the FCC's December 1, 2003, Voice Over IP Forum, VoIP providers such as Time Warner Telecom and Level 3 Communications have committed to work with Law Enforcement and build CALEA-like capabilities into their offerings.[37]

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[35] Cisco advertises that its MGX 8000 Series Carrier Voice Gateway supports CALEA requirements. The MGX 8000 Series Gateways are "high capacity carrier-class voice gateways that offer standards-based support for voice over IP (VoIP) and voice over ATM (VoATM) services." http://www.cisco.com/en/US/products/hw/switches/ps1925/products_data_sheet09186a00800a3c3d.html.

36 Cisco has put CALEA compliance into its cable equipment, the Cisco Broadband Local Integrated Services Solution for Cable (BLISS). http://www.cisco.com/en/US/netsol/ns341/ns396/ns289/ns4/ns320/netbr09186a0080113747.html . The Cisco solution and that of other companies are based on PacketCable, a specification for the delivery of VoIP in the cable space, which includes CALEA compliance. The PacketCable initiative was developed by CableLabs in 1997, to create interoperable interface specifications for delivering various services, including voice, over a two-way cable plant. Another example is Cedar Point Communications, Inc., a supplier of packet-based voice switching equipment for the cable industry, which announced in February 2003 that its SAFARI C Media Switching System was able to implement CALEA functions for legal wiretaps through a secure central point.

[37] Joint Comments of the United States Department of Justice, the United States Drug Enforcement Administration, and the Federal Bureau of Investigation in the Matter of the Commission's December 1, 2003 Voice over IP Forum, at page 3.

Further, the VoIP industry is continuing to develop standards that will facilitate Law Enforcement surveillance. For example, the Telecommunications Industry Association ("TIA") is releasing Revision B of its J-Standard 025. Under Revisions 0 and A, the J-Standard provides a basic solution for packet communications which allows service providers to comply with an order for "communication-identifying information" by providing the entire data stream. Revision B of the J-Standard expands on different packet technologies, including some VoIP-like technologies though normative reference, and allows for the sending of specified communication-identifying information parameters without providing the entire data stream. Revision C, now in progress, will include the 3GPP2 IMS/MMD platform. The VoIP industry has worked closely with Law Enforcement in developing these standards and will continue to do so in the future.

Finally, even if the FCC determines that CALEA applies to VoIP services, there is no compelling need for the FCC to impose the compliance deadlines, pre-clearance requirements, and other regulations requested by Law Enforcement. Law Enforcement already has access to most of the information to which it is entitled under CALEA and VoIP providers have demonstrated a willingness to cooperate with Law Enforcement to address deficiencies in such information.

Conclusion

Therefore, based on the foregoing, the VON Coalition urges the Federal Communications FCC to either dismiss Law Enforcement's Petition or issue an NPRM to fully explore the complex legal and policy issues raised by Law Enforcement's Petition.

Respectfully submitted,

THE VON COALITION

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