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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

**Communications Assistance for
Law Enforcement Act**

CC Docket No. 97-213

**COMMENTS OF
THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

Pursuant to the Commission's recent *Public Notice*,¹ the Telecommunications Industry Association ("TIA")² respectfully submits these comments.

I. INTRODUCTION

On August 31, 1999, the Commission issued its *Third Report and Order* in these proceedings,³ requiring carriers, *inter alia*, to implement six of the nine "punch list" capabilities requested by the Department of Justice and the Federal Bureau of Investigation by September 30,

¹ Commission Seeks Comments to Update the Record in the CALEA Technical Capabilities Proceeding, *Public Notice*, CC Docket No. 97-213, DA 00-2324 (rel. October 17, 2000).

² TIA is a full-service, national trade organization with membership of over 1,000 large and small companies that provide communications and information technology products, materials, systems, distribution services and professional services in the United States and around the world. TIA is accredited by the American National Standards Institute ("ANSI") to issue standards for the industry.

³ In the Matter of Communications Assistance for Law Enforcement Act, *Third Report and Order*, CC Docket No. 97-213, FCC 99-230 (rel. August 31, 1999) ("Third Report & Order").

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2001.⁴ The Commission also required that carriers implement a packet-mode surveillance capability, consistent with the industry safe harbor standard (J-STD-025),⁵ by the same date. Finally, the Commission asked TIA: 1) to prepare a study (by September 30, 2000) on surveillance of packet data technology, and 2) to modify J-STD-025 (by March 30, 2000) to provide standardized technical requirements for the six punch list items mandated by the Commission. As the Commission is aware from the previous *Status Reports* submitted by TIA,⁶ TIA's Engineering Subcommittee TR 45.2 completed both delegations within the Commission's deadlines.

In the meantime, however, several privacy and industry groups sought review of the Commission's *Third Report and Order* in the United States Court of Appeals for the District of Columbia Circuit. In a decision issued August 15, 2000, the court affirmed the Commission's decision in part and vacated and remanded in part for further proceedings.⁷ Specifically, the court vacated and remanded to the Commission four of the six "punch list" capabilities mandated by the

⁴ The FBI had initially sought eleven punch list features. However, the Department of Justice determined that two of the FBI's original items ("Standard Delivery Interface" and "Separated Delivery") were not required by CALEA. *See* Letter from Assistant Attorney General Stephen R. Colgate to Mr. Tom Barba, Counsel for TIA (dated February 3, 1998). Of the remaining nine items, the Commission concluded that three ("Surveillance Status Message," "Feature Status Message" and "Continuity Check Tone") also were not mandated by CALEA. *See* Third Report & Order. ¶ 97-111.

⁵ Telecommunications Industry Association & Alliance for Telecommunications Industry Solutions, Interim Standard, *Lawfully Authorized Electronic Surveillance*, J-STD-025 (December 1997) ("J-STD-025").

⁶ Status Report by the Telecommunications Industry Association, CC Docket No. 97-213 (filed December 23, 1999); Second Status Report by the Telecommunications Industry Association, CC Docket No. 97-213 (filed May 17, 1999).

⁷ *United States Telecom Association, et al. v. Federal Communications Commission, et al.*, No. 99-1442, slip op. (D.C. Cir. August 15, 2000).

Commission,⁸ but affirmed the Commission's decision not to modify the packet-mode provisions of J-STD-025.

TIA has already submitted numerous, detailed comments about the four remanded punch list items (as part of the proceedings leading up to the Commission's *Third Report and Order*).⁹ These comments carefully analyzed the legal issues facing the Commission, many of which were the subject of the court's opinion and continue to be relevant and probative here. Rather than repeating these previous comments, however, TIA would like to focus on two issues specific to this *Public Notice*. First, irrespective of its final decision concerning the four punch list items on remand, the Commission should not modify J-STD-025's definitions of "origin," "destination," "direction" and "termination." In its decision, the court expressed considerable deference to the technical expertise of the industry standards body that defined the technical meaning of these terms.¹⁰ Absent any express evidence that these technical definitions are inconsistent with CALEA (which they are not), the Commission should leave the definitions unchanged.

Second, in the event that the Commission decides that any of the four remanded punch list features are not required by CALEA, the Commission should once again delegate any

⁸ The four remanded items are "Party Hold, Join, Drop," "Subject-initiated Dialing and Signaling," "In-band and Out-of-band Signaling," and "Post-cut-through Dialed Digit Extraction." The remaining two punch list features ("Content of Subject-initiated Conference Calls" and "Timing") were not challenged in the appeal to the court.

⁹ See, e.g., Comments of the Telecommunications Industry Association, CC Docket No. 97-213 (filed May 20, 1998); Reply Comments of the Telecommunications Industry Association, CC Docket No. 97-213 (filed June 12, 1998); Comments of the Telecommunications Industry Association, CC Docket No. 97-213 (filed December 14, 1998); Reply Comments of the Telecommunications Industry Association, CC Docket No. 97-213 (filed January 27, 1999).

¹⁰ See, e.g., *United States Telecom Assoc.*, at 16.

necessary standards work to TIA's Engineering Subcommittee TR 45.2. As the Commission recognized when it first asked TIA to modify J-STD-025 to incorporate the results of its *Third Report and Order*, Subcommittee TR 45.2 has the unique technical expertise and resources to best develop any revised technical standards.

Finally, before turning to these two issues, it is worth noting that this filing does not address the packet data report recently submitted to the Commission by TIA.¹¹ It is TIA's impression that any comments on packet data would not be appropriate as part of this proceeding. As noted above, unlike the punch list, the court's decision expressly affirmed the Commission and upheld those portions of J-STD-025 addressing packet data.¹² As a result, the Commission properly recognized that the packet data provisions of J-STD-025 are not on remand and its *Public Notice* did not request comment on them. However, TIA would observe that, in comments on the *Petition to Suspend Compliance Date* filed by the Cellular Telecommunications Industry Association,¹³ TIA and several other parties encouraged the Commission to extend the September 2001 deadline for packet data communications. This request is still pending before the Commission and TIA incorporates its previous comments by reference, urging the Commission to extend the packet data deadline as soon as possible.¹⁴

¹¹ See Report on Surveillance of Packet-Mode Technologies by the Telecommunications Industry Association, CC Docket No. 97-213 (filed September 29, 2000).

¹² *United States Telecom Assoc.*, at 24.

¹³ *Petition to Suspend Compliance Date by the Cellular Telecommunications Industry Association*, CC Docket No. 97-213 (filed August 23, 2000).

¹⁴ *Comments of the Telecommunications Industry Association*, CC Docket No. 97-213 (filed September 15, 2000).

II. THE COMMISSION SHOULD NOT MODIFY J-STD-025'S DEFINITIONS OF "ORIGIN," "DIRECTION," "DESTINATION," AND "TERMINATION."

Section 102(2) of CALEA defines "call identifying information" as "dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier." TIA's Engineering Subcommittee TR 45.2, including representatives from the FBI and other law enforcement agencies, adopted this statutory definition when developing J-STD-025.¹⁵ The standards group also adopted definitions of the terms "origin," "direction," "destination," and "termination," based on well-established industry practice.¹⁶

Because the standard is not deficient, the Commission should leave these definitions unmodified. First, as noted above, these definitions reflect the combined technical expertise of the world's leading systems engineers. Not only does Engineering Subcommittee TR 45.2 draw on engineers from carriers and manufacturers from around the world, but in preparing this standard, the Subcommittee also had the contribution of several technical experts representing the law enforcement community (including several teams of technical consultants from Booz-Allen Hamilton). As such, the definitions contained in the standard reflect current industry practice and the industry "expertise" that Congress explicitly wanted to incorporate in CALEA standards.¹⁷

¹⁵ See J-STD-025, section 3.0 (Definitions).

¹⁶ Specifically, the standard defines *destination* as "the number of the party to which a call is being made (*e.g.*, called party); *direction* as "the number to which a call is redirected or the number from which it came, either incoming or outgoing (*e.g.*, redirected-to party or redirected-from party);" *origin* as "the number of the party initiating a call (*e.g.*, calling party); and *termination* as "the number of the party ultimately receiving a call (*e.g.*, answering party)." *Id.*

¹⁷ See, *e.g.*, CALEA, § 107(a); H.R. Rep. No. 103-827, at 19 (1994) ("House Report") ("The legislation provides that the telecommunications industry itself shall decide how to implement law enforcement's requirements. The bill allows industry associations and standard-setting bodies, in consultation with law enforcement, to establish publicly available specifications

(Continued ...)

Second, as noted by the court, the Commission has “identified no deficiencies in the Standard’s definitions of the terms ‘origin,’ ‘destination,’ ‘direction,’ and ‘termination.’”¹⁸ The court showed considerable deference to these definitions, noting “CALEA’s unique structure” and “the major role Congress obviously expected industry to play in formulating CALEA standards.”¹⁹

Finally, J-STD-025’s definitions are consistent with CALEA’s definition of “call-identifying information”²⁰ and mirror the intent of Congress as expressed in CALEA’s legislative history, which provides that for voice communications, “call-identifying information” is “the numbers dialed or otherwise transmitted for the purpose of routing calls through the carrier’s network.”²¹ Absent any clear evidence that these definitions are inconsistent with CALEA (which they are not), the Commission should refrain from redrafting industry’s technical interpretation of these terms. As Congress repeatedly emphasized, CALEA generally defers to industry’s expertise in such technical matters, so that “the telecommunications industry itself shall decide how to implement law enforcement’s requirements [and] those whose competitive future depends on innovation will have a key role in interpreting the legislated requirements and finding ways to meet them without impeding the deployment of new services.”²²

creating “safe harbors” for carriers. This means that those whose competitive future depends on innovation will have a key role in interpreting the legislated requirements and finding ways to meet them without impeding the deployment of new services.”).

¹⁸ *United States Telecom Assoc.*, at 16.

¹⁹ *Id.* See also *id.*, at 6-7

²⁰ CALEA, § 102(2).

²¹ House Report, at 21.

²² *Id.*, at 19.

III. THE COMMISSION SHOULD DELEGATE ANY REVISION WORK TO TIA ENGINEERING SUBCOMMITTEE TR 45.2.

In the event that the Commission decides that one or more of the four punch list features are not required by CALEA, the Commission should once again delegate any necessary standards work to TIA's Engineering Subcommittee TR 45.2 – the technical subcommittee that drafted J-STD-025 and has already modified that standard once at the Commission's request.²³

In its *Third Report and Order*, the Commission “remand[ed] the interim standard [J-STD-025] to Subcommittee TR 45.2 of the TIA to make the necessary technical modifications in accord with our findings.”²⁴ The Commission observed that “those technical modifications can be most efficiently implemented by permitting the Subcommittee to make the modifications,” noting that “[law enforcement agencies], carriers, and manufacturers are voting members of the Subcommittee and the Subcommittee has the experience and resources in place to resolve these issues quickly.”²⁵ TIA appreciates the confidence expressed by the Commission and is pleased to note that Subcommittee TR 45.2 completed these modifications (known as J-STD-025, revision A) within the Commission's ambitious deadline of March 30, 2000. Given this recent standards effort, it is only logical that TR 45.2 would be the appropriate entity to make any further modifications to the safe harbor standard that might be required from the Commission's decision on the four remanded items.

As the Commission has previously noted, because of its unique expertise and resources, TR 45.2 is best qualified to develop any revised technical standards: “the Subcommittee

²³ In fact, the Subcommittee has already approved a project number (“PN”) to conduct such standards work, if necessary.

²⁴ Third Report & Order, ¶ 128.

²⁵ *Id.*

already has the experience and resources in place to resolve these issues more quickly [and] a Commission-based standard-setting activity would necessarily have to rely heavily on the Subcommittee to modify J-STD-025 in any event....”²⁶ Because of its broad membership of manufacturers and carriers (both foreign and domestic), TR 45.2 represents an extremely talented collection of systems engineers from around the world.²⁷

Delegation to this Subcommittee would not only permit the development of a feasible technical standard in a relatively short period of time, it would also allow the Subcommittee to ensure that any modifications are harmonious with existing industry standards and capabilities. Such standardization is critical to ensure network interoperability and preserve system reliability. As the Commission is aware, local exchange, cellular and broadband PCS providers frequently intermix various manufacturers’ telephone network elements. Thus, standards-based, compatible solutions are essential to ensure that such devices are fully interoperable.

Delegation is also consistent with CALEA and with Commission precedent. While Section 107(b) permits the Commission to modify a deficient industry standard by rule, it does not require the Commission to do so. Indeed, as noted in the court’s decision, the policies inherent in CALEA indicate a strong preference to defer to the telecommunications industry for the actual

²⁶ In the Matter of Communications Assistance for Law Enforcement Act, *Further Notice of Proposed Rulemaking*, CC Docket No. 97-213, FCC 98-282, ¶ 132 (rel. November 5, 1998).

²⁷ Moreover, as TIA has noted in its previous submissions, these standards-developing committees are open to non-member “parties having a direct and material interest in its Standards, including U.S. federal, state and local governmental entities....” Comments of the Telecommunications Industry Association, CC Docket No. 97-213, at 11 (filed December 14, 1998) (quoting TIA Engineering Manual, § 3.2.4 (December 6, 1991)). In fact, several law enforcement agencies (including the FBI) actively participated in both the standards development of J-STD-025 (1995-1997) and the recent revisions to J-STD-025 to incorporate the results of the Commission’s *Third Report and Order* (1999-2000). For more information about TIA’s standards process, *see id.*, at 7-17.

development of technical standards.²⁸ Similar delegation has been adopted in several of the Commission's proceedings, with the Commission permitting industry to issue and/or revise standards consistent with Commission determinations.²⁹

IV. CONCLUSION

For the reasons set out above, if the Commission were to decide that any of the four remanded items need to be modified, TIA urges the Commission to delegate, once again, any technical standards work to TIA's Engineering Subcommittee TR 45.2. Such delegation would ensure that any modifications are harmonious with existing industry standards and capabilities.

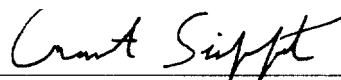
TIA also urges the Commission, irrespective of its decision concerning the four remanded punch list items, not to modify J-STD-025's definitions of "origin," "destination," "direction" and "termination." These definitions are fully consistent with CALEA and its legislative history, reflect current industry practice and the technical expertise of the standards

²⁸ See, e.g., *United States Telecom Assoc.*, at 16. See also House Report, at 19 ("The legislation provides that the telecommunications industry itself shall decide how to implement law enforcement's requirements.... This means that those whose competitive future depends on innovation will have a key role in interpreting the legislated requirements and finding ways to meet them without impeding the deployment of new technologies.").

²⁹ See, e.g., Implementation of Section 551 of the Telecommunications Act of 1996: Video Programming Ratings, *Report and Order*, CS Docket No. 97-55, FCC 98-35 (rel. March 13, 1998); Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices, *Report and Order*, CS Docket No. 97-80, FCC 98-116 (rel. June 24, 1998).

group that interpreted these terms, and, therefore, as the Court of Appeals suggested in its decision, should be entitled to some deference.

Respectfully submitted,



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November 16, 2000

CERTIFICATE OF SERVICE

I, L. Benjamin Ederington, an attorney in the law firm of Steptoe & Johnson, LLP, hereby certify that I have on this November 16, 2000 caused to be served by first class mail, postage prepaid, or by hand delivery, a copy of the foregoing Comments on FCC Public Notice to the following:

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