

**STATEMENT OF COMMISSIONER**  
**MICHAEL J. COPPS**

*RE: Communications Assistance for Law Enforcement.*

I support the Commission's actions today. Our responsibilities under Section 107 of the Communications Assistance for Law Enforcement Act ("CALEA") are critical, and I am pleased that the Commission was able to move from our September 18, 2001 Order to today's Order so rapidly. Our actions today will help law enforcement agencies ("LEAs") and the wireless industry make progress in better equipping LEAs to collect call-identifying information.

While I support today's action, I am concerned about two aspects of the Order. First, as the Order notes, we must "establish standards that 'meet the assistance capability requirements of Section 103 by cost effective methods'<sup>1</sup> and 'minimize the cost of such compliance on residential ratepayers.'<sup>2</sup>" The Remand Order states that the Third R&O "made no attempt to compare the cost of implementing the punch list capabilities with the cost of obtaining the same information through alternative means, nor did it explain how it measured cost-effectiveness. Although it mentioned residential ratepayers, it never explained what impact its Order would have on residential rates."<sup>3</sup>

In today's Order, with an explanation of our reasoning, we conclude that the same capabilities that we have identified in our previous Order and the same means of implementing these capabilities are cost-effective and serve to minimize costs on residential ratepayers.

I remain concerned, however, that CALEA-related costs for these government mandates will be high for residential customers and wireless providers, especially for rural providers. Carriers and consumers have only one recourse when faced with these costs – they may petition the Commission under Section 109(b)(1) and demonstrate that compliance with the new assistance capabilities is not "reasonably achievable." The Commission must then consider "the effect on rates for basic residential telephone service" as part of determining whether the capabilities are reasonably achievable for that carrier.

My second issue of concern is privacy. CALEA requires any Commission rule to "protect the privacy and security of communications not authorized to be intercepted." The Court noted in the *Remand Decision* that in justifying its decision: "The Commission spoke of law enforcement's need to obtain post-cut-through dialed digits and of the cost of providing them, but it never explained, as CALEA requires, how its rule will 'protect the privacy and security of communications not authorized to be intercepted.'"<sup>4</sup> The Court also stated that the Commission's rejection of alternatives to its post-cut-through

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<sup>1</sup> 47 U.S.C. § 1006(b)(1) (emphasis added).

<sup>2</sup> 47 U.S.C. § 1006(b)(3).

<sup>3</sup> *United States Telecom. Assoc. v. FCC*, 227 F.3d 450, 461 (DC Cir. 2000) (hereafter "*Remand Decision*").

<sup>4</sup> *Remand Decision* at 462.

dialed digit decision was based not on technological infeasibility, but because the alternatives "‘would shift the cost burden from the originating carrier to the LEA,’ ‘could be time-consuming,’ and might burden law enforcement's ability ‘to conduct electronic surveillance effectively and efficiently.’”<sup>5</sup> The Court stated that this was “an entirely unsatisfactory response.”<sup>6</sup>

Congress insisted that we protect individual privacy in CALEA. The Court told us that we must explain how our rule does this, and not accept a solution that fails to protect privacy merely because of costs, time burdens, or difficulties LEAs might encounter from a rule that is more privacy protective. This is an extremely difficult task for the Commission. I would be more satisfied if we had a post-cut-through dialed digit technology available to us that provides LEAs with call-identifying information while protecting other information. Unfortunately, we do not, so we have chosen a technology that ensures that LEAs will receive the information they need, and rely on the fact that a court must decide whether a pen register warrant or a Title III warrant is the appropriate legal authority when that information is mixed with non-call-identifying information. Given our options at this time, I believe that this is the best choice available to us.

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*