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

In the Matter of	)	
	)	
Jurisdictional Separations Reform	)	
and Referral to the Federal-State	)	CC Docket No. 80-286
Joint Board	)	
	)	
Communications Assistance for	)	
Law Enforcement Act and	)	ET Docket No. 04-295
Broadband Access and Services	)	

COMMENTS OF JOHN STAURULAKIS, INC.

John Staurulakis, Inc. ("JSI") hereby responds to the invitation of the Federal-State Joint Board on Jurisdictional Separations ("Joint Board") to comment on the manner in which costs and revenues related to the implementation of the Communications Assistance for Law Enforcement Act ("CALEA") should be allocated for jurisdictional separations purposes.[1]

JSI is a consulting firm offering regulatory and financial services to more than two hundred incumbent and competitive local exchange carriers throughout the United States. Among its services, JSI assists many of its rate-of-return incumbent local exchange carriers ("ILEC") client companies in preparing jurisdictional cost studies. In terms of the treatment of CALEA-related costs when it prepares these cost studies, the firm has continued to follow the Part 36 Rules that are currently in place and treated costs related to CALEA compliance in the same manner as any other Central Office ("CO") software upgrade. As explained below in the responses to the Joint Board's questions, JSI believes that any changes to Part 36 to reflect

[1] *See Federal-State Joint Board on Jurisdictional Separations Seeks Comment on Communications Assistance for Law Enforcement Act (CALEA) Issues,* CC Docket No. 80-286, ET Docket No. 04-295, Public Notice, DA 05-535 (rel. Mar. 2, 2005) ("Notice").

CALEA-related costs are unnecessary at this time and recommends that these costs continue to be allocated to existing separations categories or subcategories.

I. Background

To develop the cost basis for their exchange access tariffs, ILECs are required to record their costs into various accounts, divide these costs between regulated and non-regulated activities, separate the regulated costs between the intrastate and interstate jurisdictions and apportion the interstate regulated costs among their interexchange services and rate elements.[2] The process of separating the regulated costs between the intrastate and interstate jurisdictions is called "jurisdictional separations" and must be performed pursuant to Part 36 of the Rules of the Federal Communications Commission ("FCC" or "Commission").[3]

CALEA was enacted on October 25, 1994 to preserve the ability of law enforcement officials to conduct electronic surveillance "effectively and efficiently in the face of advances in telecommunications technology."[4] This Act required telecommunications carriers to make certain modifications to their equipment, facilities and services to meet certain capability and capacity requirements. It also granted authority to the U.S. Attorney General to reimburse telecommunications carriers for the costs incurred in making these modifications to equipment, facilities and services installed or deployed on or before January 1, 1995 to meet the capability requirements and to reimburse carriers for the costs incurred to meet the capacity requirements

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2 *See Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 12 FCC Rcd 22120 (1997) ("*Separations NPRM*") at paras. 6-8.

3 *Id.* at para. 6.

4 *Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, Report and Order, 14 FCC Rcd 4151 (1999) ("CALEA R&O") at para. 3, *recon sua sponte*, FCC 99-184 (1999); *second recon*, 16 FCC Rcd 8959 (2001).

"subject to the availability of appropriations".[5] In its *Separations NPRM*, the FCC referred to the Joint Board the matter of whether to recommend changes to Part 36 of the FCC's Rules with respect to the recovery of costs incurred by ILECs to make the modifications required by CALEA, as well as the treatment of any revenues received from the Attorney General for reimbursement of CALEA-related expenses.[6] In its Notice, the Joint Board now seeks comment on these issues by posing a series of questions.

II. Responses to Questions Posed by the Joint Board

A. What equipment, investments, and other costs (including expenses) can or should be considered to be related to CALEA compliance?

In addition to CALEA's capability and capacity requirements, the FCC's CALEA rules require carriers to prepare compliance manuals and follow certain record-keeping requirements.[7]

The following are examples of some of the costs that JSI ILEC client companies have incurred in implementing these CALEA requirements:

- Embedded switch or switch-related costs:
  - Installation of switch software upgrades for CALEA technical capability.
  - Payment to switch vendors of right-to-use (RTU) fees.
  - Hardware required to facilitate transmission of surveillance data.
  - Switch training.

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5 *See* 47 U.S.C. § 1008. Carriers may seek reimbursement for modifications to equipment, facilities or services installed or deployed after January 1, 1995 provided that the FCC has ruled that such modifications are not otherwise readily achievable. *Id.*

6 *See Separations NPRM* at para. 108-110.

7 *See, e.g.* CALEA R&O at para. 20.

- CALEA Telecommunications Carrier Systems Security and Integrity Compliance Costs.[8]
    - Development and maintenance of Section 64.2103 Carrier Systems Security and Integrity Policies and Procedures.[9]
    - Filing of original and updated Section 64.2105 Systems Security and Integrity Policies and Procedures (commonly referred to as "CALEA Manuals") to the Commission.[10]
    - Ongoing compliance with duties prescribed in Section 64.2103, including training, supervision, point of contact costs and costs for legal counsel.
- Costs for compliance with court orders for surveillance or intercepts:
    - Costs for maintaining system and personnel to handle court orders.[11]
    - Costs for any technician time required.[12]
    - Costs for transport from switch to LEA.[13]

B. Who are the users (anticipated and historical) of CALEA-related services (*i.e.*, federal, state, or local LEAs, or others)? What has been their relative usage, and do you expect that relationship to change in the future? If so, how?

Most JSI ILEC clients serve geographic areas that have little or no history of demand by

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8 See Part 64, Subpart V, 47 C.F.R. § 64.2100 et. seq.

9 *See* 47 C.F.R. § 64.2103.

10 *See* 47 C.F.R. § 64.2105.

11 Many small carriers engage a third party vendor such as VeriSign to handle interfaces with LEAs, including serving as the point of contact, compliance review, record keeping and related work. Small companies pay a monthly fee for such service, even though they may have no requests for surveillance or intercepts.

12 Generally, provision of miscellaneous labor is covered by tariffed labor rates.

13 Transport costs are provided at the applicable tariffed rates.

federal, state or local law enforcement agencies ("LEAs") for electronic surveillance. As recognized by the Federal Bureau of Investigation ("FBI"), public safety is not threatened when carriers serving areas with a history of little or no demand of surveillance activity are granted extensions of CALEA compliance deadlines.[14] The FCC agreed with this assessment and granted extensions of CALEA deadlines to many JSI ILEC client companies that serve areas with little or no history of electronic surveillance.[15] Because the areas served by most of these companies are rural and therefore sparsely populated, it is likely that these areas will continue to have a history of little or no demand for electronic surveillance.

C. Should CALEA-related costs incurred be allocated to a single category identified as CALEA-related expenses or should the costs associated with compliance be allocated to the existing separations categories or subcategories within them?

Many ILECs have been allocating CALEA-related costs pursuant to current Part 36 Rules for at least two and a half years.[16] In assisting its ILEC client companies with preparing their jurisdictional cost studies, JSI has treated costs related to equipment and software upgrades incurred to comply with CALEA mandates in the same manner as with any other equipment or CO software upgrades. Other costs such as expenses for compliance manuals or training to comply with CALEA requirements have been treated in the same manner as with other company manuals or training programs.

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[14] *See Communications for Law Enforcement Act*, CC Docket No. 97-213, Order, 2001 FCC LEXIS 5015 (2001) at para. 10 ("*Order*") (FCC citing FBI's "Flexible Deployment Program" in which the FBI reviews a carrier's extension request in light of the priorities of LEAs and noting that for carriers serving areas in which there is little or no demand for electronic surveillance, the FBI may advise the FCC that extensions for these carriers are appropriate).

[15] In the Order, the FCC noted that it had granted extensions to "several hundred wireline carriers." *Id.* Among carriers receiving extensions from the FCC were many JSI ILEC client companies.

[16] Carriers were initially required to implement CALEA by June 30, 2000 with most receiving extensions of the deadline until June 30, 2002. Many of the companies receiving extensions for their circuit-based equipment are now in compliance but have sought further extension for their packet-mode equipment.

D. If changes to Part 36 are required or appropriate, are any similar or related changes required in Part 32 or in any other Commission rules?

As demonstrated above, changes to Part 36 are unnecessary. Accordingly, investing time, energy and resources to determine whether changes are required in Part 32 or any other Commission rules would be a waste of limited Commission and Joint Board resources.

E. Should CALEA-related revenues received from the Attorney General be allocated to ensure that revenues follow their associated costs to a particular jurisdiction?

As discussed under Section I above, CALEA authorizes the Attorney General to reimburse carriers for costs related to complying with both CALEA capability and capacity requirements. It appears, however, that the reimbursement for capability requirements will not be in the form of revenues to telecommunications carriers but rather in allowing vendors to reduce the costs to carriers for CALEA-compliant software. With the flow of funds to vendors, it does not appear that there will not be enough funds to reimburse carriers for expenses related to meeting the capacity requirements.

According to the FBI's "AskCALEA" webpage,[17] "[t]he FBI has implemented a reimbursement strategy that allows telecommunications carriers to receive CALEA software at no charge for high priority switching platforms."[18] The webpage explains that under this strategy, the government pays for the development of CALEA software solutions for high priority switching platforms under nationwide right-to-use (RTU) license agreements.[19]

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17 *See* www.askcalea.net

18 *Id.* The

19 *Id.* The webpage lists the equipment manufacturers with which the FBI has entered into agreements which includes manufacturers used by JSI ILEC client companies (Nortel Networks, Lucent Technologies, Motorola and Siemens AG). According to the webpage, "[w]hen considered in total, these agreements result in software solutions being available for the vast majority of law enforcement's priority, pre-January 1, 1995 switches." *Id.* When reviewing equipment vendor bids and invoices while assisting clients in preparing petitions for CALEA extensions under Section 107 of CALEA (*see* 47 U.S.C. § 1006(c)), JSI found that in many cases, the

According to the webpage, Congress authorized $500 million "to be appropriated to reimburse the telecommunications industry for certain eligible costs associated with modifications to their networks" and of that amount, $397 million is obligated for nationwide RTU license agreements and $53 million is "otherwise obligated," leaving only $50 million of the appropriated amount for reimbursement. Accordingly, it is very likely that unless more funds are appropriated, few telecommunications carriers (of which JSI ILEC clients are only a small part) will receive reimbursement for other CALEA-related costs in the form of revenues.

In the event that an ILEC receives reimbursement for CALEA-related expenses in the form of revenues, jurisdictional treatment of the revenues should parallel jurisdictional treatment of CALEA costs. As mentioned above, JSI believes that CALEA costs should receive continued treatment as investment or expenses subject to the existing separations process without direct assignment. Wherever possible, JSI recommends that such revenues not be treated as revenues at all but as reductions in investment or expenses. For reimbursements directly associated with plant investment, CALEA reimbursements can be accounted for as reductions in the plant investment balance consistent with Section 32.2000(a)(2) of the Commission's Rules.[20]

F. Should CALEA-related costs for circuit-based capabilities be separated, and if so, how should the associated costs and revenues be allocated for jurisdictional separations purposes?

JSI believes that based on the current definition of "circuit-based capabilities," the CALEA-related costs for these capabilities should be separated. These costs should be allocated based on existing Part 36 procedures that are used for allocating any CO software upgrade.

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software upgrade containing the CALEA component had been made available to carriers at discounted prices as a result of the RTU license agreements. Effectively, the funding paid by the government directly to vendors has already been taken into account as a reduction in booked costs.

20 See 47 C.F.R. § 32.2000(a)(2).

G. Should CALEA-related costs for packet-mode capabilities be separated, and if so, how should the associated costs and revenues be allocated for jurisdictional separations purposes?

JSI believes that based on the current definition of "packet-mode capabilities," the CALEA-related costs for these capabilities should be separated. These costs should be allocated based on existing Part 36 procedures that are used for allocating any CO software upgrade.

H. Should the interim freeze of the Commission's jurisdictional separations rules affect the treatment of CALEA-related costs? If there are any recommended changes to Part 36 of the Commission's rules, should they wait until the end of the freeze, or should the frozen factors and categories be adjusted during the freeze?

While the interim freeze has been in effect, JSI has been allocating CALEA-related costs according to current Part 36 jurisdictional separations rules and has found that the interim freeze has had no affect on the treatment of CALEA-related costs. As explained above, JSI is not recommending any changes to Part 36. As a matter of course, JSI ILEC client companies have been compensated for the portion of CALEA costs allocated to the interstate jurisdiction through the Commission's access charge and settlement process. Recovery of CALEA costs allocated to the intrastate jurisdiction may be recovered in part through existing cost-based structures in the respective jurisdictions.

I. In addition, we seek comment on three alternative proposals for the appropriate jurisdictional separation of CALEA-related costs and revenues:

1. Should all CALEA-related costs and revenues be directly assigned to the Federal jurisdiction, based on the fact that CALEA is a Federal mandate?

As explained under E above, JSI believes that there should be no direct assignment of CALEA related costs and revenues to the interstate jurisdiction. Although CALEA is a federal mandate, CALEA requirements benefit all LEA jurisdictions. Surveillance and intercept orders will come from all jurisdictions.

2. Should CALEA-related costs and revenues be allocated between jurisdictions based on relative-use factors derived from the relative electronic surveillance requirements of the LEAs?

JSI does not believe this proposal to be practical. Moreover, for small carriers, CALEA capability is more of a standby capability than one subject to ongoing use. For the many small companies who do not receive surveillance or intercept requests each year, no measurement of relative use even exists.

3. Should CALEA-related costs and revenues be allocated between jurisdictions based on a fixed factor, and if so, what should the fixed factor be based on?

JSI believes that the costs and revenues should be allocated between jurisdictions based on fixed factors which should be the existing factors in current Part 36 rules.

III. Conclusion

Treatment of CALEA costs under existing jurisdictional separations procedures has been ongoing since at least 2000. For small ILECs, this process has worked. In the unexpected event a small company received reimbursement for CALEA investment, such investment should be treated as aid to construction under Section 32.2000(a)(2). It is impractical for small companies to develop CALEA-specific allocation factors given the infrequency of surveillance or intercept requests. If CALEA related costs continue to be subject to the existing separations process, then CALEA related revenues should be allocated in a parallel manner so that there would be a reduction in revenue requirement for both the interstate and intrastate jurisdictions, and therefore, JSI recommends continuation of current procedures.

Respectfully submitted,

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