

**SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: In the Matter of Communications Assistance for Law Enforcement Act and Broadband Access and Services, RM-10865, ET Docket No. 04-295, Notice of Proposed Rulemaking and Declaratory Ruling.

We are entering a dynamic space in the evolution of Internet voice services and applications. As technologies re-shape communications, this Commission must continually assess the needs of the law enforcement community under the Communications Assistance for Law Enforcement Act (“CALEA”). More and more people are taking advantage of these new and exciting competitive voice offerings, and we are starting to see substantial consumer and economic benefits emerge. The development and success of the Internet has been a result, in part, of our desire to maintain its minimally regulated status. Above all, law enforcement access to IP-enabled communications is essential. CALEA requirements can and should apply to VoIP and other IP enabled service providers, even if these services are “information services” for purposes of the Communications Act. The NPRM we issue today demonstrates that the interests of the law enforcement community can be fully addressed for potential information services and these interests need not be an excuse for imposing onerous common carrier regulations on vibrant new services.

Previous Commission action on CALEA has focused primarily on circuit-mode technology. Today’s item takes a major step in implementing CALEA, particularly with respect to new packet-mode technologies, by tentatively concluding that broadband Internet access services and managed voice over Internet protocol (“VoIP”) services are subject to CALEA. The item also tentatively concludes that non-managed, or disintermediated, VoIP and Instant Messaging are not subject to CALEA, and that it is unnecessary to identify future services and entities subject to CALEA. Additionally, the item addresses important compliance and cost issues, and requests comment on (1) the feasibility of carriers relying on a trusted third party to manage their CALEA compliance obligations; and (2) whether standards for packet technologies are deficient and preclude carriers relying on them as safe harbors for complying with CALEA’s capability requirements. Finally, in the companion *Declaratory Ruling* grants in part a Law Enforcement request in the Petition and clarifies that commercial wireless “push-to-talk” services are subject to CALEA, regardless of the technologies that Commercial Mobile Radio Service providers choose to apply in offering them.

I write to make clear that our tentative conclusion is expressly limited to the requirements of the CALEA statute and does not indicate a willingness on my part to regulate VoIP services as telecommunications services. We have before us a pending rulemaking and several petitions for declaratory ruling that address themselves to the classification of VoIP services and nothing in this item prejudices the outcome of those proceedings.

Our support for law enforcement is unwavering; it is our goal in this proceeding to ensure that law enforcement agencies have all of the electronic surveillance capabilities that CALEA authorizes to combat crime and terrorism and support Homeland Security. The Commission will

devote the necessary resources to expeditiously and responsibly complete this task. In the interim, carriers, the law enforcement community and the Commission must continue to work in partnership to ensure that law enforcement retains access to the information they have now and to ensure that they have the tools they need in this ever changing environment.