

**Before the
Federal Communications Commission
Washington, DC**

In the Matter of)
)
Petition for Expedited Rulemaking to Establish) RM-11376
Technical Requirements and Standards Pursuant)
to Section 107(b) of the Communications)
Assistance for Law Enforcement Act)

**REPLY COMMENTS OF THE
ALLIANCE FOR TELECOMMUNICATIONS INDUSTRY SOLUTIONS**

The Alliance for Telecommunications Industry Solutions (ATIS) hereby submits these reply comments to the Federal Communications Commission (Commission) in response to the above-captioned *Petition for Expedited Rulemaking (DoJ Petition)* filed by the U.S. Department of Justice (DoJ). The *DoJ Petition* alleges that ANSI/J-STD-025-B, an American National Standard developed jointly by ATIS and the Telecommunications Industry Association (TIA), is deficient under the Communications Assistance for Law Enforcement Act (CALEA) in that the standard fails to include certain capabilities. In these reply comments, ATIS: (1) urges the Commission to carefully consider the impact of granting the *DoJ Petition* on the current and future development of lawful intercept (LI) related standards; (2) agrees with those commenters who raise significant concerns with DoJ’s suggestion that the FCC should automatically apply any requirements imposed as a result of the evaluation of ANSI/J-STD-025-B to other LI-related standards; and (3) recommends that a minimum of twenty-four (24) months be provided for the implementation of any new capabilities.

I. The Commission Should Carefully Consider the Impact of the *DoJ Petition* on the Development of LI-Related Standards

ATIS believes that the voluntary standards process is the most effective method to examine issues and develop solutions related to LI. ATIS is concerned that the development of these solutions could be stifled if the *DoJ Petition* is granted and the work of the subject matter experts in industry committees, such as the ATIS Packet Technologies and Systems Committee (PTSC) and Wireless Technologies and Systems Committee (WTSC), is set aside. ATIS therefore urges the Commission to exercise caution in evaluating the *DoJ Petition* and to ensure that any action taken in this proceeding does not threaten the current or future development of industry standards.

The standards development process that was followed by ATIS in its development of ANSI/J-STD-025-B, and is followed in all ATIS' standards work, is characterized by: (1) openness – all stakeholders, including service providers, manufacturers and law enforcement, are provided the opportunity to participate in and advance the work of the committee; (2) fairness – all participants' views are heard and decisions are made through established balloting methods that require that the majority respond to any objections that may be made; and (3) expertise – participants include representatives from industry with technical and operational expertise in network operations and systems.

Each of ATIS' LI-related standards was created using this open and equitable development process. For ANSI/J-STD-025-B and the other LI-related standards

developed by ATIS' PTSC and WTSC committees,¹ ATIS believes that the development process has successfully permitted a full, fair and open discussion of technical challenges and solutions. The voluntary standards process followed by ATIS also did not constrain this discussion to the narrow set of capabilities required by CALEA. Instead, ATIS PTSC and WTSC addressed LI-concerns raised by participating equipment and service providers and law enforcement regardless of whether these issues would fall within CALEA. In fact, as noted by the Telecommunications Industry Association (TIA) in its comments, at least one capability at issue in this proceeding – buffering – is being addressed by ATIS outside of the CALEA legal framework.²

If the standards development process and the work of the subject matter experts participating in relevant industry groups is not given due consideration, however, future standards work may not be completed and the future implementation of LI-related solutions that are dependent on these standards may be slowed.³ ATIS believes that both the industry and law enforcement should have a responsibility to voice timely and appropriate concerns related to LI standards and to work to resolve these concerns before the industry expends significant resources, in both money and manpower, to implement these standards.

¹ As noted in its comments, ATIS' LI work extends far beyond ANSI/J-STD-025-B and includes: ANS T1.724, *UMTS Handover Interface for Lawful Interception*; ATIS-1000678.2006, *Lawfully Authorized Electronic Surveillance (LAES) for Voice over Packet Technologies in Wireline Telecommunications Networks (version 2)*; ATIS-1000013.2007, *Lawfully Authorized Electronic Surveillance (LAES) for Internet Access and Services (IAS)*; ATIS-1000021, *Data Buffering (Short Term Storage) in an LAES Environment*; ATIS-0700005.2007, *LAES for 3GPP IMS-based VoIP and Other Multimedia Services*; and 3GPP TS 33.108 R6, *Handover Interface for Lawful Interception ('e'-interface)*.

² Comment of the Telecommunications Industry Association at p. 10. The ATIS PTSC recently approved ATIS-1000021, *Data Buffering (Short Term Storage) in an LAES Environment*.

³ ATIS is concerned that the interests of the industry, as well of those of law enforcement, may not be served by providing law enforcement with an opportunity to "veto" standards that are developed and have been implemented to meet statutory deadlines.

The Commission should also note that certain capabilities at issue in the *DoJ Petition*, such as time stamping, were carefully reviewed by the ATIS PTSC and WTSC and consensus was reached regarding these issues. ATIS urges the FCC to consider the work done by the committees regarding these issues. For instance, DoJ states in its petition that “[s]ince a time stamp indicates the date and time that an event is detected in the network, the time stamp also should include the time zone offset from universal coordinated time (UTC).”⁴ ATIS notes this issue was discussed on numerous occasions by the ATIS PTSC and WTSC, and consensus was reached that the time zone only be reported when reasonably available at the Internet Access Provider (IAP).

II. The FCC Should Limit its Evaluation to ANSI/J-STD-025-B

ATIS strongly disagrees with DoJ’s recommendation that any rules requiring carriers to provide the requested additional and/or modified capabilities be applied to other published standards where the same capabilities are at issue.⁵ ATIS strongly supports those commenters who note that there can be no presumption that any capabilities that may be found to be required under CALEA for one specific technology are required for other technologies.⁶ Such a presumption would be inconsistent with both the legal framework surrounding the review of standards under CALEA and the development of LI standards.⁷

⁴ *DoJ Petition* at p. 26, n.63.

⁵ *DoJ Petition* at 5, n.10.

⁶ See, e.g., Comments of Verizon at pp. 6-10; Comments of AT&T, Inc. at pp.14-15; Comments of CTIA-The Wireless Association @ at pp. 14-15; Comments of the United States Internet Service Provider Association at pp. 5-7.

⁷ ATIS agrees with the United States Internet Service Provider Association that DoJ’s request in this regard is “flatly inconsistent” with the statutory framework of CALEA. Comments of the United States Internet Service Provider Association at p. 6.

As Verizon notes in its comments, there are two essential determinations that must be made before a standard can be found to be deficient under CALEA. First, the FCC must identify and explain how the standard is deficient. Second, the FCC must find that any new capability of alteration meets the appropriate statutory criteria.⁸ Whether the statutory criteria are satisfied for any particular capability will likely vary by technology. The United States Internet Service Provider Association correctly acknowledges that, “[f]or some technologies, a particular intercept assistance capability might be simple to implement. For other technologies, the same capability may not be technically feasible without alerting the intercept subject of the surveillance or affecting the service of other users; or may require such major network modifications as to be not cost-effective; or may alter the economics of the technology to such an extent that it will never be deployed.”⁹ ATIS agrees with these commenters that, under the statutory framework established by CALEA, this proceeding must be limited in scope to ANSI/J-STD-025-B.

The automatic application of any additional and/or modified ANSI/J-STD-025-B capabilities to other standards or technologies is also inconsistent with the way in which the industry develops LI-related standards. LI-related standards are developed to reflect the unique attributes of different technologies. For each technology (such as UMTS, wireline packet, internet access technologies), the ATIS PTSC and WTSC have separately evaluated technical issues and potential solutions to lawful interception. This process is both appropriate and necessary to ensure that the needs of law enforcement can be reasonably accommodated for a particular technology.

⁸ Comments of Verizon at p. 7.

⁹ Comments of the United States Internet Service Provider Association at p. 6.

The results of these individual evaluations, as some commenters have noted, have been the creation of standards that do not uniformly address LI capabilities.¹⁰ However, this is not a failure of the process, but an essential result of the tailoring of different standards-based solutions to specific technologies. As TIA states in its comments, “industry standards for CALEA are established through a negotiated process conducted by various standards bodies in consultation with law enforcement. It is not surprising, therefore, that the standards setting process may yield different results for different network technologies, and include compromises, such as the inclusion of non CALEA capabilities.”¹¹

ATIS strongly cautions the Commission not to consider the existence of different capabilities within different LI standards as evidence that any particular standard is deficient. Nor should the inclusion of any LI-related capability in a particular ATIS standard be considered an acknowledgement by ATIS that capability is required under CALEA. For instance, ATIS-1000021, *Data Buffering (Short Term Storage) in an LAES Environment*, the technical document recently approved by ATIS PTSC that describes LI-related data buffering, was specifically developed to describe capabilities outside of CALEA. ATIS’ voluntary development of this document should not be misunderstood as implicitly supporting the inclusion of buffering capabilities within ANSI/J-STD-025-B or within any other standard.¹²

¹⁰ Comments of Verisign, Inc. at Appendix A.

¹¹ Comments of Telecommunications Industry Association at p. 18.

¹² The technical requirements related to buffering will be affected by a number of factors, including: the number of intercepts, the time period for the intercept and the throughput of the communications media. ATIS does not believe that buffering would be a technically feasible option unless appropriate limits are established regarding these criteria. The establishment of these specific technical criteria is best left to the industry through standards development bodies such as ATIS.

IV. An Implementation Period of Twelve Months Is Insufficient

Finally, ATIS strongly urges the Commission to provide adequate time for the industry to implement any new capabilities that might be required as a result of this proceeding.

ATIS believes that the twelve (12) month implementation period proposed by DoJ in its petition would provide insufficient time for compliance and therefore would be unnecessarily disruptive to existing implementations. If a minimum implementation period is established, ATIS supports CTIA's recommendation that industry be given at least twenty-four (24) months for implementation of any new capabilities.¹³

ATIS also notes that additional time, over and above this period, may be necessary depending on the nature of the new capabilities and the need to revise existing standards and implementations. As ATIS noted in its comments, the standards development process generally takes from six (6) to eighteen (18) months, depending on the technical issues involved. An additional six (6) to eighteen (18) months may be necessary to implement new standards.¹⁴

¹³ Comments of CTIA – The Wireless Association at p. 25.

¹⁴ Comments of the Alliance for Telecommunications Industry Solutions at p.7.

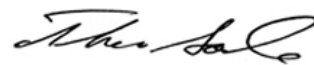
III. Conclusion

As stated in its comments, ATIS believes that the process used to develop LI-related standards is effective. ATIS urges the Commission to carefully consider the impact that granting the *DoJ Petition* could have on the future development of LI-related standards. In addition, ATIS strongly opposes DoJ's suggestion that the FCC should automatically apply any requirements imposed as a result of the evaluation of ANSI/J-STD-025-B to other LI-related standards. Finally, ATIS supports CTIA's recommendation that a minimum twenty-four (24) month implementation period be established if new capabilities are imposed on carriers.

THEREFORE, THE PREMISES CONSIDERED, ATIS respectfully submits these reply comments for inclusion on the record in this proceeding.

Respectfully submitted by:

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