A brief summary of the May 3 FCC order based on the staff presentation follows. The order:

1. Affirms the 18-month implementation deadline, which mandates full compliance by May 14, 2007.

2. Clarifies that this deadline applies to all providers of broadband Internet access and interconnected VoIP services. That is, there will not be earlier deadlines for LECs already subject to CALEA, or later deadlines for small entities.

3. Confirms that the FCC will not establish any assistance-capability requirements, but rather will defer to ongoing industry standards-setting bodies working in conjunction with law enforcement.

4. Makes clear that covered service providers may rely on "trusted third parties" (TTPs; for example, VeriSign) to handle CALEA compliance. The FCC views this as a cost-saving measure for smaller entities.

5. Limits the availability of extensions under section 107(c) of the act, apparently making clear that section 107(c) applies only to equipment installed before October 1998. The order also will provide guidance regarding petitions for relief pursuant to section 109(b), which applies to equipment deployed after January 1, 1995, and authorizes the FCC to determine that particular capability requirements are not "reasonably achievable" with respect to a petitioning carrier's equipment, facilities, or services.

6. Addresses the enforcement of CALEA.

7. Clarifies that carriers may not recover capital costs through charges imposed on law-enforcement agencies for installing wiretaps.

After staff presented the draft order, Commissioner Michael Copps noted his regret that the FCC's interpretation of the substantial replacement provision needlessly invited legal challenges and complicated the statute's implementation. (He opposed classifying broadband Internet access services as information services and has consistently argued that if the FCC had ruled that broadband providers also offer telecommunications services, that would have avoided any debate regarding the applicability of CALEA to such services.) Commissioner Copps further noted the importance of avoiding the imposition of undue burdens on educational institutions, and he expressed his hope that all agencies involved would work closely with the educational community to resolve our concerns.

Commissioner Deborah Tate also spoke at some length about the impact of CALEA on colleges and universities. She noted that she had worked with Vanderbilt and another university in the past, and she is sensitive to their concerns. Nevertheless, she stated that she is not persuaded by universities' "speculative" assertions regarding CALEA compliance costs. She said that universities' claims about the likely costs do not take into account the availability of TTPs. She also noted that, in light of the FCC's clarification in the court brief that only gateway equipment is subject to CALEA, universities would not be required to replace equipment throughout their networks. In the end, she argued that a full exemption is unwarranted because the governmental interests in national security and public safety outweigh universities' concerns about costs, particularly because section 109 of the statute makes relief available where compliance is not reasonably achievable.

Dated May 5, 2006