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June 3, 2005

**VIA TELEFAX AND AIR MAIL**

His Excellency Jean Asselborn  
Presidency of the Council of the European Union  
Rue de la Loi 175  
B-1048 Brussels - Belgium

Her Excellency Viviane Reding  
European Commission  
Commissioner for Information Society and Media  
Rue de la Loi 200  
B-1049 Brussels - Belgium

His Excellency Franco Frattini  
European Commission  
Vice President and Commissioner, Justice, Freedom and Security  
Rue de la Loi 200  
B-1049 Brussels - Belgium

**Re: Framework Decision on Data Retention for Communications Providers  
Comments of CompTel/ALTS**

Dear Ms. Reding and Messrs Asselborn and Frattini:

CompTel/ALTS appreciates the opportunity to present its views on this issue. With more than 350 members, CompTel/ALTS is the largest and oldest association in the U.S. representing a myriad of companies, including competitive facilities-based carriers using unbundled network elements, resale carriers, global integrated communications companies, and their supplier partners. CompTel/ALTS, which is based in Washington, D.C., includes companies of all sizes and profiles that provide voice, data and video services in the U.S. and around the world. CompTel/ALTS members share a common objective: to create and sustain true competition in the communications industry, both domestically and internationally. With the development of liberalized regulatory regimes and competitive market conditions in a growing number of countries, many of CompTel/ALTS members have made significant investments in telecommunications facilities and services in Europe.

CompTel/ALTS congratulates the Council and the Commission on taking the initiative to harmonize the EU-wide regime for data retention for communications providers. Terrorism and

Internet-related crimes are now borderless crimes in many respects. Any agreed EU legislation in this area will impact law enforcement in the EU and the United States. This is one reason why the EU's initiative is of great importance. Effective law enforcement cooperation may not be possible, or at a minimum is significantly complicated, when public safety authorities are confronted with a variety of non-uniform exceptions to data protection requirements.

CompTel/ALTS is concerned that the current initiatives of the Council, as discussed during the Council Meeting on Justice and Home Affairs on June 2, 2005, and the Commission's currently discussed proposal (jointly the "EU Proposal") will disproportionately burden the industry and lead to legal uncertainty. In particular, the EU Proposal that traffic data should generally be retained for a period of 12 months, but that EU Member States may derogate from this by providing for different periods of at least 6 and/or up to 48 months raises various concerns:

- CompTel/ALTS believes that the best solution is that there be no mandatory retention period at all. If there is a retention period, as foreseen by the EU Proposal, it should apply EU-wide and should not be mandated for longer than is generally needed by responsible operators for business purposes. The EU Proposal does not harmonize the retention regime. Since the Member States will be authorized to derogate from the 12 months period, there will be no EU-wide retention period, which will render it more difficult for US carriers and ISPs to provide innovative EU-wide non-location based services, such as VoIP.
- Any mandatory retention periods hurt the industry and discourage investments. CompTel/ALTS fully agrees with the German Competitive Carriers Association's (VATM) position paper that VATM submitted to the Commission on July 30, 2004 ([http://www.vatm.de/images/dokumente/stellung/2004/23\\_en.pdf](http://www.vatm.de/images/dokumente/stellung/2004/23_en.pdf)): mandatory data storage requirements impose significant burdens on the affected companies, and they have a negative impact on investment. In addition to negative technical and organizational impacts (required restructuring of data management; new databases that must be established, tested and protected) financial effects in particular will be significant. The investment costs alone will be in the hundreds of millions of euros, and annual operating costs could reach tens of millions of euros, the lowest estimates. If, as foreseen by the EU Proposal, the carriers and ISPs need to pay out of their own pockets for storing and providing the data, law enforcement agencies and prosecutors will shop around to obtain "free" traffic data: the exception (obtaining this sensitive information) will become the rule and will increase the cost burden.
- Retention obligations should be based upon demonstrable law enforcement needs and grounded in the experience gained to date in cooperating with the communications industry. There is not enough evidence that huge amounts of unstructured data that carriers and ISPs must store under the EU Proposal are actually necessary for effective law enforcement. As long as it remains unclear

what carriers and ISPs must store and who has access to the data, the EU Proposal sends the wrong signal to potential investors. Carriers and ISPs don't need this enormous amount of data for their own businesses. Moreover, it remains unclear how carriers and ISPs are to retain the traffic data without storing the content as well.

- The EU Presidency has proposed that “as a first step” only providers of telephony services be required to store data, while later ISPs would be covered by this obligation. This “two step approach” is not in line with the EU’s technology neutrality under the EU Electronic Communications Framework. It also raises a lot of currently unresolved questions; for instance, if and whether providers of VoIP are classified as “telephony services.”

For these reasons, the Council and the Commission should not hasten to a solution that could have a tremendous negative impact on business and investments and will serve as the wrong role model for other countries. CompTel/ALTS respectfully submits that the Council and the Commission consider the adoption of the U.S. system for data retention. Under this system, U.S. law enforcement agencies may issue preservation requests for any type of data, not merely traffic data. Data such as connection logs, subscriber information, Internet protocol addresses, and billing information may be relevant to an ongoing investigation. In addition, it may be important to preserve the content of stored Internet communications – for example, the text of an e-mail message between two criminal co-conspirators. This means that the EU Proposal that huge amount of data be collected and stored in advance – just in case a law enforcement officer or prosecutor demands access – may not be the best solution.

CompTel/ALTS believes that a joint EU/US work shop, as early as possible, is useful to discuss the concepts and solutions to reconcile the needs of law enforcement, industry and customers’ data protection rights. CompTel/ALTS hopes that these comments are helpful and would be pleased to continue the dialogue with the EU on these issues.

Regards,



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