

Thinking through the CALEA Exempt/Non-Exempt Issue

By Doug Carlsonⁱ

Two tests that have been helpful to me as I think about the CALEA exempt/non-exempt issue (but see caveats below):

1. Does the institution support the connection to the ISP?

- If no, then the organization is probably exempt and likely need not comply with CALEA
- If yes, go to test #2 to determine scope of compliance

2. Is it a private network?

- If yes, just need to be CALEA compliant at the gateway
- If no, the whole network may be subject to being CALEA compliant

Details:

1. Does the institution support the connection to the ISP?

- If the ISP provides the physical connection and the router/multiplexor for the campus, the campus is exempt
- If the ISP provides the physical connection to the campus, the campus is probably exempt
- If the campus leases a line (e.g., a tariffed Verizon circuit), it is probably exempt
- If the campus leases fiber to the ISP, the campus may not be exempt
 - ISP runs electronics at both ends - probably exempt
 - Campus runs electronics at both ends - probably not exempt
 - ISP runs electronics at one end, campus runs the other end - probably not exempt
- If the campus provides its own fiber to the ISP (e.g., an IRU, etc.), the campus is most likely not exempt
- If the "demarc" between the campus-provided facilities and the ISP's facilities is off campus, the campus is most likely not exempt

2. Is it a private network?

- If the network isn't connected to the Internet, it is private.
- If the network is limited to serving only staff, faculty and students, it is private
- If there is incidental public usage, probably private
- If there is significant public usage (e.g., university providing services for community, university runs non-authenticated wireless network, etc.) then the network is at risk of being deemed public and at least those elements of the internal campus network that are providing the public access would need to be CALEA compliant (in addition to the gateway)

Caveats:

- * Only future litigation will determine if this interpretation is the correct one
- * The more public access that an institution provides, the greater the risk that it will be subject to CALEA regardless of how it connects to the Internet
- * You should work with your institution's legal department to develop your institution's position on this issue

The information is based on the ACE document:

http://www.acenet.edu/AM/Template.cfm?Section=Legal_Issues_and_Policy_Briefs2&CONTENTID=17470&TEMPLATE=/CM/ContentDisplay.cfm

and perspective of this issue.

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