



August 23, 2006

Dear Colleagues,

For several months Federal Communications Commission rulings extending the provisions of the Communications Assistance for Law Enforcement Act of 1994 (CALEA) to the Internet have received considerable press, and some higher education organizations have originated mailings that interpret these FCC rulings and a subsequent court decision, and warn about possible impact on campuses.

The Network Policy Council of EDUCAUSE, also tracking CALEA developments closely, has concluded that, with rare possible exceptions, universities, colleges, and libraries are exempt from CALEA. While this opinion does not comprise legal advice, it does derive from extensive interaction with FCC Commissioners and staff, with experts involved over the past decade in legislation related to all aspects of telecommunications, and with lawyers of varied expertise who have studied CALEA. After a similar exercise, the Association of Research Libraries and the American Library Association recently published their view that libraries are exempt.

Unfortunately, much information related to the CALEA order remains confusing and incomplete. For example, the FCC has yet to promulgate either a definition of “compliance,” or essential parts of its implementation order. We here summarize some recent events, denoting what is known and what is not:

1. The preponderance of FCC and court guidance is that campus networks are private and exempt, the few possible exceptions being some involved in broader ISP-like activities and some that provide their own connection to the Internet (in a certain manner as yet not clearly defined). Although it did not explicitly rule on the ACE petition for exclusion of campus networks, the Court stated: “The *Order* on review – like CALEA – expressly excludes ‘private networks’ from its reach. ... If and when the Commission expands its interpretation, the aggrieved party can bring a petition for review at that time.”
2. Even if private networks are ultimately required to be CALEA compliant, in a court brief the FCC clarified that compliance would apply only to gateway equipment, not to a campus network’s internal parts. The FCC’s most recent report (<http://www.educause.edu/ir/library/pdf/EPO0634.pdf>) released on May 12, reaffirmed May 14, 2007 as the deadline for networks covered by CALEA to become compliant. However, no standards for compliance have yet been

- published, and no “CALEA compliant” network equipment for colleges and universities exists.
3. It is also worth noting that even the reporting requirements mentioned in the FCC orders for those few institutions that must be CALEA compliant are NOT yet in effect. It will be a matter of at least three months before any such requirements must be considered by any institutions that must comply.
 4. Although not directly related to CALEA, higher education institutions and libraries remain obligated to assist law enforcement with lawful intercepts under Title 18 and associated regulations and have long cooperated in this regard. Campuses might now review their procedure for receiving and responding to a court-ordered information intercept by law enforcement, including a designated campus contact, and personnel who can help law enforcement with, for instance, phone closet access.

Institutions of higher education and libraries should regularly review CALEA developments in Washington, and the Network Policy Council will keep the community informed. The EDUCAUSE resource page on CALEA offers up to date information (<http://www.educause.edu/calea>). But careful reading of the documents to date and direct advice from the principals have led the Council to conclude that essentially all campus networks are private and exempt. Regularly reviewing campus mechanisms for responding to court ordered information gathering by law enforcement under Title 18 is wise, but in the absence of published standards and equipment for CALEA compliance, the vast majority of institutions need not take other proactive steps.

The Network Policy Council will continue to track and assess the evolving rules regarding CALEA, and try to develop guidelines well prior to deadlines for any actions required of campuses. EDUCAUSE continues its dialogue with other higher education organizations to help bring a unified view on CALEA to our community.

Sincerely,

Network Policy Council

For more information on the EDUCAUSE Network Policy Council please go to: www.educause.edu/npc