

CALEA

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The Author of this document is not an attorney. You should seek legal advice from an appropriate legal professional.

Quick History

- **Communications Assistance to Law Enforcement Act**
- **Passed by Congress in 1994**
- **Target: Traditional Telephone Conversations (POTS)**
- **Applies to Telecommunications Carriers**
- **Explicitly excludes “Information Service” providers**
 - **Like the Internet?**

Since 1994

- **Deployment of Cable Providers**
 - **“Broadband providers”**
 - **Not covered by CALEA**
- **Rise of Voice over IP**

FCC Action

- **2004: Notice of Proposal to cover “Facilities Based Broadband” Networks**
- **EDUCAUSE moves to ensure that universities are not covered**
- **September 23, 2005: “First Report and Order”**
- **Final Rule: July 5, 2006**

Footnote 100

¹⁰⁰See 47 U.S.C. § 1002(b)(2)(B); see also House Report, 1994 U.S.C.C.A.N. at 3498; Second Report and Order, 15 FCC Rcd at 7112, para. 12; Notice, 19 FCC Rcd at 15679, para. 8. Relatedly, some commenters describe their provision of broadband Internet access to specific members or constituents of their respective organizations to provide access to private education, library and research networks, such as Internet2's Abilene Network, Nysernet, and the Pacific Northwest gigaPoP. See, e.g., EDUCAUSE Comments at 22-25. To the extent that EDUCAUSE members (or similar organizations) are engaged in the provision of facilities-based private broadband networks or intranets that enable members to communicate with one another and/or retrieve information from shared data libraries not available to the general public, these networks appear to be private networks for purposes of CALEA. Indeed, DOJ states that the three networks specifically discussed by EDUCAUSE qualify as private networks under CALEA's section 103(b)(2)(B). DOJ Reply at 19. We therefore make clear that providers of these networks are not included as "telecommunications carriers" under the SRP with respect to these networks. To the extent, however, that these private networks are interconnected with a public network, either the PSTN or the Internet, providers of the facilities that support the connection of the private network to a public network are subject to CALEA under the SRP.

Deadlines

- **May 14, 2007**
 - **from first Report and Order**
 - **VoIP providers must be compliant**

What is CALEA?

- **Lawful interception**
- **Technical Specification:**
 - **TIA J-STD-025B**
 - **Yes, there is a formal standard that says what do to**
- **Done at the “Border” of a network**

Speculation

- **Where there is no knowledge, there is speculation**
- **Best Case?**
- **Likely Case?**
- **Worst Case?**

Best Case

- **We have to do nothing**
- **Case closed**

Worst Case

- **Every drop and every switch must be CALEA compliant**
- **Every switch must be replaced, soon!**
- **Many many \$\$\$**
- **Request to monitor may be vague**
 - **“All communications from Jeff Schiller”**

Likely Case

- **Monitoring at the border**
 - **Maybe by the ISP, not the institution**
- **Monitoring at VoIP \Leftrightarrow PSTN Gateway**
 - **Even if owned by an enterprise**
- **The final report makes this pretty clear**

Are Universities Covered

- **Unclear**
- **You do not need to deploy CALEA capabilities if your network is “private”**
- **Exactly what is “private” isn't very clear**

Fear and Loathing

- **If you ask the DOJ “What do you want to monitor?”**
 - **Of course the answer is “Everything”!**
- **If you ask FCC Personnel what they are going to do...**
 - **Of course they are not going to answer in writing!**

Don't Worry, Be Happy!

- **Nothing irrational is likely to happen (*)**
- **But there are no guarantees**
 - **There is still some risk of an over-broad or burdensome requirement**
- **Case Law we'll make things clear**
 - **But may take a while**