

CALEA: ***What was all the fuss about?***

Communications Assistance for Law
Enforcement Act

April 19, 2007
ACCS
Charlottesville, VA



A brief history of wiretapping

1960's : Wiretapping was easy; one phone company; basic technology

1980's: Deregulation means multiple carriers; cell phones; analog to digital transition begins

1994: CALEA passed with several compromises; specifically no Internet; no private networks

2004: VoIP: Wiretapping isn't getting any easier...



How many wiretaps are there?

	Real Time	Historical
Content	Title III “Wiretap Order”	Warrant/Subpoena
Other information: subscriber; transactional data	Warrant/Subpoena	Subpoena/Court Order



Federal, State, Local and FISA Wiretap Orders for 2005

- 1,773 regular court
- 2,074 under FISA (Foreign Intelligence Surveillance Act)



What is CALEA?

CALEA is the Communications Assistance for Law Enforcement Act. It requires providers of commercial voice services to engineer their networks in such a way as to assist law enforcement agencies in executing wiretap orders.

Until August 5, 2005 that is.....



CALEA: New Report and Order

On August 5, 2005, in response to a request by law enforcement, the FCC voted to extend CALEA to include facilities-based Internet service providers.

Facilities-based Internet service providers are defined as: *"entities that provide transmission or switching over their own facilities between the end user and the Internet Service Provider."*



Private Networks are still exempt, but....

Private Networks are now defined as networks that do not allow access to the “public” Internet or the public switched telephone network (PSTN).

If your network provides access to the “public” Internet does this mean you are no longer exempt as a private network?



Arguments for/against extending CALEA to ISPs

➤ Law Enforcement

- The Internet is increasingly the communication of choice for criminal activity
- Legal intercepts need to be easier and less expensive for LE
- An “exempt” system is a magnet for criminal activity

➤ Education and Libraries

- Congress should decide not the FCC or DoJ
- LE has sufficient access now
- Cost to comply can't be justified
- Will slow innovation



Legal Justification: Substantial Replacement Provision

The term “Telecommunications Carrier” includes a person or entity engaged in providing wire or electronic communication switching or transmission service to the extent that the Commission finds that such service is a replacement for a substantial portion of the local telephone exchange service and that it is in the public interest

.....

(Section 102. 8B(ii) CALEA)



Substantial Replacements

1. Broadband Internet access substantially replaces Dial-up (a portion of the local exchange service)
2. Interconnected VoIP substantially replaces POTS
3. Therefore, Broadband and Interconnected VoIP providers are “Telecommunications Providers”



Two Part Decision

- Part #1: Decided August 2005
CALEA does apply to ISPs and all facilities-based Internet service providers. Full compliance is required by May 14, 2007.
- Part #2: Decided May 2006
 - Compliance date extensions
 - Technical requirements
 - Security requirements
 - Cost recovery



Compliance Deadline

May 14, 2007 remains the deadline for compliance

- Extensions are only available for pre-October 1998 equipment



Option: Petition for Relief

- Must demonstrate that compliance is not “reasonably achievable”
 - Cost must be prohibitive (disfavored as an excuse)
 - Lack of commercially available equipment (not an excuse)
 - All possible solutions must be examined: third parties must be brought in
- Prohibits group petitions



Technical Requirements

- FCC refuses to intervene in the standards process
- Industry standard-setting bodies are free to determine what constitutes compliance
- Compliance progress reports required (Monitoring Report Due Feb. 12, 2007)
- Law Enforcement must file a deficiency petition if they disagree



Technical Standards

- Available March 2007 through the American National Standards Institute (ANSI)
- Lawfully Authorized Electronic Surveillance (LAES) For Internet Access and Services (document #ATIS-1000013.2007)
- <https://www.atis.org/docstore/product.aspx?id=22665>



Security Requirements

- Report due March 12, 2007 describing how you have, or will, comply with Section 107:
- In short:
 - Create a security office
 - Train personnel
 - Provide contact information to the FCC



What did EDUCAUSE do?

- April 2004 in response to the original petition by LE, EDUCAUSE formed a coalition of 16 education and library associations and filed comments.
- EDUCAUSE actively engaged in talks with Congress, the FCC, and the DoJ until October 24, 2005 when....
- American Council of Education filed a lawsuit in Federal District Court



Court Decision

- By Court decision: a network's level of compliance is determined by a two prong test:
 - Are you a private or public network?
 - Do you support the connection to the commercial ISP?



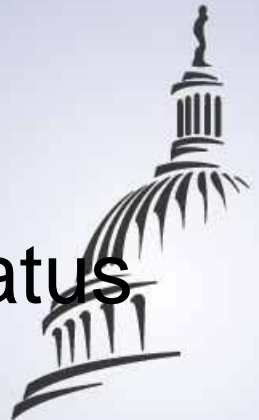
Where do you fall?

	Don't support the connection	Support the connection
Private	Exempt	Compliance required at gateway
Public	Exempt	Full compliance required



Ambiguity remains

- Each entity must decide dependent on their best interpretation and their legal council's advice
- Ambiguity will remain until this is tested in court
- Most entities have decided they are exempt
- Most that have chosen to comply are working with third party providers and vendors to achieve a “safe harbor” status



For more information

➤ www.educause.edu/calea

