



ASSOCIATION
OF RESEARCH
LIBRARIES

Issue Brief: Communications Assistance for Law Enforcement Act (CALEA)

Summary and Current Status:

Since 2004, ARL and others in the public and private sectors have challenged an effort to extend CALEA to facilities-based broadband Internet access providers (please see: <http://www.arl.org/info/frn/tr/calea/index.html>). CALEA, passed by Congress in 1994, addressed the concerns of the law enforcement community regarding the use of wiretaps in digital telephone networks. The law specifically required phone companies to enable law enforcement to conduct wiretaps in the carrier's central office rather than on phone lines in the street.

In August 2005, the Federal Communications Commission (FCC) decided that all facilities-based broadband Internet access providers would be subject to CALEA. ARL, ALA, and ACRL, ACE, Educause, public interest organizations, and commercial entities filed a petition with the District of Columbia Court of Appeals for review of the FCC CALEA Order. Oral argument is scheduled for May 5, 2006 with a decision from the Court as early as August and certainly by the end of the year. In addition, ARL, ALA and ACRL are also pursuing a regulatory approach with the FCC.

Background:

In 1994, Congress differentiated between traditional telephone services and the Internet and did not make CALEA applicable to the Internet or information services such as e-mail, instant messaging, and other Internet-based information and access services. In August 2005, the FCC issued an Order supporting the DOJ position despite strong opposition from libraries and other interested parties. The FCC action is based on a request from the Department of Justice (DOJ) and various law enforcement agencies. The decision by the FCC to extend CALEA to providers of facilities-based broadband and VoIP means that institutions including some libraries will be required to make changes to their systems to accommodate law enforcement surveillance. The FCC's Order requires all facilities-based providers of broadband Internet access and all interconnected VoIP services to comply with CALEA within 18 months.

Recently, in a brief filed in federal court, the FCC called for CALEA to be extended to equipment that connects otherwise exempt private networks to the public Internet – the intersection of the private network and the public network. For example, this might mean that campuses would only need to redesign networks at the point of contact with the public Internet, not reach to communications within campuses. So intra-campus communications would not

be covered but communications between campuses would be covered if they used the Internet.

Private Network. In the context of Internet communications, the FCC describes a private network as a system that enables members of an organization or community to communicate with one another and/or to retrieve information from shared databases not available to the general public. The FCC has said that if these private networks connect to the Internet, however, the facilities that support the connection would be covered. Library associations and others have asked the FCC to clarify whether that means the private network operator has the obligation or whether it means the commercial ISP that connects the private network to the Internet has the obligation. The FCC has not responded, but in its latest filing with the Court of Appeals, it indicated that the obligation falls on the private network operator.

Applicability to Libraries. In its Order, the Commission found it not to be in the public interest *at this time* to extend CALEA to libraries that procure broadband Internet access through a commercial Internet Service Provider. However, many libraries obtain Internet access through local and regional library networks, or other private networks. As noted above, the FCC stated that to the extent these networks are interconnected with a public network like the Internet, providers of the facilities that support the connection of the private network to a public network are subject to CALEA. Thus, libraries through their private network connections still could be subject to CALEA obligations. For many ARL libraries, this would be managed elsewhere on campus.

Compliance Deadline and Other Obligations. Several parties including the library associations have asked the FCC to stay the 18 month CALEA compliance deadline pending either the outcome of the appeal or at least pending the issuance of final technical requirements by the FCC. Because it is unclear what a service provider would have to do to meet CALEA at this time for broadband Internet access, the parties have urged the FCC to delay implementation. There is no date required by which the FCC must act on this request.

Compliance Requirements. The precise technical requirements have not been determined and were not part of the FCC's Order. The FCC has said that it will issue another Order addressing technical requirements but it is unknown when this will be released. In addition, entities that are covered must provide 7x24 security personnel to receive and implement wiretap orders. Wiretaps must be performed with the affirmative intervention of service provider staff so it can fairly be concluded that some libraries (non-university based) will have to train personnel on the receipt of surveillance orders and their implementation. To the extent that library network operators are covered, similar upgrades and administrative procedures would have to be implemented. Because the wiretap is conducted by library or university personnel, privacy concerns do not loom quite so large.