Abstract: This document summarizes CALEA and NJCU’s position on this legislation. The University believes that it is exempt and therefore is not subject to its filing or other requirements. Below is an overview of the law, recent rulings and interpretations along with the criteria used in making our decision.

Overview

On August 5, 2005, the Federal Communications Commission (FCC) extended provisions of the Communications Assistance for Law Enforcement Act of 1994 (CALEA) to include assisting with “wire-tapping” all forms of communications over the Internet. The extension broadened the scope of participants to include all businesses that provide access to the Internet, potentially adding Institutions of Higher Education (IHE) to the list. However, the new mandate leaves each institution to interpret compliance or exemption on an individual basis.

The order requires that providers come into compliance by late spring of 2007. If included, compliance mandates the university to provide equipment to detect and pass all traffic associated with an individual user to the FBI. This will involve substantial costs, which the FCC has stated must be borne by the institutions with no available cost sharing.

On December 14, 2006, the FCC released a Public Notice establishing filing deadlines. For those institutions that are subject to CALEA, the Monitoring report is due February 12, and the SSI report is due March 12. However, the Public Notice targeted providers of “facilities-based broadband Internet access and interconnected VoIP services”. Since the University does not provide these services to the general public, it becomes necessary to evaluate applicability and compliance requirements of this law and the possibility that the university is exempt from compliance.

In April 2004 and again in November 2004, EDUCAUSE formed a coalition of fifteen education and library associations including the American Council on Education (ACE) and the American Library Association (ALA). This coalition filed suit asking that educational institutions should not be included in the law. The U.S. Court of Appeals for the D.C. circuit upheld the FCC order on appeal. However, according to ACE documents "... the Government's court briefs and the court's opinion provided further guidance. Generally speaking, a higher education or research instruction should be fully exempt from CALEA if it satisfies two criteria; (1) its network qualifies as a "private network" and (2) it does not "support" the connection of the private network to the internet."
Interpretations

In a web page updated July 10, 2006, Cornell University concluded that it was exempt from CALEA because it is running a private network. However, what constitutes a private network is still open for interpretation. In a Network World article, dated 5/1/2009, Jim Duffy notes the American Council on Education (ACE) came to a similar conclusion and submitted a formal argument to the FCC requesting IHE to be formally excluded. The petitioners included Educause, “a nonprofit association whose mission is to advance higher education by promoting the intelligent use of information technology.”

Educause recently issued a formal statement, dated August 23, 2006, that concludes “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)”. One possible exception may be NJEDge.Net, New Jersey’s state-wide educational network, which NJCU is a participating member. This was acknowledged by George Laskaris, Executive Director, in an email message to members dated September 6, 2006.

NJEDge.Net conducted a CALEA panel Fall 2006 to investigate how their compliance will affect its members. On January 4, 2007, Mr. Laskaris further clarified this conclusion in an email to member, stating “…as the primary ISP for NJEDge members and the entity that supports the "gateway facilities" to the Internet, NJEDge itself will have the formal responsibility of becoming CALEA compliant on behalf of its membership and we will be filing the appropriate compliance documents …” However, Mr. Laskaris also notes “The only exceptions to this would be NJEDge members that are dual homed to the Internet with a secondary connection to another ISP. Also, institutions that maintain "unsecured wireless" networks that provide access to the general public beyond their own students and faculty could jeopardize their exempt (private) status and may well be subject to CALEA obligations.”

On January 9, 2007, Mr. Laskaris issued a follow-up email to members stating “any library that acquires its Internet access from another provider has no CALEA obligation whatsoever. The access provider may be a commercial ISP or a state or local network operator, or a university or college.”

NJEDge.Net’s conclusions can be corroborated through the following criteria, compiled by the Texas Christian University using information from Educause, ACE and the ALA to help institutions determine if they qualify for the exemption. According to this paper, it is enough to answer yes to any one of the descriptions within each criterion to assume exemption. (TCU’s Position on the Communications…)

Criteria 1: The Institution is a Private Network.

1. It is a "private network" if the network is NOT connected to the internet.
2. It is a "private network" if the network is limited to serving only faculty, staff and students.
3. It may be a "private network" if there is incidental public usage.

Criteria 2: The institution does not support the connection to the internet.

1. The institution does “not support the internet connection" if an ISP provides the physical connection and the router/multiplexer for the campus.
2. The institution probably does “not support the internet connection" if it leases a line (e.g. a tarriffed Verizon circuit).
3. The institution may "not support the internet connection" if the campus leases fiber to the ISP.
4. The institution likely does "support the internet connection" if the campus provides its own fiber.

5. The institution likely does "support the internet connection" if the point of demarcation between the campus-provided facilities and the ISP's facilities is off-campus.

Conclusion

After careful review of related materials available online and in conjunction with various communiqués with colleagues and NJEDge.Net officials, New Jersey City University has come to the conclusion that the university is exempt from CALEA requirements. This deduction is based on the following points of reasoning:

- NJCU is not an Internet Service Provider (ISP). (Gidari, “Communications Assistance…”)
- NJCU is a private network as defined by Criterion 1.2 above, which is excluded from CALEA requirements. Nearly all computers on the University wired network and all wireless connections require authentication, which restricts access to members of the university community (e.g. students, faculty, conference attendees, and visitors related to the educational mission). This includes student labs. (ACE, Application of CALEA, 2006)
- NJEDge.Net provides NJCU and other members of their organization “gateway facilities” to connect to the Internet through contracted services with an ISP. Consequently, NJEDge.Net will be responsible for accommodating CALEA requirements and register with the FCC. (Laskaris, NJCIO-list, 2007) NJCU also acknowledges
- While computers in the CFG Library are less restricted, libraries are excluded from this legislation. (Gidari, “Libraries are Exempt…”; Laskaris, CSR-list, 2007)
- ACE and Educause have both concluded that the majority of IHE’s do not have to comply with CALEA legislation. (Luker, Educause List, 2007)

References

Articles & Emails

“Amendments to CALEA, Section by Section Analysis”, Electronic Frontier Foundation, [not dated]

“TCU’s Position on the Communications Assistance for Law Enforcement Act (CALEA)”, Texas Christian University, [not dated]


Carlson, D. “Thinking Through the CALEA Exempt/Non-Exempt Issue”, Educause CALEA Tech Working Group, [not dated].


Gidari, A. “Communications Assistance for Law Enforcement Act (CALEA) and Private Networks in Academia, Perkins Cole, [not dated].

Gidari, A., (Legal council to ALA), “Libraries are Exempt from CALEA Wiretap Obligations”, American Library Association, [not dated].


**Additional Resources**


Latham & Watkins, “CALEA and HE Networks”, ACE PowerPoint Presentation


**Websites**

AskCALEA (http://www.askcalea.net)

Center for Democracy & Technology, CALEA page (http://www.cdt.org/wiretap/calea/)

Cornell University on CALEA (http://www.cit.cornell.edu/oit/policy/calea/)

EDUCAUSE CALEA Resource Center
(http://www.educause.edu/content.asp?PAGE_ID=645&PARENT_ID=698&bhcp=1)

Electronic Frontier Foundation on CALEA (http://www.eff.org/Privacy/Surveillance/CALEA/)

FCC on CALEA (http://www.fcc.gov/calea/)