

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Communications Assistance for Law)	ET Docket No. 04-295
Enforcement Act and Broadband Access and)	
Services)	RM-10865

**REPLY COMMENTS OF
University at Albany**

Introduction and Summary

The University at Albany (UAlbany) respectfully submits these reply comments in response to the Further Notice of Proposed Rulemaking adopted in the above-captioned docket.¹ UAlbany supports the comments filed by the Higher Education Coalition and submits this reply to amplify several points based on its own experience and circumstances.

(1) the Federal Communications Commission (FCC) should make clear that the private networks operated by colleges, universities, and research institutions have been and are exempt from CALEA. UAlbany has a private network that conducts education and research and is not sold to its users, thereby we are not a “telecommunications provider”; (2) UAlbany has not, to our current knowledge, ever received a wiretap order but has cooperated with law enforcement requests involving data communications over our IP network. It is our experience with law enforcement that existing procedures are more than adequate to ensure prompt compliance with any lawful surveillance request by a law enforcement agency; and (3) applying CALEA to

¹ *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, ET Docket No. 04-295, FCC 05-153 (rel. Sept. 23, 2005) (“*Order*”).

UAlbany's private network would impose significant costs that would impede UAlbany's ability to deliver on its core responsibilities to students and society as a whole.

Discussion

1. The FCC Should Clarify That Higher Education Networks Are Exempt from CALEA.

Campus networks operated by higher education and research institutions such as UAlbany are not subject to CALEA because the statute expressly exempts "equipment, facilities, or services that support the transport or switching of communications for private networks." 47 U.S.C. § 1002(b)(2)(B). Although the FCC acknowledged in the *Order* that private educational networks are exempt from CALEA, it introduced ambiguity by stating: "To the extent . . . that [such] 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 . . ." *Order* at ¶ 36, n.100. UAlbany's private network is connected to the Internet via leased fiber; we are concerned that UAlbany could be deemed under the *Order* to "support" such a "connection" and thus become subject to CALEA.

The FCC should clarify that only commercial entities are covered by the language in footnote 100, in light of the clear statutory exemption of private network operators. Alternatively, the FCC should invoke its discretionary authority under Section 102(8)(C)(ii) of CALEA to exempt higher education and research institutions from compliance with the forthcoming assistance-capability requirements. Such an exemption is necessary to remain faithful to congressional intent and to avoid imposing unnecessary burdens on colleges, universities, and research institutions.

Contrary to the suggestion by the Department of Justice (DOJ) that "no exemptions are appropriate based on the current record," DOJ Comments at 11, the Higher Education Coalition

has defined a narrow class of private network operators that should be exempt from CALEA for all the reasons contained in the Coalition's comments and in these reply comments. The absence of existing compliance standards does not argue for postponing exemption determinations, but instead makes a prompt exemption more critical. Because the FCC has established an 18-month compliance deadline, UAlbany must begin planning *now* if it is necessary to identify funds for possible CALEA compliance. Far from being premature, an exemption for higher education and research institutions is urgently necessary.

2. UAlbany's Experience with Surveillance Requests Demonstrates the Absence of Any Need to Impose CALEA Requirements on Higher Education Networks.

UAlbany has not had any wiretap orders but promptly and fully cooperated in one law enforcement order for servers on an IP network. UAlbany is committed to working with law enforcement in any way under the processes established by law. UAlbany also is committed to working with law enforcement in the future with respect to any lawful surveillance requests. UAlbany's experience helps demonstrate that existing procedures are more than adequate to ensure compliance with lawful surveillance requests, in light of both the absence of such requests and its history of full cooperation. Imposing burdensome new assistance-capability requirements under CALEA is simply not necessary to serve the interests of law enforcement. It would be a waste of time and money.

3. A Broad Application of CALEA Would Impose Significant Burdens on UAlbany and Divert Funds from Its Critical Educational Mission.

As noted above, UAlbany believes that CALEA does not apply to it under the plain terms of the statute and under the most reasonable reading of the *Order*. If the FCC were to apply the language in footnote 100 of the *Order* broadly and conclude that higher education networks such

as UAlbany's must comply with some or all assistance capability requirements, such a ruling would impose significant and unwarranted burdens.

UAlbany would :

- Need to replace over 600 network switches and 10 routers with an estimated cost of \$2.1 million dollars;
- Have to do a complete network redesign and bring in additional expertise to become compliant;
- Need to replace or dismantle a newly installed wireless network; and
- Have to cut other programs to compensate for the increased costs of compliance.

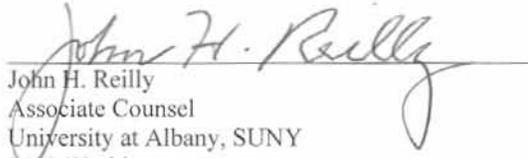
UAlbany is near the end of a five year network upgrade program using capital funding. At the conclusion of that plan there will be no additional funding available. Other programs, such as providing technology for students through smart classroom development and an Information Commons area in the University Library, would have to be evaluated and potentially cut to bring the institution into compliance. In short, if the FCC were to apply CALEA broadly to higher education networks — contrary to the text of the statute — such a ruling would impose significant burdens that far outweigh its putative benefits. The FCC accordingly should exempt higher education institutions and research networks from CALEA, if it considers them subject to the assistance-capability requirements in the first place.

Moreover, if the FCC applies CALEA to private educational networks at all, it should construe the *Order* as applying *at most* to the Internet connection facilities at the edge of the network, for the reasons stated by the Higher Education Coalition in its comments. In addition, as proposed by the Coalition, any such requirement should be phased in over a five-year period as existing equipment is replaced in the normal course of events.

Conclusion

UAlbany respectfully requests that the FCC clarify that private networks operated by higher education and research institutions are not subject to CALEA, or alternatively grant an exemption under Section 102(8)(C)(ii) of CALEA. At a minimum the FCC should limit the CALEA obligations imposed on higher education and research networks consistent with the compromise measures proposed by the Higher Education Coalition.

Respectfully submitted,


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