

**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 the
Wisconsin Department of Public Instruction**

The Wisconsin Department of Public Instruction (department) respectfully submits these comments in response to the Further Notice of Proposed Rulemaking in the matter of the Communications Assistance for Law Enforcement Act.¹ The Department of Public Instruction is the state PK-12 public education and public library agency of Wisconsin.

The department strongly supports the comments filed by the American Library Association (ALA). We agree fully with ALA that the Commission should confirm that public libraries are not subject to CALEA compliance requirements.² Over 95% of Wisconsin’s 387 public libraries get Internet access via regional WANs that are managed by library consortia or municipal/county governments.³ In some states, including Wisconsin, these library WANs are then connected to larger statewide networks. State WANs are often managed by a state government network office or some not-for-profit consortium serving the education (PK-20) and library communities. These WANs are almost always closed, private networks in that they restrict who or what entities can access the network. As ALA’s comments note, it appears clear in the Order that the Commission

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 (released September 23, 2005, “Order”).

² The issue of PK-12 school compliance with CALEA is not directly addressed in the Order. But as the department believes that CALEA compliance does not include public libraries, by extension, we believe it does not include public PK-12 schools either.

³ It is also important to note that probably a majority of public libraries nationwide get Internet access via similar networks.

concluded that not just libraries but networks that connect them are exempt from CALEA. To make certain that all parties have the same understanding, the Commission should (1) specifically confirm that public libraries are not subject to CALEA and (2) confirm that regional and statewide networks are also exempt.⁴

In private, closed wide area networks, be they regional library/education networks or statewide networks, it is not entirely clear in the Order where the point of CALEA compliance resides. The Order says that “providers of the facilities that support the connection of the private network to a public network are subject to CALEA.”⁵ We note that in some states, like Wisconsin, there can be several interconnected private networks. We request that the Commission clarify that in a single or multilayered private network environment, responsibility for compliance resides with the provider who ultimately takes the packets from the private network(s) and adds them to the public packet stream. The public packet stream is often referred to as the “open” or “commodity” Internet. Another way to view this is by analogy to more traditional voice telephony. That is, when packets from the private network are added to the public packet stream corresponds to when a conversation from a private network (e.g., PBX) reaches the Public Switched Telephone Network (PSTN).

Another fact that supports a library exemption is that about 60% of Wisconsin’s public libraries are in communities of fewer than 2,500 population. Many have minimal staff and are open only 20-30 hours a week. The department is concerned that some possible requirements, such as having staff “on call” on a 24/7 basis, or needing staff to have a detailed, technical knowledge of internetworking, are unrealistic obligations for a majority of our libraries.

The department believes our understanding of the Order is based on a straightforward reading of its language. But imposing the requirements of CALEA on Internet-based communications is fraught with unknowns not found in the more traditional voice telephony network environment. This being noted, if the Wisconsin Department of Public Instruction or the American Library Association has misinterpreted the FCC’s language in the Order and public libraries, the

⁴ As a point of clarification, in most instances the library or statewide networks do not themselves provide Internet access. Such access is provided by a separate Internet Service Provider (ISP).

⁵ *CALEA Broadband Order* ¶ 36. n.100.

education community, and the networks that interconnect them are covered by CALEA, then the Commission should act to exempt them. If an exemption is needed, declaring it in a timely manner becomes critically important in the context of the Order's 18-month compliance timeframe. That is, any delay in granting an exemption will force many education institutions and libraries to begin the costly compliance processes because of the uncertainty of the exemption.

As the Commission continues its work on drafting the follow-up Order⁶ that will address such issues as specific compliance requirements for entities covered by CALEA, the department requests that Commission and federal law enforcement staff continue their dialogue with the education and library communities. On May 5, 2005, the author of these comments and representatives from the American Library Association, EDUCAUSE, and Internet2 met in Washington, D.C., with representatives from the federal Department of Justice and the Drug Enforcement Administration to discuss CALEA in the context of library and education networks. Continuing such discussions is helpful to all sides in resolving questions and assumptions, especially in the area of complex network environments.

The Wisconsin Department of Public Instruction supports the comments filed by the American Library Association. We ask the Commission to issue clear language exempting from CALEA compliance the PK-20 education community, public libraries, and the networks that connect them.

Respectfully submitted by

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⁶ *CALEA Broadband Order* ¶ 3.