



American Council on Education
Government and Public Affairs

May 18, 2006

Commissioner Deborah Taylor Tate
Room 8-A204
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Communications Assistance for Law Enforcement Act and Broadband Access and Services (ET Docket No. 04-295)*

Dear Commissioner Tate:

On behalf of the American Council on Education (ACE), I am writing in response to your recent Statement regarding the extension of CALEA obligations to broadband networks operated by colleges and universities. ACE is a leading member of the Higher Education Coalition,¹ which has participated actively in the Commission's rulemaking, as well as in the pending appeal in the D.C. Circuit. We appreciate your attention to the arguments we have raised, but we are concerned that your Statement significantly understates the burdens facing colleges and universities and overlooks the legal flaws inherent in the Commission's extension of CALEA to private broadband networks.

As an initial matter, we want to emphasize that we share your strong interest in public safety and national security. In particular, while we believe that CALEA compliance is wholly unnecessary and overly burdensome for higher education institutions, we are committed to cooperating fully with law enforcement agencies in the relatively rare cases when they seek to conduct electronic surveillance on college and university campuses. Indeed, we have been

¹ The Higher Education Coalition also includes the American Association of Collegiate Registrars and Admissions Officers, American Association of Community Colleges, the American Association of State Colleges and Universities, the Association of American Universities, Association for Communications Technology Professionals in Higher Education, Association of Community College Trustees, Association of Jesuit Colleges and Universities, EDUCAUSE, Internet2, National Association of College and University Business Officers, National Association of Independent Colleges and Universities, National Association of State Universities and Land Grant Colleges, and University of California.

working closely with the Department of Justice (including the FBI, DEA, and other agencies) for several months to develop procedures to ensure that colleges and universities provide effective assistance in carrying out wiretaps. Our goal in these discussions and throughout the Commission's rulemaking proceeding has been to develop pragmatic, cost-effective solutions to law enforcement agencies' surveillance needs, in contrast to the needlessly expensive requirements of CALEA.

Although we welcome the Commission's clarification in its court brief that CALEA obligations would apply only to the connection point between a university's private broadband network and the Internet, that gives us little comfort for two primary reasons. First, as we have explained to the court, such "gateway" equipment—no less than any other equipment that "support[s] the transport or switching of communications for private networks"—is exempt from CALEA under the plain language of the statute.² And second, the costs of replacing all campus gateway equipment by May 2007 remain daunting, even if the Commission upholds the exempt status of the internal portions of our broadband networks.

Some equipment vendors have told the Commission that our concerns are overstated, but the equipment-replacement costs threatened by the extension of CALEA are both real and substantial. While the estimated burdens of billions of dollars in the record assumed broader equipment replacement, replacing gateway equipment throughout college and university networks still could total hundreds of millions of dollars. No "trusted third party" has submitted any evidence to support the assertion that costs will be significantly lower. Notably, Subsentio, whose comments are cited in your Statement, has *not* suggested that a university's compliance costs could be anywhere near one cent per "subscriber" per month; rather, it acknowledges that "the cost per subscriber for CALEA implementation for a company with a base of 2,000 customers can be more than 4,000% higher than [for] companies with a subscriber base of 1,000,000 customers."³ The one-cent estimate referred to that company's proposed "nationwide tax . . . [for] all ISP and/or VoIP subscribers."⁴

More fundamentally, even apart from vendors' obvious self-interest in understating anticipated compliance costs, it is simply not possible for "trusted third parties" to predict with any reliability what the ultimate costs will be, *because the assistance-capability requirements have yet to be defined, and CALEA-compliant gateway equipment has yet to be manufactured.* Moreover, we understand that law enforcement agencies would like all colleges and universities to develop centralized authentication systems so that particular communications could easily be linked to a surveillance target (something relatively few campus networks can do today). If the application of CALEA to higher education networks is upheld, and such requirements are imposed, the costs to colleges and universities could extend well beyond replacing or modifying gateway equipment.

² 47 U.S.C. § 1002(b)(2)(B).

³ Comments of Subsentio, Inc., ET Docket No. 04-295, at 4 (Nov. 11, 2005) (emphasis added).

⁴ *Id.* at 6.

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If the record before the Commission had indicated a systemic failure of higher education institutions to assist with wiretaps, perhaps such burdens could be justified. But there is no evidence of any problem at all. To the contrary, the few intercept requests that have been received by higher education institutions have been successfully and promptly implemented, and the higher education community has made clear its continued commitment to working cooperatively with law enforcement agencies. There is therefore no justification for requiring colleges and universities to bear the costs of building in surveillance capabilities that in most cases will never be utilized.

We thank you for your consideration of these issues. We would welcome an opportunity to meet with you to continue the dialogue about the impact of CALEA on our nation's colleges and universities.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry W. Hartle". The signature is fluid and cursive, with a prominent initial "T" and a stylized "H".

Terry W. Hartle
Senior Vice President
Government and Public Affairs

TWH/cms

cc: John Grant, Special Advisor for Policy
Marlene Dortch, Secretary