



NEWS

Federal Communications Commission
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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action.
See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

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FCC Requires Certain Broadband and VoIP Providers to Accommodate Wiretaps *Order Strikes Balance Between Law Enforcement, Innovation*

Washington, D.C. – Responding to a petition from the Department of Justice, the Federal Bureau of Investigation, and the Drug Enforcement Agency, the Commission determined that providers of certain broadband and interconnected voice over Internet Protocol (VoIP) services must be prepared to accommodate law enforcement wiretaps, the Federal Communications Commission ruled today.

The Commission found that these services can essentially replace conventional telecommunications services currently subject to wiretap rules, including circuit-switched voice service and dial-up Internet access. As replacements, the new services are covered by the Communications Assistance for Law Enforcement Act, or CALEA, which requires the Commission to preserve the ability of law enforcement agencies to conduct court-ordered wiretaps in the face of technological change.

The Order is limited to facilities-based broadband Internet access service providers and VoIP providers that offer services permitting users to receive calls from, and place calls to, the public switched telephone network. These VoIP providers are called interconnected VoIP providers.

The Commission found that the definition of “telecommunications carrier” in CALEA is broader than the definition of that term in the Communications Act and can encompass providers of services that are not classified as telecommunications services under the Communications Act. CALEA contains a provision that authorizes the Commission to deem an entity a telecommunications carrier if the Commission “finds that such service is a replacement for a substantial portion of the local telephone exchange.”

Because broadband Internet and interconnected VoIP providers need a reasonable amount of time to come into compliance with all relevant CALEA requirements, the Commission established a deadline of 18 months from the effective date of this Order, by which time newly covered entities and providers of newly covered services must be in full compliance. The Commission also adopted a Further Notice of Proposed Rulemaking that will seek more information about whether certain classes or categories of facilities-based broadband Internet

access providers – notably small and rural providers and providers of broadband networks for educational and research institutions – should be exempt from CALEA.

The Commission's action is the first critical step to apply CALEA obligations to new technologies and services that are increasingly used as a substitute for conventional services. The Order strikes an appropriate balance between fostering competitive broadband and advanced services deployment and technological innovation on one hand, and meeting the needs of the law enforcement community on the other.

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CHAIRMAN KEVIN J. MARTIN COMMENTS ON ADOPTION OF CALEA ORDER

Responding to the needs of law enforcement is of paramount importance. New technologies present challenges to executing authorized electronic surveillance. The Order adopted today affirms that interconnected VoIP services and facilities-based Internet access providers are subject to CALEA. These services have proliferated in recent years, and they continue to grow at exponential rates. Given this, it is critical to our nation's security that VoIP and broadband Internet access providers have CALEA obligations.

Although I believe that new technologies and services should operate free of economic regulation, I also believe that law enforcement agencies must have the ability to conduct lawful electronic surveillance over these new technologies. We must strike a balance between fostering competitive broadband deployment with meeting the needs of the law enforcement community.

The Order that we adopt today is an important first step, but there is still more work ahead of us. In the next few months, we intend to issue a subsequent order that will address other important issues under CALEA such as cost recovery, standards, and enforcement. Nevertheless, we firmly expect that interconnected VoIP and facilities-based broadband Internet providers use the regulatory clarity provided by this Order to begin tackling the technical issues necessary for full compliance. I am committed to ensuring that these providers take all necessary actions to incorporate surveillance capabilities into their networks in a timely fashion. To this end, the Commission intends to continue working closely with industry representatives, equipment manufacturers, and law enforcement officials to address and overcome any challenges that stand in the way of effective lawful electronic surveillance.

**STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Communications Assistance for Law Enforcement Act and Broadband Access and Services (ET Docket No. 04-295, RM-10865).

Of all our responsibilities, none is more important than preserving public safety. The very first sentence in the very first section of the Communications Act establishes the Commission "for the purpose," among others, "of promoting safety of life and property through the use of wire and radio communications." Last year, the Department of Justice, Federal Bureau of Investigation, and Drug Enforcement Administration brought to our attention ways in which the Commission might act to further this goal by closing gaps in the application of CALEA – gaps that increase the danger posed to American citizens by criminals and terrorists. We quickly opened a proceeding to address the critical issues raised by law enforcement, and I am pleased that we have now taken an important first step in resolving them.

I am happy to support this item, which properly signals the Commission's intention to apply CALEA's requirements to providers of broadband Internet access and VoIP, but wisely seeks further input regarding the precise form that those obligations will take and grants providers sufficient time to reconfigure their systems. In particular, issues regarding enforcement and cost recovery warrant further investigation now that we have resolved broader questions regarding the statute's coverage, and we will benefit from a more nuanced record on these matters.

Our decision today must not, however, lead to complacency regarding the need for legislative action clarifying CALEA's reach. Because litigation is as inevitable as death and taxes, and because some might not read the statute to permit the extension of CALEA to the broadband Internet access and VoIP services at issue here, I have stated my concern that an approach like the one we adopt today is not without legal risk.

Upon review of the record compiled and of CALEA's legislative history, I believe that the construction we adopt is reasonable, particularly given law enforcement's indisputably compelling needs. In circumstances like these, as the Supreme Court recently emphasized in its *NCTA v. Brand X* decision, the Commission's interpretation is due deference from the courts. Nevertheless, because some parties will dispute our conclusions, the application of CALEA to these new services could be stymied for years. For this reason, I continue to believe that the Commission, the law enforcement community, and the public would benefit greatly from additional Congressional guidance in this area.

In sum, I am happy to support this item, which is of the utmost importance to public safety in the twenty-first century. I believe we have interpreted the statute faithfully, and expect that courts will ultimately agree. But I think it is wise to follow the lead of good law enforcement officers everywhere, and to call for backup *before* a potential problem becomes an actual hazard. To that end, I repeat my plea for Congressional clarity and for the certainty such clarity will bring.