



## SUMMARY

The Corporation for Education Network Initiatives in California, Florida LambdaRail, Internet2, National LambdaRail, Pacific Northwest Gigapop and Southern Crossroads Gigapop are regional and national private advanced research and education network providers. [collectively, the “ARENs”] We urge the Commission to confirm that such private research and education networks are not covered by the Communications Assistance for Law Enforcement Act (“CALEA”).

The AREN Providers have significant infrastructure and capabilities that permit their members and users, which include primarily education and research institutions and sites, as well as other regional research and education networks and network exchange points, to interconnect their networks to achieve highly reliable, very high performance services that are necessary for today’s inherently collaborative and interconnected research and education purposes. In many respects, the ARENs, and other entities like them, are the private network mirror images of the public Internet.

By enabling a member university, community college, high school or other similar entity, for example, to connect to one of these private research and education networks, that entity is able to send its data at local and regional levels cost-effectively across the infrastructure provided by private research and education networks. These private research and education networks in turn connect to a national private research and education network like NLR, ultimately delivering the data to another regional private research and education network and to its intended destination at another local university, community college or high school that is part of that state’s or region’s private research and education network.

None of this intra- or inter-regional or intra- or inter-campus traffic crosses the public commodity Internet. However, traffic destined for a commercial Internet site is exchanged by the private regional research and education network at its gigapops, or at some workable

peering, exchange or inter-connection point, with a commercial provider who would use its equipment to deliver the packets to the public commodity Internet for routing. It is this commercial provider that provides access to the public commodity Internet that would have whatever CALEA obligation the Commission determines is appropriate through this and other proceedings.

If the Commission intended to cover these private research and education networks in the first instance, the Commission should now grant an exemption from CALEA's coverage by rule for research and education institutions and the private research and education networks like the ARENs upon which these entities rely for interconnection and traffic exchange. The criteria for exemption should be clear and include consideration of the impact on research, innovation, and delivery of education, as well as law enforcement's real needs and the existence of other real alternatives. The final rules should lighten any CALEA burden if a full exemption is not granted.

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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
	)	
	)	
	)	

To: The Commission

COMMENTS  
OF THE  
CORPORATION FOR EDUCATION NETWORK INITIATIVES IN  
CALIFORNIA;  
FLORIDA LAMBDARAIL;  
INTERNET2;  
NATIONAL LAMBDARAIL;  
PACIFIC NORTHWEST GIGAPOP;  
SOUTHERN CROSSROADS GIGAPOP  
  
IN RESPONSE TO FURTHER NOTICE OF PROPOSED  
RULEMAKING

On September 23, 2005, the Federal Communications Commission (“Commission”) extended the Communications Assistance for Law Enforcement Act (“CALEA”)<sup>1</sup> to all facilities-based providers of broadband Internet access and all providers of Voice over Internet Protocol (“VoIP”) services.<sup>2</sup> Having done so, the Commission then asked what procedures, if any, the Commission should adopt to

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<sup>1</sup> Pub. L. No. 103-414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.).

<sup>2</sup> See *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295 (Rel. Sept. 23, 2005), published in 70 Fed. Reg. 59,664 (Oct. 13, 2005) (“CALEA Broadband Order”).

consider exemptions from CALEA or the application of different compliance obligations for certain categories of providers.

The Corporation for Education Network Initiatives in California ("CENIC"), National LambdaRail ("NLR"), the Florida LambdaRail ("FLR"), Internet2, Pacific Northwest Gigapop ("PNW Gigapop"), and the Southern Crossroads Gigapop ("SoX") [collectively, the "ARENs"] are regional and national private research and education networks with significant infrastructure and capabilities that permit their members and users, which include primarily education and research institutions and sites, as well as other regional research and education networks and network exchange points, to interconnect their networks to achieve highly reliable, very high performance services that are necessary for today's inherently collaborative and interconnected research and education purposes.

By enabling a member university, community college, high school or other similar entity, for example, to connect to one of these private research and education networks, that entity is able to send its data at local and regional levels cost effectively across the infrastructure provided by private research and education networks. Private research and education networks in turn connect to a national private research and education network like NLR, ultimately delivering the data to another regional private research and education network and to its intended destination at another local university, community college or high school that is part of that state's or region's private research and education network.

None of this intra- or inter-regional or intra- or inter-campus traffic crosses the public commodity Internet. However traffic destined for a commercial Internet site is exchanged by the private regional research and education network at its gigapops, or at some workable peering, exchange or inter-connection point, with a commercial Internet Service Provider ("ISP") that would use its equipment to deliver the packets to the public commodity Internet for routing. In many respects, the ARENs and other entities like

them, are the private network mirror images of the public Internet, and are also in this way much like a multi-site commercial enterprises private 'intra-net'.

The ARENs urge the Commission to confirm that such private research and educational networks are not covered by CALEA. Instead, the commercial operators that provide access to the public commodity Internet would have whatever CALEA obligation the Commission determines is appropriate through this and other proceedings. These comments explain why the ARENs and similarly constituted networks should not be within the ambit of the Commission's order or should otherwise be exempt from it.

## **I. Advanced Research and Education Networks**

Advanced research and education networks provide important services, capabilities and shared infrastructure to the research and education community. They permit, for example, local area campus networks to interconnect to more efficient and cost-effective advanced networks where traffic is aggregated and/or exchanged with other networks and also exchanged efficiently with the public commodity Internet in ways that also enable research activities to be conducted. We describe the ARENs in more detail in this section before discussing how these entities fit into the Commission's legal framework and why they should be exempt from CALEA's coverage.

The mission of CENIC is to develop, deploy and operate leading edge network-based services and to facilitate and coordinate their use for the research and education community to advance learning and innovation.<sup>3</sup> CENIC is charged with designing, provisioning and operating robust, high capacity, next generation Internet communications services through a cohesive infrastructure for its associates and affiliates. CENIC represents the common interests of its associates, who are drawn from California's higher education academic and research communities and California K-12

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<sup>3</sup> See [www.cenic.org](http://www.cenic.org)

schools. CENIC serves all University of California campuses, Caltech, Stanford, all California State University campuses, all California Community Colleges and the K-12 system.

FLR<sup>4</sup> is new very high-speed regional optical network that supports research and education institutions in the state of Florida. FLR is a collaboration of 10 public and private research universities which provides Internet2 Abilene, National LambdaRail (NLR), and commodity ISP services to its participants, who include the major research entities in the state of Florida, including the University of Florida, University of Miami, and Florida State University. The federally supported National High Magnetic Field Laboratory is a participant and NASA has committed to connecting the Kennedy Space Center the summer of 2006. . FLR has recently become operational utilizing 1540 miles of fiber optic cable throughout the state and is actively connecting other Florida colleges and universities to provide a leading-edge very high-speed networking infrastructure for higher education.

The FLR supports the total data communications needs of its participants and allows Florida institutions to collaborate and compete on equal network connectivity footing with the best funded and most prestigious universities in the nation. The FLR is collaborating with Intenet2, the Southern University Research Association, the Southern Light Rail, and the Mid-Atlantic Crossroads (“MAX”) networking entities to launch a new east coast high-speed peering fabric called the Atlantic Wave, which is patterned after the Pacific Wave initiative on the west coast. The Atlantic Wave will provide very high-speed peering interchange in Miami and New York City for international research networks and via MAX will provide this peering service for federal networks in the Washington, D.C. area.

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<sup>4</sup> [www.flrnet.org](http://www.flrnet.org)

Internet2<sup>5</sup> is a non-profit consortium led by 207 U.S. universities working in partnership with industry and government to develop and deploy advanced network applications and technologies, accelerating the creation of tomorrow's Internet. On behalf of the U.S. research university community, Internet2 operates the Abilene Network, an advanced, high-speed Internet Protocol (both versions 4 and 6) national backbone that enables high-performance connectivity among over 220 research universities and laboratories and 35 state education networks (most usually aggregated via advanced regional networks, including regional optical networks and Gigapops).

Operated under established Conditions of Use that support Abilene's advanced mission, this network does not provide general connectivity to the public commodity Internet, but instead interconnects and peers only with similarly focused research and education networks in the U.S. and abroad. Abilene routinely supports individual computer-to-computer flows at the level of 1 Gigabit per second and higher – a factor of one thousand times larger than those supported by the typical 'broadband' connection to U.S. homes today. Concurrently, a large number of computer science network research projects are supported through the Abilene Observatory initiative. In addition, Internet2 operates the MAN LAN international research and education exchange point in New York City and hosts the Quilt Project, the collaboration of the 23 largest advanced regional networks in the U.S.

NLR<sup>6</sup> is a major initiative of over 200 U.S. research universities and institutions to provide a national scale infrastructure for research and experimentation in networking technologies and major research applications. NLR aims to catalyze innovative "big"

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<sup>5</sup> <http://www.internet2.edu/>

<sup>6</sup> See [www.nlr.net](http://www.nlr.net)

applications research in all fields and network research development into next generation network technologies, protocols, services and applications.

The foundation of the NLR infrastructure is a national footprint of dark fiber (10,000 miles) lit with optical equipment that enables the research and education community to provision multiple experimental and production networks. NLR owns, operates and controls the uses of this infrastructure to advance research and education across the country.

In essence, NLR serves to interconnect over 15 regional/state research and education networks like those described here for PNW Gigapop and CENIC. Taken together these regional networks and NLR provide the United States with nationwide research and education network capability that helps researchers, faculty and students carry out the mission and programs of their respective institutions through access to resources and collaboration with other institutions across the nation.

PNW Gigapop<sup>7</sup> is a not-for-profit organization, serving leading edge organizations and research and education networks throughout the Pacific Rim. It provides robust, highest-speed access to current state-of-the-art Internet; next generation Internet services and technology; and the exclusive R&D testbeds where tomorrow's Internet technologies are being developed. PNW Gigapop is, in addition to being a regional research and education network, among the highest caliber research and education networking services hub and exchange points in the world.

PNW Gigapop is the Pacific Northwest's access point to the nation's leading edge, high-bandwidth, next-generation Internet networks, including Internet2/Abilene, NLR, high-performance federal research networks, and high-performance access to commercial public commodity Internet offerings. It provides a state-of-the-art, super high-speed and

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<sup>7</sup> <http://www.pnw-gigapop.net/>

low latency peering and exchange point for research and education networks interconnecting via the Pacific Wave International Research and Education Network Peering Services and/or PNW Gigapop. Pacific Wave is a joint project between CENIC and the PNW Gigapop designed to enhance the performance and efficiency of the flow of IP traffic between various networks.

PNW Gigapop provides a “one-stop shopping” inter-connection point that provides its members cost-effective interconnection to and exchange of traffic with the major national commodity ISPs. Similarly, PNW Gigapop provides both research and education “aggregation pooling” and also furnishes mechanisms that ensure the availability of alternate data paths, and data paths with especially high quality and/or deterministic end-to-end performance for specific applications.

SoX<sup>8</sup> is the research and education inter-connection point for the Southeastern US, providing services to participants in Georgia, Florida, Alabama, Tennessee, South Carolina, and Kentucky. SoX brings research and education network facilities, high-performance network peering, and access to low cost Internet services to participants enabling high-performance networking for the advanced research and education community, facilitating unique networking and connectivity needs. SoX participates in the national research and education network fabric creating a cohesive connectivity matrix for members. SoX serves universities, state education networks, K-12, and other research organizations.

These entities are examples of advanced research and education networks throughout the country. The ARENs are uniquely affected by the Commission’s Order<sup>9</sup>

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<sup>8</sup> [www.sox.net](http://www.sox.net).

<sup>9</sup> The views of the ARENs were represented in the comments the Educause Coalition, filed on April 12, 2004, in response to the Commission’s Notice of Proposed Rulemaking.

and are adversely affected by the ambiguity created regarding CALEA compliance obligations for such private research and education networks and the entities that facilitate their interconnection with and exchange of traffic between the commercial Internet.

## **II. The Commission's Order and Legal Framework**

The Commission has determined that all facilities-based, broadband Internet access providers are “telecommunications carriers” for purposes of CALEA. It reached this conclusion through Section 1001(8)(B)(ii) of CALEA, which includes within the definition of a telecommunications carrier:

A person or entity engaged in providing wire or electronic communication switching or transmission service to the extent that the Commission finds that such service is a replacement for a substantial portion of the local telephone exchange service and that it is in the public interest to deem such a person or entity to be a telecommunications carrier for purposes of [CALEA].<sup>10</sup>

The Commission has dubbed this section of CALEA the “Substantial Replacement Provision” or SRP. The SRP applies if three criteria are met. First, the service provider must be engaged in providing wire or electronic communications switching or transmission service. The Commission includes within this phrase “routers, softswitches, and other equipment that may provide addressing and intelligence functions for packet-based communications to manage and direct communications along to their intended destinations.”<sup>11</sup>

Second, the service must replace “any significant part of an individual subscriber’s functionality previously provided via circuit-switched local telephone

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<sup>10</sup> 47 U.S.C. § 1001(8)(B)(ii).

<sup>11</sup> *CALEA Broadband Order*, ¶ 11.

exchange service.”<sup>12</sup> The Commission finds that broadband Internet access, regardless of the entity that provides it or whether it is offered commercially for hire, replaces dialup service and therefore meets the SRP definition.<sup>13</sup>

Finally, the SRP requires that the Commission find that it is in the public interest to extend CALEA to broadband Internet access.<sup>14</sup> The Commission has made the necessary finding and expressly has “decline[d] to exclude any facilities-based broadband Internet access provider from CALEA requirements at this time.”<sup>15</sup>

A facilities-based provider is one that “provides transmission or switching over their own facilities between the end user and the Internet Service Provider (“ISP”).”<sup>16</sup> Entities that sell or lease mere transmission facilities on a non-common carrier basis to other entities that use such transmission capacity to provide a broadband Internet access service are not subject to CALEA under the SRP.<sup>17</sup> However, the entity procuring transmission capacity via sale or lease and using it to provide Internet access would be considered the facilities-based broadband Internet access service provider and therefore subject to CALEA.<sup>18</sup>

Conversely, the Commission has determined that it is not in the public interest at this time to cover “establishments that acquire Internet access service from a facilities-

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<sup>12</sup> *Id.* ¶ 12.

<sup>13</sup> *Id.* ¶ 13.

<sup>14</sup> *Id.* ¶ 14.

<sup>15</sup> *Id.* ¶ 35, n.98.

<sup>16</sup> *Id.* ¶ 24, n.74.

<sup>17</sup> *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, Notice of Proposed Rulemaking and Declaratory Ruling, ET Docket No. 04-295, RM-10865, 19 FCC Rcd 15676, ¶ 37, n.80 (2004) (“*NPRM*”).

<sup>18</sup> *Id.*

based provider to enable their patrons or customers to access the Internet from their respective establishments.”<sup>19</sup> Here again, the underlying facilities-based provider to such an establishment is covered.<sup>20</sup>

The Commission acknowledges the CALEA exclusion for “equipment, facilities, or services that support the transport or switching of communications for private networks or for the sole purpose of interconnecting telecommunications carriers.”<sup>21</sup> Indeed, the Commission has concluded that the provision of facilities-based *private* broadband networks or intranets that enable members to communicate with one another and/or to retrieve information from shared databases not available to the general public are exempt private networks under CALEA, thereby providing a useful definition of a private network.<sup>22</sup>

The Commission then says “that to the extent these 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 under the SRP.”<sup>23</sup> We understand this to mean in the simplest case

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<sup>19</sup> *CALEA Broadband Order* ¶ 35.

<sup>20</sup> *Id.* The Commission also noted that it did not intend to cover personal area networks like home gateways.

<sup>21</sup> 47 U.S.C. § 1002(b)(2)(B). In addition to being private networks themselves, the ARENs and similar entities are not covered by CALEA to the extent they provide interexchange service. Because these entities in fact are routing and providing exchange services for traffic from universities and other entities to an interconnection point where a commercial ISP then routes such traffic to the public commercial Internet, CALEA does not apply. We ask the Commission to confirm this point.

<sup>22</sup> *CALEA Broadband Order* ¶ 36, n.100. Thus, for example, campus networks for students and faculty should, by definition, be private networks, just the same as corporations that provide Internet access to their employees, notwithstanding that these entities provide access to the Internet.

<sup>23</sup> *Id.*

that traffic originating from a private campus network bound for the public Internet for delivery to a subscriber of a commercial ISP would be captured for purposes of CALEA by the commercial ISP with whom the university has acquired Internet access. The private research and education entity's border router or switch that determines whether the destination of a packet should be to another research and education entity or to the commercial Internet, is NOT the facility that *supports* the connection of the private research and education network to the commercial Internet. The facility that supports the connection to the commercial Internet is actually the commercial ISP's router and larger routing fabric.

Therefore, the covered entity for CALEA purposes is the operator of the commercial ISP's Internet equipment that receives the packets for routing and or switching on and within the public commodity Internet.<sup>24</sup> We ask the Commission to confirm this understanding.

### **III. Exemption Procedures**

These comments in support of an exemption are necessary in case the Commission does not confirm our understanding.<sup>25</sup>

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<sup>24</sup> The ARENs, like other commercial ISPs that filed comments in response to the *NPRM*, fundamentally disagree with the Commission's legal analysis in extending CALEA to any Internet access. That is a matter for appeal and not these comments, however. But we do point out – and it is an important point for the Commission to understand – if commercial ISPs are covered by the Commission's Order in the end, it would be redundant and wasteful to require the AREN Provider facilities that support exchange of commercial Internet-bound traffic to be CALEA-compliant too. The identical traffic would be filtered twice and delivered to law enforcement twice to no apparent law enforcement or private network operator benefit.

<sup>25</sup> These comments are not a request for reconsideration or motion for clarification. No exemption is required if the ARENs and similar entities are not otherwise covered, as we believe they should not be covered; however, if the Commission intended otherwise, there are strong reasons for an exemption.

**A. CALEA's Exemption Clause**

CALEA permits the Commission to grant exemptions from CALEA for entities that would otherwise fall within the definition of telecommunications carrier under the SRP or otherwise. The Commission may exclude (1) any class or category of telecommunications carriers (2) by rule (3) after consultation with the Attorney General.<sup>26</sup>

The Commission first asks how the phrase “by rule” should be interpreted. The Commission already has concluded that it has broad rulemaking authority to implement CALEA under Section 229(a) of the Communications Act, which states that the Commission “shall prescribe such rules as are necessary to implement the requirements of [CALEA].”<sup>27</sup> When the Commission prescribes rules, it is bound by the Administrative Procedures Act and its own rules of procedure.<sup>28</sup> In the context of a public rulemaking, the ARENs agree with the Commission that it can fulfill its consultation obligation with the Attorney General through consideration of the Attorney General’s filed comments.<sup>29</sup>

**B. Exemption of Certain Entities and Procedures**

The Commission has said in its Further Notice that its objective is “to adopt streamlined exemption procedures . . . [and] any other rules that will reduce CALEA burdens on small carriers or other categories of telecommunications carriers.”<sup>30</sup> We

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<sup>26</sup> 47 U.S.C. § 1001(8)(C)(ii).

<sup>27</sup> NPRM ¶ 114; 47 U.S.C. § 229(a).

<sup>28</sup> 5 U.S.C. § 553; 47 C.F.R. §§ 1.399 *et seq.*

<sup>29</sup> CALEA Broadband Order ¶ 52, n.149.

<sup>30</sup> See 70 Fed. Reg. 59,704, 59,706 (Oct. 23, 2005).

support that goal. To achieve it, the Commission should immediately identify the categories eligible for exemption. The record in this proceeding is sufficient to identify as exempt education institutions and the major research and education networks like the ARENs that enable private research and education network connectivity and exchange of traffic with other networks.<sup>31</sup> The Commission has received undisputed comments in regard the unique concerns of the education community regarding the impacts on research, delivery of education, innovation, and administrative burden when juxtaposed with the lack of any comment from others on the law enforcement need for such access.<sup>32</sup>

We suggest that the Commission define an “educational institution” to mean:

An accredited institution organized and operated for the purpose of teaching its enrolled students or pursuing research efforts for its students, faculty, staff or other authorized users. An accredited institution includes any public or private elementary and secondary school (K-12), vocational school, correspondence school, junior college, college, university, or scientific or technical schools that is either institutionally accredited by an accrediting agency recognized by the U.S. Secretary of Education or, in the case of a public K-12 institution, recognized or approved by the Department of Education of the State in which it is located.

And, the Commission should include those advanced research and education networks that enable connectivity and exchange services for education, research or other authorized users (*e.g.*, museums, hospitals, research institutions such as UCAR, and governmental entities such as NASA), or equipment, facilities or services that support the transport, routing or switching of communications for private networks or for the sole purpose of interconnecting such networks to a public Internet access provider or the PSTN. The ARENs, of course, are examples of such private research and education networks.

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<sup>31</sup> See generally *Comments of the Educause Coalition* (Apr. 24, 2004).

<sup>32</sup> *Id.*

If these are to be covered entities under the Commission's *CALEA Broadband Order*, which we dispute, the Commission should adopt a simple certification process where the exempt entity informs the Commission that it is within the defined category for exemption purposes.<sup>33</sup> To be clear, it is recognized that these otherwise exempt entities may still receive requests for lawfully authorized electronic surveillance and would still be responsive to such requests. The law still requires any "provider of wire or electronic communication service, landlord, custodian or other person" to provide "all information, facilities, and technical assistance necessary to accomplish" the surveillance.<sup>34</sup>

The exemption should be permanent until such time as the Attorney General petitions or the Commission determines in a further rulemaking proceeding that an exemption is no longer warranted. And the Commission should announce immediately those classes or categories eligible for exemption to avoid unnecessary compliance efforts under the Order. Alternatively, the Commission should extend the compliance date of the Order for those entities clearly contemplated to be within the exemption noted above.

### *C. Exemption Criteria*

The Commission should be clear on the criteria it uses both to grant an exemption and to withdraw it. The exemption provision contains no specific standard.

The Commission already has determined that it is in the public interest to deem certain facilities-based broadband Internet access providers to be covered by CALEA

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<sup>33</sup> The ARENs do not offer any comment on the procedures the Commission should adopt to consider the exemption of small businesses or rural providers. The classification of such providers, however, should be an easy task inasmuch as the categories plainly align with those the Commission considers in its Initial Regulatory Flexibility Analysis.

<sup>34</sup> 18 U.S.C. § 2518(4).

under the SRP.<sup>35</sup> But that does not mean that an exemption is not warranted or is precluded. While we have raised important issues regarding the impact of CALEA compliance on research, innovation and delivery of educational services, other factors also have weight.

For example, cost is certainly a consideration for the Commission in making a determination. It is no secret, and detailed budget and cost information is not necessary to know, that the education sector is financially stressed today, and new technology funding is not available, is limited or is directed to filtering requirements for offensive content.<sup>36</sup> Section 109 of CALEA addresses when compliance is not reasonably achievable, so costs already are a consideration within the CALEA framework. But Section 109 is specific to individual entities, rather than a broad category of providers. The Commission would be justified in determining that the impact of CALEA compliance on student tuition, availability of educational services, likely limitations on access to advanced networks for research and development and the alternative cost of such access, satisfies the exemption clause without requiring individual members of those communities to petition under Section 109.<sup>37</sup>

The Commission should also consider law enforcement's needs. Historically, higher education has been responsive to law enforcement requests. There is insufficient

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<sup>35</sup> We do not challenge here or seek reconsideration of the Commission's public interest finding to the extent it applies to educational institutions or private network operators such as the ARENs even though we believe the Commission's finding cannot be supported on the record. That finding is now the subject of an appeal of the Commission's Order to the Federal Court of Appeals for the District of Columbia. For purposes of these comments, we must assume that the finding stands.

<sup>36</sup> The Commission may want to consider whether funds will be available from the Universal Service Fund or other sources to support CALEA upgrades.

<sup>37</sup> Of course, nothing prevents the government from assisting these entities to achieve compliance to avoid individual petitions under Section 109.

evidence to justify law enforcement's need for electronic surveillance in universities and private research and education networks to justify CALEA compliance today. Alternative methods are available to law enforcement should such a need arise. It is undisputed that a court may order technical assistance from these entities and there would be no objection to installing government equipment necessary to conduct an authorized wiretap.

The Commission should also consider the government's need to provision facilities to collect and receive information from these institutions. The obligation is squarely on law enforcement to provision the necessary lines and facilities to be capable of receiving intercepted information under CALEA.<sup>38</sup> How does the government propose to provision lines to universities or to advanced network access points? In the case of very high bandwidth networks, the government would have to procure facilities sufficient to accept the content stream of transmission, which in some cases may be at gigabit speeds. Clearly, educational institutions and the private research and education networks that support them should not be required to comply with CALEA, unless the government can present a plan to collect or receive the intercepted communications. Nor should CALEA obligations be required when they would be duplicative of those assistance capabilities already provided by commercial ISPs on the other side of the connection from the private research and education networks.<sup>39</sup>

Finally, it is more than appropriate for the Commission to consider the impact on the deployment of advanced communications in rural and other areas to the benefit of all

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<sup>38</sup> 47 U.S.C. § 1002(a)(3)(intercepted data to "be transmitted by means of equipment, facilities, or services *procured by the government* to a location other than the premises of the carrier.")(emphasis added).

<sup>39</sup> See *infra*, n.25.

Americans.<sup>40</sup> Again, while it may still be in the public interest to cover all access providers entities as the Commission has done here, it may still be appropriate to exempt educational institutions and advanced research and educational networks like the ARENs that facilitate Internet access services. In some cases, these sites may be the only place that individuals can access the Internet, and regional or local networks may be the only cost-effective way for such entities to provide access.

***D. Partial Application of CALEA Requirements to Exempt Entities***

Finally, if CALEA permits the Commission to grant a complete exemption to a broad category or class of telecommunications carriers, the lesser power to grant a partial exemption from some of CALEA's requirements necessarily follows. For example, the Commission could exempt certain carriers from the Section 103 assistance capability requirements while yet imposing the Section 105 system security and integrity requirements on them. The Commission would do so by rule, either pursuant to the exemption clause in the rulemaking process, or under Section 229(a).<sup>41</sup>

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<sup>40</sup> See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Notice of Inquiry, 13 FCC Rcd 15280, 15308-11 ¶¶ 77-82 (1998). See also *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Report, 14 FCC Rcd 2398, 2449 ¶¶ 100-01 (1999).

<sup>41</sup> For example, we assume that the Commission could amend its Section 105 rules, which do not take effect for these newly covered entities until 19 months from the date of publication of the *CALEA Broadband Order*, to specify applicable requirements for universities or libraries, and could have those requirements take effect sooner than the effective date of the Order or any resulting exemption rulemaking.

#### **IV. CONCLUSION**

The ARENs urge the Commission to act with haste in clarifying which entities will be eligible for an exemption. The resulting rules should be streamlined and should reduce the impact and burden on covered entities.

Respectfully submitted,

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November 14, 2005