

Lawful Interception and Cable TV:

Overview of the FCC's Recent Actions Affecting Cable Operators

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Topics Covered

- Definitions dictate regulatory status or classification under Communications Act and CALEA
- Current CALEA solutions for voice over cable
- Overview of FBI/DOJ Request for Rulemaking
- Overview of FCC NPRM
- Comments submitted on FCC NPRM

Definitions Dictate Regulatory Status or Classification – Communications Act

- **Communications Act:**
 - Telecommunications: “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received”
 - Telecommunications service: “the offering of telecommunications for a fee directly to the public . . . regardless of facilities used”
 - Information service: “the offering of a capability for generating, acquiring, storing, transforming, processing . . . information via telecommunications”

Definitions Dictate Regulatory Status or Classification - CALEA

- CALEA:
 - Applies to telecommunications carriers: any “person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire”
 - FCC finds that facilities used to provide both telecom and information services are subject to CALEA, but facilities “used solely to provide” information services are not
 - FCC has authority to reach any provider of “wire or electronic communication switching or transmission service to the extent that . . . such service is a replacement for a substantial portion of the local telephone exchange service”

Current Regulatory Environment

- Telecommunications services are subject to common carrier regulation at the federal and state level
 - Subject to CALEA
 - Subject to economic, public safety, and consumer protection regulation
- Providers of information services are not subject to traditional common carrier regulation
 - Not subject to CALEA
 - Treated as “end users”

CALEA Solutions for Voice over Cable Providers

- CableLabs developed first lawful surveillance specification for voice communications over cable in late 1999 – Version 101 of PacketCable Electronic Surveillance Specification (ESS)
 - Provided basic capabilities to deliver call content and call-identifying information to law enforcement
- According to CableLabs, every issue on FBI “wish list” for VoIP CALEA compliance resolved in July 2004 – Version 103 of PacketCable ESS
 - Includes subject-initiated conference calls, dialing, and signaling; dialed digit extraction; timing information
- Outsourced and managed VoIP services available for cable providers, including CALEA solutions

FBI/DOJ Request for Rulemaking

- DOJ, FBI, and DEA filed a petition for rulemaking on March 10, 2004 (RM-10865)
- Ask the FCC to issue Declaratory Ruling clarifying the types of services subject to CALEA, including:
 - Broadband access: services used to gain access or connect to the public Internet (wireline broadband, cable modem, wireless, satellite, powerline)
 - Broadband telephony service: transmission or switching of voice communications using broadband facilities (*i.e.*, VoIP)

FBI/DOJ Request for Rulemaking

(cont'd)

- Also ask the FCC to initiate a rulemaking to:
 - Require providers to install and deploy CALEA solutions for new and planned services
 - Require new services competing against a CALEA-covered service also to be covered by CALEA
 - Adopt implementation deadlines and benchmark filings for CALEA compliance
 - Limit use of extension requests
 - Adopt rules enforcing CALEA compliance
 - Clarify the ability of providers to recover CALEA compliance costs

FCC CALEA NPRM

- FCC issues NPRM on August 9, 2004 (ET Docket No. 04-295)
- FCC declines to issue Declaratory Ruling requested by FBI/DOJ
 - Finds record needs to be more fully developed to apply CALEA to broadband Internet access and broadband telephony (VoIP)
- Initial comments filed November 8; replies due December 21

FCC CALEA NPRM- Tentative Conclusions

- FCC tentatively concludes:
 - Meaning of “telecommunications carrier” in CALEA is broader than definition in Communications Act
 - Services considered information services under Communications Act still need to be evaluated under CALEA’s separate definition of telecom carrier
 - Three factors to determine whether a technology is considered a substantial replacement for local exchange service: whether it would (1) promote competition, (2) encourage the development of new technologies, and (3) protect public safety and national security

FCC CALEA NPRM- Tentative Conclusions

- FCC tentatively concludes that facilities-based providers of any type of broadband Internet access service, whether provided on a wholesale or retail basis, are subject to CALEA
 - Includes (but not limited to) cable modem, wireline, satellite, wireless, powerline
 - Finds broadband Internet access service providers satisfy three factors of substantial replacement test
 - FCC asks what implementation deadlines should be

FCC CALEA NPRM- Tentative Conclusions

- FCC tentatively concludes that managed or mediated VoIP services are subject to CALEA
 - Includes VoIP services that offer voice communications calling capabilities whereby the VoIP service provider acts as a mediator to manage the communications between its end points and to provide call set-up, connection, termination, and party ID features, often generating or modifying dialing, signaling, switching, addressing, or routing functions for the user
 - Finds managed or mediated VoIP service providers satisfy three factors of substantial replacement test
 - Finds subjecting only broadband access provider to CALEA without including managed VoIP services would undermine law enforcement efforts

FCC CALEA NPRM- Safe Harbor Process

- FCC asks about safe harbor process for CALEA compliance:
 - What standards and specifications should be used?
 - Are current standards deficient?
 - Should a trusted third-party approach be used?
 - Which organizations should be recognized as industry associations or standard-setting organizations?

FCC CALEA NPRM- Safe Harbor Process

- FCC specifically seeks comment on suitability of any version of PacketCable Electronic Surveillance Specification to serve as safe harbor for voice over packet services provided by cable
- FCC appears to view PacketCable solution in very favorable light and recognizes that:
 - V. 102 fixes minor technical problems from V. 101
 - V. 102 and V. 103 provide more of the capabilities requested by FBI, including subject and network initiated signaling
 - FBI technical consultants now on CableLabs technical team

Comments in Response to FCC CALEA NPRM

- More than 40 parties and nearly 400 individuals submitted initial comments
- NCTA only cable entity filing comments
 - Supports application of CALEA to VoIP
 - Notes that CableLabs has already developed CALEA-compliant specifications for VoIP service
 - Takes no position on the application of CALEA to broadband services, other than to point out that the application of CALEA to broadband Internet access presents different technical issues than exist for VoIP
 - Argues that CableLabs should qualify as industry association or standard-setting organization

Questions?

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