CALEA
The Communications Assistance for Law Enforcement Act (CALEA), adopted by Congress in 1994, creates a set of statutory obligations for telecommunications carriers to assist law enforcement in executing electronic surveillance. Most important, the law requires carriers to design or modify their systems to ensure that lawfully authorized electronic surveillance can be performed, usually at their own cost. The law also imposes additional obligation on carriers to collect and deliver the collected information to law enforcement.

The CALEA statute is aimed at “common carriers” on the switched public telecommunications network. The law specifically excludes all information services such as Internet access from coverage.

The NPRM
On September 23, 2004 the FCC issued a notice of public rule making (NPRM) at the request of the FBI that would extend CALEA from traditional telecommunication networks (i.e. standard telephone) to broadband Internet and VoIP providers.

Notwithstanding the plain language of CALEA to the contrary, the FCC found that the broadband Internet, as well as VoIP services, were a “substantial replacement” for the public switched telephone network and therefore subject to CALEA. The Commission incorrectly reasoned that the statute’s exemption for information services was not absolute; if an information service were found to be a “substantial replacement” for phone service, CALEA would apply. The FCC’s analysis is not only at odds with the plain words of the statute, it in fact reads the information service exemption out of CALEA altogether, making all information services, including instant messaging and email, vulnerable to the future imposition of CALEA obligations.

The Impact on Education and Library Networks
The order has provoked widespread concern from broadband providers and Internet advocates, who argue not only that the proposal is contrary to the CALEA statute, but it will also drive up cost, threaten innovation, and reduce privacy on the Internet. It has also raised strong concerns in the education and library community because the NPRM appears on its face to extend CALEA obligations beyond “common carriers”, such as commercial broadband providers, to private education and library networks such as Internet2, university networks and state education and library networks. An extension of CALEA to such networks would cause severe harm to the networks and the institutions that support these systems. While the language of the NPRM is unclear, it does not explicitly exempt these networks, nor does it provide any analysis of the potential impact of extending CALEA coverage in this manner. It is not in the public interest to impose CALEA obligations on university, library and K-
12 networks. The cost of compliance would be prohibitive and do great damage to education at a time when resources are stretched. Equally important, applying CALEA to important research networks like Internet2 could put a stranglehold on the innovation and development of new applications that those networks were created to develop.

Furthermore, there is no evidence in the NPRM that the extension of CALEA to education and library networks is needed. There are very few law enforcement wiretaps of private educational networks and whatever minimal value CALEA compliance may provide is far outweighed by the costs and the burden on these networks. CALEA is not needed for the rare instance where a wiretap may be approved for a private education networks. The FBI has the ability to bring its own equipment in such cases to facilitate the collection of information.

Finally, if CALEA is extended to broadband in general, and private education and library networks in particular, it is Congress and not the FCC that must make that determination.

**Action Needed:**

Comments are due for the CALEA NPRM November 8, 2004 Members of Congress are urged to write to the FCC and demand that private education and library networks be specifically excluded from CALEA coverage in the final rule. A draft letter is attached.