April 20, 2004

Honorable Michael K. Powell, Chairman (and separately to Commissioners Adelstein, Martin, Copps and Abernathy)
Federal Communications Commission
445 12th Street, SW
Washington, DC  20554

Dear Chairman Powell,

As a member of the Higher Education and Library Coalition that submitted comments on April 12 in opposition to the Joint Petition of the Department of Justice, Federal Bureau of Investigation and Drug Enforcement Administration (RM-10865), we would like to express our concern for the potential impact this ruling would have on our community. The Joint Petition asks the Federal Communications Commission to bring all broadband access to the Internet within the scope of the Communications Assistance for Law Enforcement Act ("CALEA"). As Internet providers for thousands of campuses and libraries throughout this country, we expect these requirements to create an untenable situation for our members.

If the Petition is granted, we expect three major areas of impact: technological innovation will be severely crippled as new systems are burdened with these standards and implementation is delayed awaiting approval from the FBI; it will undermine the privacy Congress designed the Electronic Communications Privacy Act to protect and add yet another layer of legal confusion to the already troubled combination of telephony and electronic communications; and, the financial burden placed on our members to attain compliance will come at a time when budgets are already strained to the breaking point. While we understand law enforcement’s dilemma as communication systems evolve, we feel the costs far outweigh the potential benefits in this case.

EDUCAUSE supports the need for law enforcement access to communications traffic under appropriate legal conditions and constraints. However, our review of CALEA, its history and hearings, and the current CALEA record at the Commission and in the courts suggests that the Petition interprets the application of CALEA inaccurately with respect to Internet access. We oppose extending CALEA to the Internet through this rulemaking process when Congress expressly exempted the Internet from CALEA’s scope. If it is proven necessary to change the law, the decision should be made by Congress, not the Commission.

Sincerely,

Brian Hawkins
President
EDUCAUSE