Statement by American Council on Education
President David Ward on Decision in American Council on Education v.
Federal Communications Commission and the United States of America,
No. 05-1404

“We learned this morning that the U.S. Court of Appeals for the District of Columbia Circuit issued a decision in our appeal of the Federal Communications Commission's rules extending provisions of the Communications Assistance for Law Enforcement Act (CALEA) to include the Internet. While we are still studying the decision of the three-judge panel, the court's opinion appears somewhat mixed.

On the one hand, we are disappointed that the court upheld the FCC's contention that CALEA provisions apply broadly to the Internet. We believe we had established a strong legal case that CALEA did not apply to providers of facilities-based Internet access or voice-over-IP.

On the other hand, the court reaffirmed provisions within CALEA that specifically exempt private networks, such as those operated by many colleges and universities, from such regulation by the FCC. This is good news for higher education.

However, the language of the decision is complex, and it will require further study by our legal team before we can fully determine our next steps in the process. While it appears that many of America's colleges and universities may be exempt from the FCC rule, a final determination will require additional study of the court's decision and the dissenting opinion. We are still considering all options pending further analysis of the court decision.”

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