

Groups battle FCC's Wiretap Act extension

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Civil liberties groups have come out strongly against the Federal Communications Commission's order to expand the Wiretap Act and force universities and public Internet networks to overhaul their networks to make it easier for the feds to monitor online communications.

The FCC finalized an order two weeks ago calling for an expansion of 1994's Communications Assistance for Law Enforcement Act, which required that telecom carriers design their networks in a way that they can intercept messages and deliver them to the government upon court order.

The FCC's expansion of the act applies to broadband Internet access providers, such as universities, libraries, and public wireless access networks like the ones planned in Philadelphia and San Francisco, as well as voice-over Internet protocol companies.

The Center for Democracy and Technology led several groups this week in asking a federal appeals judge to overturn the FCC's order. According to a CDT news release put out Tuesday, "when Congress passed CALEA in 1994 it specifically exempted the Internet from its reach."

"We're deeply concerned that extending a law written specifically for the public telephone network to these emerging technologies will stifle the sort of innovation that has been the hallmark of the Internet revolution," said John Morris, staff counsel for the CDT.

Jeff Pulver, CEO of Pulver.com, a VoIP insider Web site, said the FCC overstepped its bounds in its decision.

"The debate over the scope of CALEA was fought in Congress during the debate and passage of the CALEA statute," he said, "and it was determined that CALEA would not extend to the Internet."

"Frankly," Pulver added, "it is inappropriate for a regulatory body to reinterpret the clear intent of Congress."

Morris said that while ISPs and application providers already comply with interception orders under wiretap laws, they have never before had design mandates imposed on them.

The American Council on Education estimates that it will cost about \$7 billion for universities nationwide to make all the necessary changes to their networks.

The CDT news release said that the FCC's demands "impose a burdensome government mandate on innovators and threaten the privacy rights of individuals who use the Internet and other new communications technologies."

"In this case it's particularly problematic," said Morris, "since the government has offered no evidence that it has any trouble intercepting Internet communications today."

The Electronic Frontier Foundation, a technology-oriented civil liberties group, is also planning a legal challenge to the FCC's order. The EFF has a page on their web site dedicated to CALEA.

According to the EFF page, telephone and Internet networks should be treated differently because of telephone networks are closed and

insulated while the Internet is ever-changing.

"End users cannot change the nature of the phone network on a whim," the page says. "But on the Internet, people can deploy new services and new devices at will."

In addition to the CDT and EFF, the American Council on Education will also be challenging the FCC in court.

"College and universities have a long history of working with law enforcement agencies pursuing criminal investigations and are proud of our working relationship," said Sheldon E. Steinbach, vice president and general counsel of ACE.

"In filing suit," he said, "we hope to convince the FCC that colleges and universities can provide the same access through alternative approaches without the need to incur the \$7 billion expense of revamping our computer network systems."

Steinbach added that his alternative approaches would be more efficient for all involved parties.

"When you value efficiency versus the incredible cost of compliance," he said, "we just don't think it makes a lot of sense."

The EFF also noted that making networks tappable introduces more points of vulnerability in the system.

"Many of the technologies currently used to create wiretap-friendly computer networks make the people on those networks more pregnable to attackers who want to steal their data or personal information," the EFF site says.

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