

Merit's CALEA Position

Merit's fiber network is a "private" network for purposes of CALEA, because Merit limits the availability of its services to its Members and Affiliate Members.¹ CALEA expressly exempts "equipment, facilities, or services that support the transport or switching of communications for private networks."² For this reason, Merit's CALEA obligations are limited.

Although CALEA exempts private networks from the statute's assistance capability requirements, the FCC has ruled that "providers of the facilities that support the connection of [a] private network with a public network are subject to CALEA."³ Merit is interconnected to the public Internet at various places. Merit "supports" the connection to the Internet because it owns connectivity equipment as well as fiber that links the edges of its private network to various public Internet providers. Merit views its gateway facilities as the locations where traffic leaves its Autonomous System (AS-237). Therefore, Merit will be CALEA compliant at these gateway facilities.

¹ See *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989, at ¶ 36 n.100 (2005) ("*Broadband CALEA Order*") (explaining that private networks limit transmission and switching to "to specific members or constituents of . . . [particular] organizations," in contrast to networks that enable communication and information retrieval by "the general public"), *aff'd American Counsel on Education v. FCC*, 451 F.3d 226 (D.C. Cir. 2006).

² 47 U.S.C. § 1002(b)(2)(A).

³ *Broadband CALEA Order* at ¶ 36 n.100.