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Public Interest, Business Groups Unite to Challenge FCC Wiretapping Ruling

A coalition of public interest and business groups today asked a federal appeals court to overturn a Federal Communications Commission (FCC) ruling requiring that broadband Internet and interconnected voice-over Internet Protocol (VOIP) services be designed to make government wiretapping easier.

In a ruling finalized Oct. 13, the FCC ordered distributors of broadband and certain VOIP services to comply with the Communications Assistance for Law Enforcement Act (CALEA) of 1994. CALEA requires telephone companies to design their systems to ensure a baseline level of government wiretapping capability. When Congress passed CALEA in 1994 it specifically exempted the Internet from its reach.

The civil liberties, privacy and high-tech industry advocates opposing the FCC ruling warn that it extends the wiretapping rules to technologies it was never intended to cover, imposes a burdensome government mandate on innovators and threatens the privacy rights of individuals who use the Internet and other new communications technologies.

"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 Center for Democracy & Technology (CDT), one of the groups bringing the appeal. "It's always troubling when the government seeks to limit how technologists design new products," Morris said. "In this case it's particularly problematic, since the government has offered no evidence that it has any trouble intercepting Internet communications today. "

CDT joined COMPTEL, the Electronic Frontier Foundation, the Electronic Privacy Information Center, Pulver.com and Sun Microsystems in filing the appeal with the United States Court of Appeals for the District of Columbia Circuit.

Congress realized in 1994 that the Internet was fundamentally different from the telephone system, and specifically refrained from applying CALEA to the Internet and "information services" carried over it. Although ISPs and Internet application providers must (and do) comply with interception orders under the wiretap laws, they have not until now been burdened with FBI-imposed design mandates.

Jeff Pulver, chairman and CEO of Pulver.com said the FCC went too far in upsetting the balance struck in 1994. "The debate over the scope of CALEA was fought in Congress during the debate and passage of the CALEA statute, and it was determine that CALEA would not extend to the Internet. Frankly, it is inappropriate for a regulatory body to reinterpret the clear intent of Congress."