

COMMUNICATIONS ASSISTANCE FOR LAW
ENFORCEMENT ACT (CALEA):
Fourth Annual Report to Congress

Submitted to:

*Committees on the Judiciary
United States House of Representatives
and
United States Senate*

*Committees on Appropriations
Subcommittees for the Departments of Commerce, Justice, and State,
the Judiciary and Related Agencies
United States House of Representatives
and
United States Senate*

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I. PURPOSE

Section 112 of the Communications Assistance for Law Enforcement Act (CALEA) directs the Attorney General to submit an annual report to Congress, beginning November 30, 1995, on the amounts paid during the preceding fiscal year to telecommunications carriers under section 2608 of title 18, United States Code. The report, which is to be made available to the public, shall include:

(A) a detailed accounting of the amounts paid to each carrier and the technology, equipment, features or services for which the amounts were paid; and

(B) projections of the amounts expected to be paid in the current fiscal year, the carriers to which the payment is expected to be made, and the technologies, equipment, features or services for which payment is expected to be made.

Pursuant to section 112, this Fourth Annual Report is submitted to Congress. The report provides financial information regarding Fiscal Year (FY) 1998 expenditures to telecommunications carriers, and projected spending levels for FY 1999. This report also fulfills the Attorney General's reporting responsibilities pursuant to section 401 of CALEA.

II. BACKGROUND

CALEA was enacted in 1994 to preserve the ability of federal, state and local law enforcement agencies to conduct lawfully authorized electronic surveillance in the face of rapid technological changes in the telecommunications environment. CALEA requires telecommunications carriers to ensure that their equipment, facilities and services are capable of delivering to law enforcement agencies all communications and call-identifying information that law enforcement is authorized to acquire.

To facilitate CALEA's implementation, Congress authorized \$500,000,000 to be appropriated to reimburse the telecommunications industry for (1) all reasonable costs directly associated with the modifications performed by carriers in connection with equipment, facilities and services installed or deployed on or before January 1, 1995, to establish the capabilities necessary to comply with section 103 of CALEA; (2) additional reasonable costs directly associated with making the assistance capability requirements found in section 103 of CALEA reasonably achievable with respect to equipment, facilities, or services installed or deployed January 1, 1995, in accordance with the procedures established in CALEA section 109(b); and (3) reasonable costs directly associated with modifications of any of a carrier's systems or services, as identified in the Carrier Statement required by CALEA section 104(d) which do not have the capacity to accommodate simultaneously the number of

interceptions, pen registers, and trap and trace devices set forth in the Capacity Notice(s) published in accordance with CALEA section 104. The Omnibus Consolidated Appropriations Act of 1997 (the Act) (P.L. 104-208) amended CALEA by adding Title IV which created the Telecommunications Carrier Compliance Fund (TCCF) to facilitate the disbursement of funds available for CALEA implementation, and appropriated \$60,000,000 in initial CALEA funding.¹ Additionally, the Act authorized agencies with law enforcement and intelligence responsibilities to transfer unobligated balances into the TCCF, subject to applicable Congressional reprogramming requirements.

III. STATUS OF CALEA

Since the submission of the Third Annual Report, there have been several significant developments that will have an impact on CALEA implementation.

In December 1997, the telecommunications industry adopted an interim standard (J-STD-025) to meet the assistance capability requirements of section 103 of CALEA. The law enforcement community opposed the interim standard based upon its failure to include nine assistance capabilities which law enforcement considers necessary to meet certain evidentiary and minimization requirements.²

On behalf of the Nation's law enforcement community, the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) filed a joint petition in April 1998 with the Federal Communications Commission (FCC) requesting that the FCC: (1) find the industry adopted interim standard deficient; and (2) promulgate a new standard that includes the nine assistance capabilities requested by law enforcement.³ The Center for Democracy and Technology (CDT), the Telecommunications Industry Association (TIA), and the Cellular Telecommunications Industry Association (CTIA), claiming that certain assistance capabilities proposed by law enforcement exceeded the requirements of section 103, also filed petitions with the FCC seeking resolution of the standards issue. On October 22, 1998, the FCC adopted a Further Notice of Proposed Rulemaking (FNPRM) regarding a technical standard for meeting the assistance capability requirements of section 103 of CALEA. In that Notice, the FCC concluded that five assistance capabilities are statutorily required by CALEA. The FCC tentatively concluded that three assistance capabilities were not

¹ The Omnibus Consolidated Appropriations Act of 1997; P.L. 104-208, 110 STAT 3009 (1996).

² On January 23, 1998, the DOJ issued an opinion that these nine assistance capabilities are required by CALEA and underlying electronic surveillance statutes.

³ See *In the Matter of Establishment of Technical Requirements and Standards for Telecommunications Carrier Assistance Capabilities under the Communications Assistance for Law Enforcement Act*, Public Notice, CC Docket No. 97-213, DA 98-762, (rel. April 20, 1998) (encompassing petitions filed by CDT, TIA, CTIA, and FBI/DOJ).

required. The FCC has reserved judgement on one assistance capability pending additional information.⁴ After the requisite comment and reply comment periods, the FCC will issue a Final Rule.

On September 11, 1998, the FCC released a Memorandum of Opinion and Order (Order) extending the section 103 compliance deadline from October 25, 1998, to June 30, 2000.⁵ The Order, which applies to all telecommunications carriers, gives industry until mid-2000 to install certain assistance capabilities included in the industry adopted interim standard. As mentioned above, the FCC has committed to a separate, expedited rulemaking to resolve the outstanding assistance capability issue, including the status of the nine assistance capabilities requested by law enforcement.

With regard to the Attorney General's regulatory responsibilities for CALEA, on March 12, 1998, the Final Notice of Capacity for local exchange services, cellular and broadband personal communications services (PCS) was published in the *Federal Register*.⁶ By September 8, 1998, 1,617 telecommunications carriers covered by the Final Notice of Capacity submitted carrier statements as required by CALEA section 104. The FBI is currently working on a Notice of Inquiry (NOI) seeking information and suggestions from the telecommunications industry and other interested parties on the development of reasonable methodologies for characterizing capacity requirements for telecommunications services other than local exchange services, cellular, and broadband PCS. Such services include, but are not limited to: traditional paging, two-way paging, narrowband PCS, mobile satellite services (MSS), specialized mobile radio (SMR) and enhanced specialized mobile radio (ESMR), national and multi-rate services, asynchronous transfer mode (ATM), X.25, frame relay, airplane telephony, and railroad telephony. Publication of this NOI is anticipated in the last quarter of calendar year 1998.

On April 28, 1998, the FBI published an NPRM proposing a definition of the term "significant upgrade or major modification."⁷ This definition will clarify the reimbursement eligibility of many equipment, facilities, and services that were installed or deployed prior to January 1, 1995, but which may have undergone some type of modification since that date. The FBI is currently reviewing

⁴ The five assistance capabilities tentatively determined by the FCC to be required by CALEA are: content of subject-initiated conference calls, party hold, join, drop on conference calls, subject-initiated dialing and signaling information, timing information, and dialed digit extraction. The three assistance capabilities tentatively concluded not to be required by CALEA are: surveillance status, feature status, and continuity check tone. The FCC has reserved judgement on in-band and out-of-band signalling.

⁵ *In the Matter of the Compliance Date under Section 107 of the Communications Assistance for Law Enforcement Act, Memorandum Opinion and Order*, CC Docket No. 98-223, (rel. September 11, 1998).

⁶ 63 FR 12218 (March 12, 1998).

⁷ 63 FR 23231 (April 28, 1998).

public comment received in this proceeding and anticipates publishing a Final Rule in calendar year 1999.

Finally, certain aspects of both the reimbursement mechanism and the capacity requirements are currently being litigated in the Federal District Court.⁸ It is unclear at this time the extent to which this litigation will impact CALEA implementation.

IV. PAYMENTS TO TELECOMMUNICATIONS CARRIERS

A. Prior Year Payments: FY 1998

No direct appropriations or deposits of unobligated funding by eligible agencies were made to the TCCF in FY 1998. Therefore, \$101,000,000⁹ remains available in the TCCF. Between October 1, 1997 and September 30, 1998, no payments were made to telecommunications carriers from the TCCF pursuant to section 104(e) or 109 of CALEA.

B. Current Year Estimates: FY 1999

During 1998, several major manufacturers informed the Government that they are in advanced stages of CALEA solution development. Some of these manufacturers claim to have solutions meeting the industry standard (J-STD-025) available for immediate deployment. The manufacturers also claim that solutions for all the “punch list” capabilities are technically feasible; however, due to the varying degrees of technical difficulty involved, manufacturers plan to make solutions for the punch list capabilities available in phases. The punch list capabilities to be required and the deadline for their deployment will be set forth in the FCC’s final ruling on the issue.

The Government remains committed to begin the reimbursement process in FY 1999 if agreement can be reached with a carrier and/or a carrier and its manufacturer. It must be noted that any such agreement would be dependent upon the carrier/manufacturer’s willingness to provide data in sufficient detail for the Government to determine fairness and reasonableness of solution price. Should agreements be finalized with the major manufacturers and carriers, it is possible that the Government could begin obligating funding in the TCCF during FY 1999.

At the same time, the September 11, 1998, FCC order extending the capability compliance deadline to

⁸ CTIA et al. v. Janet Reno et al., D.C. Cir. C.A. No. 1:98CV01036, April 27, 1998.

⁹ Subsequent to the transmittal of the CALEA 3rd Annual Report to Congress, the \$1,580,270 transfer from the United States Customs Service was reversed, resulting in TCCF FY 1998 available funding of \$101,000,000, not \$102,580,270. However, the United States Customs Service advised that these funds remained available and executed an expenditure transfer of the \$1,580,270 on December 1, 1998, making these funds available in FY 1999.

June 30, 2000, may delay reimbursement activity until FY 2000. In part, the FCC Order was predicated upon the view that some manufacturers might not have solutions available until December, 1999. Given this, it is possible that carriers will wait until all solution options are available before making solution deployment decisions and seeking Government reimbursement.