COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA):

Fifth 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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Federal Bureau of Investigation
United States Department of Justice

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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 by November 30th of each year on the amounts paid during the preceding fiscal year to telecommunications carriers under section 2608 of title 18, United States Code. The annual report, which is 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.[1]

Pursuant to section 112, this fifth annual report is submitted to Congress. The report provides financial information regarding Fiscal Year (FY) 1999 expenditures to telecommunications carriers, and projected spending levels for FY 2000.

[1] Section 112: Reports , Communications Assistance for Law Enforcement Act

II. BACKGROUND

CALEA was enacted in 1994 to ensure that ongoing technological changes in the telecommunications industry would not compromise the ability of federal, state, and local law enforcement agencies to conduct lawfully authorized electronic surveillance. To that end, CALEA obligates telecommunications carriers to ensure that their equipment, facilities, and services are capable of expeditiously isolating and 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 million to be appropriated to reimburse the telecommunications industry for certain eligible costs associated with modifications to their networks. The Omnibus Consolidated Appropriations Act of 1997 (the Act) (P.L. 104-208)[2] amended CALEA by adding Title IV which created the Telecommunications Carrier Compliance Fund (TCCF), and appropriated $60 million in initial CALEA funding. The purpose of the TCCF is to facilitate the disbursement of funds available for CALEA implementation. Additionally, the Act authorized agencies with law enforcement and intelligence responsibilities to transfer unobligated balances into the TCCF, subject to applicable Congressional reprogramming requirements.

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

As of September 30, 1999, the balance of the TCCF was $87,580,270. This amount was the result of the following account activity:

Exhibit 1
Telecommunications Carrier Compliance Fund Activity
FY 1997 - Present

SOURCE	DOLLARS
Direct Appropriation	$60,000,000
Department of Justice Working Capital Fund	$40,000,000
United States Postal Inspection Service Transfer	$1,000,000
United States Customs Service Transfer	$1,580,270
TOTAL DEPOSITS	**$102,580,270**
Payment to Nortel Networks, Inc. via Ameritech Services Inc. for Release NAO10 CALEA functionality	($15,000,000)
END-OF-FY 1999 BALANCE	**$87,580,270**

III. STATUS OF CALEA

A. CALEA Solution Availability

Driven by fast-approaching capability compliance deadlines, CALEA solution development activity accelerated during FY 1999. As a result of two Federal Communications Commission (FCC) determinations,[3] CALEA's implementation timeline now includes two, separate capability compliance deadlines. Telecommunications equipment, facilities, and services must be compliant with Telecommunications Industry Association TR45.2 J-STD-025 (hereafter referred to as J-STD-025) assistance capabilities by June 30, 2000. By September 30, 2001, telecommunications equipment, facilities, and services must be compliant with six additional assistance capabilities not included in J-STD-025, but which have been determined by the FCC to be required by section 103 of CALEA. As a result, most manufacturers will make fully compliant CALEA solutions available to their carrier customers over the course of several generic software releases. Each successive generic software release will contain partial CALEA functionality until full functionality is achieved.

With the FCC's June 30, 2000 J-STD-025 capability compliance deadline seven months away, telecommunications equipment manufacturers are finalizing development of CALEA solutions for

[3] *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); and Third Report and Order, *Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213 (rel. August 31, 1999)

the various switching platforms used throughout the public switched telephone network. Based on discussions with several equipment manufacturers, most manufacturers are in advanced stages of CALEA solution development or have already begun making J-STD-025 solutions available to their carrier customers. According to solution availability schedules from these manufacturers, J-STD-025 assistance capabilities on most widely-used switching platforms are either already available to carriers, or will be available in the first half of the year 2000.

B. Finalization of Section 103 Assistance Capability Requirements

On August 31, 1999, the FCC issued its Third Report and Order, regarding section 103 assistance capability requirements.[4] The FCC determined that, in addition to the assistance capabilities included in J-STD-025, wireline, cellular, and broadband Personal Communications Services (PCS) carriers must provide six additional assistance capabilities sought by the Department of Justice (DOJ) and Federal Bureau of Investigation (FBI)[5] As stated previously, these assistance capabilities must be implemented by September 30, 2001.

These six additional assistance capabilities are:

- Content of subject-initiated conference calls;

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[4] Third Report and Order, *Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213 (rel. August 31, 1999)

[5] *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).

- Party hold, join, and drop with regard to conference calls;
- Subject-initiated dialing and signaling information;
- In-band and out-of-band signaling;
- Timing information; and
- Dialed digit extraction.

The FCC ruled that three additional assistance capabilities requested by DOJ/FBI (surveillance status, continuity check tone, and feature status), while potentially useful to law enforcement, are not statutorily mandated under section 103(a) of CALEA. The determination represents a significant step forward in CALEA implementation.

C. Reimbursement Activity

The Government began reimbursement activity to the telecommunications industry in FY 1999. Using the CALEA software Right-to-Use (RTU) license agreement approach discussed below, the Government committed funds to reimburse industry for CALEA software solutions on four (4) priority switching platforms.

The Government will utilize two alternative reimbursement approaches for acquiring

CALEA software solutions: RTU license agreements or switch-by-switch reimbursement. Both approaches are designed to be consistent with the Government's goal of maximizing return on TCCF dollars while at the same time responding to industry concerns regarding CALEA compliance costs and deployment schedules. Under the RTU license agreement approach, the Government reimburses a facilitating carrier[6] for that carrier's purchase of the CALEA software RTU for a switch installed or deployed on or before January 1, 1995. The license fee covers the manufacturer's CALEA software development cost for the switch's platform type. Manufacturers then grant CALEA software right to use licenses to other carriers at no charge for all switches of the same platform type installed or deployed on or before January 1, 1995. Under a switch-by-switch reimbursement approach, the Government reimburses carriers for CALEA software on an individual, switch-by-switch basis at solution deployment.

The reimbursement approach chosen will depend on several factors. These factors include, but are not limited to, availability of TCCF funds, the reimbursement cost for a RTU license for the CALEA solution, per-switch commercial prices for CALEA solutions, and a switching platform's priority status to law enforcement.

The Government has pursued RTU license agreements with manufacturers and their

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[6] The CALEA statute requires that TCCF payments be made to telecommunications carriers for the reasonable costs associated with modifications to equipment, facilities, and services installed or deployed on or before January 1, 1995.

facilitating carrier partners on one or more of their high priority switching platforms. As a result of these negotiations, on September 10, 1999, Ameritech Services, Inc. (Ameritech), Nortel Networks, Inc (Nortel) and the FBI entered into an RTU license agreement (the Agreement) . The purpose of the Agreement is to reimburse Ameritech for its purchase of the CALEA software RTU license for the DMS-100 wireline switching platform and to establish an agreed upon total license fee for four (4) Nortel switching platforms: the DMS-100 and DMS-10 wireline platforms, the DMS-MTX cellular platform, and the DMS-MSC personal communications services (PCS) platform switches.[7]

D. Flexible CALEA Solution Deployment

In FY 1999, the Attorney General announced the Government's intention to work with telecommunications carriers to establish a flexible schedule for deploying CALEA solutions in the nation's telecommunications network. The Plan works within carrier's normal business processes and software roll-out schedules, resulting in substantial cost savings to the industry, while allowing carriers to target resources at those switches which are of highest priority to law enforcement.

Under CALEA, switches that were installed or deployed on or before January 1, 1995 are deemed compliant until: 1) the Government agrees to reimburse the carrier for eligible costs directly

[7] Letter Agreement Number J-FBI-99-053, signed by Nortel Networks, Inc., Ameritech Services, Inc., and the Federal Bureau of Investigation on September 10, 1999.

associated with making CALEA modifications, or 2) they are replaced, significantly upgraded, or otherwise undergo a major modification. Switches that were installed or deployed after January 1, 1995, (post 1/1/95 switches) or switches that have been replaced, significantly upgraded or have otherwise undergone a major modification, must be CALEA compliant at the carrier's expense by the June 30, 2000 compliance date established by the FCC unless the FCC has determined that compliance is not reasonably achievable according to Section 109(b) of CALEA.

In an attempt to minimize the costs and operational impact of CALEA compliance on carriers, the DOJ/FBI have initiated a CALEA Flexible Deployment Plan. This plan benefits carriers by working within normal deployment schedules, and eliminating a carrier's legal exposure under CALEA for post 1/1/95 switches not made CALEA compliant by the June, 2000 compliance date. Law enforcement benefits from the plan by ensuring that its priority switches are made CALEA compliant in a timely manner, regardless of the date on which that switch was installed or deployed.

Specifically, those carriers wishing to participate in the Flexible Deployment Plan are requested to provide CIS with projected CALEA deployment schedules for all Host and Stand-Alone switches in their networks. Upon receiving a carrier's projected CALEA deployment schedule, CIS and the carrier will jointly develop a final CALEA deployment schedule that provides appropriate consideration to federal, state, and local law enforcement's high priority switches. Once the carrier and CIS agree on a final CALEA deployment schedule, CIS and DOJ will prepare a letter from the United

States Attorney General granting forbearance from enforcement against a carrier consistent with the provisions of section 108 of CALEA. This forbearance will only apply as along as the carrier continues to deploy CALEA solutions consistent with the agreed-upon plan. Further, CIS will not oppose a carriers efforts to obtain a one-year extension of the June 30, 2000 capability compliance date under 47 U.S.C. 1006(c), for switches installed or deployed after January 1, 1995. CIS agreement not to oppose any extension would be subject to the carrier's adhering to the agreed-upon deployment schedule. We believe that the foregoing process provides carriers with significant cost savings and operational flexibility, while providing law enforcement with assurance that its priority switches will be CALEA compliant in a timely manner.

The Government, carriers, and associations representing the telecommunications industry are in ongoing discussions pertaining to the most expeditious and effective way to implement the flexible deployment plan, and to ensure that all carriers are aware of the plan.

IV. PAYMENTS TO TELECOMMUNICATIONS CARRIERS

A. Prior Year Payments: FY 1999

On September 10, 1999, Nortel, Ameritech, and the FBI signed a Letter Agreement regarding the CALEA software RTU license for the DMS-100, DMS-10, DMS-MTX, and DMS-MSC switching platforms. The CALEA software RTU license for all Nortel DMS-100, DMS-10, DMS-MTX, and DMS-MSC switching platforms installed or deployed in the United States on or before January 1, 1995 is $101.8 million ("total license fee"). As a result, in FY 1999, the FBI committed $101.8 million of available TCCF funds.

For the purposes of the agreement with Ameritech and Nortel, the CALEA solution functionality includes those assistance capabilities defined by the Telecommunications Industry Association's Subcommittee TR45.2 in the J-STD-025 plus those additional assistance capabilities that the FCC or a court of competent jurisdiction determines are required by CALEA.

Pursuant to the terms of the Agreement, Nortel will develop the CALEA functionality, demonstrate the functionality's consistency with applicable standards, and then incrementally incorporate the functionality into its software generic releases for each respective platform. In FY 1999, the FBI made initial reimbursement payments in the amount of $15 million. The $15 million payment represents a reimbursement to Ameritech for its purchase of the RTU license for the partial CALEA functionality contained in Nortel's software generic Release NA010 for the DMS-100 platform.

Exhibit 2

Summary of TCCF Expenditures
FY 1999

Amount	Purpose
$15,000,000	Nationwide RTU license for the partial CALEA functionality contained in Nortel's Generic Software Release NAO10 for the DMS-100 wireline platform

Full CALEA functionality for the DMS-100 platform will be incrementally incorporated in software generic Releases NAO10 through NA014. The remaining $15 million cost for the DMS-100 CALEA functionality, as well as the remainder of the total license fee, is expected to be reimbursed in FY 2000.

B. Current Year Estimates: FY 2000

In FY 2000, the Government intends to reimburse facilitating carriers for the remainder of the total license fee associated with the Nortel Agreement. Amounts projected include: the remaining $15 million for complete CALEA functionality on the DMS-100 platform; $20.9 million for complete CALEA functionality on the DMS-10 platform; $33.0 million for complete CALEA functionality on the DMS-MTX platform; and $17.9 million for complete CALEA functionality on the DMS-MSC platform.

In addition to reimbursements associated with the Agreement, the Government is in advanced stages of negotiations with other manufacturers to finalize similar RTU license agreements for priority platforms. The government expects to enter into new RTU license agreements in FY 2000 that will result in additional payments from the TCCF to telecommunications carriers.

Finally, the Government expects to face significant requests for reimbursements associated with the June 30, 2000, J-STD-025 capability compliance deadline. Carriers will incur costs associated with the deployment of CALEA solutions on their networks, and may request reimbursement for such cost on equipment, facilities or serviced installed or deployed on or before January 1, 1995. The Government's ability to reimburse carrier's requests will depend on availability of funds in the TCCF. In accordance with the provisions of section 109 of CALEA, equipment, facilities, and services installed or deployed on or before January 1, 1995 that are not reimbursed will be deemed CALEA compliant.