COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA)

Sixth 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), 47 U.S.C. §§ 1001-1010 (1994) 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 equipment, facility or service 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 payment is expected to be made, and the equipment, facilities, or services for which payment is expected to be made.[1]

Pursuant to section 112 of CALEA, this sixth annual report is submitted to Congress. The report provides financial information regarding Fiscal Year (FY) 2000 expenditures to telecommunications carriers, and projected spending levels for FY 2001.

II. BACKGROUND

CALEA was enacted to preserve law enforcement's ability to conduct lawfully authorized electronic surveillance in order to ensure national security and public safety. 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. CALEA embraces the fundamentals of privacy and United States' policies which encourage the provision of new technologies and services to the public. CALEA also provides for the reimbursement of certain telecommunications carriers for "reasonable costs" directly associated with implementing CALEA. Factors set forth in CALEA for determining whether a carrier is eligible for reimbursement include: (1) the equipment, facility, or service being upgraded is a priority to law enforcement; (2) the equipment, facility, or service was installed or deployed on or before January 1, 1995;[2] and (3) the equipment, facility, or service has not been replaced, significantly upgraded

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

[2] With respect to any equipment, facility, or service installed or deployed after January 1, 1995, a telecommunications carrier may petition the FCC to determine whether compliance with the assistance capability requirements is reasonably achievable. In those instances where compliance with the assistance capability requirements is determined not to be reasonably achievable, the Government may, subject to the availability of appropriations, agree to pay the telecommunications carrier for the additional reasonable costs of making

or otherwise undergone a major modification.[3]

CALEA contains a number of reimbursement provisions that were designed to ease the transition to full compliance with the assistance capability and capacity requirements. First, to the extent that telecommunications carriers must install additional capacity to meet law enforcement's needs, the act provides that the Attorney General may agree to reimburse a telecommunications carrier for the reasonable costs directly associated with modifications made to attain the capacity requirements under 47 U.S.C. 1003(e). Second, the Attorney General may agree to pay a telecommunications carrier for all reasonable costs directly associated with making modifications to its equipment, facilities, or services installed or deployed on or before January 1, 1995 (preexistent equipment) under 47 U.S.C. 1008(a) & (d). Finally, as described in the second footnote, if the Federal Communications Commission (FCC) determines that compliance with the assistance capability requirements is not reasonably achievable with respect to a telecommunications carrier's equipment, facilities, or services installed or deployed after January 1, 1995 (post-equipment), the Attorney General may agree to pay the telecommunications carrier for the additional reasonable costs of making compliance with the assistance capability requirements reasonably achievable under 47 U.S.C. 1008(b). Detailed procedures and standards for the reimbursement of carriers were promulgated by the FBI in the Cost Recovery Regulations (28 C.F.R. Part 100).

To facilitate CALEA's implementation, Congress authorized $500,000,000 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)[4] amended CALEA by adding Title IV which created the Telecommunications Carrier Compliance Fund (TCCF) 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. A total of $298,580,270 has been made available in the TCCF through the end of FY 2000. Of this amount, $256,000,000 was the result of appropriated funding, $40,000,000 was provided through the Department of Justice (DOJ) Working Capital Fund, $1,580,270 was provided through a transfer from the United States Customs Service, and $1,000,000 was provided through a transfer from the United States Postal Inspection Service. As of September 30, 2000, the unobligated balance of the TCCF was $16,500,004.

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compliance reasonably achievable.

[3] 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 compliance date(s) established by the FCC unless the FCC determines that compliance is not reasonably achievable according to section 109(b) of CALEA.

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

III. STATUS OF CALEA

A. Status of Section 103 Assistance Capability Requirements

On August 31, 1999, the FCC issued its Third Report and Order[5] regarding CALEA's section 103 assistance capability requirements.[6] Subsequent to the FCC's determination, members of the telecommunications industry and privacy groups filed a petition in the District of Columbia Court of Appeals seeking judicial review of the FCC's Third Report and Order. Specifically, the industry challenged the FCC's inclusion of location information, packet-mode communications, and the following four disputed assistance capability requirements commonly referred to as the "punch list:"

- Post-cut-through dialed digit extraction
- Party Hold/Join/Drop information
- Subject-initiated dialing and signaling information
- In-band and out-of-band signaling

On August 15, 2000, the Court of Appeals opined that the FCC ". . . concluded, with neither analysis nor explanation, that each capability is required by CALEA." (Opinion at 15) The Court of Appeals vacated the provisions of the Third Report and Order dealing with the four challenged punch list capabilities and remanded them to the FCC for further proceedings. Two other punch list capabilities required by the FCC, subject-initiated conference call surveillance and timing information, were not before the Court and were thus left unchanged by its decision. The Court of Appeals also declined to vacate the FCC's determinations as to location information and packet-mode communications.

B. CALEA Solution Availability

As reported in the Fifth Annual Report to Congress, most manufacturers of telecommunications equipment were expected to develop and make fully compliant CALEA solutions available to their carrier customers over the course of several generic software releases. Each successive generic software release was expected to contain partial CALEA functionality until full functionality had been achieved.

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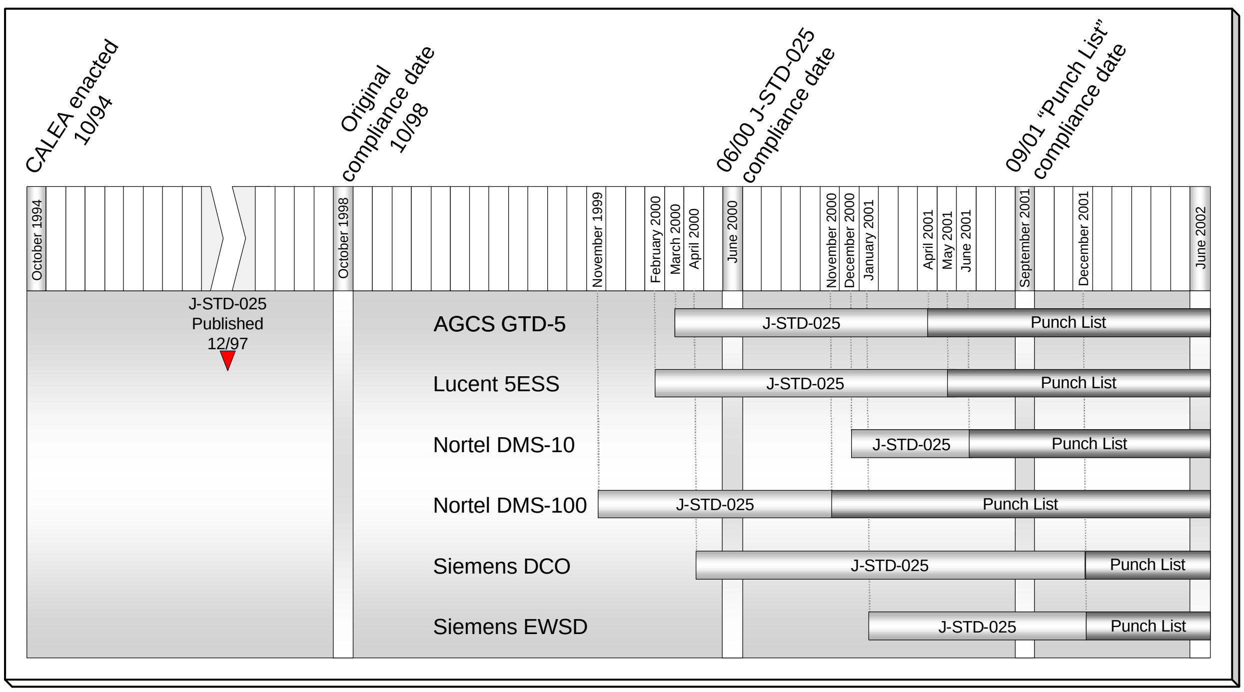
[5] Third Report and Order, *Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213 (rel. August 31, 1999).

[6] The FCC determined that, in addition to the assistance capabilities included in the industry-developed standard (J-STD-025), wireline, cellular, and broadband Personal Communications Services (PCS), carriers must provide six additional assistance capabilities sought by DOJ and FBI. The six assistance capabilities are: (1) Content of subject-initiated conference calls; (2) Party Hold/Join/Drop information; (3) Subject-initiated dialing and signaling information; (4) In-band and out-of-band signaling; (5) Timing information; and (6) Post-cut-through dialed digit extraction.

1. Wireline Solutions

To date, many manufacturers of wireline telecommunications equipment have made CALEA solutions available to their carrier customers in accordance with the industry-developed technical standard (J-STD-025). As shown in Figure 1, a number of manufacturers either currently have, or are expected to have, J-STD-025 CALEA solutions commercially available for their respective switching platforms. Furthermore, these manufacturers are expected to have the required CALEA punch list solutions available, on or before September 30, 2001.

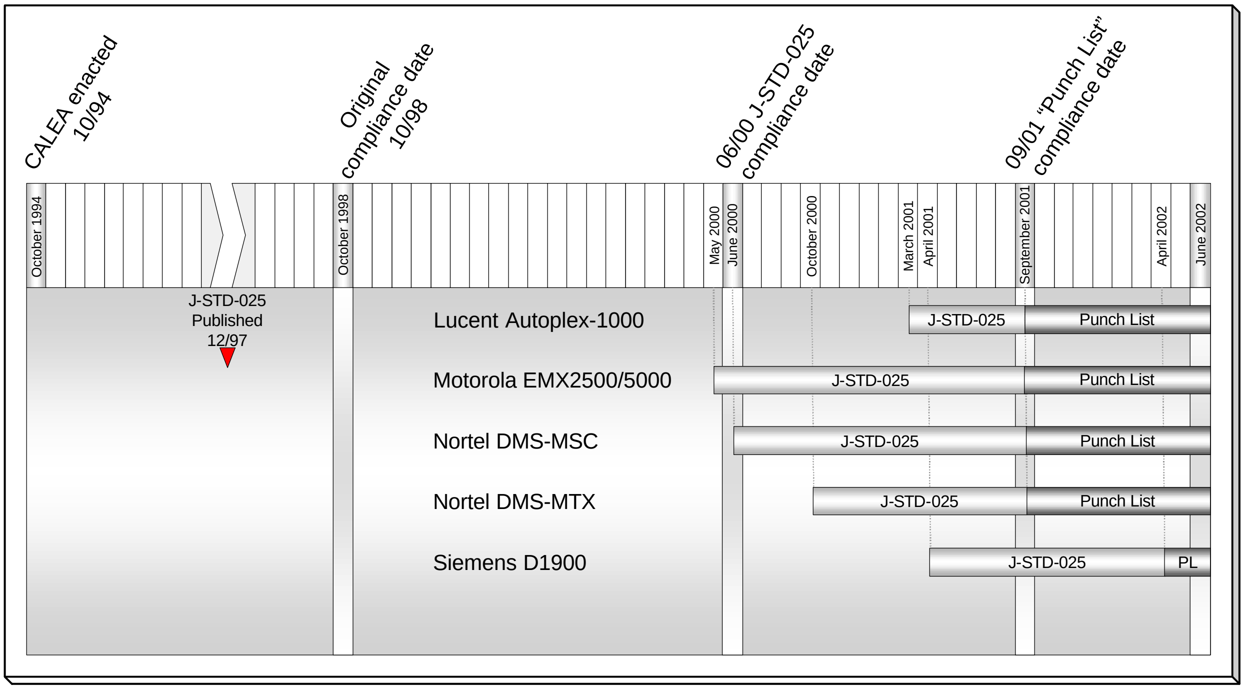
Figure 1 - CALEA Solution Availability for Selected Wireline Manufacturers and Platforms



2. Wireless Solutions

A number of manufacturers of wireless telecommunications equipment either currently have, or are expected to have, J-STD-025 CALEA solutions commercially available for their respective switching platforms. Furthermore, these manufacturers are expected to have CALEA punch list solutions around September 30, 2001. Solution availability from manufacturers of wireless equipment is illustrated in Figure 2.

Figure 2 - CALEA Solution Availability for Selected Wireless Manufacturers and Platforms



C. Reimbursement Activity

The Federal Bureau of Investigation (FBI) continued reimbursement activity to the telecommunications industry in FY 2000. Using the CALEA software Right-to-Use (RTU) license agreement approach discussed below, the FBI committed funds to reimburse telecommunications carriers for CALEA software solutions on five priority switching platforms. The number of priority switching platforms for which the FBI has committed funds totals nine (i.e., four in FY 1999, and five in FY 2000).

Two alternative reimbursement approaches the FBI will utilize for the implementation of CALEA software solutions are: 1) RTU software license agreements; and 2) switch-by-switch reimbursement. Both approaches are consistent with the FBI's goal of maximizing return on TCCF dollars while responding to industry concerns about CALEA compliance costs and deployment schedules.

Under the RTU software license agreement approach, the FBI reimburses a facilitating carrier[7] for that carrier's purchase of the CALEA RTU software license for a switch installed or

[7] 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.

deployed on or before January 1, 1995. The license fee covers the manufacturer's CALEA software development cost for the switch's platform type. Under this reimbursement approach, a manufacturer grants CALEA RTU software 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 FBI reimburses carriers for CALEA software on an individual, switch-by-switch basis at solution deployment.

The reimbursement approach chosen by the FBI will depend on several factors. These factors include, but are not limited to: 1) the availability of TCCF funds; 2) the per-switch commercial prices for CALEA software solutions; 3) the reimbursement cost for an RTU software license for a CALEA solution; and 4) the switching platform's priority status to law enforcement.

The FBI has negotiated, and continues to pursue, RTU software license agreements with manufacturers and their facilitating carrier partners for those switching platforms that are a priority to law enforcement. As a result of its negotiations during FY 2000, the FBI entered into RTU software license agreements covering five priority switching platforms. When added to the one RTU software license agreement reached in FY 1999 (i.e., with Nortel Networks for four priority switching platforms), a total of nine priority switching platforms are now covered by RTU software license agreements.

On March 31, 2000, Bell Atlantic (now Verizon), Lucent Technologies, and the FBI entered into an RTU software license agreement for Lucent's 5ESS wireline and Autoplex-1000 wireless switching platforms. On June 30, 2000, GTE (now Verizon), AG Communications Systems (AGCS), and the FBI entered into an RTU software license agreement for AGCS' GTD-5 wireline switching platform. On September 21, 2000, Loretto Telecom, Siemens Telecom Systems (Siemens AG), and the FBI entered into an RTU software license agreement for Siemens AG's DCO wireline switching platform. On September 29, 2000, BellSouth, Siemens AG, and the FBI entered into an RTU software license agreement for Siemen's EWSD wireline switching platform. As previously described, the purpose of each agreement is to reimburse the respective facilitating carrier partner for its purchase of the CALEA RTU software license from the manufacturer.

In some instances a switch-by-switch reimbursement approach may be utilized. For example, a manufacturer may decline to pursue a nationwide RTU software license agreement with the FBI, or the FBI and a manufacturer may be unable to agree on a nationwide RTU software license price. In these cases, manufacturers will design and develop, with appropriate law enforcement participation, a CALEA-compliant solution in accordance with the telecommunications industry's normal business practices. Telecommunications carriers will install the developed CALEA solution, some of which will be eligible for reimbursement.

D. CALEA Solution Flexible Deployment Initiative

In FY 1999, the Attorney General announced that DOJ intended to work with telecommunications carriers to establish flexible schedules for carriers' deployment of CALEA solutions in their telecommunications networks. As described below, the Flexible Deployment Initiative works within a carrier's normal business processes and software roll-out schedules, resulting in substantial cost savings to the industry and the government, while allowing carriers to target resources at those switches which are of highest priority to law enforcement.

In an attempt to minimize the costs and operational impact of CALEA compliance on carriers, DOJ and FBI adopted a CALEA Flexible Deployment Initiative. This initiative benefits carriers by working within their normal deployment schedules, and limiting a carrier's legal exposure under CALEA for post-January 1, 1995 switches[8] not made CALEA compliant by the June 30, 2000, compliance date. Law enforcement benefits from the plan by ensuring that its priority switches are made CALEA compliant in a timely manner.

Specifically, those carriers wishing to participate in the Flexible Deployment Initiative were given the opportunity to provide the FBI with projected CALEA deployment schedules for all host and stand-alone switches in their networks. In January 2000, the FBI provided the telecommunications industry with a Flexible Deployment Assistance Guide (Guide) to facilitate telecommunications carriers' submission of information. The Guide requested telecommunications carriers to voluntarily submit certain information to the FBI, and explains under what circumstances, based on a review of that information, the FBI might support a carrier's request to the FCC for an extension under section 107(c) of CALEA. The Guide also provides some general background information regarding CALEA and discusses lawfully-authorized electronic surveillance, technical solutions being developed by the industry, and cost reimbursement provisions of CALEA. The FBI disseminated over 3,500 copies of the Guide to the telecommunications industry and other interested parties.

Upon receiving a carrier's projected CALEA deployment schedule, the FBI and the carrier jointly developed a final CALEA deployment schedule that provided appropriate consideration to federal, state, and local law enforcement's priority switches. Telecommunications carriers also had the opportunity to submit a petition to the FCC for an extension of the June 30, 2000 compliance

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[8] Under CALEA, the government cannot obtain an enforcement order against a carrier for switches that were installed or deployed on or before January 1, 1995 until: 1) the FBI agrees to reimburse the carrier for eligible costs directly 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 compliance date(s) established by the FCC unless the FCC has determined that compliance is not reasonably achievable according to section 109(b) of CALEA.

date. Once a carrier and the FBI agreed on a final CALEA deployment schedule, the FBI provided the carrier with a letter of support acknowledging the final, agreed-upon deployment schedule. The letter of support was to be used in conjunction with the carrier's extension petition filed before the FCC. The FBI's agreement to support a carrier's petition for extension is subject to the carrier's adhering to the agreed-upon deployment schedule. The FBI believes that the foregoing process provided carriers with significant cost savings and operational flexibility, while simultaneously providing law enforcement with the assurance that priority switches will be CALEA compliant in a timely manner.

At the end of FY 2000, the FBI received 1,251 carrier-supplied Flexible Deployment Templates that identified: 1) carrier equipment and type; 2) geographic area served; 3) software generic deployment history and expected deployment dates; and 4) the last four years of electronic surveillance intercept data. As a result of its analysis and discussions with carriers, the FBI has provided 871 carriers with letters of support. The remaining 380 Flexible Deployment Templates are currently under review.

E. Status of Cost Recovery Regulations and Final Notice of Capacity Litigation

On April 28, 1998, members of the telecommunications industry filed a lawsuit in the U.S. District Court challenging the FBI's Cost Recovery Regulations and its definition of "installed or deployed" as it applied to the January 1, 1995 cut-off date for reimbursements to the industry for CALEA compliance. On August 20, 1998, an additional lawsuit was filed in the U.S. District Court challenging the methodology used, and the requirements identified, in the FBI's Final Notice of Capacity. The two lawsuits were consolidated. On August 28, 2000, the Court ruled in favor of the government by granting its petition for summary judgment and denying the plaintiff's cross motion for summary judgment.

IV. PAYMENTS TO TELECOMMUNICATIONS CARRIERS

As required by CALEA, the following sections provide: 1) a detailed accounting of the amounts paid to each carrier and the equipment, facility or service for which the amounts were paid; and 2) projections of the amounts expected to be paid in the current fiscal year, the carriers to which payment is expected to be made, and the equipment, facilities, or services for which payment is expected to be made.

A. Telecommunications Carrier Compliance Fund Activity: FY 1997 - FY 2000

As of September 30, 2000, the unobligated balance of the TCCF was $16,500,004.[9] This balance was the result of: (1) direct appropriations and redirected funding in the amount of $298,580,270; (2) payments to the telecommunications industry in the amount of $51,000,000; and (3) obligations to the telecommunications industry in the amount of $231,080,266. The table on the following page depicts this account activity:

[9] Funding sources, payments, obligations, and balances associated with the TCCF have been rounded to the nearest dollar.

Table 1: Telecommunications Carrier Compliance Fund Activity: FY 1997 - FY 2000

FUNDING SOURCE	FY	DOLLARS
Direct Appropriation	1997	$60,000,000
Department of Justice Working Capital Fund	1997	$40,000,000
United States Customs Service Transfer	1997	$1,580,270
United States Postal Inspection Service Transfer	1997	$1,000,000
Direct Appropriation	2000	$15,000,000
Supplemental Appropriation	2000	$181,000,000
TOTAL DEPOSITS		**$298,580,270**
PAYMENTS		
Payment to Nortel Networks, Inc. via Ameritech Services Inc. for Release NAO10 CALEA functionality	1999	($15,000,000)
Payment to Nortel Networks, Inc. via Ameritech Services Inc. for Release NAO11 CALEA functionality	1999	($5,000,000)
Payment to Nortel Networks, Inc. via Ameritech Services Inc. for Release NAO12 CALEA functionality	2000	($5,000,000)
Payment to Nortel Networks, Inc. via AirTouch for Releases MTX-08 and MTX-10 CALEA functionality	2000	($26,000,000)
TOTAL PAYMENTS		**($51,000,000)**
OBLIGATIONS		
Nortel Networks for CALEA functionality on the DMS-10 and DMS-MSC switching platforms	1999	($50,800,000)
Ameritech for its role as a facilitating carrier partner in testing CALEA solutions	2000	($182,464)
Bell Atlantic (Verizon) for its role as a facilitating carrier partner in testing CALEA solutions	2000	($97,801)
Lucent Technologies for CALEA functionality on the 5ESS and Autoplex-1000 switching platforms	2000	($110,000,000)
AG Communications for CALEA functionality on the GTD-5 switching platform	2000	($30,000,000)
Siemens AG for CALEA functionality on the EWSD and DCO switching platforms	2000	($40,000,000)
TOTAL OBLIGATIONS		**($231,080,266)**
BALANCE		
End-of-FY 2000 Unobligated Balance		**$16,500,004**

B. Current Year Estimates: FY 2001

The FY 2001 Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act provided $200,977,000, after a 0.22 percent recission. In FY 2001, the FBI intends to reimburse facilitating carriers for: 1) the obligations identified in the previous table; 2) the remainder of the software license fees associated with the Lucent Agreement ($60,000,000 for complete CALEA functionality on its 5ESS wireline and Autoplex-1000 wireless switching platforms); and 3) the software license fees associated with the Motorola EMX 2500/5000 and iDEN wireless platforms ($55,000,000).

The remaining $102,477,004 will be used to satisfy requests for reimbursements associated with: 1) individual carriers' J-STD-025 capability compliance deadline, and 2) the March 12, 2001 deadline associated with the Final Notice of Capacity.[10] Carriers will incur costs associated with the deployment of CALEA solutions and capacity on their networks, and may request reimbursement for such cost on equipment, facilities or services installed or deployed on or before January 1, 1995. The FBI's ability to reimburse carriers' requests will largely depend on availability of funds in the TCCF. During the course of consultations between the FBI and various major telecommunications carriers, the concept of carrier-specific, network-wide reimbursement arrangements have emerged as a potential method for reimbursing carriers for the costs associated with deploying CALEA-compliant software solutions and capacity into carrier networks. The FBI will continue to explore this option during FY 2001. In accordance with the provisions of section 109 of CALEA, a carrier will be deemed in compliance when the FBI does not agree to pay the carrier after receiving its reimbursement request for the costs associated with retrofitting equipment, facilities, and services installed or deployed on or before January 1, 1995.

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[10] Section 104(a) of CALEA obligates the Attorney General to provide telecommunications carriers, telecommunications industry associations, and standards-setting organizations with an estimate of the "number of interceptions, pen registers, and trap and trace devices . . . that government agencies . . . may conduct . . .: (47 U.S.C. § 1003[a], [c][1]). On March 12, 1998, the FBI published, in the *Federal Register*, a Final Notice of Capacity (63 Fed. Reg. 12228) fulfilling the Obligations of the Attorney General under section 104 of CALEA.