

COMMUNICATIONS ASSISTANCE FOR LAW  
ENFORCEMENT ACT:  
Second 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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# COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT: Second Annual Report to Congress

## I. INTRODUCTION

Lawfully authorized electronic surveillance is one of the most valuable tools in America's arsenal to fight crime. Law enforcement uses this vital tool to penetrate closely controlled, but highly sophisticated, criminal enterprises that might otherwise engage in wholesale illegal activity with impunity. Even though it is used sparingly, electronic surveillance is crucial to effective law enforcement.

Law enforcement's ability to perform electronic surveillance to protect the public safety is seriously threatened by rapid changes in telecommunications technologies. Although today's communications networks are an important aid for law enforcement in fulfilling its mission, the continuous technological advances in telecommunications systems and networks and the introduction of new digitally-based technologies, transmission modes, services, and features are making it increasingly more difficult, if not impossible, for law enforcement to conduct court-authorized electronic surveillance. The loss of these investigative techniques would be devastating to the fight against crime.

Recognizing the potential impact of emerging telecommunications technology on law enforcement and public safety, the Communications Assistance for Law Enforcement Act (CALEA) (Public Law 103-414; 47 U.S.C. 1001-1010) was enacted. The purpose of CALEA is to clarify the responsibilities of telecommunications carriers in the interception of communications for law enforcement purposes. CALEA was enacted to preserve law enforcement's ability, pursuant to a court order or lawful authorization, to access communications content and associated call-identifying information in an ever-changing telecommunications environment.

Attorney General Order 28 CFR 0.85(o), dated February 24, 1995, delegated management and administration responsibilities of CALEA to the FBI. The CALEA initiative and the FBI's implementation efforts are on behalf of all Federal, State and local law enforcement agencies. The FBI's Telecommunications Industry Liaison Unit, which consists of engineers and industry experts, and its Telecommunications Contracts and Audit Unit, which consists of accountants, auditors, and contract specialists, will implement and oversee CALEA responsibilities.

To facilitate implementation of the CALEA, the Congress authorized the appropriation of \$500,000,000 between Fiscal Years (FYs) 1995 and 1998 to pay for certain costs associated with CALEA compliance. Under CALEA, up to \$500,000,000 will be allocated to telecommunications carriers based upon a prioritized spending plan which addresses the greatest technological problems facing law enforcement. CALEA authorizes the Attorney General, subject to the availability of appropriations, to pay telecommunications carriers for: 1) all reasonable costs directly associated with the modifications performed by carriers in connection with equipment, facilities, and services installed or deployed 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 after 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.

CALEA further provides that, if carriers request payment in accordance with CALEA cost recovery procedures and the Attorney General does not agree to pay for such modifications, the equipment, facilities and services will be considered to be in compliance. In the case of equipment, facilities, and services installed or deployed on or before January 1, 1995, this status lasts only until the equipment, facility, or service is replaced or significantly upgraded or otherwise undergoes major modification.

The Omnibus Consolidated Appropriations Act of 1997 (Public Law 104-208) establishes the Department of Justice Telecommunications Carrier Compliance Fund (TCCF) for making payments to telecommunications carriers, equipment manufacturers, and providers of telecommunications support services pursuant to Section 109 of CALEA. Prior to the enactment of the Omnibus Consolidated Appropriations Act of 1997, CALEA permitted the FBI to make payments solely to telecommunications carriers. However, the language establishing the TCCF now enables the FBI to make payments to both equipment manufacturers and support service providers, as well as to telecommunications carriers.

Prior to expending any funds from the TCCF, the Omnibus Consolidated Appropriations Act of 1997 requires the FBI to submit to Congress an implementation plan for CALEA. The implementation plan, which will be submitted separately from this report, will include: "1) the law enforcement assistance capability requirements and an explanation of law enforcement's recommended interface; 2) the proposed actual and maximum capacity requirements for the number of simultaneous law enforcement communications interceptions, pen registers, and trap and trace devices that authorized agencies may seek to conduct, set forth on a county-by-county basis for wireline services and on a market service area basis for wireless services, and the historical baseline of electronic

surveillance activity upon which such capacity requirements are based; 3) a prioritized list of carrier equipment, facilities, and services deployed on or before January 1, 1995, to be modified by carriers at the request of law enforcement based upon its investigative needs; and 4) a projected reimbursement plan that estimates the cost for the coming fiscal year and for each fiscal year thereafter, based on the prioritization of law enforcement needs as outlined in 3) above, of modification by carriers of equipment, facilities, and services, installed on or before January 1, 1995.”

The FBI was also directed in the conference report that accompanied the Omnibus Consolidated Appropriations Act of 1997 to submit to Congress by June 30, 1997, “an estimate of reasonable costs of modifications to carrier equipment, facilities, and services, based on law enforcement assistance capacity and capability requirements.” The FBI was directed further to prepare this estimate after consultation with industry.

Section 112 of the CALEA directs the Attorney General to submit to the Congress, on an annual basis beginning November 30, 1995, a report on the amounts paid during the preceding fiscal year. CALEA also directs that this report be made available to the public. The first annual report was submitted on April 24, 1996.

Pursuant to Section 112, this second annual report is submitted to the Congress. This report provides the required financial information regarding previous year expenditures and current year projections. This report is available for the public’s review in the FBI’s Freedom of Information Act Reading Room, located at FBI Headquarters, 935 Pennsylvania Avenue, N.W., Washington, D.C. 20535, telephone (202) 324-3000.

## **II. FUNDING AVAILABILITY FOR FISCAL YEAR 1997**

For FY 1997, the FBI anticipates the availability of \$100,000,000 for CALEA implementation. This funding includes both a direct appropriation for the TCCF and transfers to the TCCF. The Omnibus Consolidated Appropriations Act of 1997 appropriated \$60,000,000 to the FBI as “start up” funds to begin CALEA implementation. Additionally, the Act established a TCCF within the United States Treasury and authorized agencies with law enforcement and intelligence responsibilities to deposit any unobligated balances that are available until expended into this Fund, subject to applicable Congressional reprogramming requirements. The Department of Justice Working Capital Fund is expected to provide an additional \$40,000,000. The FBI, with Congressional approval, has transferred \$12,300,000 from FY 1996 personnel compensation and benefits funding to the Working Capital Fund. The FBI is currently in the process of transferring another \$8,000,000 from prior year funding to the Working Capital Fund for CALEA. Finally, the Department of Justice proposes to transfer another \$19,700,000 from the Working Capital Fund to support CALEA implementation. The FBI anticipates working with other Federal law enforcement agencies and agencies with intelligence responsibilities to transfer eligible funds to the TCCF. As of this date, the

level of contributions to be transferred to the TCCF during FY 1997 by other Federal law enforcement and national security agencies is undetermined.

### **III. PAYMENTS TO TELECOMMUNICATIONS CARRIERS AND MANUFACTURERS**

Section 112 of CALEA directs the Attorney General to submit to the Congress, on an annual basis beginning November 30, 1995, a report on amounts paid during the preceding fiscal year to telecommunications carriers under sections 104(e) and 109 of CALEA and to provide estimates of the amounts to be paid in the current fiscal year.

#### **A. Prior Year Payments: Fiscal Year 1996**

No funding was appropriated in FY 1996 for CALEA; therefore, no payments were made to telecommunications carriers, pursuant to sections 104(e) and 109 of CALEA, during the period October 1, 1995, through September 30, 1996.

#### **B. Current Year Estimates: Fiscal Year 1997**

The annual report on CALEA requires the submission of projections for the current fiscal year of (a) the carriers to which payments are expected to be made and (b) the equipment, facilities, or services to be modified and for which payments are expected to be made.

The FBI plans to allocate the available FY 1997 funding of \$100,000,000 (including proposed reprogrammings) between systems engineering (\$50,000,000) and engineering development (\$50,000,000) efforts necessary for modifications to switching platforms and intelligent network peripherals (INPs). Switching platforms are the major switching systems in the public switched telephone network, and INPs are the support network equipment that augment switching systems for advanced features.

Although there are at least 35 switching platforms in use today in the public switched telephone network, historical interception activity analyzed for the period January 1993 through March 1995 shows that 14 of these switching platforms are associated with approximately 93 percent of the interceptions that occurred during that time period. The following table alphabetically lists the 14 switching platforms and associated INPs that will be the focus of CALEA implementation efforts.

AGCS GTD-5
ASSOCIATED INPS
ERICSSON AXE
ERICSSON CMS
LUCENT AUTOPLEX-1000
LUCENT 1AESS
LUCENT 4ESS
LUCENT 5ESS
MOTOROLA EMX 2500
NORTEL DMS-MTX
NORTEL DMS10
NORTEL DMS100
NORTEL DMS100/200
NORTEL DMS200
SIEMENS EWSD

The 14 switching platforms and associated INPs are being considered based upon a number of factors: historical interception activity analyzed for the period between January 1993 through March 1995, extent of technical impediments to law enforcement, platform market share, manufacturer support for the platform, platform architecture, service provider market share, and potential for solution transfer to other platforms.

The FBI will use cooperative agreements to structure joint efforts between telecommunications carriers, equipment manufacturers, and law enforcement. These activities are also consistent with the well-established business process used by the telecommunications industry to design, develop, and deploy modifications to its networks and equipment. The three primary components of this process are systems engineering, engineering development, and systems deployment. Under CALEA, the Government must rely on the telecommunications carriers to drive equipment manufacturer decisions to invest in solution development.

In general, **systems engineering** is defined as the stage when the customer defines a set of requirements for a new service and the manufacturers respond to these requirements with

an analysis of the technical approach and estimated price of development. Systems engineering is generally viewed as a six-month process. The definition of requirements will assist equipment manufacturers in developing the technical approaches on specific switching systems and other equipment used by a carrier to provide telecommunications services. The completed systems engineering analyses will articulate for the industry and law enforcement the potential costs for development and remove the technical uncertainty associated with compliance. Systems engineering efforts are expected to begin in the second quarter of FY 1997.

**Engineering development** is defined as the stage when modifications or additions to systems occur to meet a customer's requirements. This might result in new software, hardware, or, in many cases, a combination of both hardware and software. Typically, the engineering cycle requires an average of 12 months to complete. Engineering development efforts directly follow systems engineering efforts in the industry business process. The basis for these efforts will be the documentation and quotes completed as a result of the systems engineering efforts. Finally, **systems deployment** will occur in the areas of priority geographical need for law enforcement based upon the availability of appropriations.

General cost and schedule estimates for systems engineering and engineering development have been developed based on current information available about the telecommunications industry business process. Using these estimates, the \$100,000,000 in FY 1997 will be allocated between systems engineering and engineering development in a manner consistent with the telecommunications industry business process. Furthermore, the obligation of funds will also ensure that CALEA solutions are initiated for the specific platforms that have the maximum benefit to law enforcement.

The exact dollar amount allocated to each specific platform for systems engineering and the engineering development in FY 1997 will not be known until the execution of cooperative agreements. The FBI will provide these exact amounts in the next annual report. In addition, since the cooperative agreement process has not yet begun, it is not possible at this time to specify the exact carriers to which payments are expected to be made. Payments depend, in large measure, upon carrier responsiveness to the cooperative agreement process.