



# NEWS

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC. 515 F 2d 385 (D.C. Circ 1974).

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## **FCC CLARIFIES ENTITIES SUBJECT TO CALEA AND PROVIDES GUIDANCE ON "REASONABLY ACHIEVABLE" PETITIONS**

The Federal Communications Commission (FCC) has clarified which categories of service providers are subject to the requirements of the Communications Assistance for Law Enforcement Act (CALEA). The FCC also provided guidance regarding the factors it will consider in determining whether compliance with the law is "reasonably achievable" for particular carriers.

CALEA was enacted by Congress in October 1994 to ensure that telecommunications carriers' facilities are capable of providing legally authorized electronic surveillance. The FCC shares implementation responsibilities with the Department of Justice. In a separate action today, the FCC adopted standards for carriers to meet the assistance capability requirements of the law.

### Specifics of Today's Action:

Examining the definition of "telecommunications carrier" set forth in section 102 of the Act, the FCC made various clarifications with respect to the entities subject to CALEA, including:

- All entities previously classified as common carriers are subject to CALEA, as are cable operators and electric and other utilities to the extent they offer telecommunications services for hire to the public.
- CMRS providers are subject to CALEA, except to the extent they offer service that is not interconnected to the PSTN (*e.g.*, dispatch service). PMRS operators are subject to CALEA only where they offer service that qualifies as CMRS.

- Resellers, which often operate hybrid networks consisting of their own facilities and resold services, will be responsible for CALEA compliance only with respect to their own facilities.
- While facilities used solely for the provision of information services are not subject to CALEA, telecommunications carriers' facilities used to provide both telecommunications and information services are subject to the requirements of the Act.
- Under section 109(b) of CALEA, telecommunications carriers may petition the FCC for a determination as to whether compliance with the Act's assistance capability requirements is "reasonably achievable" for equipment, facilities, and services deployed after January 1, 1995. The Act states that the FCC must "determine whether compliance would impose significant difficulty or expense on the carrier or on the users of the carrier's systems." The Act also lists additional factors the FCC must take into account. In today's action, the FCC:
  - Found that it would be premature to adopt factors in addition to those set forth in section 109(b) or to assign special weight to any one factor generally.
  - Stated that the section 109 process should be reserved for the examination of specific carrier compliance problems, and should not be used to revisit broad policy goals.
  - Emphasized that requests for relief from CALEA compliance based on CALEA's costs or its impact on rates, quality of service, or the introduction of services to the market must be supported by specific facts, including quantitative data.

Action by the Commission August 26, 1999, by Second Report and Order (FCC 99-229). Chairman Kennard, Commissioners Ness, Furchtgott-Roth, Powell and Tristani.

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