

COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT:
First 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
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I. INTRODUCTION

On October 25, 1994, President Clinton signed into law the Communications Assistance for Law Enforcement Act (CALEA) (Public Law 103414; 47 U.S.C. 1001-1010). The primary purpose of the CALEA is to clarify a telecommunications carrier's duty to assist law enforcement agencies with the lawful interception of communications and the collection of call-identifying information in a rapidly changing telecommunications environment. To ensure that law enforcement agencies can continue to conduct court authorized surveillance of wire or electronic communications, the CALEA states that telecommunications carriers must meet the assistance capability requirements set forth in Section 103 of the Act. The Attorney General by memorandum dated February 24, 1995, delegated management and administration responsibilities of the CALEA to the FBI.

To facilitate implementation of the CALEA, the Congress authorized under Section 109, the appropriation of \$500 million between fiscal Years 1995 and 1998 to pay for 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 necessary capabilities and capacities. Section 109 also permits compensation, subject to the availability of appropriations, for reasonable costs of complying with the assistance capability requirements for equipment, facilities, or services deployed after January 1, 1995, if the Federal Communications Commission determines the assistance capability requirements are not reasonably achievable. The Act 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 until the equipment, facilities, and services are replaced or significantly modified.

Federal, state, and local law enforcement often depend upon court-approved wiretaps and pen register and trap-trace capabilities to prevent criminal acts from occurring and to collect evidence of crimes and conspiracies. Court-approved wiretaps are used by law enforcement to combat illegal drug trafficking, violent crime, terrorism, espionage, white-collar crime, and organized crime. Although used quite sparingly, court-approved wiretapping is an essential tool used by law enforcement to protect public safety, save lives, and protect the national security. The majority of court-approved wiretaps are obtained by state and local law enforcement. The loss of these investigative techniques would be devastating to the fight against crime. Consequently, the availability of funding to ensure timely industry compliance with the CALEA and preservation of electronic surveillance capabilities are priorities for law enforcement agencies.

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 amounts paid during the preceding fiscal year to telecommunications carriers under sections 104(e) and 109 of the Act and to provide estimates of amounts expected to be paid in the current fiscal year. The Act also directs that this report be made available to the public.

Pursuant to Section 112, this first annual report is submitted to the Congress. This report provides the required financial information regarding previous year expenditures and current

year projections, as well as a summary of actions taken by the FBI to implement the CALEA, as of November 30, 1995.

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., telephone (202) 324-3000.

II. PAYMENTS TO TELECOMMUNICATIONS CARRIERS

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 amounts paid during the preceding fiscal year to telecommunications carriers under sections 104(e) and 109 of the Act and to provide estimates of amounts expected to be paid in the current fiscal year.

A. Prior Year Payments: Fiscal Year 1995

No funding was appropriated in Fiscal Year 1995 for CALEA; therefore, no payments were made to telecommunications carriers during the period October 1, 1994, through September 30, 1995, pursuant to sections 104(e) and 109 of the Act. It is noted that the CALEA was signed into law after Congressional approval of the Justice Appropriation Act of 1995 and that no funding for payments to carriers was included in that appropriation.

B. Current Year Estimates: Fiscal Year 1996

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 payment is expected to be made. As of this report date, this information is not available because capacity and capability requirements to be met by the telecommunications carriers have not been completed. The status of implementation efforts is discussed in the next section.

To date, no funding has been appropriated for Fiscal Year 1996 for payments to telecommunications carriers.

However, the FBI estimates that funding during Fiscal Year 1996, if available, could be used for preliminary developmental efforts that would lead to more cost effective and timely deployment of solutions, including:

Network system analysis; Architectural and feature design specifications; Solutions development; and Initiation of Act implementation process.

The above activities are viewed by the FBI as joint efforts between telecommunications carriers, equipment manufacturers, and telecommunications support services providers. These activities are also consistent with the well-established business process used by the telecommunications industry. The three primary components of this process are: systems engineering, engineering development, and systems deployment. Major switch manufacturers, upon whom telecommunications carriers rely for most required technological solutions, have advised the FBI

that timely development of interception features is technically feasible; however, the development and deployment of such features are directly dependent upon the availability of funding if the statutory deadlines are to be met.

III. IMPLEMENTATION EFFORTS

Since enactment of CALEA, the FBI has, after consultation with other federal, state, and local law enforcement agencies and with the telecommunications industry, undertaken a number of significant actions to implement key aspects of the Act.

A. Capacity Survey and Notice

Section 104 of the Act requires the Attorney General, within one-year of enactment of the CALEA, to publish in the Federal Register "(A) notice of the actual number of communications intercepts, pen registers, and trap and trace devices, representing a portion of the maximum capacity . . . that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously by the date that is 4 years after the date of enactment . . . and (B) notice of the maximum capacity required to accommodate all of the communications intercepts, pen registers, and trap and trace devices that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously after that date that is 4 years after the date of enactment . . ."

On October 16, 1995, the FBI published in the Federal Register an Initial Notice of Capacity as required under Section 104 of the CALEA, for public comment and review. The initial 30-day comment period was extended to January 16, 1996, to accommodate the submission of comments from the telecommunications industry and public. After reviewing and considering these comments, the FBI will take appropriate actions leading to the issuance of a Final Notice of Capacity. Section 104(d) allows telecommunications carriers 180 days after publication of capacity requirements to submit a statement "identifying any of its systems or services that do not have the capacity to accommodate simultaneously the number of interceptions, pen registers, and trap and trace devices set forth in the notice . . ." These statements will form the basis for payment projections for the current and future years.

To establish a baseline for projecting the maximum future law enforcement capacity requirements that are the basis of the Initial Notice of Capacity, the principle repositories of interception information were examined: records of the telecommunications carriers, law enforcement agencies, and, most importantly, the records of federal and state Clerk of Courts offices -- the official repository of all interception court orders. Surveys were mailed to approximately 1,500 telecommunications carriers, representing nearly all wireline and cellular telephone companies. Surveys were conducted requesting information on all types of interceptions conducted between January 1, 1993, and March 1, 1995, for all geographic locations based upon information related to area code/exchange information and interception start/end dates. Information was collected from law enforcement agencies authorized to conduct interceptions of communications. Federal court order data was collected by the FBI acting pursuant to special court orders directing the unsealing of interception court orders. State and

local court order data were collected with the assistance of State Attorney Generals and prosecutors' offices.

After collecting this data, the FBI was able to determine the amount of simultaneous interception activity of the recent past with regard to carrier switches (or the system(s) that support interceptions) in specific geographic locations. Using statistical modeling, the FBI was then able to develop an estimate of potential future interception capacity requirements. This model correlated the number and trend of past electronic surveillance usage with population statistics provided by the United States Bureau of the Census, relevant crime statistics provided by the FBI's Uniform Crime Reporting program, and with telecommunications market statistics provided by the Federal Communications Commission and telecommunications associations. Experts in statistical analysis were consulted to develop this statistical model and other experts were consulted to verify the integrity of its results.

B. Industry Consultation and Cooperation

Sections 106 and 107 of the Act set forth the expectation that the Government and the telecommunications industry consult and cooperate to ensure the efficient and industry-wide implementation of the CALEA. The FBI has conducted and/or participated in over 200 meetings with the telecommunications industry, industry trade associations, and standards organizations to develop and clarify law enforcement interception capability and capacity requirements.

The FBI has met with telecommunications carriers on an individual basis and through their trade organizations, such as: the United States Telephone Association, the Cellular Telephone Industry Association, the Personal Communications Industry Association, the National Telephone Cooperative Association, and the Organization for the Protection and Advancement of Small Telephone Companies. The FBI has also worked closely with standards organizations, including the Telecommunications Industry Association and the Alliance for Telecommunications Industry Solutions, on both wireline and wireless implementation issues. As part of the consultative process, the FBI has met with the Federal Communications Commission, the National Association of Regulatory Utility Commissioners, and the National Exchange Carriers Association Family, the FBI has also consulted with the major switch manufacturers.

Through these consultation and cooperative efforts, the FBI believes substantial progress has been made in further clarifying the generic interception requirements and the telecommunications carrier - law enforcement interface requirements so that the FBI, carriers, manufacturers, and service providers understand the technological modifications that may be required to achieve compliance under the CALEA.

C. Cost Recovery Regulations

In anticipation of the availability of funding to pay telecommunications carriers for all reasonable costs directly associated with CALEA compliance, the FBI is developing appropriate cost recovery regulations that will establish parameters for costs eligible for reimbursement by the Government. These rules are being prepared following consultations with the Federal Communications Commission, the General Accounting Office, and the Office of Management

and Budget. Publication of proposed cost recovery regulations in the Federal Register, which is planned for Spring 1996, will afford an opportunity for public comment.

D. Budget

The President's Fiscal Year 1996 budget request proposed \$100 million for telephone carrier compliance, to be generated through a surcharge on civil fines and penalties. The surcharge has not been enacted. The President's Fiscal Year 1997 budget request proposes \$100 million in spending for telephone carrier compliance through a direct appropriation.