One Hundred Ninth Congress of the United States of America
AT THE SECOND SESSION
An Act

To amend titles 47 and 18, United States Code, to further clarify a communications carrier's duty to cooperate in the interception of communications for law enforcement purposes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

TITLE I–INTERCEPTION OF DIGITAL AND OTHER COMMUNICATIONS

SEC. 101. SHORT TITLE.
This title may be cited as the Amendments to the Communications Assistance for Law Enforcement Act.

SEC. 102. DEFINITIONS.

[(1) The terms defined ***]

(2) The term communication identifying information means dialing, routing, addressing or signaling information that identifies the origin, direction, destination, processing, transmission, or termination of each communication generated or received by a subscriber or other person by means of any equipment, facility, or service of a telecommunications carrier. Such term includes source and destination Internet protocol and other protocol addresses, the port number, packet file size, and user authentication and logon information, including session time and duration. Except in the case of network access service, such term includes post-cut-through digits.

[(3) The term Commission ***]

(4) The term electronic messaging services means software-based services that enable the sharing of data, images, sound, writing, or other information among computing devices controlled by the senders or recipients of the messages.

[(5) The term government ***]
(6) The term information services means—

(A) means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications; and a service or application that is offered or accessed via equipment, facilities or services that are subject to the requirements of section 103, and provides—

(B) includes—

(i) a capability for processing stored information;

(ii) a service that permits a customer to retrieve stored information from, or file information for storage in, information storage facilities for the storage or retrieval from storage of information;

(iii) electronic publishing;

(iv) a software-based application that solely enables a user to obtain addressing or routing information from anyone other than the provider of the software-based application, that can be used to direct communications to another user of a software-based application without further assistance from the provider of the software-based application; or

(v) electronic messaging services; but and

(B) a service offered by an entity that is not otherwise a communications carrier, which service is intended to allow a device owned or controlled by the user to share a network access service at a distance of 300 feet or less of the premises of that entity, provided that such network access service shall be compliant with section 103, unless a compliant network access service is not reasonably available to the entity or the service is subject to an unexpired contract in existence on the effective date of this section; but

(C) does not include—

(i) any capability for a telecommunications carrier’s internal management, control, or operation of its telecommunications network; or

(ii) any telecommunications, or other wire or electronic communication transmission, routing, addressing or switching equipment, facilities or services, that are used to offer or access a service or application described in subsection 6(A);

(iii) any service subject to a determination by the Commission under subsection (8)(B)(iv).
(7) The term `telecommunications support services' means a product, software, or service used by a telecommunications carrier for the internal signaling, routing, addressing or switching functions of its telecommunications network.

(8) The term `telecommunications carrier'--
(A) means a person or entity engaged in the transmission, routing, addressing or switching of wire or electronic communications via any technology or method as a common carrier for hire or otherwise on a commercial basis available to the public; and

(B) includes a person or entity engaged in providing any of the following --
(i) a person or entity engaged in providing commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)); or

(ii) network access service;

(iii) replacement telephone service; or

(iv) any service that provides a person or entity engaged in providing wire or electronic communication transmission, routing, addressing or switching or transmission service to the extent that the Commission finds, after consultation with the Attorney General, that such service is a replacement for a substantial portion of the local telephone exchange service and that it is in the public interest, to deem such a person or entity to be a telecommunications carrier for purposes of this title; but

(C) does not include--
(i) persons or entities insofar as they are engaged in providing exempt information services; and

(ii) any class or category of telecommunications carriers that the Commission exempts by rule after consultation with the Attorney General.

(9) The term “network access service” means the provision on a commercial basis available to the public, of wire, radio, electromagnetic, photooptical or photoelectronic services that enable a customer, subscriber or other person to send or receive wire or electronic communications, via any technology or method, to or from the Internet or other public communications or data network, except that such term does not include a replacement telephone service as defined herein.

(10) The term “replacement telephone service” means the provision on a commercial basis available to the public, of transmission, routing, addressing or switching services, to enable a customer, subscriber or other person, via any technology or method, to
send and receive any communications involving the human voice in real or near-real time, including a service that resells or relies on the transmission, routing, addressing or switching facilities, equipment or services of another entity, except that such term does not include an application described in section 102(6)(A)(iv).
SEC. 103. ASSISTANCE CAPABILITY REQUIREMENTS.

(a) CAPABILITY REQUIREMENTS- Except as provided in subsections (b), (c), and (d), (e) and (g) of this section and sections 108(a) and 109(b) and (d), a telecommunications carrier shall ensure that its equipment, facilities, or services that provide a customer or subscriber with the ability to originate, terminate, or direct communications are capable of—

(1) expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to intercept at a point-of-presence within the United States, to the exclusion of any other communications, all wire and electronic communications carried by the carrier within a service area to or from equipment, facilities, or services of a subscriber of such carrier concurrently with their transmission to or from the subscriber's equipment, facility, or service, or at such later time as may be acceptable to the government;

(2) expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to access at a point-of-presence within the United States, all communication call-identifying information that is used by the carrier in the transmission, routing, addressing or switching of wire or electronic communications or, if not used by the carrier, is otherwise reasonably available to the carrier—

(A) before, or during, or immediately after the communication-identifying information is generated or received by any equipment, facility, or service of the communications carrier transmission of a wire or electronic communication (or at such later time as may be acceptable to the government);
(B) in a manner that allows it to be associated with the communication to which it pertains, except that, with regard to information acquired solely pursuant to the authority for pen registers and trap and trace devices (as defined in section 3127 of title 18, United States Code), such communication call-identifying information shall not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number);

(3) delivering intercepted communications and communication call-identifying information to the government, pursuant to a court order or other lawful authorization, in a standard, commercially available, and reliable format such that they may be transmitted by means of equipment, facilities, or services procured by the government to a location other than the premises of the carrier; and

(4) facilitating authorized communications interceptions and access to communication call-identifying information unobtrusively and with a minimum of interference with any subscriber's telecommunications service and in a manner using methods or procedures that do not impair such interception or access and protects—
(A) operate unobtrusively and with a minimum of interference with any subscriber's telecommunications service;
(B) protect the privacy and security of communications and communication call-identifying information not authorized to be intercepted; and
(C) protect information regarding the government's interception of communications and access to communication call-identifying information,
provided that, nothing in this subsection (4) shall be interpreted to prohibit a carrier from facilitating the use of processing or filtering methods or procedures applied by a law enforcement agency or officer, or their designee, to the full stream of wire or electronic communications and other information isolated by a carrier under subsection (e).

(b) LIMITATIONS-
(1) DESIGN OF FEATURES AND SYSTEMS CONFIGURATIONS- This title does not authorize any law enforcement agency or officer--
(A) to require any specific design of equipment, facilities, services, features, or system configurations to be adopted by any provider of a wire or electronic communication service, any manufacturer of telecommunications equipment, or any provider of telecommunications support services; or
(B) to prohibit the adoption of any equipment, facility, service, or feature by any provider of a wire or electronic communication service, any manufacturer of telecommunications equipment, or any provider of telecommunications support services.

(2) EXEMPT INFORMATION SERVICES; PRIVATE NETWORKS AND INTERCONNECTION SERVICES AND FACILITIES- The requirements of subsection (a) do not apply, unless otherwise determined by the Commission pursuant to subsection 102(8)(B)(iv), to--
(A) exempt information services; or
(B) equipment, facilities, or services that support the transport or switching of communications for private networks not made available to the public on a commercial basis or for the sole purpose of interconnecting telecommunications carriers.

(3) ENCRYPTION- A telecommunications carrier shall not be responsible for decrypting, or ensuring the government's ability to decrypt, any communication encrypted by a subscriber or customer, unless the encryption was provided by the carrier and the carrier possesses the information necessary to decrypt the communication.

(c) PREMISES MONITORING - EMERGENCY, OR EXIGENT AND AUTHORIZED
CIRCUMSTANCES- In emergency or exigent circumstances (including those described in sections 2518 (7) or (11)(b) and 3125 of title 18, United States Code, and section 1805(e) and 1843 of title 50 of such Code), a carrier at its discretion may comply with subsection (a)(3) by allowing monitoring at its premises if that is the only means of accomplishing the interception or access. Pursuant to lawful order or other authorization, a carrier shall comply with subsection (a)(3) by allowing monitoring at its premises.

(d) MOBILE SERVICE ASSISTANCE REQUIREMENTS- A telecommunications carrier that is a provider of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934) offering a feature or service that allows subscribers to redirect, hand-off, or assign their wire or electronic communications to another service area or another service provider or to utilize facilities in another service area or of another service provider shall ensure that, when the carrier that had been providing assistance for the interception of wire or electronic communications or access to communication identifying information pursuant to a court order or lawful authorization no longer has access to the content of such communications or communication identifying information within the service area in which interception has been occurring as a result of the subscriber’s use of such a feature or service, information is made available to the government (before, during, or immediately after the transfer of such communications) identifying the provider of a wire or electronic communication service that has acquired access to the communications.

(e) NETWORK ACCESS SERVICE ASSISTANCE REQUIREMENTS - A communications carrier that is engaged in any network access service shall ensure that its equipment, facilities, or services that support such network access service are capable of, pursuant to a court order or other lawful authorization, compliance with subsection (a), provided that, by way of compliance with subsections (a)(1) and (3), such carrier shall ensure that such equipment, facilities or services are capable of:

1. expeditiously and reliably isolating, at a point-of-preservation within the United States, the stream of wire or electronic communications and other information, transmitted by the carrier to or from the facilities, equipment or services of a subscriber of such network access service, to the exclusion of all other wire and electronic communications and information, concurrently with such transmission;

2. expeditiously and reliably storing on a temporary basis, upon written request by the government agency or officer seeking to effectuate the lawful interception of wire or electronic communications or access to communication-identifying information, for a limited time period specified by such agency or officer as necessary to effectuate such interception or access, and in a standard commercially available file format —
   (a) the stream of communications and information isolated under subsection (e)(1), and,
(b) the communication-identifying information isolated under subsection (a)(2); and

(3) enabling expeditious and reliable transmission in a standard commercially available format of the stream of communications and information isolated under subsection (e)(1), and the communication-identifying information isolated under subsection (a)(2), to a location, device, facilities or process identified in writing by the government agency or officer seeking to effectuate the lawful interception of wire or electronic communications or access to communication-identifying information, at which the communications authorized to be intercepted and communication-identifying information authorized to be acquired may be recorded or decoded in accordance with such court order or lawful authorization,

provided that, if such communications carrier is also engaged in any replacement telephone service or other service or activities subject to this section, it shall comply with subsection (a) and other applicable requirements with respect to such service or activity.

(f) The Commission may, by rule established pursuant to section 107(b), after consideration of the cost-effectiveness for federal, state and local law enforcement agencies, specify one or more standard commercially available formats that shall be used by a class or category of communications carriers for delivery, storage or transmission pursuant to paragraphs (a)(3), (e)(2), and (e)(3) of this section. Nothing in this subsection shall limit the authority of the Commission pursuant to section 109 to determine whether delivery, storage or transmission in the format specified by rule is reasonably achievable with respect to any equipment, facility or service installed or deployed after January 1, 1995.

(g) A point-of-presence within the United States as required by paragraphs (a)(1), (a)(2), and (e)(1) of this section, shall, in the case of satellite communications, be an earth station gateway. The Attorney General may agree to waive the requirement for a point-of-presence of any communications carrier within the United States subject to such conditions as are mutually agreed by the Attorney General and the carrier.
SEC. 104. NOTICES OF CAPACITY REQUIREMENTS.

(a) NOTICES OF MAXIMUM AND ACTUAL CAPACITY REQUIREMENTS-

(1) IN GENERAL- Not later than 1 year after the date of enactment of this title, after consulting with State and local law enforcement agencies, telecommunications carriers, providers of telecommunications support services, and manufacturers of telecommunications equipment, and after notice and comment, the Attorney General may publish in the Federal Register and provide to appropriate telecommunications industry associations and standard-setting organizations—

(A) notice of the actual number of communication interceptions, pen registers, and trap and trace devices, representing a portion of the maximum capacity set forth under subparagraph (B), 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 of this title; and

(B) notice of the maximum capacity required to accommodate all of the communication interceptions, 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 the date that is 4 years after the date of enactment of this title.

[(2) BASIS OF NOTICES - *** ]

[(b) COMPLIANCE WITH CAPACITY NOTICES- ***]

(c) NOTICES OF INCREASED MAXIMUM CAPACITY REQUIREMENTS-

(1) NOTICE- The Attorney General may publish periodically in the Federal Register, after notice and comment, notice of any necessary increases in the maximum capacity requirement set forth in the notice under subsection (a)(1)(B).

(2) COMPLIANCE- Within 3 years after notice of increased maximum capacity requirements is published under paragraph (1), or within such longer time period as the Attorney General may specify, a telecommunications carrier shall, subject to subsection (e), ensure that its systems are capable of expanding to the increased maximum capacity set forth in the notice.

(d) CARRIER STATEMENT- Within 180 days after the publication by the Attorney General of a notice of capacity requirements pursuant to subsection (a) or (c), a telecommunications carrier shall submit to the Attorney General 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 under such subsection.
(e) REIMBURSEMENT REQUIRED FOR COMPLIANCE—The Attorney General shall review
the statements submitted under subsection (d) and may, subject to the availability of
appropriations, agree to reimburse a telecommunications carrier for costs directly associated
with modifications to attain such capacity requirement that are determined to be reasonable in
accordance with section 109(e). Until the Attorney General agrees to reimburse such carrier for
such modification, such carrier shall be considered to be in compliance with the capacity notices
under subsection (a) or (c).

(f) MINIMUM CAPACITY - Notwithstanding any reimbursement, and unless the
Attorney General has made publication of an applicable notice of capacity requirements, a
communications carrier shall ensure that each of its switching, addressing, routing, or
transmission facilities are capable of accommodating simultaneously a minimum of two
each of interceptions, pen registers and trap and trace devices.
SEC. 105. SYSTEMS SECURITY AND INTEGRITY.
A telecommunications carrier shall ensure that any interception of communications or access to communication call-identifying information effected within its transmission, routing, addressing or switching premises can be activated only in accordance with a court order or other lawful authorization and only with the affirmative intervention of an individual officer or employee of the carrier acting within the United States and in accordance with regulations prescribed by the Commission.
SEC. 106. COOPERATION OF EQUIPMENT MANUFACTURERS AND PROVIDERS OF TELECOMMUNICATIONS SUPPORT SERVICES.

(a) CONSULTATION. A telecommunications carrier shall consult, as necessary, in a timely fashion with manufacturers of its telecommunications transmission, routing, addressing and switching equipment and its providers of telecommunications support services for the purpose of ensuring that current and planned equipment, facilities, and services comply with the capability requirements of section 103 and the capacity requirements identified by the Attorney General under section 104.

(b) COOPERATION. Subject to sections 104(e), 108(a), and 109 (b) and (d), a manufacturer of telecommunications transmission, routing, addressing or switching equipment and a provider of telecommunications support services shall, on a reasonably timely basis and at a reasonable charge, make available to the telecommunications carriers using its equipment, facilities, or services such features or modifications as are necessary to permit such carriers to comply with the capability requirements of section 103 and the capacity requirements identified by the Attorney General under section 104.
SEC. 107, TECHNICAL REQUIREMENTS AND STANDARDS; EXTENSION OF COMPLIANCE DATE.

(a) SAFE HARBOR-

(1) CONSULTATION- To ensure the efficient and industry-wide implementation of the assistance capability requirements under section 103, the Attorney General, in coordination with other Federal, State, and local law enforcement agencies, shall consult with appropriate associations and standard-setting organizations of the telecommunications industry, with representatives of users of telecommunications equipment, facilities, and services, and with State utility commissions.

(2) COMPLIANCE UNDER ACCEPTED STANDARDS- A telecommunications carrier shall be found to be in compliance with the assistance capability requirements under section 103, and a manufacturer of telecommunications transmission, routing, addressing or switching equipment or a provider of telecommunications support services shall be found to be in compliance with section 106, if the carrier, manufacturer, or support service provider is in compliance with publicly available technical requirements or standards adopted by an industry association or standard-setting organization, or by the Commission under subsection (b), to meet the requirements of section 103.

(A) an industry association or standard-setting organization to meet the assistance capability requirements of section 103, except that this safe harbor provision shall not apply during the period after a petition is filed by the Attorney General under subsection (b) to determine whether such requirements or standards adopted by the industry association or standard-setting organization meet the assistance capability requirements of section 103, until the effective date of an order entered by the Commission that—

(i) determines that such requirements or standards meet the assistance capability requirements of section 103; or

(ii) modifies such standards or requirements by rule under subsection (b);

(B) the Attorney General to meet the assistance capability requirements of section 103, and approved by the Commission pursuant to subsection (b); or

(C) the Commission pursuant to subsection (b).

(b) COMMISSION AUTHORITY- If industry associations or standard-setting organizations fail to issue technical requirements or standards or if a Government agency or any other person believes that such requirements or standards are deficient, the agency or person may petition the Commission to establish, by rule, technical requirements or standards that—

(1) meet the assistance capability requirements of section 103 by cost-effective methods;

(2) protect the privacy and security of communications not authorized to be intercepted;

(3) minimize the cost of such compliance on residential ratepayers;
(4) serve the policy of the United States to encourage the provision of new technologies and services to the public; and

(5) provide a reasonable time and conditions for compliance with and the transition to any new standard, including defining the obligations of telecommunications carriers under section 103 during any transition period.

(1) The Commission, on its own motion or on petition by the Attorney General, an industry association, standard-setting organization, Government agency, or any other person, may —

(A) issue a declaratory ruling regarding the applicability of the definition of communications carrier to a particular entity or class of entities;

(B) determine whether technical requirements or standards adopted by an industry association or standard-setting organization, or by the Attorney General, meet the assistance-capability requirements of section 103 or are deficient; or

(C) establish, by rule, any technical requirements, standards, guidelines or any other requirements as are necessary to meet the assistance-capability requirements of section 103 and, subject to meeting such assistance-capability requirements, will promote the use of methods that —

(i) are cost-effective methods for federal, state and local law enforcement agencies and communications carriers;

(ii) protect the privacy and security of communications not authorized to be intercepted in accordance with section 103(a)(4));

(iii) minimize the cost of such compliance on residential ratepayers; and

(iv) serve the policy of the United States to encourage the provision of new technologies and services to the public.

(2) The Commission may, in establishing rules, technical requirements or standards under subsection (b)(1), provide a reasonable time and conditions for compliance with and the transition to any new standard, including defining the obligations of communications carriers under section 103 during any transition period.

(3) The Commission shall, prior to making a determination under paragraph (b)(1), consult with the Attorney General as to the needs of law enforcement, public safety and national security.

(4) The Commission shall issue a written determination under paragraph (b)(1) within 180 days after it receives a petition, provided that, if the Attorney General certifies in the petition that emergency conditions require an expedited decision, the Commission shall expedite such written determination. The Commission may grant or deny a petition in whole or in part and shall explain its decision in writing.
(c) EXTENSION OF COMPLIANCE DATE FOR EQUIPMENT, FACILITIES, AND SERVICES-

(1) PETITION- A telecommunications carrier proposing to install or deploy, or having installed or deployed, any equipment, facility, or service prior to the effective date of section 103 may petition the Commission for 1 or more extensions of the deadline for complying with the assistance capability requirements under section 103, subject to the limitations on length of extensions provided in subsection (3).

(2) GROUNDS FOR EXTENSION- The Commission may, after consultation with the Attorney General, grant an extension under this subsection, if the Commission determines that compliance with the assistance capability requirements under section 103 is not reasonably achievable through application of technology available within the compliance period and that the carrier has shown through particular facts that it will become compliant with such capability requirements within the extension period requested.

(3) LENGTH OF EXTENSION- An extension under this subsection shall extend for no longer than the earlier of—

(A) the date determined by the Commission as necessary for the carrier to comply with the assistance capability requirements under section 103; or
(B) the date that is 2 years after the date on which the extension is granted the date that is 1 year after [the day before the bill is introduced].

(4) APPLICABILITY OF EXTENSION- An extension under this subsection shall apply to only that part of the carrier’s business on which the new equipment, facility, or service is used.
SEC. 108, ENFORCEMENT ORDERS.

(a) GROUNDS FOR ISSUANCE DEFENSE - A communications carrier may be found in compliance with the requirements of this title if the court shall issue an order enforcing this title, in any proceeding under section 2522(a) of title 18, United States Code, only if the court finds that the communications carrier has demonstrated that

(1) alternative technologies or capabilities of the facilities of another carrier are not reasonably available to the law enforcement agency or officer seeking enforcement for the expeditious implementation of the interception of communications or access to call communication-identifying information; and

(2) compliance with the requirements of this title is reasonably achievable through the application of available technology to the equipment, facility, or service at issue or would have been reasonably achievable if timely action had been taken.

(b) TIME FOR COMPLIANCE - Upon issuing an order enforcing this title, the court shall specify a reasonable time and conditions for complying with its order, considering the good faith efforts to comply in a timely manner, any effect on the carrier's, manufacturer's, or service provider's ability to continue to do business, the degree of culpability or delay in undertaking efforts to comply, any exigent need by the government for prompt compliance, and such other matters as justice may require.

(c) LIMITATIONS- An order enforcing this title may not—

(1) require a telecommunications carrier to meet the Government's demand for interception of communications and acquisition of communication call-identifying information to any extent in excess of the minimum capacity, except for which the Attorney General has agreed to reimburse such carrier;

(2) require any telecommunications carrier to comply with assistance capability requirement of section 103 if the carrier is deemed to be in compliance under Commission has determined (pursuant to section 109(b)(1)) that compliance is not reasonably achievable, unless the Attorney General has agreed (pursuant to section 109(b)(2)) to pay the costs described in section 109(b)(23)(AB); or

(3) require a telecommunications carrier to modify, for the purpose of complying with the assistance capability requirements of section 103, any equipment, facility, or service deployed on or before January 1, 1995, unless—

(A) the Attorney General has agreed to pay the telecommunications carrier for all reasonable costs directly associated with modifications necessary to bring the equipment, facility, or service into compliance with those requirements;

(B) the equipment, facility, or service has been replaced or significantly upgraded or otherwise undergoes major modification; or

(C) the effective date of the court's order is after January 1, 2008.
SEC. 109, PAYMENT OF COSTS OF TELECOMMUNICATIONS CARRIERS TO
COMPLY WITH CAPABILITY REQUIREMENTS.
(a) EQUIPMENT, FACILITIES, AND SERVICES DEPLOYED ON OR BEFORE JANUARY
1, 1995- The Attorney General may, subject to the availability of appropriations, agree to pay
telecommunications carriers for all 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 capabilities necessary to comply with section 103.

(b) EQUIPMENT, FACILITIES, AND SERVICES DEPLOYED AFTER JANUARY 1, 1995-

(1) Except as provided in subsection (b)(2) below, a communications carrier shall
pay all costs directly associated with the modifications performed by carriers in connection
with equipment, facilities, and services installed or deployed after January 1, 1995, to
establish the capabilities necessary to comply with section 103.

(2) DETERMINATIONS OF REASONABLY ACHIEVABLE- The Commission, on
petition conforming to the requirements stated herein from a telecommunications
carrier or any other interested person, and after notice to the Attorney General, shall
determine whether compliance with the assistance capability requirements of section 103
is reasonably achievable with respect to any equipment, facility, or service installed or
deployed after January 1, 1995. The Commission shall make such its determination on
each petition within 1 year 180 days after the date such petition is filed. A petition filed
by a communications carrier shall include a detailed description and supporting
documentation setting forth the technical modifications and related costs necessary
to achieving compliance with respect to each of its services and each of the separate
applicable assistance capability requirements of section 103. The communications
carriers shall bear the burden of proof as to each and every fact alleged in support
of the petition. In making such determination the The Commission shall determine
whether compliance would impose significant difficulty or expense on the carrier and
make separate determinations with respect to each of the carrier’s services and for
each assistance capability requirement, or on the users of the carriers systems and
Where the Commission determines that compliance would impose such expense, the
Commission shall consider the following factors in determining whether to grant the
petition:

(A) The effect on public safety and national security.
(B) The effect on rates for basic residential telephone service.
(C) The need to protect the privacy and security of communications not
authorized to be intercepted.
(D) The need to achieve the capability assistance requirements of section 103 by
cost-effective methods.
(E) The effect on the nature and cost of the equipment, facility, or service at issue.
(F) The effect on the operation of the equipment, facility, or service at issue.
(G) The policy of the United States to encourage the provision of new
technologies and services to the public.
(H) The financial resources of the telecommunications carrier.
(I) The effect on competition in the provision of telecommunications services.
(J) The extent to which the design and development of the equipment, facility, or
service was initiated before January 1, 1995.
(K) Such other factors as the Commission determines are appropriate.

(23) COMPENSATION- If after reviewing a petition filed pursuant to section
109(b)(2), the Commission determines that compliance with the assistance capability
requirements of section 103 is not reasonably achievable with respect to equipment,
facilities, or services deployed after January 1, 1995—

(A) the Attorney General, on application of a telecommunications carrier, may
agree, subject to the availability of appropriations, to pay the telecommunications
carrier for the additional reasonable costs of making compliance with such
assistance capability requirements reasonably achievable; and
(B) if the Attorney General does not agree to pay such costs, the
telecommunications carrier shall be deemed to be in compliance with such
capability requirements for a period set by the Commission but not to exceed
two years following the Commission's determination of the petition filed
under subsection (b)(2); provided that the Attorney General may petition at
any time for reconsideration of the Commission’s determination, and the
Commission shall make its determination on such petition within 90 days
after the date such petition is filed.

(c) ALLOCATION OF FUNDS FOR PAYMENT- The Attorney General shall allocate funds
appropriated to carry out this title in accordance with law enforcement priorities determined by
the Attorney General.

(d) FAILURE TO MAKE PAYMENT WITH RESPECT TO EQUIPMENT, FACILITIES, AND
SERVICES DEPLOYED ON OR BEFORE JANUARY 1, 1995- If a carrier has requested
payment in accordance with procedures promulgated pursuant to subsection (e), and the
Attorney General has not agreed to pay the telecommunications carrier for all reasonable costs
directly associated with modifications necessary to bring any equipment, facility, or service
deployed on or before January 1, 1995, into compliance with the assistance capability
requirements of section 103, such equipment, facility, or service shall be considered to be in
compliance with the assistance capability requirements of section 103 until the earlier of the
date on which the equipment, facility, or service is replaced or significantly upgraded or
otherwise undergoes major modification, January 1, 2008.

(e) COST CONTROL REGULATIONS—
(1) IN GENERAL- The Attorney General shall, after notice and comment, establish
regulations necessary to effectuate timely and cost-efficient payment to
telecommunications carriers under this title, under chapters 119 and 121 of title 18, United States Code, and under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

(2) CONTENTS OF REGULATIONS- The Attorney General, after consultation with the Commission, shall prescribe regulations for purposes of determining reasonable costs under this title. Such regulations shall seek to minimize the cost to the Federal Government and shall--

(A) permit recovery from the Federal Government of--

(i) the direct costs of developing the modifications described in subsection (a), of providing the capabilities requested under subsection (b), of providing the capacities requested under section 104(c), but only to the extent that such costs have not been recovered from any other governmental or non-governmental entity;
(ii) the costs of training personnel in the use of such capabilities or capacities; and
(iii) the direct costs of deploying or installing such capabilities or capacities;
(B) in the case of any modification that may be used for any purpose other than lawfully authorized electronic surveillance by a law enforcement agency of a government, permit recovery of only the incremental cost of making the modification suitable for such law enforcement purposes; and
(C) maintain the confidentiality of trade secrets.

(3) SUBMISSION OF CLAIMS- Such regulations shall require any telecommunications carrier that the Attorney General has agreed to pay for modifications pursuant to this section and that has installed or deployed such modification to submit to the Attorney General a claim for payment that contains or is accompanied by such information as the Attorney General may require.

(f) LIMITATION ON RECOVERY OF COSTS - A communications carrier shall not include in any charges to any government agency or officer pursuant to 18 U.S.C. §§ 3124(c), 2518(4), 2706 or 50 U.S.C. §§ 1805(c)(2)(D), 1842(d)(B)(iii), the costs directly associated with --

(i) modifications necessary to bring any equipment, facility, or service into compliance with the assistance capability requirements of section 103;
(ii) compliance with any rules or regulations adopted by the Commission to implement the provisions of section 103 of this Act; and
(iii) compliance with any rules or regulations adopted by the Commission to implement the provisions of section 105 of this Act, unless specifically authorized by the Commission.

[Sections 110, 111 of CALEA not reprinted herein]

SEC. 112. REPORTS.

(a) REPORTS BY THE ATTORNEY GENERAL-

(1) IN GENERAL- On or before November 30, 1995, and on or before November 30 of each year thereafter, the Attorney General shall submit to Congress and make available to the public a report on the amounts paid during the preceding fiscal year to telecommunications carriers under sections 104(e) and 109.

(2) CONTENTS- A report under paragraph (1) 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.

(b) REPORTS BY THE COMPTROLLER GENERAL-

(1) PAYMENTS FOR MODIFICATIONS- On or before April 1, 1996, and every 2 years thereafter, the Comptroller General of the United States, after consultation with the Attorney General and the telecommunications industry, shall submit to the Congress a report--

(A) describing the type of equipment, facilities, and services that have been brought into compliance under this title; and

(B) reflecting its analysis of the reasonableness and cost-effectiveness of the payments made by the Attorney General to telecommunications carriers for modifications necessary to ensure compliance with this title.

(2) COMPLIANCE COST ESTIMATES- A report under paragraph (1) shall include the findings and conclusions of the Comptroller General on the costs to be incurred by telecommunications carriers to comply with the assistance capability requirements of section 103 after the effective date of such section 103, including projections of the amounts expected to be incurred and a description of the equipment, facilities, or services for which they are expected to be incurred.
AMENDMENTS TO TITLE 18, UNITED STATES CODE

Amendments to 18 U.S.C. § 2522 —

SEC. 2522. ENFORCEMENT OF THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT

(a) ENFORCEMENT BY COURT ISSUING SURVEILLANCE ORDER— If a court authorizing an interception under this chapter, a State statute, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) or authorizing use of a pen register or a trap and trace device under chapter 206, the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1841 et seq.), or a State statute finds that a telecommunications carrier has failed to comply with the requirements of the Communications Assistance for Law Enforcement Act as amended, the court may, in accordance with section 108 of such Act, and in addition to any information, facilities and technical assistance directed by the Court under the authority provided in sections 2518(4) or 3124(a) or (b) of this title, direct that the carrier comply forthwith and may direct that a provider of support services to the carrier or the manufacturer of the carrier's transmission, routing, addressing or switching equipment furnish forthwith modifications necessary for the carrier to comply.

(b) ENFORCEMENT UPON APPLICATION BY ATTORNEY GENERAL— The Attorney General may, in a civil action in the appropriate United States district court, obtain an order, in accordance with section 108 of the Communications Assistance for Law Enforcement Act as amended, directing that a telecommunications carrier, a manufacturer of telecommunications transmission, routing, addressing or switching equipment, or a provider of telecommunications support services comply with such Act.

(c) CIVIL PENALTY—

(1) IN GENERAL— A court issuing an order under this section against a telecommunications carrier, a manufacturer of telecommunications transmission, routing, addressing or switching equipment, or a provider of telecommunications support services may impose a civil penalty of up to $10,000 per day for each day in violation after the issuance of the order or after such future date as the court may specify.

(2) CONSIDERATIONS— In determining whether to impose a civil penalty and in determining its amount, the court shall take into account—

(A) the nature, circumstances, and extent of the violation;

(B) the violator's ability to pay, the violator's good faith efforts to comply in a timely manner, any effect on the violator's ability to continue to do business, the degree of culpability, and the length of any delay in undertaking efforts to comply; and

(C) such other matters as justice may require.
(d) DEFINITIONS- As used in this section, the terms defined in section 102 of the Communications Assistance for Law Enforcement Act as amended have the meanings provided, respectively, in such section.

Amendment to 18 U.S.C. § 2518(4)--

Adding the following to the second-to-last sentence: "... Any provider of wire or electronic communication service, landlord, custodian, or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant for reasonable expense incurred in providing such facilities or assistance, upon the presentation of evidence of such expenses in an itemized form and consistent with standard billing practices.

Further Amendment to 18 U.S.C. § 2518(4) --

Adding the following to the last sentence: "Pursuant to section 2522 of this chapter, and in addition to any information, facilities and technical assistance directed by the court pursuant to this subsection, an order may also be issued to enforce the assistance capability and capacity requirements under the Communications Assistance for Law Enforcement Act as amended."

Amendment to 18 U.S.C. § 3124(c) --

(c) Compensation - A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities or assistance, upon the presentation of evidence of such expenses in an itemized form and consistent with standard billing practices.

Amendments to 18 U.S.C. § 3124(f) --

(f) COMMUNICATIONS ASSISTANCE ENFORCEMENT ORDERS- Pursuant to section 2522, and in addition to any information, facilities and technical assistance directed by the court pursuant to this subsection, an order may also be issued to enforce the assistance capability and capacity requirements under the Communications Assistance for Law Enforcement Act as amended.'.

[X.1] Amendment to be incorporated into 18 U.S.C. §§ 2511(2)(a)(ii), 3124(d), or to CALEA --

Anti-Liability Provision

Except as otherwise provided in section 108 of this Act and section 2252 of title 18, no cause of action shall lie in any court against any communications carrier,
manufacturer of its communications transmission, routing, addressing and
switching equipment, or provider of communications support services, their
officers, employees, or agents for providing any information, facilities or assistance
or making any modifications to equipment, facilities or services, or ensuring any
capability in accordance with this Act.
AMENDMENTS TO THE COMMUNICATIONS ACT OF 1934

Amendment to 47 U.S.C. § 229 --

SEC. 229. COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT COMPLIANCE.

(a) IN GENERAL.- The Commission shall prescribe such rules as are necessary to implement the requirements of the Communications Assistance for Law Enforcement Act as amended.

(b) SYSTEMS SECURITY AND INTEGRITY.- The rules prescribed pursuant to subsection (a) shall include rules to implement section 105 of the Communications Assistance for Law Enforcement Act as amended that require communications common carriers, as defined in such Act --

\(\text{(1) to establish appropriate policies and procedures for the supervision and control of its officers and employees--}\)

\(\text{(A) to require appropriate authorization to activate interception of communications or access to communication call-identifying information;}\)

\(\text{(B) to prevent any such interception or access without such authorization;}\)

\(\text{(C) to require that one or more officers or employees are available within the United States, seven days a week, 24 hours a day, to assist a law enforcement agency with any such interception or access;}\)

\(\text{(D) to require that carriers provide to a law enforcement agency or officer upon request, the names and appropriate identifying information of officers, employees or persons otherwise under the carrier's control who have access to any information about the government's interception of communications or access to communication-identifying information; and}\)

\(\text{(E) to require that all officers, employees or persons otherwise under the carrier’s control who have access to any information regarding the government’s interception of communications or acquisition of communication-identifying information shall be located in the United States;}\)

\(\text{(2) to maintain secure and accurate records of any interception or access with or without such authorization; and}\)

\(\text{(3) to submit to the Commission the policies and procedures adopted to comply with the requirements established under paragraphs (1) and (2).}\)
(c) COMMISSION REVIEW OF COMPLIANCE.- The Commission shall review the policies and procedures submitted under subsection (b)(3) and shall order a communications carrier to modify any such policy or procedure that the Commission determines does not comply with Commission regulations. The Commission shall conduct such investigations as may be necessary to insure compliance by common carriers with the requirements of the regulations prescribed under this section.

(d) COMMISSION INVESTIGATIONS OF COMPLIANCE.- The Commission shall conduct such investigations and impose such penalties as may be necessary to ensure compliance by communications carriers with the requirements of the Communications Assistance for Law Enforcement Act as amended and any regulations prescribed thereunder.

(de) PENALTIES.- For purposes of this Act, a violation by an officer or employee of any policy or procedure adopted by a communications common carrier pursuant to subsection (b), or of a rule prescribed by the Commission pursuant to subsection (a), shall be considered to be a violation by the carrier of a rule prescribed by the Commission pursuant to this Act.

(ef) COST RECOVERY FOR COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT COMPLIANCE.-

`(1) PETITIONS AUTHORIZED.- A common carrier may petition the Commission to adjust charges, practices, classifications, and regulations to recover costs expended for making modifications to equipment, facilities, or services pursuant to the requirements of section 103 of the Communications Assistance for Law Enforcement Act.

`(2) COMMISSION AUTHORITY.- The Commission may grant, with or without modification, a petition under paragraph (1) if the Commission determines that such costs are reasonable and that permitting recovery is consistent with the public interest. The Commission may, consistent with maintaining just and reasonable charges, practices, classifications, and regulations in connection with the provision of interstate or foreign communication by wire or radio by a common carrier, allow carriers to adjust such charges, practices, classifications, and regulations in order to carry out the purposes of this Act.

`(3) JOINT BOARD.- The Commission shall convene a Federal-State joint board to recommend appropriate changes to part 36 of the Commission's
rules with respect to recovery of costs pursuant to charges, practices, classifications, and regulations under the jurisdiction of the Commission.'

(g) DETERMINATIONS OF PUBLIC INTEREST -

The Commission, in any determination or proceeding regarding a communications carrier as such term is defined by the Communications Assistance for Law Enforcement Act as amended, which determination requires consideration of the public interest, shall inquire of the carrier as to the status of its compliance with such Act and shall consider any non-compliance by such carrier with any provision of such Act to be a factor weighing against a determination that the relief sought by the carrier is in the public interest.