

One Hundred Third Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,
the twenty-fifth day of January, one thousand nine hundred and ninety-four*

An Act

To amend title 18, United States Code, to make clear a telecommunications 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 “Communications Assistance for Law Enforcement Act”.

SEC. 102. DEFINITIONS.

For purposes of this title—

(1) The terms defined in section 2510 of title 18, United States Code, have, respectively, the meanings stated in that section.

(2) The term “call-identifying information” means dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier.

(3) The term “Commission” means the Federal Communications 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” means the government of the United States and any agency or instrumentality thereof, the District of Columbia, any commonwealth, territory, or possession of the United States, and any State or political subdivision thereof authorized by law to conduct electronic surveillance.

(6) The term “information services”—

(A) means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications; and

(B) includes—

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

(ii) electronic publishing; and

(iii) electronic messaging services; but

(C) does not include any capability for a telecommunications carrier's internal management, control, or operation of its telecommunications network.

(7) The term "telecommunications support services" means a product, software, or service used by a telecommunications carrier for the internal signaling or switching functions of its telecommunications network.

(8) The term "telecommunications carrier"—

(A) means a person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire; and

(B) includes—

(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) a person or entity engaged in providing wire or electronic communication switching or transmission service to the extent that the Commission finds 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 information services; and

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

SEC. 103. ASSISTANCE CAPABILITY REQUIREMENTS.

(a) CAPABILITY REQUIREMENTS.—Except as provided in subsections (b), (c), and (d) 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, 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 call-identifying information that is reasonably available to the carrier—

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(A) before, during, or immediately after the transmission of a wire or electronic communication (or at such later time as may be acceptable to the government); and

(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 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 call-identifying information to the government, pursuant to a court order or other lawful authorization, in a 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 call-identifying information unobtrusively and with a minimum of interference with any subscriber's telecommunications service and in a manner that protects—

(A) the privacy and security of communications and call-identifying information not authorized to be intercepted; and

(B) information regarding the government's interception of communications and access to call-identifying information.

(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) INFORMATION SERVICES; PRIVATE NETWORKS AND INTERCONNECTION SERVICES AND FACILITIES.—The requirements of subsection (a) do not apply to—

(A) information services; or

(B) equipment, facilities, or services that support the transport or switching of communications for private networks 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) EMERGENCY OR EXIGENT 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) 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.

(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 call-identifying information pursuant to a court order or lawful authorization no longer has access to the content of such communications or call-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.

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 shall 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.—The notices issued under paragraph (1)—

(A) may be based upon the type of equipment, type of service, number of subscribers, type or size or carrier, nature of service area, or any other measure; and

(B) shall identify, to the maximum extent practicable, the capacity required at specific geographic locations.

(b) COMPLIANCE WITH CAPACITY NOTICES.—

(1) INITIAL CAPACITY.—Within 3 years after the publication by the Attorney General of a notice of capacity requirements or within 4 years after the date of enactment of this title, whichever is longer, a telecommunications carrier shall, subject to subsection (e), ensure that its systems are capable of—

(A) accommodating simultaneously the number of interceptions, pen registers, and trap and trace devices set forth in the notice under subsection (a)(1)(A); and

(B) expanding to the maximum capacity set forth in the notice under subsection (a)(1)(B).

(2) EXPANSION TO MAXIMUM CAPACITY.—After the date described in paragraph (1), a telecommunications carrier shall, subject to subsection (e), ensure that it can accommodate expeditiously any increase in the actual number of communication interceptions, pen registers, and trap and trace devices that authorized agencies may seek to conduct and use, up to the maximum capacity requirement set forth in the notice under subsection (a)(1)(B).

(c) NOTICES OF INCREASED MAXIMUM CAPACITY REQUIREMENTS.—

(1) NOTICE.—The Attorney General shall periodically publish 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).

SEC. 105. SYSTEMS SECURITY AND INTEGRITY.

A telecommunications carrier shall ensure that any interception of communications or access to call-identifying information effected within its switching premises can be activated only in accordance with a court order or other lawful authorization and with the affirmative intervention of an individual officer or employee of

the carrier acting 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 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 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 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.

(3) ABSENCE OF STANDARDS.—The absence of technical requirements or standards for implementing the assistance capability requirements of section 103 shall not—

(A) preclude a telecommunications carrier, manufacturer, or telecommunications support services provider from deploying a technology or service; or

(B) relieve a carrier, manufacturer, or telecommunications support services provider of the obligations imposed by section 103 or 106, as applicable.

(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.

(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.

(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.

(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.

(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.—A court shall issue an order enforcing this title under section 2522 of title 18, United States Code, only if the court finds that—

(1) alternative technologies or capabilities or the facilities of another carrier are not reasonably available to law enforcement for implementing the interception of communications or access to call-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, manufac-

turer's, or service provider's ability to continue to do business, the degree of culpability or delay in undertaking efforts to comply, 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 call-identifying information to any extent in excess of the capacity 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 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)(2)(A); 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; or

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

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) DETERMINATIONS OF REASONABLY ACHIEVABLE.—The Commission, on petition 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 determination within 1 year after the date such petition is filed. In making such determination, the Commission shall determine whether compliance would impose significant difficulty or expense on the carrier or on the users of the carrier's systems and shall consider the following factors:

(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.

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(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.

(2) COMPENSATION.—If 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.

(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 equipment, facility, or service is replaced or significantly upgraded or otherwise undergoes major modification.

(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)(2), or of providing the capacities requested under section 104(e), but only to the extent that such costs have not been recovered from any other governmental or nongovernmental 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.

SEC. 110. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title a total of \$500,000,000 for fiscal years 1995, 1996, 1997, and 1998. Such sums are authorized to remain available until expended.

SEC. 111. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title shall take effect on the date of enactment of this Act.

(b) ASSISTANCE CAPABILITY AND SYSTEMS SECURITY AND INTEGRITY REQUIREMENTS.—Sections 103 and 105 of this title shall take effect on the date that is 4 years after the date of enactment of this Act.

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.

TITLE II—AMENDMENTS TO TITLE 18, UNITED STATES CODE

SEC. 201. COURT ENFORCEMENT OF COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT.

(a) COURT ORDERS UNDER CHAPTER 119.—Chapter 119 of title 18, United States Code, is amended by inserting after section 2521 the following new section:

“§ 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 or a State statute finds that a telecommunications carrier has failed to comply with the requirements of the Communications Assistance for Law Enforcement Act, the court may, in accordance with section 108 of such Act, 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 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, directing that a telecommunications carrier, a manufacturer of telecommunications transmission 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 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 have the meanings provided, respectively, in such section.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 2518(4) of title 18, United States Code, is amended by adding at the end the following new sentence: “Pursuant to section 2522 of this chapter, an order may also be issued to enforce the assistance capability and capacity requirements under the Communications Assistance for Law Enforcement Act.”.

(2) Section 3124 of such title is amended by adding at the end the following new subsection:

“(f) COMMUNICATIONS ASSISTANCE ENFORCEMENT ORDERS.—Pursuant to section 2522, an order may be issued to enforce the assistance capability and capacity requirements under the Communications Assistance for Law Enforcement Act.”.

(3) The table of sections at the beginning of chapter 119 of title 18, United States Code, is amended by inserting after the item pertaining to section 2521 the following new item:

“2522. Enforcement of the Communications Assistance for Law Enforcement Act.”.

SEC. 202. CORDLESS TELEPHONES.

(a) DEFINITIONS.—Section 2510 of title 18, United States Code, is amended—

(1) in paragraph (1), by striking “, but such term does not include” and all that follows through “base unit”; and

(2) in paragraph (12), by striking subparagraph (A) and redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively.

(b) PENALTY.—Section 2511 of title 18, United States Code, is amended—

(1) in subsection (4)(b)(i) by inserting “a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit,” after “cellular telephone communication,”; and

(2) in subsection (4)(b)(ii) by inserting “a cordless telephone communication that is transmitted between the cordless tele-

phone handset and the base unit,” after “cellular telephone communication,”.

SEC. 203. RADIO-BASED DATA COMMUNICATIONS.

Section 2510(16) of title 18, United States Code, is amended—

- (1) by striking “or” at the end of subparagraph (D);
- (2) by inserting “or” at the end of subparagraph (E); and
- (3) by inserting after subparagraph (E) the following new subparagraph:

“(F) an electronic communication;”.

SEC. 204. PENALTIES FOR MONITORING RADIO COMMUNICATIONS THAT ARE TRANSMITTED USING MODULATION TECHNIQUES WITH NONPUBLIC PARAMETERS.

Section 2511(4)(b) of title 18, United States Code, is amended by striking “or encrypted, then” and inserting “, encrypted, or transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of such communication, then”.

SEC. 205. TECHNICAL CORRECTION.

Section 2511(2)(a)(i) of title 18, United States Code, is amended by striking “used in the transmission of a wire communication” and inserting “used in the transmission of a wire or electronic communication”.

SEC. 206. FRAUDULENT ALTERATION OF COMMERCIAL MOBILE RADIO INSTRUMENTS.

(a) OFFENSE.—Section 1029(a) of title 18, United States Code, is amended—

- (1) by striking “or” at the end of paragraph (3); and
- (2) by inserting after paragraph (4) the following new paragraphs:

“(5) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses a telecommunications instrument that has been modified or altered to obtain unauthorized use of telecommunications services; or

“(6) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses—

“(A) a scanning receiver; or

“(B) hardware or software used for altering or modifying telecommunications instruments to obtain unauthorized access to telecommunications services.”.

(b) PENALTY.—Section 1029(c)(2) of title 18, United States Code, is amended by striking “(a)(1) or (a)(4)” and inserting “(a) (1), (4), (5), or (6)”.

(c) DEFINITIONS.—Section 1029(e) of title 18, United States Code, is amended—

(1) in paragraph (1) by inserting “electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier,” after “account number.”;

(2) by striking “and” at the end of paragraph (5);

(3) by striking the period at the end of paragraph (6) and inserting “; and”; and

(4) by adding at the end the following new paragraph:

“(7) the term ‘scanning receiver’ means a device or apparatus that can be used to intercept a wire or electronic communication in violation of chapter 119.”.

SEC. 207. TRANSACTIONAL DATA.

(a) DISCLOSURE OF RECORDS.—Section 2703 of title 18, United States Code, is amended—

(1) in subsection (c)(1)—

(A) in subparagraph (B)—

(i) by striking clause (i); and

(ii) by redesignating clauses (ii), (iii), and (iv) as clauses (i), (ii), and (iii), respectively; and

(B) by adding at the end the following new subparagraph:

“(C) A provider of electronic communication service or remote computing service shall disclose to a governmental entity the name, address, telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of such service and the types of services the subscriber or customer utilized, when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under subparagraph (B).”; and

(2) by amending the first sentence of subsection (d) to read as follows: “A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction described in section 3126(2)(A) and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation.”.

(b) PEN REGISTERS AND TRAP AND TRACE DEVICES.—Section 3121 of title 18, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection:

“(c) LIMITATION.—A government agency authorized to install and use a pen register under this chapter or under State law shall use technology reasonably available to it that restricts the recording or decoding of electronic or other impulses to the dialing and signaling information utilized in call processing.”.

SEC. 208. AUTHORIZATION FOR ACTING DEPUTY ATTORNEYS GENERAL IN THE CRIMINAL DIVISION TO APPROVE CERTAIN COURT APPLICATIONS.

Section 2516(1) of title 18, United States Code, is amended by inserting “or acting Deputy Assistant Attorney General” after “Deputy Assistant Attorney General”.

TITLE III—AMENDMENTS TO THE COMMUNICATIONS ACT OF 1934

SEC. 301. COMPLIANCE COST RECOVERY.

Title II of the Communications Act of 1934 is amended by inserting after section 228 (47 U.S.C. 228) the following new section:

“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.

“(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 that require common carriers—

“(1) to establish appropriate policies and procedures for the supervision and control of its officers and employees—

“(A) to require appropriate authorization to activate interception of communications or access to call-identifying information; and

“(B) to prevent any such interception or access without such authorization;

“(2) to maintain secure and accurate records of any interception or access with or without such authorization; and

“(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 common 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) **PENALTIES.**—For purposes of this Act, a violation by an officer or employee of any policy or procedure adopted by a 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.

“(e) **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.”.

SEC. 302. RECOVERY OF COST OF COMMISSION PROCEEDINGS.

The schedule of application fees in section 8(g) of the Communications Act of 1934 (47 U.S.C. 158(g)) is amended by inserting under item 1 of the matter pertaining to common carrier services the following additional subitem:

“d. Proceeding under section 109(b) of the Communications Assistance for Law Enforcement Act 5,000”.

SEC. 303. CLERICAL AND TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO THE COMMUNICATIONS ACT OF 1934.—The Communications Act of 1934 is amended—

(1) in section 4(f)(3), by striking “overtime exceeds beyond” and inserting “overtime extends beyond”;

(2) in section 5, by redesignating subsection (f) as subsection (e);

(3) in section 8(d)(2), by striking “payment of a” and inserting “payment of an”;

(4) in the schedule contained in section 8(g), in item 7.f. under the heading “EQUIPMENT APPROVAL SERVICES/EXPERIMENTAL RADIO” by striking “Additional Charge” and inserting “Additional Application Fee”;

(5) in section 9(f)(1), by inserting before the second sentence the following:

“(2) INSTALLMENT PAYMENTS.—”;

(6) in the schedule contained in section 9(g), in the item pertaining to interactive video data services under the private radio bureau, insert “95” after “47 C.F.R. Part”;

(7) in section 220(a)—

(A) by inserting “(1)” after “(a)”; and

(B) by adding at the end the following new paragraph:

“(2) The Commission shall, by rule, prescribe a uniform system of accounts for use by telephone companies. Such uniform system shall require that each common carrier shall maintain a system of accounting methods, procedures, and techniques (including accounts and supporting records and memoranda) which shall ensure a proper allocation of all costs to and among telecommunications services, facilities, and products (and to and among classes of such services, facilities, and products) which are developed, manufactured, or offered by such common carrier.”;

(8) in section 220(b), by striking “classes” and inserting “classes”;

(9) in section 223(b)(3), by striking “defendant restrict access” and inserting “defendant restricted access”;

(10) in section 226(d), by striking paragraph (2) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;

(11) in section 227(b)(2)(C), by striking “paragraphs” and inserting “paragraph”;

(12) in section 227(e)(2), by striking “national database” and inserting “national database”;

(13) in section 228(c), by redesignating the second paragraph (2) and paragraphs (3) through (6) as paragraphs (3) through (7), respectively;

(14) in section 228(c)(6)(D), by striking “conservation” and inserting “conversation”;

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(15) in section 308(c), by striking “May 24, 1921” and inserting “May 27, 1921”;

(16) in section 309(c)(2)(F), by striking “section 325(b)” and inserting “section 325(c)”;

(17) in section 309(i)(4)(A), by striking “Communications Technical Amendments Act of 1982” and inserting “Communications Amendments Act of 1982”;

(18) in section 331, by amending the heading of such section to read as follows:

“VERY HIGH FREQUENCY STATIONS AND AM RADIO STATIONS”;

(19) in section 358, by striking “(a)”;

(20) in part III of title III—

(A) by inserting before section 381 the following heading:

“VESSELS TRANSPORTING MORE THAN SIX PASSENGERS FOR HIRE REQUIRED TO BE EQUIPPED WITH RADIO TELEPHONE”;

(B) by inserting before section 382 the following heading:

“VESSELS EXCEPTED FROM RADIO TELEPHONE REQUIREMENT”;

(C) by inserting before section 383 the following heading:

“EXEMPTIONS BY COMMISSION”;

(D) by inserting before section 384 the following heading:

“AUTHORITY OF COMMISSION; OPERATIONS, INSTALLATIONS, AND ADDITIONAL EQUIPMENT”;

(E) by inserting before section 385 the following heading:

“INSPECTIONS”; and

(F) by inserting before section 386 the following heading:

“FORFEITURES”;

(21) in section 410(c), by striking “, as referred to in sections 202(b) and 205(f) of the Interstate Commerce Act,”;

(22) in section 613(b)(2), by inserting a comma after “pole” and after “line”;

(23) in section 624(d)(2)(A), by inserting “of” after “viewing”;

(24) in section 634(h)(1), by striking “section 602(6)(A)” and inserting “section 602(7)(A)”;

(25) in section 705(d)(6), by striking “subsection (d)” and inserting “subsection (e)”;

(26) in section 705(e)(3)(A), by striking “paragraph (4) of subsection (d)” and inserting “paragraph (4) of this subsection”;

(27) in section 705, by redesignating subsections (f) and (g) (as added by Public Law 100-667) as subsections (g) and (h); and

(28) in section 705(h) (as so redesignated), by striking “subsection (f)” and inserting “subsection (g)”.

(b) AMENDMENTS TO THE COMMUNICATIONS SATELLITE ACT OF 1962.—The Communications Satellite Act of 1962 is amended—

(1) in section 303(a)—

(A) by striking “section 27(d)” and inserting “section 327(d)”;

(B) by striking “sec. 29-911(d)” and inserting “sec. 29-327(d)”;

(C) by striking “section 36” and inserting “section 336”;

and

(D) by striking “sec. 29-916d” and inserting “section 29-336(d)”;

(2) in section 304(d), by striking “paragraphs (1), (2), (3), (4), and (5) of section 310(a)” and inserting “subsection (a) and paragraphs (1) through (4) of subsection (b) of section 310”; and

(3) in section 304(e)—

(A) by striking “section 45(b)” and inserting “section 345(b)”;

(B) by striking “sec. 29-920(b)” and inserting “sec. 29-345(b)”;

(4) in sections 502(b) and 503(a)(1), by striking “the Communications Satellite Corporation” and inserting “the communications satellite corporation established pursuant to title III of this Act”.

(c) AMENDMENT TO THE CHILDREN’S TELEVISION ACT OF 1990.—Section 103(a) of the Children’s Television Act of 1990 (47 U.S.C. 303b(a)) is amended by striking “noncommercial” and inserting “noncommercial”.

(d) AMENDMENTS TO THE TELECOMMUNICATIONS AUTHORIZATION ACT OF 1992.—Section 205(1) of the Telecommunications Authorization Act of 1992 is amended—

(1) by inserting an open parenthesis before “other than”;

and

(2) by inserting a comma after “stations”.

(e) CONFORMING AMENDMENT.—Section 1253 of the Omnibus Budget Reconciliation Act of 1981 is repealed.

(f) STYLISTIC CONSISTENCY.—The Communications Act of 1934 and the Communications Satellite Act of 1962 are amended so that the section designation and section heading of each section of such Acts shall be in the form and typeface of the section designation and heading of this section.

SEC. 304. ELIMINATION OF EXPIRED AND OUTDATED PROVISIONS.

(a) AMENDMENTS TO THE COMMUNICATIONS ACT OF 1934.—The Communications Act of 1934 is amended—

(1) in section 7(b), by striking “or twelve months after the date of the enactment of this section, if later” both places it appears;

(2) in section 212, by striking “After sixty days from the enactment of this Act it shall” and inserting “It shall”;

(3) in section 213, by striking subsection (g) and redesignating subsection (h) as subsection (g);

(4) in section 214, by striking “section 221 or 222” and inserting “section 221”;

(5) in section 220(b), by striking “, as soon as practicable.”;

- (6) by striking section 222;
 - (7) in section 224(b)(2), by striking “Within 180 days from the date of enactment of this section the Commission” and inserting “The Commission”;
 - (8) in 226(e), by striking “within 9 months after the date of enactment of this section.”;
 - (9) in section 309(i)(4)(A), by striking “The commission, not later than 180 days after the date of the enactment of the Communications Technical Amendments Act of 1982, shall,” and inserting “The Commission shall.”;
 - (10) by striking section 328;
 - (11) in section 413, by striking “, within sixty days after the taking effect of this Act.”;
 - (12) in section 624(d)(2)(B)—
 - (A) by striking out “(A)”;
 - (B) by inserting “of” after “restrict the viewing”; and
 - (C) by striking subparagraph (B);
 - (13) by striking sections 702 and 703;
 - (14) in section 704—
 - (A) by striking subsections (b) and (d); and
 - (B) by redesignating subsection (c) as subsection (b);
 - (15) in section 705(g) (as redesignated by section 304(25)), by striking “within 6 months after the date of enactment of the Satellite Home Viewer Act of 1988, the Federal Communications Commission” and inserting “The Commission”;
 - (16) in section 710(f)—
 - (A) by striking the first and second sentences; and
 - (B) in the third sentence, by striking “Thereafter, the Commission” and inserting “The Commission”;
 - (17) in section 712(a), by striking “, within 120 days after the effective date of the Satellite Home Viewer Act of 1988.”;
 - and
 - (18) by striking section 713.
- (b) AMENDMENTS TO THE COMMUNICATIONS SATELLITE ACT OF 1962.—The Communications Satellite Act of 1962 is amended—
- (1) in section 201(a)(1), by striking “as expeditiously as possible.”;
 - (2) by striking sections 301 and 302 and inserting the following:

“SEC. 301. CREATION OF CORPORATION.

“There is authorized to be created a communications satellite corporation for profit which will not be an agency or establishment of the United States Government.

“SEC. 302. APPLICABLE LAWS.

“The corporation shall be subject to the provisions of this Act and, to the extent consistent with this Act, to the District of Columbia Business Corporation Act. The right to repeal, alter, or amend this Act at any time is expressly reserved.”;

- (3) in section 304(a), by striking “at a price not in excess of \$100 for each share and”;
- (4) in section 404—
 - (A) by striking subsections (a) and (c); and
 - (B) by redesignating subsection (b) as section 404;
- (5) in section 503—
 - (A) by striking paragraph (2) of subsection (a); and

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- (B) by redesignating paragraph (3) of subsection (a) as paragraph (2) of such subsection;
- (C) by striking subsection (b);
- (D) in subsection (g)—
 - (i) by striking “subsection (c)(3)” and inserting “subsection (b)(3)”; and
 - (ii) by striking the last sentence; and
- (E) by redesignating subsections (c) through (h) as subsections (b) through (g), respectively;
- (5) by striking sections 505, 506, and 507; and
- (6) by redesignating section 508 as section 505.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*