

Wednesday, November 20, 1996, beginning at 10:00 a.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

The public hearing scheduled for Wednesday, November 20, 1996, is cancelled.

Cynthia E. Grigsby,  
Chief, Regulations Unit, Assistant Chief  
Counsel (Corporate).

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am]

BILLING CODE 4830-01-U

## DEPARTMENT OF JUSTICE

### 28 CFR Part 100

RIN 1105-AA39

#### Implementation of Section 109 of the Communications Assistance for Law Enforcement Act: Request for Comment on "Significant Upgrade" and "Major Modification"

**AGENCY:** Federal Bureau of Investigation, DOI.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** This notice solicits from the telecommunication industry information on and suggestions for dealing with the terms "significant upgrade" and "major modification" as these terms are used in section 109 of the Communications Assistance for Law Enforcement Act (CALEA). Specifically, the FBI seeks public comment on these terms with regard to CALEA compliancy and cost reimbursement under CALEA section 109.

**DATES:** Comments must be received on or before December 19, 1996.

**ADDRESSES:** Comments should be submitted to the Telecommunications Contracts and Audit Unit, Federal Bureau of Investigation, P.O. Box 221286, Chantilly, VA 20153-0450, Attention: CALEA FR Representative. See Section D of the **SUPPLEMENTARY INFORMATION** for further information on electronic submission of comments.

**FOR FURTHER INFORMATION CONTACT:** Walter V. Meslar, Unit Chief, Telecommunications Contracts and Audit Unit, Federal Bureau of Investigation, P.O. Box 221286, Chantilly, VA 20153-0450, telephone number (703) 814-4900.

#### SUPPLEMENTARY INFORMATION:

##### A. General Background

Recent and continuing advances in telecommunications technology and the introduction of new digitally-based

services and features have impaired the ability of federal, state, and local law enforcement agencies to fully and properly conduct various types of court-authorized electronic surveillance. Therefore, on October 25, 1994, the President signed into law the Communications Assistance for Law Enforcement Act (CALEA) (Public Law 103-414, 47 U.S.C. 1001-1010). This law requires telecommunications carriers, as defined in CALEA, to ensure that law enforcement agencies, acting pursuant to court order or other lawful authorization are able to intercept communications regardless of advances in telecommunications technologies.

Under CALEA, certain implementation responsibilities are conferred upon the Attorney General; the Attorney General has, in turn, delegated responsibilities set forth in CALEA to the Director, FBI, or his designee, pursuant to 28 CFR 0.85(o). The Director, FBI, has designated the Telecommunications Industry Liaison Unit of the Information Resources Division and the Telecommunications Contracts and Audit Unit of the Finance Division to carry out these responsibilities.

One of the CALEA implementation responsibilities delegated to the FBI is the establishment, after notice and comment, of regulations necessary to effectuate timely and cost-efficient payment to telecommunications carriers for certain modifications made to equipment, facilities and services (hereafter referred to as "equipment") to make that "equipment" compliant with CALEA.<sup>1</sup> Section 109(b)(2) of CALEA authorizes the Attorney General, subject to the availability of appropriations, to agree to pay telecommunications carriers for additional reasonable costs directly associated with making the assistance capability requirements found in section 103 of CALEA reasonably achievable with respect to "equipment" installed or deployed after January 1, 1995, in accordance with the procedures established in section 109(b)(1)<sup>2</sup> of CALEA. Section 104(e) of CALEA authorizes the Attorney General, subject to the availability of appropriations, to agree to pay telecommunications carriers for reasonable costs directly associated with modifications of any of a carrier's systems or services, as identified in the Carrier Statement required by CALEA section 104(d), which do not have the

capacity to accommodate simultaneously the number of interceptions, pen registers, and trap and trace devices set forth in the Capacity Notice(s) published in accordance with CALEA section 104. Finally, section 109(a) of CALEA authorizes the Attorney General, subject to the availability of appropriations, to agree to pay telecommunications carriers for all reasonable costs directly associated with the modifications performed by carriers in connection with "equipment" installed or deployed on or before January 1, 1995, to establish the capabilities necessary to comply with the assistance capability requirements found in section 103 of CALEA. However, reimbursement under section 109(a) of CALEA is modified by the requirements of section 109(d), which states:

If a carrier has requested payment in accordance with procedures promulgated pursuant to subsection (e) [Cost Control Regulations], 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, facilities, and services installed or 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 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*. (emphasis added).

While this section deals specifically with a carrier's compliance with CALEA, the phrase "replaced or significantly upgraded or otherwise undergoes major modification" (hereafter referred to as "significant upgrade or major modification"), depending on a carrier's actions after January, 1995, also has a direct bearing on the eligibility for reimbursement of some "equipment" installed or deployed on or before January 1, 1995.<sup>3</sup>

##### B. Proposed Cost Reimbursement Rule

As required by CALEA § 109(e), the FBI published a proposed CALEA cost reimbursement rule (NPRM) for notice and comment in the Federal Register on May 10, 1996 (61 FR 21396). The NPRM proposed procedures which telecommunications carriers would follow in order to receive reimbursement under Sections 109(a), 109(b)(2) and 104(e) of CALEA, as discussed above. Specifically, the NPRM set forth the means of

<sup>1</sup> CALEA § 109(e).

<sup>2</sup> CALEA Section 109(b)(1) sets forth the procedures and the criteria the Federal Communications Commission (FCC) will use to determine if the modifications are "reasonably achievable".

<sup>3</sup> "Significant upgrade or major modification" also appears in CALEA § 108(c)(3)(B) with regard to the limitations placed upon the issuance of enforcement orders under 18 U.S.C. 2522.

determining allowable costs, reasonable costs, and disallowed costs. Furthermore, it established the requirements carriers must meet in their submission of cost estimates and requests for payment to the Federal Government for the disbursement of CALEA funds. Finally, the NPRM sought to ensure the confidentiality of trade secrets and to protect proprietary information from unnecessary disclosure.

Of particular interest for the purposes of this Advance Notice of Proposed Rule Making (ANPRM) is section 100.11(a)(1) of the NPRM, which included in the costs eligible for reimbursement under section 109(e) of CALEA:

All reasonable plant specific 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 of CALEA, *until the equipment, facility, or service is replaced or significantly upgraded or otherwise undergoes major modifications* . . . .  
(emphasis added).

In response to the NPRM, the FBI received comments from 16 representatives of the telecommunications industry, including wireline and wireless carriers and associations. Of the 16 sets of comments received on the proposed rule, half requested that the FBI define "significant upgrade or major modification" as used in § 100.11(a)(1) of the NPRM.

Given the dynamic nature of the telecommunications industry and the potential impact on eligibility for reimbursement, the FBI acknowledges that "significant upgrade or major modification" must be defined. However, this issue affects only those carriers who have made some form of modification, other than routine maintenance, or upgrade to their "equipment" which was installed or deployed on or before January 1, 1995. The reimbursement eligibility of "equipment" which has undergone no modification or upgrade since January 1, 1995 is not affected by this definition. In addition, "significant upgrade or major modification" does not pertain to cases of reimbursement for capability modifications which have been deemed not reasonably achievable by the FCC under CALEA section 109(b)(2) or to reimbursement for capacity modifications under CALEA section 104(e). Therefore, given that many of the potential reimbursement scenarios allowed by CALEA, and, therefore, by the NPRM, are not affected by the definition of "significant upgrade and

major modification," the FBI has elected to handle this issue separately in order to expedite the CALEA implementation process. This decision is in both the best interests of the government and of the carriers given that CALEA funds are now available to begin the reimbursement effort.<sup>4</sup> Severing the "significant upgrade or major modification" issue from the NPRM for separate consideration will allow the FBI to go forward in finalizing the rest of the NPRM, thereby allowing the FBI as soon as possible to begin reimbursing those carriers who have made no modifications or upgrades since January 1, 1995. With regard to the rest of the NPRM, the FBI has considered all comments submitted and anticipates publication of the final rule for CALEA cost reimbursement (exclusive of a definition of "significant upgrade or major modification") in the first quarter of calendar year 1997.

#### C. "Significant Upgrade" and "Major Modification"

In addition to the need for expedition in finalizing the CALEA cost reimbursement rule, the FBI has determined that it is in the best interests of all parties concerned that the FBI solicit further input from the telecommunications industry and the general public in order to resolve this issue. Therefore, the FBI requests that telecommunications carriers and other interested parties submit potential definitions of "significant upgrade or major modification" in response to this ANPRM. Committed to the consultative process and to maintaining an on-going dialogue with the telecommunications industry, the FBI seeks to draw on the expertise of that industry so that it may gain an understanding of the range of options available with regard to "significant upgrade or major modification."

It should be noted that the comment period for this ANPRM is 30 days. The FBI has elected to use a reduced comment period in order to expedite the CALEA implementation process, particularly with regard to "significant upgrade and major modification." Given the concerns expressed by the commenters on NPRM, the FBI has reason to believe that the telecommunications industry wishes for a rapid resolution to the issue.

Once the FBI has received comments in response to the ANPRM, it will determine the best means of promulgating the definition of "significant upgrade and major

modification." Furthermore, after making this determination and developing a definition, the FBI will address the comments received in some form in the Federal Register at a later date.

#### D. Electronic Submission of Comments

While printed comments are welcome, commenters are encouraged to submit their responses on electronic media. Electronic documents must be in WordPerfect 6.1 (or earlier version) or Microsoft Word 6.0 (or earlier) format. Comments must be the only file on the disk. In addition, all electronic submissions must be accompanied by a printed sheet listing the name, company or organization name, address, and telephone number of an individual who can replace the disk should it be damaged in transit. Comments under 10 pages in length can be faxed to the Telecommunications Contracts and Audit Unit, Attention: CALEA FR Representative, fax number (703) 814-4730.

(Authority: 47 U.S.C. 1001-1010; 28 CFR 0.85(o))

Dated: November 12, 1996.

Louis Freech,

*Director, Federal Bureau of Investigation,  
Department of Justice.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 906

[CO-031-FOR]

#### Colorado Abandoned Mine Land Reclamation Plan

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Colorado abandoned mine land reclamation (AMLR) plan (hereinafter, the "Colorado plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to and additions of plan provisions pertaining to reclamation objectives and priorities, future reclamation set-aside programs, reclamation of interim program and

<sup>4</sup> Public Law 104-208, Item 28: (16) "Telecommunications Carrier Compliance Fund."