

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 and section 1805(e) of title 50), 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 this title) 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.

(Pub. L. 103-414, title I, § 103, Oct. 25, 1994, 108 Stat. 4280.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on the date that is 4 years after Oct. 25, 1994, see section 111(b) of Pub. L. 103-414, set out as a note under section 1001 of this title.

§ 1003. Notices of capacity requirements

(a) Notices of maximum and actual capacity requirements

(1) In general

Not later than 1 year after October 25, 1994, 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 October 25, 1994; 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 October 25, 1994.

(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 or¹ 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 October 25, 1994, 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

¹ So in original. Probably should be "of".

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 1008(e) of this title. 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).

(Pub. L. 103-414, title I, §104, Oct. 25, 1994, 108 Stat. 4282.)

§ 1004. 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.

(Pub. L. 103-414, title I, §105, Oct. 25, 1994, 108 Stat. 4283.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on the date that is 4 years after Oct. 25, 1994, see section 111(b) of Pub. L. 103-414, set out as a note under section 1001 of this title.

§ 1005. 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 1002 of this title and the capacity requirements identified by the Attorney General under section 1003 of this title.

(b) Cooperation

Subject to sections 1003(e), 1007(a), and 1008(b) and (d) of this title, 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 1002 of this title and the capacity requirements identified by the Attorney General under section 1003 of this title. (Pub. L. 103-414, title I, §106, Oct. 25, 1994, 108 Stat. 4284.)

§ 1006. 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 1002 of this title, 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 1002 of this title, 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 1005 of this title, 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 1002 of this title.

(3) Absence of standards

The absence of technical requirements or standards for implementing the assistance capability requirements of section 1002 of this title shall not—