tions of the authority to develop health and safety standards. See also *U.S.* v. *Frame*, 885 F.2d 1119, 1122 (3rd Cir. 1989) (upholding delegation to the beef industry to devise its own strategies to implement the Government's policy).

The appropriateness of the delegation here is furthered by two factors: (1) Compliance with the industry standards is voluntary, not compulsory. Carriers can adopt other solutions for complying with the capability requirements. (2) The FCC retains control over the standards. Under section 2602(b), any carrier, any law enforcement agency or any other interested party can petition the FCC, which has the authority to reject the standards developed by industry and substitute its own. See *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U.S. 381 (1940); *St. Louis, Iron Mt. & Southern Ry. Co.* v. *Taylor, supra; Frame, supra*, 885 F.2d at 1128 (delegation valid where discretion of private bodies is subject to the Government's authority to disapprove or modify the standards).

This section states affirmatively that the absence of standards will not preclude carriers, manufacturers or support service providers from deploying a technology or service, but they must still comply with the capability assistance requirements.

Subsection (b) provides a forum at the Federal Communications Commission in the event a dispute arises over the technical requirements or standards. Anyone can petition the FCC to establish technical requirements or standards, if none exist, or challenge any such requirements or standards issued by industry associations or bodies under this section. In taking any action under this section, the FCC is directed to protect privacy and security of communications that are not the targets of court-ordered electronic surveillance and to serve the policy of the United States to encourage the provision of new technologies and services to the public.

If an industry technical requirement or standard is set aside or supplanted by the FCC, the FCC is required to consult with the Attorney General and establish a reasonable time and conditions for compliance with and the transition to any new standard. The FCC may also define the assistance obligations of the telecommunications carriers during this transition period.

This section is also intended to add openness and accountability to the process of finding solutions to intercept problems. Any FCC decision on a standard for compliance with this bill must be made publicly.

Subsection (c) gives telecommunications carriers an additional 2 years to achieve compliance with the capability assistance requirements beyond the 4 years provided in section 2 of the act, if they petition for, and the FCC grants, an extension. The FCC may grant a petition for relief from compliance with the capability assistance requirements for up to 2 years in circumstances where the carrier can show that compliance with those requirements is not reasonably achievable through application of technology available within the 4-year compliance period. The Attorney General will reimburse the carrier for any necessary modifications made during the extension period.

Any extension granted under this subsection applies only to that part of the carrier's business on which the feature or service at issue is used.

Section 2607 provides for enforcement of the bill by the courts. *Subsection (a)* provides that a court may order telecommunications carriers, equipment manufacturers and support service providers to comply forthwith with the requirements of the bill in circumstances where an electronic surveillance order or authorization has been issued but cannot be effected because a carrier has failed to comply with the requirements of the bill. This provision compliments the existing requirement in 18 U.S.C. 2518(4) that an order authorizing electronic surveillance may direct that providers of wire or electronic communications services or any "other person * * * furnish * * * forthwith all information, facilities, and technical assistance necessary to accomplish the interception."

Subsection (b) authorizes the Attorney General, in the absence of a particular electronic surveillance order or authorization, to apply to an appropriate U.S. district court for an enforcement order directing a telecommunications carrier, equipment manufacturer and support services provider to comply with the bill. In order to avoid disparate enforcement actions throughout the country which could be burdensome for telecommunications carriers, this authority is vested in the Attorney General of the United States through the Department of Justice and the Offices of the various U.S. attorneys.

Subsection (c) places limitations on the court's authority to issue enforcement orders. First, the court must find that law enforcement has no alternatives reasonably available for implementing the order through use of other technologies or by serving the order on another carrier or service provider. Essentially, the court must find that law enforcement is seeking to conduct its interception at the best, or most reasonable, place for such interception.

Second, the court must find that compliance with the requirements of the bill are reasonably achievable through application of available technology, or would have been reasonably achievable if timely action had been taken. Of necessity, a determination of "reasonably achievable" will involve a consideration of economic factors. This limitation is intended to excuse a failure to comply with the capability assistance requirements or capacity notices where the total cost of compliance is wholly out of proportion to the usefulness of achieving compliance for a particular type or category of services or features. This subsection recognizes that, in certain circumstances, telecommunications carriers may deploy features or services even though they are not in compliance with the requirements of this bill.

In the event that either of these standards is not met, the court may not issue an enforcement order and the carrier may proceed with deployment, or with continued offering to the public, of the feature or service at issue.

Subsection (d) requires a court upon issuance of an enforcement order to set a reasonable time and conditions for complying with the order. In determining what is reasonable, the court may consider as to each party before it a number of enumerated factors.

Subsection (e) provides that an order may not be issued requiring a carrier to exceed the capacity set forth in the Attorney General's notices under section 2603.

Subsection (f) provides for a civil penalty up to $10,000 per day, from the date of the order, or such later date as a court may decree, for any carrier, equipment manufacturer or support service provider that violates the section. In setting the appropriate amount of the fine, a court may consider a number of enumerated factors, including the nature, circumstances, and extent of the violation, and, with respect to the violator, ability to pay, good-faith efforts to comply in a timely manner, effect on 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.

While subsection 2607(f) would subject to civil penalties a manufacturer that fails to provide its customers with the features or modifications necessary for them to comply, the committee fully expects that manufacturers and carriers will ensure the compliance with the requirements through the normal marketplace mechanisms, as carriers, in their orders, specify equipment that meets the requirements of the bill. The imposition of civil penalties on manufacturers would normally be appropriate only when the existing marketplace (i.e., contractual) mechanisms fail to ensure manufacturer compliance, just as the imposition of civil penalties would normally be appropriate on carriers when, for example, they fail to seek through contractual mechanisms such features or modifications.

Section 2608, entitled "Payment of costs of telecommunications carriers" provides, in *subsection (a)*, that the Attorney General is required to pay all reasonable costs directly associated with modifications required to comply with the capability assistance requirements, either during the period of 4 years after enactment or during any extension period granted by the FCC. In addition, the Attorney General is required to pay such costs for expanding the carrier's facilities in the event such expansion is necessary to comply with the notices issued under section 2603 of maximum and initia capacity needed by law enforcement.

Subsection (b) provides that the Attorney General is authorize to pay reasonable costs directly associated with achieving compli ance with the assistance capability requirements for equipment features or services deployed on or after the date of enactment i such compliance would otherwise not be reasonably achievable. I determining whether compliance is reasonably achievable, consid eration must be given to when the deployment occurred.

Subsection (c) directs the Attorney General to allocate appro priated funds to carry out the purposes of the bill in accordanc with law enforcement's priorities.

Subsection (d) provides that if a telecommunications carrier r quests payment for modifications to existing equipment, features o services to achieve compliance with the assistance capability r quirements under section 2602, and the Attorney General does n pay as required under subsection (a), the equipment, feature o service in question will be considered to be in compliance, until t equipment, feature or service is replaced or significantly upgrad or otherwise undergoes major modifications.

Subsection (e) authorizes the Attorney General to establish ne essary regulations and procedures to reimburse carriers.

Subsection (f) provides that any dispute over costs is to be resolved by the FCC or the court from which an enforcement order is sought. In the absence of a dispute brought by one of the parties to the FCC, it is not the committee's intent for the FCC or any other agency of the Federal Government to regulate the price of telecommunications transmission and switching equipment or support services. The committee regards such regulation as unnecessary in a competitive marketplace. Determinations regarding what constitutes a "reasonable charge" for modifications and features should be made in the first instance by manufacturers and their customers in contractual negotiations in accordance with normal and accepted business practices.

SECTION 2. AUTHORIZATION OF APPROPRIATIONS

This section authorizes $500 million to be appropriated for 1995 through 1997, which encompass the 3 years after enactment, and thereafter any additional amounts that may be necessary to carry out the purposes of the bill, which sums shall be available until expended.

SECTION 3. EFFECTIVE DATE

This section sets the effective date for compliance with the capability assistance requirements in section 2602 and the Systems Security and Integrity requirement in section 2604 as 4 years after enactment. All other provisions take effect upon date of enactment.

SECTION 4. REPORTS

The Attorney General is required to report annually to Congress periodically for the 6 years after enactment on the moneys expended under the bill. In addition, the General Accounting Office is required to report in 1996 and 1998 on the estimated costs of compliance with the bill.

SECTION 5. CORDLESS TELEPHONES

The Electronic Communications Privacy Act (ECPA), which amended the wiretap statute in 1986, exempted from the protection of the act "the radio portion of a cordless telephone that is transmitted between the cordless telephone handset and the base unit." 18 U.S.C. 2510 (1) and (12). The bill would delete the exception for cordless telephones and impose a penalty of up to $500 for *intentionally* intercepting such communications.

SECTIONS 6 AND 7. RADIO-BASED COMMUNICATIONS

ECPA does not protect communications that are "readily accessible to the general public," which includes radio communications, unless they fit into one of five specified categories. These excepted categories enjoy protection because they usually are not susceptible to interception by the general public.

The bill would add "electronic communication" as a category of radio communication covered by the wiretap statute. This would provide protection for all forms of electronic communications, including data, even when they may be transmitted by radio.

The bill also amends the penalty provision to treat communications using modulation techniques in the same fashion as those where encryption has been employed to secure communications privacy. This paragraph refers to spread spectrum radio communications, which usually involve the transmission of a signal on different frequencies where the receiving station must possess the necessary algorithm in order to reassemble the signal.

SECTION 8. TECHNICAL CORRECTION

The wiretap law permits interception of *wire* communications by a wire or electronic service provider in the normal course of business to render services or protect rights or property. The bill would make a technical correction and expand the exception to include *electronic* communications.

SECTION 9. CLONE PHONES

This section amends the Counterfeit Access Device law to criminalize the use of cellular phones that are altered, or "cloned," to allow free riding on the cellular phone system. Specifically, this section prohibits the use of an altered telecommunications instrument, or a scanning receiver, hardware or software, to obtain unauthorized access to telecommunications services. A scanning receiver is defined as a device used to intercept illegally wire, oral or electronic communications. The penalty for violating this new section is imprisonment for up to 15 years and a fine of the greater of $50,000 or twice the value obtained by the offense.

SECTION 10. TRANSACTIONAL DATA

Recognizing that transactional records from on-line communication systems reveal more than telephone toll records or mail covers, *subsection (a)* eliminates the use of a subpoena by law enforcement to obtain from a provider of electronic communication services the addresses on electronic messages. In order for law enforcement to obtain such information, a court order is required.

This section imposes an intermediate standard to protect on-line transactional records. It is a standard higher than a subpoena, but not a probable-cause warrant. The intent of raising the standard for access to transactional data is to guard against "fishing expeditions" by law enforcement. Under the intermediate standard, the court must find, based on law enforcement's showing of facts, that there are specific and articulable grounds to believe that the records are relevant and material to an ongoing criminal investigation.

Law enforcement could still use a subpoena to obtain the name address, telephone toll billing records, and length of service of subscriber to or customer of such service and the types of service the subscriber or customer utilized.

Subsection (b) requires government agencies installing and usin pen register devices to use, when reasonably available, technolog that restricts the information captured by such device to the dia ing or signaling information necessary to direct or process a cal excluding any further communication conducted through the use dialed digits that would otherwise be captured.

VII. Regulatory Impact Statement

In compliance with paragraph 11(b), rule XXVI of the Standing Rules of the Senate, the committee, after due consideration, concludes that no significant additional regulatory impact or impact on personal privacy would be incurred in carrying out the provisions of this legislation.

VIII. Cost Estimate

The committee accepts the cost estimate of the Congressional Budget Office.

The Congressional Budget Office estimate follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 30, 1994.

Hon. Joseph R. Biden, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2375, a bill 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.

Enactment of S. 2375 would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

James L. Blum
(For Robert D. Reischauer, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2375.

2. Bill title: A bill 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.

3. Bill status: As ordered reported by the Senate Committee on the Judiciary on September 28, 1994.

4. Bill purpose: S. 2375 would direct telecommunications carriers to attain certain technical capabilities to assist law enforcement agencies with wire and electronic interceptions, pen registers, and trap and trace devices. These companies generally would have four years to comply with the bill's requirements. However, telecommunications carriers would not have to meet the requirements with respect to existing equipment and services unless they are reimbursed by the Federal Government. Additionally, the Attorney General may agree to reimburse carriers for other reasonable costs in complying with the bill. This legislation would authorize appropriations totaling $500 million for the fiscal years 1995 through 1997, plus such sums as are necessary for fiscal years thereafter

This legislation would make several minor changes to the current laws relating to the telecommunications industry. S. 2375 also would establish both civil and criminal penalties for violation of certain provisions of the bill.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1995	1996	1997	1998	1999
Revenues					
Estimated receipts from fines	(1)	(1)	(1)	(1)	(1)
Direct spending					
Crime Victims Fund:					
Estimated budget authority	0	(1)	(1)	(1)	(1)
Estimated outlays	0	(1)	(1)	(1)	(1)
Authorizations:					
Specified authorizations	500				
Estimated authorizations				100	100
Total authorizations	500			100	100
Estimated outlays	25	100	375	100	100

[1] Less than $500,000.

The costs of this bill fall within budget function 750.

Basis of estimate: The estimate assumes that the Congress will appropriate the full amounts authorized. The costs of the bill in fiscal years 1998 and 1999 are very uncertain because the precise technical solutions to the bill's requirements are unknown at this time. Based on information from the Federal Bureau of Investigation (FBI) and the telecommunications industry, CBO estimates that these costs would be roughly $100 million annually. Costs of this order of magnitude could continue in later years. The outlay estimates are based on information from the FBI regarding implementation of the new capabilities by the telecommunications carriers.

S. 2375 would impose civil and/or criminal fines for violations of the bill's provisions. Both criminal and civil fines increases receipts to the Federal Government. Criminal fines would be deposited in the Crime Victims Fund and would be spent in the following year. CBO does not expect this additional revenue or direct spending to be significant.

6. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. Enactment of S. 2375 would affect both receipts and direct spending; however, CBO estimates that any changes in spending and receipts would be insignificant. The following table summarizes the estimated pay-as-you-go impact of this bill.

[By fiscal years, in millions of dollars]

	1995	1996	1997	1998
Change in outlays	0	0	0	0
Change in receipts	0	0	0	0

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Mark Grabowicz, John Webb, and Melissa Sampson.

11. Estimate approved by: Paul Van de Water, for C.G. Nuckols, Assistant Director for Budget Analysis.

IX. CHANGES IN EXISTING LAW

In compliance with paragraph 12, rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 18—UNITED STATES CODE

* * * * * * *

CRIMES AND CRIMINAL PROCEDURE

PART I—CRIMES

Chapter	Se
1. General provisions	
* * * * * * *	
119. Wire interception and interception of oral communications	251
120. Telecommunications carrier assistance to the Government	*26*
* * * * * * *	

§ 1029. Fraud and related activity in connection with acce devices

(a) Whoever—

(1) knowingly and with intent to defraud produces, uses, traffics in one or more counterfeit access devices;

(2) knowingly and with intent to defraud traffics in or us one or more unauthorized access devices during any one-ye period, and by such conduct obtains anything of value agg gating $1,000 or more during that period;

(3) knowingly and with intent to defraud possesses fifteen more devices which are counterfeit or unauthorized access vices; [or]

(4) knowingly, and with intent to defraud, produces, traff in, has control or custody of, or possesses device-making equ ment;

(5) knowingly and with intent to defraud uses, produces, tr fics in, has control or custody of, or possesses a telecommu cations, instrument that has been modified or altered to obt unauthorized use of telecommunications services; or

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

(A) a scanning receiver; or

(B) hardware or software used for altering or modify telecommunications instruments to obtain unauthorized cess to telecommunications services,

shall, if the offense affects interstate or foreign commerce, be punished as provided in subsection (c) of this section.

* * * * * * *

(c) The punishment for an offense under subsection (a) or (b)(1) of this section is—

(1) * * *

(2) a fine of not more than the greater of $50,000 or twice the value obtained by the offense or imprisonment for not more than fifteen years, or both, in the case of an offense under subsection [(a)(1) or (a)(4)] *(a)(1), (4), (5), or (6)* of this section which does not occur after a conviction for another offense under either such subsection, or an attempt to commit an offense punishable under this paragraph; and

* * * * * * *

(e) As used in this section—

(1) the term "access device" means any card, plate, code, account number, *electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier,* or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument);

* * * * * * *

(5) the term "traffic" means transfer, or otherwise dispose of, to another, or obtain control of with intent to transfer or dispose of; [and]

(6) the term "device-making equipment" means any equipment, mechanism, or impression designed or primarily used for making an access device or a counterfeit access device[.]; *and*

(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.

* * * * * * *

§ 2510. Definitions

As used in this chapter—

(1) "wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications for communications affecting interstate or foreign commerce and such term includes the electronic storage of such communication[, but such term does not include the radio portion of a cordless telephone com

nication that is transmitted between the cordless telephone handset and the base unit];

* * * * * * *

(12) "electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electronic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—

[(A) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;]

[(B)] *(A)* any wire or oral communication;

[(C)] *(B)* any communication made through a tone-only paging device; or

[(D)] *(C)* any communication from a tracking device (as defined in section 3117 of this title);

* * * * * * *

(16) "readily accessible to the general public" means, with respect to a radio communication, that such communication is not—

(A) scrambled or encrypted;

* * * * * * *

(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; [or]

(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio; *or*

(F) an electronic communication;

* * * * * * *

§ 2511. Interception and disclosure of wire, oral, or electronic communications prohibited

(1) Except as otherwise specifically provided in this chapter any person who—

(a) * * *

* * * * * * *

(2)(a)(i) It shall not be unlawful under this chapter for an operator of a switchboard, or on officer, employee, or agent of a provider of wire or electronic communication service, whose facilities are [used in the transmission of a wire communication], *used in the transmission of a wire or electronic communication* to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service

observing or random monitoring except for mechanical or service quality control checks.

* * * * * * *

(4)(a) Except as provided in paragraph (b) of this subsection or in subsection (5), whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

(b) If the offense is a first offense under paragraph (a) of this subsection and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication that is not scrambled [or encrypted, then], *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*—

(i) if the communication is not the radio portion of a cellular telephone communication, *a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit*, a public land mobile radio service communication or a paging service communication, and the conduct is not that described in subsection (5), the offender shall be fined under this title or imprisoned not more than one year, or both; and

(ii) if the communication is the radio portion of a cellular telephone communication, *a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit*, a public land mobile radio service communication or a paging service communication, the offender shall be fined not more than $500.

* * * * * * *

"CHAPTER 120—TELECOMMUNICATIONS CARRIER ASSISTANCE TO THE GOVERNMENT

Sec.
2601. Definitions.
2602. Assistance capability requirements.
2603. Notices of capacity requirements.
2604. Systems security and integrity.
2605. Cooperation of equipment manufacturers and providers of telecommunications support services.
2606. Technical requirements and standards; extension of compliance date.
2607. Enforcement orders.
2608. Reimbursement of telecommunications carriers.

"§2601. Definitions

(a) DEFINITIONS.—In this chapter—

the terms defined in section 2510 have, respectively, the meanings stated in that section.

"call-identifying information"—

(A) means all dialing or signalling information associated with the origin, direction, destination, or termination of each communication generated or received by the subscriber equipment, facility, or service of a telecommuni-

cations carrier that is the subject of a court order or lawful authorization; but

(B) does 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).

"Commission" means the Federal Communications Commission.

"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.

"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 electronic publishing and messaging services; but

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

"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 (within the meaning of section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h))); or

(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 chapter; but

(C) does not include persons or entities insofar as they are engaged in providing information services.

"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.

§2602. Assistance capability requirements

(a) CAPABILITY REQUIREMENTS.—Except as provided in subsections (b), (c), and (d) of this section, and subject to section 2607(c), a telecommunications carrier shall ensure that its services or facilities 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 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 service, facility, or equipment or at such later time as may be acceptable to the government;

(2) expeditiously isolating and enabling the government to access call-identifying information that is reasonably available to the carrier—

(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), 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 in a format such that they may be transmitted by means of 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 chapter does not authorize any law enforcement agency or officer—

(A) to require any specific design of features or system configurations to be adopted by providers of wire or electronic communication service, manufacturers of telecommunications equipment, or providers of telecommunications support services; or

(B) to prohibit the adoption of any feature or service by providers of wire or electronic communication service, manufacturers of telecommunications equipment, or providers 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) services or facilities 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 this title and section 1805(e) of title 50), a carrier at its discretion may fulfill its responsibilities under 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 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 wire or electronic communication service that has acquired access to the communications.

§2603. 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 chapter, 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 carrier associations, standard-setting organizations, and for a—

(A) 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; and

(B) notice of the number of communication interceptions, pen registers, and trap and trace devices, representing a portion of the maximum capacity set forth under subparagraph (A), that the Attorney General estimates that gove

ment 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 chapter.

(2) BASIS OF NOTICES.—The notices issued under paragraph (1) may be based upon the type of equipment, type of service, number of subscribers, geographic location, or other measure.

(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 chapter, whichever is longer, a telecommunications carrier shall ensure that its systems are capable of—

(A) expanding to the maximum capacity set forth in the notice under subsection (a)(1)(A); and

(B) accommodating simultaneously the number of interceptions, pen registers, and trap and trace devices set forth in the notice subsection (1)(B).

(2) EXPANSION TO MAXIMUM CAPACITY.—After the date described in paragraph (1), a telecommunications carrier shall ensure that it can accommodate expeditiously any increase in the 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)(A).

(c) NOTICES OF INCREASED MAXIMUM CAPACITY REQUIREMENTS.—

(1) The Attorney General shall periodically provide to telecommunications carriers written notice of any necessary increases in the maximum capacity requirement set forth in the notice under subsection (a)(1)(A).

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

§2604. Systems security and integrity

A telecommunications carrier shall ensure that any court ordered or lawfully authorized interception of communications or access to call-identifying information effected within its switching premises can be activated only with the affirmative intervention of an individual officer or employee of the carrier.

§2605. 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 identifying any service or equipment, including hardware and software, that may require modification so as to permit compliance with this chapter.

(b) MODIFICATION OF EQUIPMENT AND SERVICES.—Subject to section 2607(c), a manufacturer of telecommunications transmission

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 or services such modifications as are necessary to permit such carriers to comply with this chapter.

§2606. 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 2602, 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 and with representatives of users of telecommunications services and facilities.

(2) COMPLIANCE UNDER ACCEPTED STANDARDS.—A telecommunications carrier shall be found to be in compliance with the assistance capability requirements under section 2602, 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 2605, if the carrier, manufacturer, or support service provider is in compliance with publicly available technical requirements or standards are adopted by an industry association or standard-setting organization or by the Commission under subsection (b) to meet the requirements of section 2602.

(3) ABSENCE OF STANDARDS.—The absence of technical requirements or standards for implementing the assistance capability requirements of section 2602 shall not—

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

(B) relieve a carrier, manufacturer, or service provider of the obligations imposed by section 2602 or 2605, as applicable.

(b) FCC AUTHORITY.—

(1) IN GENERAL.—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 notice and comment rulemaking or such other proceedings as the Commission may be authorized to conduct, technical requirements or standards that—

(A) meet the assistance capability requirements of section 2602;

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

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

(2) TRANSITION PERIOD.—If an industry technical requirement or standard is set aside or supplanted as a result of Commission action under this section, the Commission, after con-

sultation with the Attorney General, shall establish a reasonable time and conditions for compliance with and the transition to any new standard, including defining the obligations of telecommunications carriers under section 2602 during any transition period.

(c) EXTENSION OF COMPLIANCE DATE FOR FEATURES AND SERVICES.—

(1) PETITION.—A telecommunications carrier proposing to deploy, or having deployed, a feature or service within 4 years after the date of enactment of this chapter may petition the Commission for 1 or more extensions of the deadline for complying with the assistance capability requirements under section 2602.

(2) GROUND FOR EXTENSION.—The Commission may, after affording a full opportunity for hearing and after consultation with the Attorney General, grant an extension under this paragraph, if the Commission determines that compliance with the assistance capability requirements under section 2602 is not reasonably achievable through application of technology available within the compliance period.

(3) LENGTH OF EXTENSION.—An extension under this paragraph 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 2602; 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 feature or service is used.

§2607. Enforcement orders

(a) ENFORCEMENT BY COURT ISSUING SURVEILLANCE ORDER.—If a court authorizing an interception under chapter 119, 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 in this chapter, the court may 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 apply to the appropriate United States district court for, and the United States district courts shall have jurisdiction to issue, an order directing that a telecommunications carrier, a manufacturer of telecommunications transmission or switching equipment, or a provider of telecommunications support services comply with this chapter.

(c) GROUNDS FOR ISSUANCE.—A court shall issue an order under subsection (a) or (b) 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 acc to call-identifying information; and

(2) compliance with the requirements of this chapter is r sonably achievable through the application of available te nology to the feature or service at issue or would have been r sonably achievable if timely action had been taken.

(d) TIME FOR COMPLIANCE.—Upon issuance of an enforcem order under this section, the court shall specify a reasonable ti and conditions for complying with its order, considering the g faith efforts to comply in a timely manner, any effect on the c rier's, manufacturer's, or service provider's ability to continue to business, the degree of culpability or delay in undertaking effort comply, and such other matters as justice may require.

(e) LIMITATION.—An order under this section may not requir telecommunications carrier to meet the government's demand interception of communications and acquisition of call-identif information to any extent in excess of the capacity for which no has been provided under section 2603.

(f) CIVIL PENALTY.—

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

(2) CONSIDERATIONS.—In determining whether to impo fine and in determining its amount, the court shall take int count—

(A) the nature, circumstances, and extent of the viola

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

(C) such other matters as justice may require.

(3) CIVIL ACTION.—The Attorney General may file a civ tion in the appropriate United States district court to c and the United States district courts shall have jurisdicti impose, such fines.

§2608. Payment of costs of telecommunications carriers

(a) EQUIPMENT, FEATURES, AND SERVICES DEPLOYED B DATE OF ENACTMENT; CAPACITY COSTS.—The Attorney G shall, subject to the availability of appropriations, pay telecom cations carriers for all reasonable costs directly associated wit

(1) the modifications performed by carriers prior to the tive date of section 2602 or prior to the expiration of any sion granted under section 2606(c) to establish, with res equipment, features, and services deployed before the date actment of this chapter, the capabilities necessary to c with section 2602;

(2) meeting the maximum capacity requirements set f the notice under section 2603(a)(1)(A); and

(3) expanding existing facilities to accommodate simultaneously the number of interceptions, pen registers and trap and trace devices for which notice has been provided under section 2603(a)(1)(B).

(b) EQUIPMENT, FEATURES, AND SERVICES DEPLOYED ON OR AFTER DATE OF ENACTMENT.—

(1) IN GENERAL.—If compliance with the assistance capability requirements of section 2602 is not reasonably achievable with respect to equipment, features, or services deployed on or after the date of enactment of this chapter, the Attorney General, on application of a telecommunications carrier, may pay the telecommunications carrier reasonable costs directly associated with achieving compliance.

(2) CONSIDERATION.—In determining whether compliance with the assistance capability requirements of section 2602 is reasonably achievable with respect to any equipment, feature, or service deployed after the date of enactment of this chapter, consideration shall be given to the time when the equipment, feature, or service was deployed.

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

(d) FAILURE TO MAKE PAYMENT WITH RESPECT TO EQUIPMENT, FEATURES, AND SERVICES DEPLOYED BEFORE DATE OF ENACTMENT.—

(1) CONSIDERED TO BE IN COMPLIANCE.—Unless the Attorney General has agreed to pay the telecommunications carrier for all reasonable costs directly associated with modifications necessary to bring the equipment, feature, or service into actual compliance with those requirements, provided the carrier has requested payment in accordance with procedures promulgated pursuant to subsection (e), any equipment, feature, or service of a telecommunications carrier deployed before the date of enactment of this chapter shall be considered to be in compliance with the assistance capability requirements of section 2602 until the equipment, feature, or service is replaced or significantly upgraded or otherwise undergoes major modification.

(2) LIMITATION ON ORDER.—An order under section 2607 shall not require a telecommunications carrier to modify, for the purpose of complying with the assistance capability requirements of section 2602, any equipment, feature, or service deployed before the date of enactment of this chapter unless the Attorney General has agreed to pay the telecommunications carrier for all reasonable costs directly associated with modifications necessary to bring the equipment, feature, or service into actual compliance with those requirements.

(e) PROCEDURES AND REGULATIONS.—Notwithstanding any other law, the Attorney General shall, after notice and comment, establish any procedures and regulations deemed necessary to effectuate timely and cost-efficient payment to telecommunications carriers for compensable costs incurred under this chapter, under chapters 119 and 121, and under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

(f) DISPUTE RESOLUTION.—If there is a dispute between the Attor ney General and a telecommunications carrier regarding th amount of reasonable costs to be paid under subsection (a), the dis pute shall be resolved and the amount determined in a proceedin initiated at the Commission or by the court from which an enforce ment order is sought under section 2607.

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§ 2703. Requirements for governmental access

(a) * * *

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(c) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVIC OR REMOTE COMPUTING SERVICE.—(1)(A) Except as provided i subparagraph (B), a provider of electronic communication service remote computing service may disclose a record or other inform tion pertaining to a subscriber to or customer of such service (n including the contents of communications covered by subsection or (b) of this section) to any person other than a governmental e tity.

(B) A provider of electronic communication service or remo computing service shall disclose a record or other information pe taining to a subscriber to or customer or such service (not includi the contents of communications covered by subsection (a) or (b) this section) to a governmental entity only when the governmen entity—

[(i) uses an administrative supoena authorized by a Fede or State statute, or a Federal or State grand jury or trail su poena:]

[(ii)] *(i)* obtains a warrant issued under the Federal Ru of Criminal Procedure or equivalent State warrant;

[(iii)] *(ii)* obtains a court order for such disclosure unc subsection (d) of this section; or

[(iv)] *(iii)* has the consent of the subscriber or customer such disclosure.

(C) A provider of electronic communication service or remote co puting service shall disclose to a governmental entity the name, dress, telephone toll billing records, and length of service of a s scriber to or customer of such service and the types of services subscriber or customer utilized, when the governmental entity u an administrative subpoena authorized by a Federal or State s ute or a Federal or State grand jury or trial subpoena or any me available under subparagraph (B).

* * * * * * *

(d) REQUIREMENTS FOR COURT ORDER.—[A court order for dis sure under subsection (b) or (c) of this section may be issued by court that is a court of competent jurisdiction set forth in sec 3126(2)(A) of this title and shall issue only if the governmental tity shows that there is reason to believe the contents of a wir electronic communication, or the records or other inform sought, are relevant to a legitimate law enforcement inquiry. *court order for disclosure under subsection (b) or (c) may be is by any court that is a court of competent jurisdiction describe*

section 3126(2)(A) and shall issue only if the governmental entity of fers specific and articulable facts showing that there are reasonabl grounds to believe that the contents of a wire or electronic commu nication, or the records or other information sought, are relevan and material to an ongoing criminal investigation. In the case o a State governmental authority, such a court order shall not issu if prohibited by the law of such State. A court issuing an order pur suant to this section, on a motion made promptly by the servic provider, may quash or modify such order, if the information o records requested are unusually voluminous in nature or compli ance with such order otherwise would cause an undue burden o such provider.

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§ 3121. General prohibition on pen register and trap an trace device use; exception

(a) * * *

* * * * * * *

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

[(c)] *(d)* PENALTY.—Whoever knowingly violates subsection (shall be fined under this title or imprisoned not more than o year, or both

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103D CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 103–827
Part 1

TELECOMMUNICATIONS CARRIER ASSISTANCE TO THE GOVERNMENT

OCTOBER 4, 1994.—Ordered to be printed

Mr. BROOKS, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 4922]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bi (H.R. 4922) to amend title 18, United States Code, to make clea a telecommunications carrier's duty to cooperate in the interceptio of communications for law enforcement purposes, and for oth purposes, having considered the same, report favorably therec with an amendment and recommend that the bill as amended pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu there the following:

SECTION 1. INTERCEPTION OF DIGITAL AND OTHER COMMUNICATIONS.

(a) IN GENERAL.—Part I of title 18, United States Code, is amended by insert after chapter 119 the following new chapter:

"CHAPTER 120—TELECOMMUNICATIONS CARRIER ASSISTANCE TC THE GOVERNMENT

"Sec.
"2601. Definitions.
"2602. Assistance capability requirements.
"2603. Notices of capacity requirements.
"2604. Systems security and integrity.
"2605. Cooperation of equipment manufacturers and providers of telecommunications support services.
"2606. Technical requirements and standards; extension of compliance date.

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"2607. Enforcement orders.
"2608. Payment of costs of telecommunications carriers to comply with capability requirements.

"§ 2601. Definitions

"(a) DEFINITIONS.—In this chapter—

"the terms defined in section 2510 have, respectively, the meanings stated in that section.

"'call-identifying information'—

"(A) means dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by the subscriber equipment, facility, or service of a telecommunications carrier that is the subject of a court order or lawful authorization; but

"(B) does 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).

"'Commission' means the Federal Communications Commission.

"'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.

"'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 electronic publishing and electronic messaging services; but

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

"'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.

"'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 (within the meaning of section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h)));

"(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 chapter; but

"(C) does not include persons or entities insofar as they are engaged in providing information services.

"§ 2602. Assistance capability requirements

"(a) CAPABILITY REQUIREMENTS.—Except as provided in subsections (b), (c), and (d) of this section and sections 2607(c) and 2608(d), a telecommunications carrier shall ensure that its services or facilities 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 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 service, facility, or equipment or at such later time as may be acceptable to the government;

"(2) expeditiously isolating and enabling the government to access call-identifying information that is reasonably available to the carrier—

"(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), 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 in a format such that they may be transmitted by means of 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 chapter does not authorize any law enforcement agency or officer—

"(A) to require any specific design of features or system configurations to be adopted by providers of wire or electronic communication service, manufacturers of telecommunications equipment, or providers of telecommunications support services; or

"(B) to prohibit the adoption of any feature or service by providers of wire or electronic communication service, manufacturers of telecommunications equipment, or providers 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) services or facilities 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 this title 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 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 wire or electronic communication service that has acquired access to the communications.

"§ 2603. 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 chapter, 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 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 chapter; and

"(B) 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 (A), 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 chapter.

"(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 possible, the capacity required at specific geographic locations, including carrier office 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 chapter, whichever is longer, a telecommunications carrier shall, subject to subsection (e), ensure that its systems are capable of—

"(A) expanding to the maximum capacity set forth in the notice under subsection (a)(1)(A); and

"(B) accommodating simultaneously the number of interceptions, pen registers, and trap and trace devices 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)(A).

"(c) NOTICES OF INCREASED MAXIMUM CAPACITY REQUIREMENTS.—

"(1) 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)(A).

"(2) 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), 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 subparagraph (A) or (B) of subsection (a)(1).

"(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 the just and reasonable costs directly associated with modifications to attain such capacity requirement. 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 subparagraphs (A) and (B) of subsection (a)(1).

"§ 2604. Systems security and integrity

"A telecommunications carrier shall ensure that any court ordered or lawfully authorized interception of communications or access to call-identifying information effected within its switching premises can be activated only with the affirmative intervention of an individual officer or employee of the carrier.

"§ 2605. 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 services and equipment comply with the capability requirements of section 2602 and the capacity requirements identified by the Attorney General under section 2603.