

Steptoe & Johnson LLP

China Central Place, 29th Floor,
Tower 2
79 Jianguo Road, Chaoyang
District
Beijing, 100025
Tel: +86 10 5834 1000
Fax: +86 10 5969 6099

Avenue Louise 489
3rd Floor
B-1050 Brussels
Belgium
Tel: +32 2 626 0500
Fax: +32 2 626 0510

115 South LaSalle Street
Suite 3100
Chicago, IL 60603
Tel: 312.577.1300
Fax: 312.577.1370

2121 Avenue of the Stars
Suite 2800
Los Angeles, CA 90067
Tel: 310.734.3200
Fax: 310.734.3300

633 West Fifth Street
Suite 700
Los Angeles, CA 90071
Tel: 213.439.9400
Fax: 213.439.9599

1114 Avenue of the Americas
New York, NY 10036
Tel: 212.506.3900
Fax: 212.506.3950

201 E. Washington Street
Suite 1600
Phoenix, AZ 85004
Tel: 602.257.5200
Fax: 602.257.5299

1330 Connecticut Avenue, NW
Washington, DC 20036
Tel: 202.429.3000
Fax: 202.429.3902

Steptoe & Johnson

99 Gresham Street
London, EC2V 7NG
England
Tel: +44 20 7367 8000
Fax: +44 20 7367 8001

Surveillance

Beginning in the late 1980s, new competition in the telecom market and divergent technologies challenged the basic eavesdropping methods law enforcement had employed for the past 75 years. Technological obstacles spurred various legal initiatives by law enforcement and national security interests to maintain and in some cases expand their intercept capabilities.

Most notable among these is the Communications Assistance for Law Enforcement Act of 1994 (CALEA). Less well known was a campaign to persuade the Federal Communications Commission (FCC) to condition licenses granted to telecommunications carriers, relying on the FCC's noted deference to the Executive Branch on law enforcement and national security matters.

In parallel with these developments, Steptoe & Johnson LLP created one of the nation's premier legal practices representing telecommunications and information technology companies, manufacturers and carriers alike with respect to the government's expanding demands for electronic surveillance capabilities and capacity.

Our CALEA attorneys regularly represent all sectors of the telecommunications and information technology industries on surveillance-related issues and appear on a regular basis before the key decision makers at the Department of Justice (including the FBI and the Bureau's CALEA Implementation Section (CIS) as well as its Telecommunications Contract and Audit Unit (TCAU), the National Security Agency, and other law enforcement and intelligence-related agencies. We also regularly appear for our clients at the FCC and, as necessary, in the federal courts on wiretap and surveillance matters. In addition to advocacy in public venues, we have an extensive practice providing advice and counsel to carriers and manufacturers with respect to the developing complex legal and regulatory scheme in this area.

We have taken a leading role representing industry on the key issues being raised by law enforcement. For example, we have critically examined and opposed, when justified, law enforcement's campaign to expand the breadth of electronic surveillance capabilities and capacity at the expense of carriers, manufacturers and their customers. We have advised several telecommunications industry groups on the promulgation of CALEA safe harbor standards for electronic surveillance capability for wireline and wireless telephony (as well as SMRS, paging and Mobile Satellite Service) and, when necessary, defended these standards before the FCC. We have advised on FBI attempts to impose restrictions or conditions on Section 214 licenses of international carriers that would, if successful, block the handling of US call traffic from locations outside of the United States. We have opposed FBI attempts to keep US carriers from cooperating with legitimate foreign law enforcement surveillance orders. We

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have also addressed intercept and surveillance requirements in the context of CFIUS (Committee on Foreign Investment in the United States) proceedings of the Department of the Treasury and FOCI (foreign ownership control or influence) at the Department of Defense.

Our representations have included advice on the application of CALEA to a wide variety of emerging technologies, including cable and cable modems, packet data, voice over IP (VoIP), and Internet services.

Team CALEA draws on other synergistic practice areas. The firm has one of the nation's preeminent encryption practices, which also requires extensive dealings with Justice and the FBI on export licenses. It is also strong in national infrastructure protection, where the FBI now plays a lead role. Finally, the firm has a thriving communications practice representing carriers in a wide range of regulatory matters, transactions and disputes and regularly appearing before the FCC, Departments of State, Commerce, Justice, Treasury, and Defense, and the US Trade Representative, and internationally before the International Telecommunications Union, World Trade Organization, foreign governments, and international tribunals.

Our 10 years of continuous efforts on behalf of the telecommunications industry on surveillance-related issues, and our team's prior experience in government, has given us an in-depth understanding of the law of electronic surveillance and an ability to predict the government's position on the key issues in this area including: the government's desired technical capabilities, national security goals, conflicting international legal regimes, expansion towards interception of packet data and IP-based systems and cost reimbursement issues.

Noteworthy

- Our attorneys have been recognized by Congress for our unique experience in the field, including frequent requests to testify before congressional committees.