

November 29, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

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In the Matter of:)	
)	
Communications Assistance for Law)	CC Docket No. 97-213
Enforcement Act)	
)	
_____)	

Dear Ms. Roman Salas:

Enclosed for electronic filing please find an original of the government's Motion for Acceptance of Supplemental Comments and Reply to Opposition to Supplemental Comments Regarding Petition for Reconsideration of Section 105 Report and Order, filed by the Department of Justice and the Federal Bureau of Investigation in the matter pending before the Commission as captioned above.

Sincerely,

Jon D. Pifer
Assistant General Counsel
Washington, D.C. 20535
(703) 814-4880

JDP/JGL/MRST:mrst

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of:))
)) CC Docket No. 97-213
Communications Assistance for Law)
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**MOTION FOR ACCEPTANCE OF SUPPLEMENTAL COMMENTS
AND REPLY TO OPPOSITION TO SUPPLEMENTAL COMMENTS REGARDING
PETITION FOR RECONSIDERATION OF SECTION 105 REPORT AND ORDER**

The Department of Justice and Federal Bureau of Investigation (the government) hereby move pursuant to 47 C.F.R. § 1.429(d) for the Commission to accept the supplemental comments filed on November 9, 2000 in further support of the government’s petition for reconsideration of the Commission’s March 15, 1999 Report and Order (SSI Order) implementing the systems security and integrity provisions contained in § 105 of the Communications Assistance for Law Enforcement Act of 1994 (CALEA).¹

The grounds for filing the November 9 supplemental comments are that the recent filing of policies and procedures by carriers pursuant to the SSI Order have raised issues that the government

¹ In the Matter of Communications Assistance for Law Enforcement Act, *Report and Order*, CC Docket No. 97-213 (rel. Mar. 15, 1999), *modified by* In the Matter of Communications Assistance for Law Enforcement Act, *Order on Reconsideration*, CC Docket No. 97-213 (rel. Aug. 2, 1999); *summary published in* 64 Fed. Reg. 51,462 - 51,470 (1999).

did not foresee when it filed its initial petition for reconsideration, and that the government believes the Commission should address in its disposition of the government's pending petition for reconsideration. The government has become aware, through discussion with Commission staff, that some carriers have misunderstood Section 64.2103(b) of the Commission's rules requiring appointment of a senior officer as a point of contact for law enforcement to reach on a seven-days-per-week, 24 hours-per-day basis. In particular, the government is informed that some carriers simply stated in their policies and procedures that they had made the necessary appointment, but neglected to include any contact information therein. In addition, some carriers' policies and procedures merely state that a particular officer, such as the company president, will serve as the designated point of contact, but again neglect to provide contact information for that person beyond the company's main phone number. The government's supplemental comments are intended to suggest clarifications to the Commission's existing requirements concerning points of contact, such that the rules will address these concerns and more effectively implement the purposes of those rules as stated in the SSI Order.

The Cellular Telephone Industry Association (CTIA) filed an Opposition to Supplemental Comments ("Opposition") raising two substantive issues.² First, they oppose the government's contention that the Commission should affirmatively state that a carrier should notify the Commission immediately upon a change to a carrier's point of contact information that would render the information unusable to a law enforcement agency. CTIA argues that the existing 90-day notification requirement for amendments to carrier policies and procedures under Section 64.2105(a) is sufficient,

² CTIA also contends that Section 1.429(d) of the Commission's rules requires that a supplement to a petition for reconsideration filed after 30 days be accompanied by a "separate pleading" requesting its acceptance and stating grounds for acceptance. The government's pleading was styled as a supplement to our prior comments, and thus the cited provision may not be applicable. To the extent required, however, the government respectfully requests that this document serve as the separate pleading.

and that use of the term “immediate” would create uncertainty and potentially subject carriers to penalties. Opposition, at 5. These comments are beside the point. The purpose of Section 64.2103(b) is to provide for a designated carrier official who is available to law enforcement at any time. This requirement would be frustrated if, due to a significant change in the point of contact information filed with the Commission, law enforcement were unable to reach the designated official. Far from creating uncertainty, the proposed modification would make explicit the requirement for carriers to supply current, up-to-date, usable information. Moreover, as stated in our supplemental comments, the clarification would promote the important public safety concerns on which the point of contact requirement is based.

The second issue raised in the Opposition, pertains to the government’s request that point of contact information be reported on a form, which CTIA contends would place undue paperwork burdens on carriers. Opposition, at 5. No additional burden would be placed on carriers, however, because the proposed form is only a method of reporting the same information already required by § 64.2103(b) of the Commission’s rules.³ Indeed, CTIA notes in its Opposition that the proposed form “duplicates information the carrier is already required to file with its procedures.” *Id.* To the extent the Opposition contends that an unnecessary burden would be placed on carriers who have *already* provided complete and current point of contact information in their policies and procedures if they were required to re-file the information on a form, the government agrees. Rather, the form should be made a part of future carrier policies and procedures filings, including any necessary amendments,

³ A carrier must “include, in its policies and procedures, a description of the job function of the appointed point of contact for law enforcement to reach on a seven days a week, 24 hours a day basis.” 47 C.F.R. § 64.2103(b).

corrections, or supplements to existing filings.

Additionally, the Opposition alleges that the Commission's incorporation of the proposed form into its rules must also include further compliance with the Paperwork Reduction Act (PRA), 44 U.S.C. § 3501 et seq., and a "new and comprehensive regulatory flexibility analysis" under the Regulatory Flexibility Act (RFA), 5 U.S.C. § 601, et seq. Opposition, at 6. CTIA cites no authority for the proposition that such additional procedural steps would be necessary, and the need for the Commission to take such action is not clear. The Commission has already complied with the PRA for its collection of point of contact information. Additional approval is required only for a "substantive or material modification" to an information collection that has already received approval from OMB. See 5 C.F.R. § 1320.5(g). The proposed form would not increase the burden of a carrier's existing reporting responsibilities under the SSI Order, and CTIA has not alleged that adoption of the form would qualify as a substantive or material modification of the current information collection. The RFA generally requires agencies to analyze and attempt to reduce their rules' economic impact on small entities. 5 U.S.C. § 603(a). Among other things, the RFA requires publishing in the Federal Register an Initial Regulatory Flexibility Analysis of a proposed rule and a Final Regulatory Flexibility Analysis with a final rule. Id., §§603, 604. An agency is exempt from this process if it certifies that the proposed rule does not have "significant impact on a substantial number of small entities." Id., § 605(b). In order to "avoid duplicative action" the agency may also consider a series of related rules as one rule. Id., § 605(c). As stated above, the proposed form would be used for future reporting of information that is already required under the Commission's current rules. Hence, the Commission's analysis under the RFA of the point of contact reporting requirements would not be substantially changed by the adoption of the form. See SSI Order, ¶ 93, et seq. CTIA has not demonstrated that

these circumstances would mandate a “new and comprehensive regulatory flexibility analysis” as it contends. Moreover, even assuming that further procedural steps under the PRA and RFA are required, the alleged need for undertaking these procedural steps is not a reason to decline to clarify the rule.

For the foregoing reasons the government requests that the Commission accept the supplemental comments filed on November 9, 2000, and consider modifying its rules in accordance therewith.

DATE: November 29, 2000

Respectfully submitted,

Larry R. Parkinson
General Counsel
Federal Bureau of Investigation
935 Pennsylvania Ave., N.W.
Washington, D.C. 20535

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Certificate of Service

I Jon D. Pifer an attorney of the Federal Bureau of Investigation, Washington, D.C., hereby certify that, on November 29, 2000 I caused to be served, by first-class mail, postage prepaid, copies of the attached document, the original of which is filed electronically herewith, upon Michael F. Altshul, Cellular Telephone Industry Association, 1250 Connecticut Ave., N.W., Suite 800, Washington, D.C. 20036.

DATED at Washington, D.C. on November 29, 2000.

Jon D. Pifer
Assistant General Counsel