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Washington, D.C. 20535
November 09, 2000

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OFFICE OF THE SECRETARY

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

_____)
In the Matter of:)

_____)
Communications Assistance for Law)
Enforcement Act)

_____)
CC Docket No. 97-213)
_____)
_____)

Dear Ms. Roman Salas:

Enclosed for filing please find an original and four copies of the Supplemental Comments Regarding the 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,

Patrick W. Kelley

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CC Docket No. 97-213

**SUPPLEMENTAL COMMENTS REGARDING
PETITION FOR RECONSIDERATION OF SECTION 105 REPORT AND ORDER**

The Department of Justice and Federal Bureau of Investigation (the government) hereby submit these supplemental comments 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 Suggested further amendments are contained in the attached appendix.

The recent filing of policies and procedures by telecommunications carriers pursuant to the requirements of the SSI Order have raised issues that the government did not foresee when it filed its petition, and that the government believes the Commission should address in its disposition of the government's pending petition for reconsideration. In particular, the government requests that the Commission amend Section 64.2103(b) of the regulations appended to the SSI Order to clarify and

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).

make explicit the following points: (1) that the name and contact information for the employees who are designated as telecommunications carrier points of contact are sensitive and will be accorded confidential treatment but continue to be made available to the FBI and other law enforcement agencies; (2) that telecommunications carriers should ensure that the appropriate contact information is kept current and effective, including immediately notifying the Commission of any change to such information that would render law enforcement unable to use it to contact the officer(s) designated by the carrier; and (3) that carriers should submit point of contact information to the Commission using a uniform format.

We recognize that these requirements might reasonably be thought implicit in the Commission's existing rules. However, as explained below, the requested clarifications would help ensure consistency in carriers' compliance with the requirements of the SSI Order. Thus, we recommend that the following specific requirements be incorporated into the regulations effectuating § 105 of CALEA:

1. Point of Contact Information Filed with the Commission Should be Accorded Confidential Treatment by the Commission and Made Available to Federal, State and Local Law Enforcement Agencies.

The SSI Order established that a telecommunications carrier must "appoint a senior officer or employee as a point of contact" and "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); SSI Order, ¶¶ 23, 25. Carrier policies and procedures were required to be filed with the Commission within 90 days of the rule's effective date of February 2, 2000, and therefore the Commission is presumably now in possession of policy manuals containing

point of contact information for each telecommunications carrier. 47 C.F.R. § 64.2105(a); see also Notice of Effective Date, 65 Fed. Reg. 8666-01 (2000).

The government understands that some carriers are filing their policies and procedures along with requests that the information be withheld, pursuant to 47 C.F.R. § 0.459, from inspection by the general public. The Commission declined to adopt a broad rule that all such documents are categorically exempt from public inspection, and has issued no formal ruling on particular carriers' requests for confidentiality, although the SSI Order did acknowledge the sensitive nature of a carrier's policies and procedures. See SSI Order, ¶ 57. The government does not disagree with the assertion that such information, particularly the carrier's point of contact information, is sensitive to both carriers and law enforcement and is appropriate for withholding from inspection by the general public. An affirmative statement by the Commission that point of contact information and other appropriate information will receive confidential treatment, would therefore serve the interests of carriers and of law enforcement.

To the extent the Commission determines to treat the information as confidential, however, it should also state explicitly that notwithstanding such treatment the point of contact information will, of course, continue to be made available to the federal, state and local law enforcement agencies for whose benefit the information is maintained.² This action would impose no additional burdens upon telecommunications carriers, which are already required to supply the information to the Commission pursuant to the SSI Order.

² Such a statement would also clarify any confusion that could result from according confidential treatment under Section 0.459 which is not specifically addressed to the type of information mandated by the SSI Order. For example, that section provides for inspection of confidential information by other *federal* agencies, but does not make explicit reference to non-federal governmental agencies, who also must obviously have access to the point of contact information required by the SSI Order. See e.g. 47 C.F.R. § 0.442.

2. Point of Contact Information Must be Kept Current.

The government also requests that the Commission clarify its systems security and integrity regulations to make plain that a carrier must update its policies and procedures immediately upon any significant change in its point of contact information.³ In particular, carriers should be required to notify the Commission in writing, or (preferably) by electronic message, of any change to their point of contact information that could cause a law enforcement agency to be unable to use that information to reach a carrier's designated officer(s) on a daily, 24-hour, basis.

As the Commission is aware, the prevention and prosecution of crime often requires the use of lawful electronic surveillance in urgent situations, such as in terrorism and kidnaping cases. See generally Declaration of FBI Director Louis J. Freeh, at pages 7-9, attached to Government's "Reply Comments Regarding Further Notice of Proposed Rulemaking" filed January 27, 1999. Public safety could be compromised and lives placed in jeopardy if a law enforcement agency with legal authorization to conduct surveillance in such a situation finds itself unable, for lack of accessible, current point of contact information, to contact a carrier's designated security officer and establish an intercept.

3. Carriers Should Use A Uniform Method of Submitting Point of Contact Information.

Finally, the government suggests that carriers report point of contact information using a single format. A suggested form is attached hereto. The Commission's existing regulation, Section 64.2103(b), calls for a carrier to "include, in its policies and procedures, a description of the job function of the appointed point of contact." The government believes that the lack of specificity in

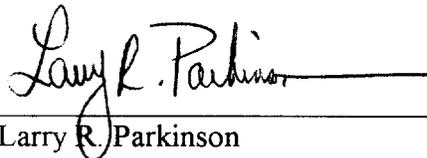
³ The rules state if a carrier amends its existing policies and procedures it must file the amended documents within 90 days. 47 C.F.R. § 64.2105(a). The clarification requested would specify that a carrier must notify the Commission immediately if a change to the point of contact information would render the current information unusable.

this description may lead some carriers to report information insufficient to ensure that the designee can be contacted quickly. Amending the rule to require use of the suggested or a similar form would simplify each carrier's reporting task, ensure more consistent reporting of point of contact information, and also facilitate the quick retrieval of the information by the Commission.

The government believes that these clarifications and modifications would help to ensure the achievement of the purposes articulated in the SSI Order. We thank the Commission for its continued efforts to further the important public safety goals of CALEA and look forward to further working with the Commission and the telecommunications industry in implementing this important legislation.

DATE: September 22, 2000

Respectfully submitted,



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APPENDIX - PROPOSED MODIFICATIONS TO FINAL RULES

(Requested Modifications Shown in *Boldface Italics*)

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

PART 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Part 64 of the Code of Federal Regulations (C.F.R.) is amended as follows:

* * * * *

§ 64.2103 Policies and Procedures for Employee Supervision and Control.

A telecommunications carrier shall:

* * * * *

(b) Appoint a senior officer or employee as a point of contact responsible for affirmatively intervening to ensure that interception of communications or access to call-identifying information can be activated only in accordance with appropriate legal authorization, and include, in its policies and procedures, a ***completed Point of Contact Information form as set forth in appendix A to these rules, to enable law enforcement to reach the point(s) of contact*** on a seven days a week, 24 hours a day basis;

* * * * *

§ 64.2105 Submission of Policies and Procedures and Commission Review.

(a) Each telecommunications carrier shall file with the Commission the policies and procedures it uses to comply with the requirements of this subpart. ***Point of contact information, and any other information contained in the carrier's policies and procedures as determined by the Commission, will be withheld from public inspection. Notwithstanding the preceding sentence, the Commission will make available the information concerning a carrier's point(s) of contact, and any other information as determined by the Commission, to any federal, state, and local law enforcement agencies having the authority to conduct electronic surveillance.*** These policies and procedures shall be filed with the Federal Communications Commission within 90 days of the effective date of these rules, and thereafter, within 90 days of a carrier's merger or divestiture or a carrier's amendment of its existing policies and procedures. ***Also, a carrier shall immediately notify the Commission in writing, or by electronic filing, of a change to the information filed with the Commission regarding the carrier's designated point(s) contact that could cause a law enforcement agency to be unable to use the information to reach a carrier's designated officer(s) on a daily, 24-hour, basis.***

CALEA Section 105 Compliance Manual Point of Contact Information

CARRIER INFORMATION

Date of this Submission: _____

Official Name:			
DBA Name:		TRS #	
Address:			
Address:			
City:			
State:		Zip Code:	
Phone Number:		Web site:	

POINT OF CONTACT INFORMATION

Name:			
Title or Position:			
Phone #		Alternate Phone #	
E-Mail Address:		Fax #	
Day(s) and Time of Availability:			
Description of Job Function:			

ALTERNATE POINT OF CONTACT INFORMATION

Name:			
Title or Position:			
Phone #		Alternate Phone #	
E-Mail Address:		Fax #	
Day(s) and Time of Availability:			
Description of Job Function:			

Certificate of Service

I, Myla R. Saldivar-Trotter, Federal Bureau of Investigation, hereby certify that a true copy of the foregoing **Supplemental Comments Regarding Petition for Reconsideration of Section 105 Report and Order** was served via hand delivery (indicated by *) or by mail, on this 9th day of November, 2000, to the following parties:

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