U.S. Department of Justice

Federal Bureau of Investigation

Office of the General Counsel

Washington, D.C. 20535

October 27, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: In the Matter of)
)
1998 Biennial Regulatory Review -)
Review of International Common Carrier)
Regulations)
)
IB Docket No. 98-118)

Dear Ms. Roman Salas:

This provides additional details about the Federal Bureau of Investigation's (FBI) reasons for opposing certain Federal Communications Commission (FCC) proposals to streamline the Section 214 review and approval process that were put forth by the FCC in the above-captioned proceeding. The FBI was requested to provide such details at the conclusion of an ex parte meeting, held on October 15, 1998, between FBI officials and officials of the FCC's International Bureau.

At that meeting, FBI and FCC officials discussed national security and law enforcement concerns that may be raised by individual applications seeking authority, pursuant to Section 214 of the Communications Act of 1934, to provide international telecommunications services. The FBI believes that, as described

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in our previous FCC filings in this matter,[1] those concerns warrant maintaining a procedure for prior review of applicants, rather than adopting the FCC's proposal as set out in a Notice of Proposed Rulemaking,[2] to issue a blanket certification for a class of carriers.

The FBI opposes the proposed change in review procedures, which would allow blanket authorizations, because absent the availability of a process for applicant-specific, precertification Governmental review, as mandated by Section 214, telephone service could be initiated by a particular carrier that could lead to direct and significant harm to important U.S. national security or law enforcement interests. The basis for concern is that a particular carrier could jeopardize national security or law enforcement investigations by virtue of its relationship with (and its likely disclosure of U.S. Government investigative efforts to) the subject(s) of such investigations.

This harm could arise where a national security or law enforcement agency conducting an investigation serves legal process upon such a carrier to acquire subscriber or record information and/or to effect an electronic surveillance effort. The agency could be confronted with a carrier considered likely to compromise the investigation generally and the subject matter of the court order for records or electronic surveillance in particular. This situation would most often arise (but certainly not always) where there is reason to believe that the carrier or key personnel within the carrier organization may be subject to influence or control by the target(s) of investigation. In such a situation the government agency would be forced to either forego important investigative efforts or run the risk of compromising an important investigation.

This is but one of many possible scenarios in which ownership and operation of telecommunications services by entities whose interests may be contrary to those of the U.S. present distinct threats to U.S. national security, public

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[1] Comments of the Federal Bureau of Investigation, *In the Matter of 1998 Biennial Regulatory Review - Review of International Common Carrier Regulations, IB Docket No. 98-118,* filed 08/13/98; and Reply Comments of the Federal Bureau of Investigation in the same matter, filed 08/28/98.

[2] FCC Notice of Proposed Rulemaking, FCC-98-149, In the Matter of 1998 Biennial Regulatory Review - Review of International Common Carrier Regulations, IB Docket No. 98-118, (7/14/98).

safety, and effective law enforcement. Ownership or control of a carrier by such entities can readily lead to the compromise of national security and law enforcement investigations; espionage and economic espionage through unlawful (but essentially undetectable) electronic surveillance; compromised communications (records) privacy; and threats to National Security Emergency Preparedness and information infrastructure efforts.

Carrier-specific, precertification, Governmental review provides the Government with the only workable basis and opportunity for avoiding such threats from the outset. It affords an opportunity for the Government to oppose a carrier's certification outright in certain situations, and, in others, it provides an opportunity for the Government to address its concerns directly with the carrier so that reasonable "terms and conditions" can be attached to the license so as to prevent the harm, and thereby allay Governmental concerns.

"Blanket 214 certification" with postservice Governmental review would be insufficient because it would allow potentially substantial harm to occur before the Executive Branch could object. For example, if blanket certification were given to 214 applicants offering service to foreign points, a foreign intelligence service, terrorist group, drug-trafficking organization, or organized crime syndicate could easily capitalize on such a regime by moving swiftly to use the service of a "friendly" carrier before Governmental review could occur, and before objections could be raised and dealt with by the FCC. Moreover, such friendly "boutique" carriers could be created and abandoned (if need be) in quick succession, only to be replaced by other similar successor carriers, where the common purpose was to provide insulation to, and an early-warning system for, entities that present a threat to U.S. national security, public safety, and law enforcement interests.

A somewhat limited Section 214 review by the government of applications to provide international service could possibly be designed which would address our concerns. As noted during our discussions with your representatives on this issue, however, it is absolutely essential that carrier-specific, precertification, Governmental review be designed into the regime to allow the Government to properly identify and address potential threats to U.S. national security and law enforcement interests. Such a review would be needed, for example, to identify an entity, which has, at the ownership and/or operational level, a relationship with a foreign intelligence service. Such a relationship could

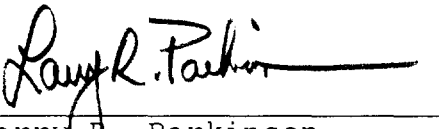
lead to the compromise of U.S. investigative efforts to detect, prevent, and prosecute the foreign intelligence service's (or its agent's) espionage activities through electronic surveillance and/or through the acquisition of carrier-based subscriber information and records under circumstances where the target is communicating with his "handlers" or confederates abroad.

Similarly, a particular entity, at the ownership and/or operational level, could have a relationship with a foreign-based terrorist organization or members thereof, such that specific investigative efforts regarding the same would be seriously impeded or precluded altogether. The same would also hold true for investigations of international drug-trafficking organizations and organized crime syndicates and their members, who have been known to infiltrate various organizations. In any of these instances, the opportunity for precertification identification of the potential threat is absolutely essential.

With regard to pro forma transfers and assignments of international Section 214 authorizations, the FBI does not object to this change where the assignments or transfers involve applications where there will be no ultimate ownership change of the entities involved.

We trust that the above further clarifies the basis for the FBI's concerns. FBI officials remain available to answer any further questions that FCC officials may have about these issues, at your convenience.

Sincerely,



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