

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

**Communications Assistance for
Law Enforcement Act**

CC Docket No. 97-213

**COMBINED OPPOSITION OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

Three petitions for reconsideration have been filed in this proceeding -- two by the U.S. Department of Justice and Federal Bureau of Investigation ("FBI") and one by the National Telephone Cooperative Association ("NTCA").¹ The Personal Communications Industry Association ("PCIA")² respectfully submits this combined response to two of the three petitions.

¹ Petition for Reconsideration by the U.S. Department of Justice and Federal Bureau of Investigation, CC Docket No. 97-213 (filed October 25, 1999) ("FBI Security Petition"); Petition for Reconsideration by the U.S. Department of Justice and Federal Bureau of Investigation (filed November 12, 1999) ("FBI Reseller Petition"); Petition for Reconsideration by the National Telephone Cooperative Association (filed October 25, 1999) ("NTCA Petition"). A combined notice for the three petitions appeared at 65 Fed. Reg. 345 (January 21, 2000).

² PCIA is an international trade association established to represent the interests of both the commercial and private mobile radio service communications industries and the fixed broadband wireless industry. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Private Systems Users Alliance, the Mobile Wireless Communications Alliance, and the Wireless Broadband Alliance. As the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 MHz and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of FCC licensees.

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I. FBI PETITION ON CARRIER SECURITY PROCEDURES (OCTOBER 25, 1999)

The FBI's first petition for reconsideration challenges the Commission's March 15, 1999 *Report and Order* on carrier security procedures.³ PCIA strongly opposes this petition.

The FBI's petition simply reiterates claims that the Commission has already carefully considered and rejected. Significantly, the petition neither presents any new facts nor cites to any additional legal authority. PCIA supports the Commission's previous determinations on these issues and urges the Commission to deny the FBI's request for reconsideration. PCIA particularly objects to the FBI's attempt to use this petition as a "backdoor" for relitigating an already resolved and completely unrelated issue -- the Commission's refusal to impose a "surveillance status message" capability on carriers.

As the FBI concedes, the Commission has already concluded that a "surveillance status message" is not required by the Communications Assistance for Law Enforcement Act ("CALEA").⁴ In its *Third Report and Order*,⁵ the Commission correctly ruled that a surveillance status requirement exceeds the mandate of CALEA's "Assistance Capability Requirements" provision (section 103). Now, although claiming that it "does not seek to challenge that ruling,"⁶ the FBI asserts that its proposed surveillance status capability falls under the rubric of a completely unrelated section of CALEA -- the act's "System Security and Integrity" provision (section 105).

³ In the Matter of Communications Assistance for Law Enforcement Act, *Report and Order*, CC Docket No. 97-213, FCC 99-11 (rel. March 15, 1999), *Order on Reconsideration*, CC Docket No. 97-213, FCC 99-184 (rel. August 2, 1999) ("Carrier Security Order").

⁴ Pub. L. 103-414, 108 Stat. 4279 (1994), *codified at* 47 U.S.C. §§ 1001 *et seq.*

⁵ In the Matter of Communications Assistance for Law Enforcement Act, *Third Report and Order*, CC Docket No. 97-213, FCC 99-230, ¶ 101 (rel. August 31, 1999) ("Third Report & Order").

This novel contention -- which the FBI has never previously raised in any of its numerous filings in this proceeding -- is in direct conflict with the letter and intent of CALEA. It represents nothing more than an unwarranted, last-ditch effort to relitigate a losing claim.

It is worth noting that the FBI cites no authority for its new interpretation. This is because Congress intended section 105 to address very different concerns from those now asserted by the FBI. The principal purpose of section 105 was to protect the “security and integrity” of a carrier’s system -- by ensuring that law enforcement could not activate an interception within the carrier’s network without the carrier’s prior knowledge and consent. Congress memorialized its concern by making clear that:

government agencies do not have the authority to activate remotely interceptions within the switching premises of a telecommunications carrier. Nor may law enforcement enter onto a telecommunications carrier’s switching office premises to effect an interception without the carrier’s prior knowledge and consent when executing a wiretap under exigent or emergency circumstances....⁷

Thus, Congress mandated that “all executions of court orders or authorizations requiring access to the switching facilities will be made through individuals authorized and designated by the telecommunications carrier.”⁸

Nowhere did Congress suggest that section 105 was also meant to require carriers to purchase prohibitively expensive and technologically difficult capabilities “to verify that a wiretap has been established and is still functioning correctly.”⁹ To the contrary, Congress provided that a

⁶ FBI Security Petition, at 8.

⁷ H. Rep. No. 103-827, at 26 (1994) (“House Report”).

⁸ *Id.*

⁹ Third Report & Order, at ¶ 97.

carrier's obligation to provide such technical capabilities was governed by the completely separate "assistance capability requirements" of section 103.

Congress considered section 103's technical requirements "to be both a floor and a ceiling."¹⁰ One of Congress's principal concerns, while drafting CALEA, was to ensure that "compliance with the requirements of the bill [would] not impede the development and deployment of new technologies."¹¹ In the legislative history, Congress repeatedly stressed that these requirements were "intended to preserve the status quo, and ... to provide law enforcement no more and no less access to information than it had in the past."¹² As a result, the "bill establishe[d] a reasonableness standard for compliance of carriers and manufacturers" and directed the Commission to consider such factors as cost and technical feasibility when determining whether compliance is reasonable.¹³

In several rounds of comments, PCIA (and literally hundreds of other commenting parties) presented detailed evidence that the FBI's surveillance status message would be extremely costly and technically difficult to implement, especially for wireless service providers.¹⁴ As the Telecommunications Industry Association summarized, the surveillance status capability was "one of the most technically difficult items on [the FBI's] punch list [and] would require significant

¹⁰ House Report, at 22.

¹¹ *Id.*, at 19.

¹² *Id.*, at 22.

¹³ *Id.*, at 19.

¹⁴ *See, e.g.*, Third Report & Order, at ¶ 99 & n. 187 (citing several comments).

modifications to system architecture....”¹⁵ Heeding this extensive record, the Commission reviewed the requirements of section 103 and properly determined that the surveillance status message capability was not required.

By claiming that the surveillance status capability is now required by a different provision (section 105) -- and that, as a result, the Commission should ignore “technical and cost concerns”¹⁶ -- the FBI essentially seeks to turn the statute on its head and, in the process, deem Congress’ intent irrelevant. The Commission has already thoroughly considered the FBI’s unreasonable request. It should reject the FBI’s belated, backdoor attempt to mandate the same capability through an unrelated (and completely inapplicable) statutory provision.

II. NTCA PETITION ON CARRIER SECURITY PROCEDURES (OCTOBER 25, 1999)

NTCA’s petition seeks to clarify an apparent oversight in § 64.2103(b) of the Commission’s carrier security rules. As NTCA notes, the Commission’s *Carrier Security Order* permits carriers to appoint more than one employee to fulfill the role of the “point of contact” with law enforcement.¹⁷ Section 64.2103(b), however, unintentionally omits the plural -- suggesting that carriers must appoint a single “employee” as the point of contact. Obviously, as the Commission acknowledged in its *Order*, more than one employee may be required to fulfill the 24-hours-a-day,

¹⁵ Comments of the Telecommunications Industry Association, CC Docket No. 97-213, at 38 (filed December 14, 1998).

¹⁶ FBI Security Petition, at 9.

¹⁷ Carrier Security Order, ¶ 25 (“[W]e conclude that carriers . . . must appoint the senior authorized officer(s) or employee(s) whose job function includes being the point of contact for law enforcement to reach on a daily, around the clock basis. We therefore require carriers to include a description of the job function(s) of such point of contact”)

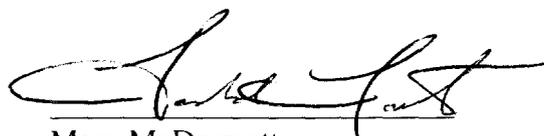
seven-days-a-week responsibilities entrusted to the point of contact. Accordingly, PCIA endorses NTCA's request and encourages the Commission to correct this minor oversight.

NTCA also proposes that the Commission exempt small carriers from the filing requirements of § 64.2105. PCIA agrees. There is little purpose for burdening either the Commission or the literally hundreds of small, "mom and pop" wireless carriers with preparing and reviewing these submissions.

III. CONCLUSION

PCIA supports the NTCA petition; it raises two minor clarifications that the Commission should adopt. The FBI's petition on carrier security procedures, on the other hand, amounts to little more than another "backdoor" bite at the apple. The Commission has already carefully considered *and rejected* the FBI's proposals. The Commission should emphatically do so again.

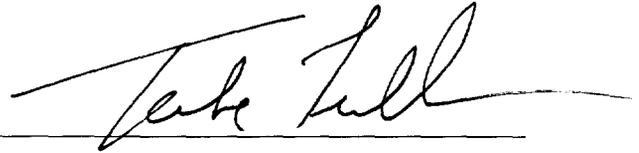
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I, Taube Pecullan, hereby certify that a copy of the Combined Opposition of the Personal Communications Industry Association was served via hand delivery* or by mail to the following parties:



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