

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

BELLSOUTH OPPOSITION TO SUPPLEMENTAL COMMENTS

BellSouth Corporation, by counsel and on behalf of itself and its affiliated entities ("BellSouth"),¹ respectfully submits its opposition to the Supplemental Comments filed by the Department of Justice and Federal Bureau of Investigation ("DOJ/FBI") in the above-captioned proceeding.² The DOJ/FBI comments seek to supplement a petition filed by the DOJ/FBI on October 25, 1999, in which the government sought reconsideration of a number of Commission rules implementing the systems security and integrity provisions of the Communications Assistance for Law Enforcement Act ("CALEA").³ For the reasons set forth herein, BellSouth strongly urges the Commission to reject the modifications sought by the DOJ/FBI in its Supplemental Comments.

¹ BellSouth Corporation is a publicly traded Georgia corporation that holds the stock of companies that offer local telephone service, provide advertising and publishing services, market and maintain stand-alone and fully integrated communications systems, and provide mobile communications and other network services world-wide.

² Supplemental Comments Regarding Petition for Reconsideration of Section 105 Report and Order, U.S. Department of Justice/Federal Bureau of Investigation, *Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213 (received by Commission November 9, 2000) ("DOJ/FBI Supplemental Comments").

³ Petition for Reconsideration of Section 105 Report and Order, U.S. Department of Justice/Federal Bureau of Investigation, *Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213 (filed Oct. 25, 1999) ("DOJ/FBI Petition").

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I. INTRODUCTION

More than a year after the DOJ/FBI filed a petition seeking reconsideration of several Commission rules implementing the systems security and integrity provisions of CALEA, the DOJ/FBI is back seeking further modifications. Specifically, the DOJ/FBI requests that the Commission amend its rules to:

- (1) require a carrier to submit as part of its systems security and integrity procedures a form listing the name, telephone number, e-mail address, etc. of the carrier's point of contact;⁴
- (2) treat the point of contact information submitted by carriers as confidential;⁵ and
- (3) require a carrier to notify the Commission immediately in writing, or by electronic filing, of any change to the point of contact information.⁶

BellSouth agrees with AT&T, CTIA, and PCIA that the Commission should deny the DOJ/FBI's recent submissions as procedurally invalid.⁷ If the Commission nevertheless decides to consider the DOJ/FBI's proposals, it should reject them as unnecessary, burdensome, and inconsistent with the Commission's minimal set of guidelines for compliance with CALEA's systems security and integrity provisions.

⁴ DOJ/FBI Supplemental Comments at 4-5; *see also* CALEA Section 105 Compliance Manual Point of Contact Information Form (attachment to DOJ/FBI Supplemental Comments).

⁵ DOJ/FBI Supplemental Comments at 2-3.

⁶ DOJ/FBI Supplemental Comments at 4.

⁷ *See* Response of AT&T Corp. To Supplemental Comments and Motion For Acceptance of Supplemental Comments, CC Docket No. 97-213, at 3 (filed Dec. 5, 2000) ("AT&T Response"); CTIA Opposition to Supplemental Comments, CC Docket No. 97-213, at 2-3 (filed Nov. 22, 2000) ("CTIA Opposition"); PCIA Opposition To Motion For Acceptance of Supplemental Comments, CC Docket No. 97-213, at 2-3 (filed Dec. 8, 2000) ("PCIA Opposition").

II. THE DOJ/FBI'S SUPPLEMENTAL COMMENTS ARE UNTIMELY FILED AND DO NOT RAISE ANY NEW ISSUES.

The pleading cycle for reconsideration of the Commission's systems security and integrity requirements closed in February 2000. Nonetheless, nine months later, the DOJ/FBI is "attempting to enlarge the scope of [its] original petition"⁸ by claiming that new evidence has come to light. Specifically, the DOJ/FBI's rationale for filing its Supplemental Comments is that the "recent filing of policies and procedures by telecommunications carriers pursuant to the requirements of the SSI Order"⁹ have raised issues that the government did not foresee when it filed its petition."¹⁰ This assertion is disingenuous.

The requests detailed in the DOJ/FBI Supplemental Comments are nothing more than a repackaging of some of the proposals included in the DOJ/FBI's October 1999 petition for reconsideration. No new evidence exists to warrant either the Commission's acceptance of the recent DOJ/FBI filings or the modification of the existing systems security and integrity regulations. The Commission should not allow the DOJ/FBI to abuse the Commission's procedural rules by disregarding established deadlines. These procedural rules exist to ensure that Commission proceedings are orderly, manageable, and fair. Since the DOJ/FBI has failed to

⁸ AT&T Response at 3.

⁹ *Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, *Report and Order*, 14 FCC Rcd 4151 (1999) ("*Report and Order*"), modified by *Communications Assistance for Law Enforcement Act*, Order on Reconsideration, CC Docket No. 97-213, FCC 99-184 (rel. August 2, 1999) ("*Reconsideration Order*").

¹⁰ DOJ/FBI Supplemental Comments at 1; see also Motion for Acceptance of Supplemental Comments And Reply to Opposition to Supplemental Comments Regarding Petition for Reconsideration of Section 105 Report and Order, U.S. Department of Justice/Federal Bureau of Investigation, *Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, at 2-3 (filed November 29, 2000) ("DOJ/FBI Reply").

establish reasonable grounds for accepting the Supplemental Comments, the Commission should reject the DOJ/FBI's recent submissions as untimely filed.

III. THE ADDITIONAL RULES SOUGHT BY THE DOJ/FBI ARE NOT ONLY INCONSISTENT WITH THE COMMISSION'S MINIMAL SYSTEMS SECURITY AND INTEGRITY GUIDELINES BUT ALSO UNNECESSARY AND UNDULY BURDENSOME.

If the Commission decides to consider the DOJ/FBI Supplemental Comments as part of the record, BellSouth urges the Commission to deny the rule changes sought by the DOJ/FBI. The additional regulation proposed by the DOJ/FBI would not only conflict with the Commission's narrowly tailored set of systems security and integrity rules but also impose unnecessary burdens on carriers as well as the Commission. The existing rules are more than adequate to ensure that carriers have policies and procedures in place to assist law enforcement in conducting lawful electronic surveillance.

In its *Report and Order*, the Commission appropriately declined "to adopt specific or detailed policies and procedures that telecommunications carriers must include within their internal operating practices"¹¹ The Commission instead found it appropriate "to implement a *very limited set of rules* to assist telecommunications carriers in complying with their obligations under section 105 of CALEA and sections 229(b) and (c) of the Communications Act."¹² In adopting this limited set of rules, the Commission concluded that it was "not the [agency's] responsibility to 'micro-manage' telecommunications carriers' corporate policies."¹³ In fact, the Commission consciously elected to "replace much of [its] proposed regulatory

¹¹ *Report and Order*, 14 FCC Rcd at 4158, ¶ 18.

¹² *Id.* at 4158, ¶ 17 (emphasis added).

¹³ *Id.* at 4158, ¶ 18.

scheme with a *minimum set of requirements* intended to allow carriers to develop their own policies and procedures that assure the maintenance of their systems security and integrity in compliance with” the law.¹⁴

The Commission was correct to adopt a limited set of rules. This approach recognizes that a carrier is in the best position to determine how to implement CALEA’s systems security and integrity provisions most effectively and efficiently. A minimal set of guidelines also allows carriers the flexibility to tailor their policies and procedures to their individual operations and circumstances. By contrast, the increased regulation proposed by the DOJ/FBI would overburden carriers and could very well jeopardize the security of electronic surveillance activities without providing any significantly increased surveillance effectiveness. BellSouth believes that existing carrier policies and procedures, combined with the statutory and regulatory requirements (including fines and penalties for non-compliance),¹⁵ provide adequate incentives to ensure that carriers comply with CALEA and the Commission’s implementing rules. Thus, there is no need to impose additional burdens on carriers by adopting the DOJ/FBI’s recent proposals.

A. The Commission Should Not Require A Carrier To Report Personal Information Regarding Its Point Of Contact On A Specific Form.

The Commission should not require a carrier to identify its point of contact by name, telephone number, e-mail address, and other information as part of its systems security and integrity procedures filed with the Commission. The DOJ/FBI’s request to obtain this employee-specific information is simply a modified repeat of the proposal set forth in the DOJ/FBI’s

¹⁴ *Report and Order*, 14 FCC Rcd at 4159, ¶ 20 (emphasis added).

¹⁵ See 47 C.F.R. § 64.2106.

reconsideration petition. In that petition, the DOJ/FBI sought to obtain personal identifying information of designated employees, including name, date of birth, social security number, and workplace telephone number.¹⁶ The Commission denied this request once before,¹⁷ and BellSouth urges it to do the same with the current proposal.

In an attempt to make its proposal more palatable, the DOJ/FBI has trimmed down the request by eliminating the date of birth and social security number. Notwithstanding this modification, the Commission should deny this request. The Commission could not have been more clear when it rejected the DOJ/FBI's previous request to obtain personal identifying information for carrier employees involved in electronic surveillance activities. Specifically, the Commission properly "conclude[d] that such information is invasive to carrier personnel and could even compromise a carrier's ability to maintain a secure system by identifying the personnel charged with effectuating surveillance functions."¹⁸ The DOJ/FBI's access to employees' names and telephone numbers, though less invasive than access to social security numbers, still poses a risk to network security. Moreover, the DOJ/FBI's request for confidential treatment of such information does not make its proposal fool proof.¹⁹ Notwithstanding any confidential treatment, the more information provided to public agencies in written form, the greater the risk of inadvertent disclosure to the public – an outcome that could jeopardize the

¹⁶ DOJ/FBI Petition at 7.

¹⁷ *Report and Order*, 14 FCC Rcd at 4162, ¶ 25.

¹⁸ *Id.*

¹⁹ In the event that the Commission modifies its rules to require a carrier to submit the name, telephone number, e-mail address, etc. of its point contact, as requested by the DOJ/FBI, the Commission must ensure that such information receives confidential treatment. The Commission therefore should adopt a rule that expressly provides confidential treatment to such detailed contact information.

security and integrity of electronic surveillance activities. Such a result cannot be what law enforcement intended. Thus, both the Commission and the DOJ/FBI should consider seriously the ramifications of such sensitive information reaching the public-at-large.

The DOJ/FBI also tries to minimize the significance of its proposal by claiming that requiring a carrier to provide employee-specific point of contact information is simply a clarification of the existing rule. The DOJ/FBI erroneously contends that "some carriers have misunderstood" the Commission's rules²⁰ and that the provision of detailed point of contact information is "implicit in the Commission's existing rules."²¹ These assertions are plainly wrong and are obvious attempts to mislead the Commission.

The Commission's rules impose a duty on a carrier to "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."²² No where in the rules does it state that a carrier must provide in writing the name, telephone number, and e-mail address for its point of contact – nor should it. At the same time, the rules do not preclude carriers from providing employee-specific information if they so choose; however, such an obligation is not mandatory. Had the Commission wanted carriers to provide employee-specific information in their policies and procedures, it would have expressly stated so. Instead, the Commission properly concluded that carriers could satisfy their CALEA obligations by providing a job description of the point of contact and ensuring 24-hour access, seven days a week. The current rule does not call for

²⁰ DOJ/FBI Reply at 3.

²¹ DOJ/FBI Supplemental Comments at 2.

²² 47 C.F.R. § 64.2103(b).

detailed, employee-specific point of contact information, and the DOJ/FBI has failed to demonstrate a need to change this requirement.

Moreover, the DOJ/FBI has failed to demonstrate a compelling need to report employee-specific point of contact information to the Commission. Carriers traditionally have provided point of contact information directly to law enforcement – not the Commission. The DOJ/FBI has not demonstrated any reason to change this process. There is no evidence in the record that law enforcement has been unable to reach authorized carrier personnel or that carriers have failed to notify law enforcement of changes in point of contact information in a timely manner. The DOJ/FBI is trying to develop a solution for a problem that simply does not exist. The record clearly demonstrates that telephone companies have a long history of cooperation with law enforcement to facilitate electronic surveillance pursuant to lawful authorization. Indeed, BellSouth has a history of and a commitment to keeping law enforcement apprised of any changes in contact information. The current rules mandate such an obligation and therefore no additional regulation is warranted.

As the Commission has concluded, carriers should be allowed to determine how best to satisfy their CALEA obligations. Providing the Commission with the names and telephone numbers of authorized personnel as part of a carrier's systems security and integrity manual, however, is far from being the best approach. The Commission has absolutely no use or need for such point of contact information. Law enforcement is the beneficiary of this information. As such, the exchange of point of contact information should remain between law enforcement and the carrier as it has in the past. The Commission need not serve as a middle-man.

If the Commission decides to consider the DOJ/FBI Supplemental Comments as part of the record, the Commission, at a minimum, must afford the public an opportunity to comment on the proposed form, not to mention the other proposals detailed in the DOJ/FBI Supplemental Comments. The proposed form was not part of the previous record; therefore, the public has not had a full and fair opportunity to evaluate the form and provide meaningful comment.

In addition, despite the DOJ/FBI's assertions, the Commission cannot bypass procedural requirements in order to accommodate the DOJ/FBI. The DOJ/FBI erroneously claims that the Commission need neither comply with the Paperwork Reduction Act ("PRA")²³ nor complete a new and comprehensive analysis under the Regulatory Flexibility Act ("RFA")²⁴ in order to incorporate the proposed form into its rules. In fact, the DOJ/FBI offers multiple reasons why the Commission is allowed to take a short cut to adopt the proposed form. For example, the DOJ/FBI claims that: (1) the "proposed form would not increase the burden of a carrier's existing reporting responsibilities under the SSI Order" and (2) "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."²⁵ These claims are without merit and completely unsubstantiated.

First, the proposed form requires carriers to provide detailed information that goes well beyond the current obligation to provide the job description of the point of contact. In fact, the proposed form requests information in three categories (carrier information; point of contact information; and alternate point of contact information). The form also requires a carrier to provide employee-specific information, including name, telephone number, fax number, e-mail

²³ 44 U.S.C. § 3501 *et seq.*

²⁴ 5 U.S.C. § 601 *et seq.*

²⁵ DOJ/FBI Reply at 5.

address, days and time of availability, and job description.²⁶ This new form requires carriers to provide much more detailed information than the Commission's existing rules. Consequently, the proposed form constitutes "a substantive or material modification" to the current collection of information and therefore must be approved by the Office of Management and Budget ("OMB").²⁷

Second, under the DOJ/FBI's suggested rule changes, carriers would be required to submit amendments to the point of contact information "immediately" in writing to the Commission.²⁸ Under this proposal, carriers might have to file multiple amendments with the Commission depending upon how often their point of contact information changes. The DOJ/FBI's claim that the proposed rule changes would not impose any additional burdens on carriers is absurd. The DOJ/FBI's efforts to downplay the impact of its proposed rules are self-serving attempts to eliminate the Commission's obligations under the PRA and the RFA and should not be sanctioned by the Commission.

One of the goals of the PRA is to "minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information."²⁹ The DOJ/FBI's proposed form is inconsistent with this objective. The filing of additional forms and potential amendments by hundreds of carriers will increase – not minimize – the costs to and burdens on the Commission. In addition, the OMB's rules require, among other things, that the proposed form (1) be the least burdensome method for the Commission to achieve its objectives;

²⁶ See CALEA Section 105 Compliance Manual Point of Contact Information

²⁷ See 5 C.F.R. § 1320.5(g).

²⁸ DOJ/FBI Supplemental Comments at 4.

²⁹ 44 U.S.C. § 3501(5).

(2) have practical utility; and (3) minimize the cost to the Commission of collecting, processing, and using the information.³⁰ The DOJ/FBI's proposed form satisfies none of these criteria. The DOJ/FBI's proposals call for significant modifications to the existing rules (*e.g.*, the provision of detailed point of contact information; the submission of a new form; the immediate submission of updated point of contact information on an on-going basis). The previous analysis performed by the Commission is inapplicable and cannot be used to justify adoption of the instant form.

A formal, open process will ensure that all carriers (large and small) as well as other members of the public are fully aware of the suggested rule modifications and are afforded an opportunity to explain the potential impact. The Commission cannot bypass proper procedures and ignore existing rules simply to accommodate the wishes of the DOJ/FBI. Thus, if the Commission decides to consider the DOJ/FBI's proposals, including the new form, it should seek comment on the proposals and perform the appropriate analysis as required by the PRA and the RFA.

B. The Commission Should Not Require A Carrier To Notify The Commission Immediately Of A Change In The Point Of Contact Information.

The DOJ/FBI requests that the Commission modify its rules to require a carrier to notify the Commission immediately of a change in the carrier's point of contact information.³¹ BellSouth strongly objects to the adoption of such a rule. As BellSouth demonstrated above, there is absolutely no reason to place the Commission in the middle of the transfer of point of contact information between law enforcement and carriers. These two parties should work

³⁰ 5 C.F.R. § 1320.5(d).

³¹ DOJ/FBI Supplemental Comments at 2 (emphasis added).

together to determine the most effective method of exchanging such information, as they do today.

BellSouth also agrees with AT&T, CTIA, and PCIA that requiring "immediate" written notification to the Commission of a change in the point of contact information is unnecessary.³² The term "immediate" has no clear-cut meaning and is extremely discretionary. Thus, contrary to the DOJ/FBI's goal, this requirement would not lead to uniformity because of the absence of a defined time frame. BellSouth therefore urges the Commission not to adopt the DOJ/FBI's proposal. The existing 90-day notification rule is a clear-cut rule that allows carriers reasonable time to incorporate changes into their existing policies and procedures. As AT&T states, there is no need to "replace[] a clear deadline ('90 days') with a confusing and subjective one ('immediately')."³³

Moreover, the filing of "immediate" notices with the Commission would unduly burden the agency. It is doubtful that the Commission has any desire to become a repository for amendments to contact information for hundreds of carriers. This arrangement would not only be an inefficient use of Commission resources, but also result in a wasteful and inefficient paper trail that could compromise the security of electronic surveillance activities. According to the Commission, its systems security and integrity rules were intended "to provide telecommunications carriers with guidance for the minimum requirements necessary to achieve compliance with section 105 of CALEA and sections 229(b) and (c) of the Communications Act *in the least burdensome manner possible.*"³⁴ Submission of a written form and continuous

³² AT&T Response at 4; CTIA Opposition at 5; PCIA Opposition at 4.

³³ AT&T Response at 4.

³⁴ *Report and Order*, 14 FCC Rcd at 4158, ¶ 18 (emphasis added).

written updates is by no means the least burdensome method by which carriers can comply with CALEA.

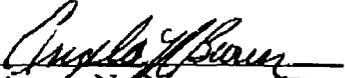
IV. CONCLUSION

As a threshold matter, BellSouth urges the Commission to reject the DOJ/FBI's Supplemental Comments as untimely filed. In the event that the Commission decides to consider these comments as part of the record, BellSouth recommends that the Commission refrain from adopting the changes proposed by the DOJ/FBI. The record overwhelmingly supports the Commission's conclusion that overly detailed rules are unnecessary to ensure compliance with the systems security and integrity provisions of CALEA. Moreover, the DOJ/FBI has failed to demonstrate a need either to file employee-specific point of contact information with the Commission using a particular form or to notify the Commission immediately in writing of any changes to such point of contact information. The existing rule requires carriers to establish these points of contact (which BellSouth does) and to keep law enforcement informed as the list changes (which BellSouth also does). The burdens and costs associated with the DOJ/FBI's proposals significantly outweigh any possible benefits. Accordingly, the Commission should deny the requests sought in the DOJ/FBI Supplemental Comments.

Respectfully submitted,

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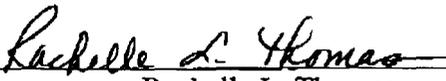
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January 8, 2001

CERTIFICATE OF SERVICE

I do hereby certify that I have this 8th day of January, 2001, served the following parties to this action with a copy of the foregoing **BELLSOUTH OPPOSITION TO SUPPLEMENTAL COMMENTS**, reference CC Docket No. 97-213, by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties on the attached service list.



Rachelle L. Thomas

****Via Hand Delivery***

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