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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

PETITION FOR RECONSIDERATION OF SECTION 105 REPORT AND ORDER

On March 15, 1999, the Commission released a 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 Department of Justice/Federal Bureau of Investigation (the Department) appreciates the close attention that the Commission has given to the various concerns implicated by § 105, and believes that the SSI Order will be largely effective in furthering this provision's important objectives. However, the Department believes that in a few important respects, the SSI Order omits obligations that are essential to the mandate of § 105.

The Department believes that to ensure the full achievement of Congress's purposes in enacting § 105, the SSI Order must be amended to include: (i) more effective personnel security obligations, including mechanisms for ensuring that law enforcement agencies will be able to

[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 (Sep. 23, 1999).

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conduct background checks on designated carrier employees who are heavily involved in electronic surveillance; (ii) a requirement that carriers generate an automated message that would enable law enforcement agencies to verify that unauthorized electronic surveillance is not occurring; (iii) a modification of the language establishing the timeliness with which security breaches must be reported; and (iv) a modification of the recordkeeping requirement pertaining to the commencement of interceptions. The Department suggests corresponding revisions to the rules accompanying the SSI Order in an appendix to this petition, and sets forth below its reasons for seeking reconsideration on these points.

1. Personnel Security Obligations

No effort to ensure systems security and integrity can be fully effective unless carriers and law enforcement agencies can have confidence in the trustworthiness of the people responsible for implementing interceptions. In the "Plain Old Telephone Service" environment, the people who conducted interceptions were law enforcement officials — individuals who were (and are) subject to extensive and rigorous background checks.[2] In the digital environment, however, employees of private telecommunications carriers increasingly must assist the law enforcement entities that have the legal authority (18 U.S.C. § 2518) to conduct electronic surveillance. In this new environment,

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[2] Candidates to become agents of the Federal Bureau of Investigation must undergo a background check that includes (i) a polygraph test, (ii) a drug test, (iii) a credit check, (iv) a criminal records check, and (v) interviews with the candidate's references — who must include all of the candidate's previous employers, the management of places of residence occupied by the candidate during the prior ten years, three unrelated people who have known the candidate for over five years, three unrelated people who have known the candidate within the prior five years, the candidate's neighbors and friends, and administrators at schools attended by the candidate. This check is updated every five years. Other federal agencies that conduct electronic surveillance, as well as State and local law enforcement agencies, also conduct background checks upon candidates for employment. While these tests vary, they generally include at least a credit check and a criminal records check.

careful oversight is essential to § 105's purpose of ensuring that interceptions are activated "only in accordance with a court order or other lawful authorization" and only by individuals who are "acting in accordance with regulations prescribed by the Commission." 47 U.S.C. § 1004. Without effective oversight, there is a great danger that a carrier employee who is regularly involved in sensitive electronic surveillance activities might conduct unauthorized interceptions, assist others in doing so, or make improper disclosures of information pertaining to investigative activities. Obviously, any of these actions would infringe severely upon the privacy and security interests that Congress enacted § 105 to protect.

Because it is crucial to the purposes of § 105 to have some mechanism for verifying the trustworthiness of carrier employees regularly involved in implementing electronic surveillance, the Department asked the Commission to include in its implementing regulations provisions that would ensure that appropriate background checks are conducted on these employees. See FBI Dec. 12, 1997 Comments ("FBI Comments") 19. Notably, multiple commenters, including an industry

[redacted]

Comments 3 ("federal and state law should authorize a carrier [to] take action to discharge its ... to furnish personal identifying information about designated employees to law enforcement ... t of conducting a background check"); PCIA Comments 12 ("it is important that carriers be ... he criminal records of their security personnel"); PCIA Reply Comments 13 ("the Commission ... e its self-certification regime by permitting carriers to check the criminal records of their ... nnel").

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The Department also requested regulations that would require carriers to designate their employees authorized to conduct electronic surveillance and require these employees to sign appropriate non-disclosure agreements. See FBI Comments 24-25. Again, numerous commenters

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