

§ 64.2100 Purpose.

Pursuant to the Communications Assistance for Law Enforcement Act, Public Law 103-414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.), this subpart contains rules that require a telecommunications carrier to ensure that any interception of communications or access to call-identifying information effected within its switching premises can be activated only in accordance with appropriate legal authorization, appropriate carrier authorization, and with the affirmative intervention of an individual officer or employee of the carrier acting in accordance with regulations prescribed by the Commission.

§ 64.2101 Scope.

The definitions included in this subchapter shall be used solely for the purpose of implementing CALEA requirements.

§ 64.2102 Definitions.

(a) *Appropriate legal authorization.* The term *appropriate legal authorization* means:

(1) A court order signed by a judge or magistrate authorizing or approving interception of wire or electronic communications; or

(2) Other authorization, pursuant to 18 U.S.C. 2518(7), or any other relevant federal or state statute.

(b) *Appropriate carrier authorization.* The term *appropriate carrier authorization* means the policies and procedures adopted by telecommunications carriers to supervise and control officers and employees authorized to assist law enforcement in conducting any interception of communications or access to call-identifying information.

(c) *Appropriate authorization.* The term *appropriate authorization* means both appropriate legal authorization and appropriate carrier authorization.

§ 64.2103 Policies and procedures for employee supervision and control.

A telecommunications carrier shall:

(a) Appoint a senior officer or employee responsible for ensuring that any interception of communications or access to call-identifying information effected within its switching premises can be activated only in accordance

with a court order or other lawful authorization and with the affirmative intervention of an individual officer or employee of the carrier.

(b) Establish policies and procedures to implement paragraph (a) of this section, to include:

(1) A statement that carrier personnel must receive appropriate legal authorization and appropriate carrier authorization before enabling law enforcement officials and carrier personnel to implement the interception of communications or access to call-identifying information;

(2) An interpretation of the phrase “appropriate authorization” that encompasses the definitions of appropriate legal authorization and appropriate carrier authorization, as used in paragraph (b)(1) of this section;

(3) A detailed description of how long it will maintain its records of each interception of communications or access to call-identifying information pursuant to § 64.2104;

(4) In a separate appendix to the policies and procedures document:

(i) The name and a description of the job function of the senior officer or employee appointed pursuant to paragraph (a) of this section; and

(ii) Information necessary for law enforcement agencies to contact the senior officer or employee appointed pursuant to paragraph (a) of this section or other CALEA points of contact on a seven days a week, 24 hours a day basis.

(c) Report to the affected law enforcement agencies, within a reasonable time upon discovery:

(1) Any act of compromise of a lawful interception of communications or access to call-identifying information to unauthorized persons or entities; and

(2) Any act of unlawful electronic surveillance that occurred on its premises.

[66 FR 22448, May 4, 2001]

§ 64.2104 Maintaining secure and accurate records.

(a) A telecommunications carrier shall maintain a secure and accurate record of each interception of communications or access to call-identifying information, made with or without appropriate authorization, in the form of single certification.

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(1) This certification must include, at a minimum, the following information:

(i) The telephone number(s) and/or circuit identification numbers involved;

(ii) The start date and time that the carrier enables the interception of communications or access to call identifying information;

(iii) The identity of the law enforcement officer presenting the authorization;

(iv) The name of the person signing the appropriate legal authorization;

(v) The type of interception of communications or access to call-identifying information (e.g., pen register, trap and trace, Title III, FISA); and

(vi) The name of the telecommunications carriers' personnel who is responsible for overseeing the interception of communication or access to call-identifying information and who is acting in accordance with the carriers' policies established under § 64.2103.

(2) This certification must be signed by the individual who is responsible for overseeing the interception of communications or access to call-identifying information and who is acting in accordance with the telecommunications carrier's policies established under § 64.2103. This individual will, by his/her signature, certify that the record is complete and accurate.

(3) This certification must be compiled either contemporaneously with, or within a reasonable period of time after the initiation of the interception of the communications or access to call-identifying information.

(4) A telecommunications carrier may satisfy the obligations of paragraph (a) of this section by requiring the individual who is responsible for overseeing the interception of communication or access to call-identifying information and who is acting in accordance with the carriers' policies established under § 64.2103 to sign the certification and append the appropriate legal authorization and any extensions that have been granted. This form of certification must at a minimum include all of the information listed in paragraph (a) of this section.

(b) A telecommunications carrier shall maintain the secure and accurate records set forth in paragraph (a) for a

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reasonable period of time as determined by the carrier.

(c) It is the telecommunications carrier's responsibility to ensure its records are complete and accurate.

(d) Violation of this rule is subject to the penalties of § 64.2106.

[64 FR 51469, Sept. 23, 1999, as amended at 64 FR 52245, Sept. 28, 1999; 66 FR 22448, May 4, 2001]

§ 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 subchapter. 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.

(b) The Commission shall review each telecommunications carrier's policies and procedures to determine whether they comply with the requirements of § 64.2103 and § 64.2104.

(1) If, upon review, the Commission determines that a telecommunications carrier's policies and procedures do not comply with the requirements established under § 64.2103 and § 64.2104, the telecommunications carrier shall modify its policies and procedures in accordance with an order released by the Commission.

(2) The Commission shall review and order modification of a telecommunications carrier's policies and procedures as may be necessary to insure compliance by telecommunications carriers with the requirements of the regulations prescribed under § 64.2103 and § 64.2104.

§ 64.2106 Penalties.

In the event of a telecommunications carrier's violation of § 64.2103 or § 64.2104 of this subchapter, the Commission shall enforce the penalties articulated in 47 U.S.C. 503(b) of the Communications Act of 1934 and 47 CFR 1.8.