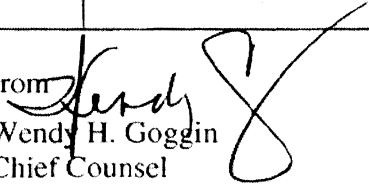


# Memorandum



Subject	Date
General Principles for Payment of Records Requested via Administrative Subpoenas	AUG 4 2010

To  
Special Agents in Charge  
Administrative Officers  
Division Counsel

From   
Wendy H. Goggin  
Chief Counsel

We continue to receive inquiries that indicate there may be some confusion about when payment must be made for records obtained by administrative subpoena. This memorandum summarizes the basic payment principles. Title 21 U.S.C. § 876 authorizes the use of administrative subpoenas to obtain information relating to Title 21 investigations. DEA is under no obligation to pay for information provided in response to its issuance of an administrative subpoena unless a separate Federal statute or regulation specifically states that reimbursement is required.

Upon issuance of a DEA administrative subpoena, the subpoena's recipient may send to DEA an invoice seeking reimbursement for both the information that the subpoena seeks and any related services. On most occasions the Division Administrative Officer, or his designee, or the Special Operations Division,<sup>1</sup> if applicable, can determine whether payment is authorized. In instances where it is unclear whether payment should be made, clarification should be sought from your Division Counsel or the Office of Chief Counsel, Domestic Criminal Law Section (CCM).

## I. OBLIGATION TO PAY

The following sets forth DEA's obligation to pay for information received in response to an administrative subpoena.

- A. DEA is not required to pay for the following:
  - 1. Telephone Company Invoices
    - a. Subscriber information;
    - b. Telephone number services;
    - c. ESN for cell phones;
    - d. MIN for cell phones;
    - e. IMEI for cell phones;

<sup>1</sup> Effective July 12, 2010, the Special Operations Division (SOD) began centralized billing for MetroPCS. Consistent with the guidance SOD issued on July 12, 2010, all MetroPCS invoices should be forwarded to SOD for handling.

- f. IMSI for cell phones;
- g. Connection records for cell phones;
- h. Outgoing long distance records for hard lines;
- i. Toll information for cell phones; and
- j. Company response that no records exist.

2. Voice Over Internet Provider (VoIP) Invoices

- a. Subscriber information (name, address, telephone number);
- b. Email address;
- c. IP address;
- d. Media Access Control (MAC) address;
- e. E911 address;
- f. Service and account information (types of services utilized, billing addresses provided);
- g. Call detail records (including session times and IP addresses associated with those call detail records); and
- h. Company response that no records exist.

3. Financial Institution Invoices

- a. Name information;
- b. Address of account holder;
- c. Account numbers; and
- d. Type of accounts

B. DEA is required to pay for the following:

1. Telephone Company Invoices

- a. Incoming/outgoing **local** calls to/from hard line telephones;
- b. Incoming long distance calls to hard line telephones;
- c. Special services (Examples include: expedited responses; special delivery format requests; special media requests; special delivery method requests);
- d. Data base searches (Examples include: automatic message accounting [AMA] searches; "dialed digit searches" also called "calls to destination searches" also called "terminating number searches");
- e. Request for means or source of payment.<sup>2</sup>
- f. A court has determined that the search was unusually voluminous or burdensome or the records received in response to the subpoena consist of 100 or more pages of information (contact DC/CCM);

2. Internet Service Provider (ISP) Invoices:

- a. DEA pays ISPs for compliance with administrative subpoenas;
- b. DEA does **not pay** ISPs for subpoenas seeking voice over internet protocol services (VoIP). For example, DEA would pay Comcast for records relating to a customer's internet service, but it would not pay Comcast for records relating to the customer's VoIP (i.e. phone) services.

3. Financial Institution Invoices

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<sup>2</sup> See United States Department of Justice Ad Hoc Technology Group, "Cost Reimbursement Guide," May 25, 2005.

- a. Anything other than names/address/account number/account type.
- b. Payment is made as follows:
  - (i) 25 cents per copy;
  - (ii) \$5.00 per diskette;
  - (iii) \$11 per hour for searches conducted by clerical staff;
  - (iv) \$17 per hour for searches conducted by managers.

## II. ADMINISTRATIVE SUBPOENA REVIEW PROCEDURES

The following is the recommended procedure for reviewing invoices.

### A. Field Procedures for Reviewing Invoices

1. Each office should determine whether it has an obligation to pay the invoice based upon the above guidance.
  - a. Determine what the office requested.
  - b. Determine what was provided.
  - c. DEA should pay only when:
    - (i) The information it requested was provided in the form requested; **and**
    - (ii) The provider is entitled to payment based upon the above guidance.
  - d. DEA should not pay all or the relevant part of an invoice:
    - (i) When the provider is not entitled to payment based upon the above guidance;
    - (ii) When DEA's administrative subpoena did not request the information provided; **or**
    - (iii) When DEA's administrative subpoena did not request special services that were provided (such as placing the information on a disk or providing an expedited response).
2. If payment is required, the relevant office should retain for the required period of time a copy of the subpoena, the invoice and evidence of the payment so that it may provide proof should the payment be challenged at a later date.
3. If payment is not required, the relevant office should notify the provider that payment is not required and, therefore, no payment will be made.

## III. HANDLING PAYMENT DISPUTES

The following is the recommended procedure when a provider disagrees with DEA's payment determination.

- A. If a provider requires an explanation why payment is not being made, in whole or in part, provide the following explanation<sup>3</sup>:

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<sup>3</sup> If Cricket requires an explanation why payment is not being made, in whole or in part, **do not reply**. Cricket is aware of DEA's legal position regarding payment, as outlined in this memorandum, and has requested that DEA not provide it with a separate response to each invoice. Your office should retain, for the required period of time, a copy of the subpoena, the invoice, and any notes or other writings reflecting any communications with Cricket concerning payment of its invoice.

**Title 21 U.S.C. § 876 authorizes the use of administrative subpoenas to obtain information relating to Title 21 investigations. This statute does not require that law enforcement reimburse costs associated with producing documents in compliance with an administrative subpoena. Accordingly, no payment is required unless a separate Federal statute or regulation specifically states that reimbursement is required. DEA is not aware of any authority that would require payment in this instance. Absent such authority, DEA is not obligated to pay for the information at issue.**

- B. The relevant office should retain for the required period of time a copy of the subpoena, the invoice, and any notes or other writings reflecting its communication with the provider, advising that DEA will not pay an invoice in whole or in part.

#### **IV. REQUESTING FURTHER LEGAL ASSISTANCE**

By following the above procedures, your office should treat the invoice as being satisfactorily resolved and referral of this matter to your Division Counsel or CCM is unnecessary. However, we recommend that you contact your Division Counsel or CCM as set forth below.

- A. Your Division Counsel or CCM should be contacted when the following circumstances exist:
  - 1. The provider seeks payment for information or services that are not described in this memorandum;
  - 2. The provider refuses to comply with an administrative subpoena until DEA pays the invoice;
  - 3. The provider refuses to provide timely compliance with the administrative subpoena;
  - 4. There are unique circumstances that require further legal assistance.
- B. If further legal assistance is required, the administrative subpoena, invoice and any other supporting materials should be forwarded to your Division Counsel or CCM. After reviewing the materials, your Division Counsel or CCM will advise whether payment should be made. If the determination is not to pay the invoice, your Division Counsel or CCM will notify the provider in writing of the reason(s) for non-payment. A copy of this notice will be provided to your office.

Attached hereto is a chart that summarizes the payment obligations outlined above. If you have further questions or concerns, please feel free to contact me or Senior Attorney Jane Erisman at 202-307-8030.

## Administrative Subpoena Payment Guide

<b>Telephone Company Invoices</b>		
Subscriber information	Do Not Pay	
Telephone number services	Do Not Pay	
ESN for cell phones	Do Not Pay	
MIN for cell phones	Do Not Pay	
IMEI for cell phones	Do Not Pay	
IMSI for cell phones	Do Not Pay	
Connection records for cell phones	Do Not Pay	
Outgoing long distance records for hard lines	Do Not Pay	
Toll information for cell phones	Do Not Pay	
Company response that no records exist	Do Not Pay	
Incoming/outgoing <b>local</b> calls to/from hard line telephones		Pay*
Incoming long distance calls to hard line telephones		Pay*
Special services (Examples include: expedited responses; special delivery format requests; special media requests; special delivery method requests)		Pay*
Data base searches (Examples include: automatic message accounting [AMA] searches; "dialed digit searches" also called "calls to destination searches" also called "terminating number searches")		Pay*
Request for means or source of payment		Pay*
A court has determined that the search was unusually voluminous or burdensome or the records received in response to the subpoena consist of 100 or more pages of information.		Pay*
<b>Voice Over Internet Provider (VoIP) Invoices</b>		
Subscriber information (name, address, telephone number)	Do Not Pay	
Email address	Do Not Pay	
IP address	Do Not Pay	
Media Access Control (MAC) address	Do Not Pay	
E911 address	Do Not Pay	
Service and account information (types of services utilized, billing addresses provided)	Do Not Pay	
Call detail records (including session times and IP addresses associated with those call detail records)	Do Not Pay	
Company response that no records exist	Do Not Pay	
DEA pays ISPs for compliance with administrative subpoenas		Pay*
DEA does <b>not</b> pay ISPs for subpoenas seeking voice over internet protocol services (VoIP). For example, DEA would pay Comcast for records relating to a customer's internet service, but it would not pay Comcast for records relating to the customer's VoIP (i.e. phone) services	Do Not Pay	
<b>Financial Institution Invoices</b>		
Name information	Do Not Pay	
Address of account holder	Do Not Pay	
Account numbers	Do Not Pay	
Type of accounts	Do Not Pay	
Anything other than names, address, account number and account type		Pay**

\* Provider is entitled to reimbursement of reasonable costs incurred in searching for, assembling, reproducing, or otherwise providing the information requested.

\*\* Provider is entitled to payment as follows:

25 cents per copy;

\$5.00 per diskette;

\$11 per hour for searches conducted by clerical staff; and

\$17 per hour for searches conducted by managers.

# Memorandum



Subject

Administrative Subpoena Payment Guidelines: Rate Update  
for Documents Obtained under the Right to Financial Privacy  
Act (RFPA)

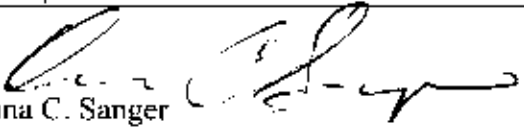
Date

September 7, 2010

To

Special Agents in Charge  
Administrative Officers  
Division Counsel

From

  
Donna C. Sanger  
Deputy Chief Counsel  
Operational Law

This updates the memorandum dated August 4, 2010, regarding the General Principles for Payment of Records Requested via Administrative Subpoenas. Effective January 1, 2010, the following reimbursement rates apply to the payment of invoices based upon administrative subpoenas issued for information under the Right to Financial Privacy Act.

- A. 25 cents per copy and microfiche frame;
- B. 50 cents per duplicate microfiche;
- C. actual cost of transmittal medium (for example: CD, flash storage device);
- D. reasonable transportation/delivery costs;
- E. \$22 per hour for searches conducted by clerical/technical staff;
- F. \$30 per hour for searches conducted by managers/computer support specialists.

An amended chart reflecting the updated payment amounts is attached. If you have further questions or concerns, please do not hesitate to contact me or Associate Chief Michelle Gutzmer, at 202-307-8030.

## Administrative Subpoena Payment Guide

<b>Telephone Company Invoices</b>		
Subscriber information	Do Not Pay	
Telephone number services	Do Not Pay	
ESN for cell phones	Do Not Pay	
MIN for cell phones	Do Not Pay	
IMEI for cell phones	Do Not Pay	
IMSI for cell phones	Do Not Pay	
Connection records for cell phones	Do Not Pay	
Outgoing long distance records for hard lines	Do Not Pay	
Toll information for cell phones	Do Not Pay	
Company response that no records exist	Do Not Pay	
Incoming/outgoing local calls to/from hard line telephones		Pay*
Incoming long distance calls to hard line telephones		Pay*
Special services (Examples include: expedited responses; special delivery format requests; special media requests; special delivery method requests)		Pay*
Data base searches (Examples include: automatic message accounting [AMA] searches; "dialed digit searches" also called "calls to destination searches" also called "terminating number searches")		Pay*
Request for means or source of payment		Pay*
A court has determined that the search was unusually voluminous or burdensome or the records received in response to the subpoena consist of 100 or more pages of information.		Pay*
<b>Voice Over Internet Provider (VoIP) Invoices</b>		
Subscriber information (name, address, telephone number)	Do Not Pay	
Email address	Do Not Pay	
IP address	Do Not Pay	
Media Access Control (MAC) address	Do Not Pay	
E911 address	Do Not Pay	
Service and account information (types of services utilized, billing addresses provided)	Do Not Pay	
Call detail records (including session times and IP addresses associated with those call detail records)	Do Not Pay	
Company response that no records exist	Do Not Pay	
DEA pays ISPs for compliance with administrative subpoenas		Pay*
DEA does <b>not</b> pay ISPs for subpoenas seeking voice over internet protocol services (VoIP). For example, DEA would pay Comcast for records relating to a customer's internet service, but it would not pay Comcast for records relating to the customer's VoIP (i.e. phone) services	Do Not Pay	
<b>Financial Institution Invoices</b>		
Name information	Do Not Pay	
Address of account holder	Do Not Pay	
Account numbers	Do Not Pay	
Type of accounts	Do Not Pay	
Anything other than names, address, account number and account type		Pay**

\* Provider is entitled to reimbursement of reasonable costs incurred in searching for, assembling, reproducing, or otherwise providing the information requested.

\*\* Effective January 1, 2010, provider is entitled to payment as follows:

25 cents per copy and microfiche frame; 50 cents per duplicate microfiche; actual cost of transmittal medium (for example: CD, flash storage device); reasonable transportation/delivery costs; \$22 per hour for searches conducted by clerical/technical staff; and

\$30 per hour for searches conducted by managers/computer support specialists.