

# MINNESOTA DEPARTMENT OF PUBLIC SAFETY



Alcohol  
and Gambling  
Enforcement

ARMER/911  
Program

Bureau of  
Criminal  
Apprehension

Driver  
and Vehicle  
Services

Homeland  
Security and  
Emergency  
Management

Minnesota  
State Patrol

Office of  
Communications

Office of  
Justice Programs

Office of  
Traffic Safety

State Fire  
Marshal and  
Pipeline Safety



## Bureau of Criminal Apprehension

1430 Maryland Avenue East • Saint Paul, Minnesota 55106  
Phone: 651.793.7000 • Fax: 651.793.7001 • TTY: 651.282.6555  
www.dps.state.mn.us

May 28<sup>th</sup>, 2015

Mike Katz-Lacabe  
46 Estabrook Street  
San Leandro, CA 94577

### *Re: Data Practices Request*

Dear Mr. Katz-Lacabe,

The Bureau of Criminal Apprehension (BCA) has received your data practices request and this letter serves to inform you that we are fulfilling your request at this time.

Enclosed you will find the non-disclosure agreement, contract, and the requested notifications maintained by the BCA.

The BCA does not maintain an MOU with other agencies in regard to BCA operated equipment. The BCA is not aware of any letter from the FBI to Harris acknowledging a non-disclosure agreement and granting Harris approval to sell hardware and/or software to the BCA.

It should be noted that portions of these documents have been redacted pursuant to Minnesota Statute 13.82, subd. 25 as they would reveal deliberative processes or investigative techniques of this agency that would disclose the existence of and the capabilities provided by cellular exploitation equipment to the public. Disclosure of the redacted portions of the documents would reveal sensitive technological capabilities possessed by the law enforcement community and may allow individuals who are the subject of investigation to employ countermeasures to avoid detection by law enforcement.

This would not only endanger the lives and physical safety of law enforcement officers and other individuals, but also adversely impact criminal investigations. Disclosure of this information could result in the BCA's inability to protect the public from terrorism and other criminal activity because, do public disclosures, this technology has been rendered essentially useless for future investigations. In order to ensure that such cellular exploitation equipment

continues to be available for use by the law enforcement community in an effective manner, the equipment/technology and any information related to its functions, operations and use are a protected from potential compromise by precluding disclosure.

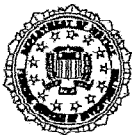
Please be advised that the State of Minnesota is allowed to charge for certain expenses related to complying with this data request. The BCA will be waiving any fees associated with compiling this request at this time.

If you have additional questions, requests, or concerns please contact me at any time.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey A. Hansen", with a long horizontal flourish extending to the right.

Jeffrey A. Hansen  
Special Agent in Charge



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535-0001

June 5, 2012

David Bjerga  
Assistant Superintendent  
Minnesota Bureau of Criminal Apprehension  
1430 Maryland Avenue East  
St. Paul, MN 55106

Re: Acquisition of Wireless Collection Equipment/Technology and Non-Disclosure Obligations

*LAW ENFORCEMENT SENSITIVE (LES): The information in this document is the property of the Federal Bureau of Investigation (FBI) and may be distributed within the Federal Government (and its contractors), U.S. intelligence, law enforcement, public safety or protection officials and individuals with a need to know. Distribution beyond these entities without FBI Operational Technology Division authorization is prohibited. Precautions should be taken to ensure this information is stored and/or destroyed in a manner that precludes unauthorized access. Information bearing the LES caveat may not be used in legal proceedings without first receiving authorization from the originating agency. Recipients are prohibited from subsequently posting the information marked LES on a website on an unclassified network.*

Dear Assistant Superintendent Bjerga:

We have been advised by Harris Corporation of the Minnesota Bureau of Criminal Apprehension's request for acquisition of certain wireless collection equipment/technology manufactured by Harris Corporation. Consistent with the conditions on the equipment authorization granted to Harris Corporation by the Federal Communications Commission (FCC), state and local law enforcement agencies must coordinate with the Federal Bureau of Investigation (FBI) to complete this non-disclosure agreement prior to the acquisition and use of the equipment/technology authorized by the FCC authorization.

As you are aware, law enforcement agencies increasingly rely on wireless collection equipment/technology to conduct lawfully-authorized electronic surveillance. Disclosing the existence of and the capabilities provided by such equipment/technology to the public would reveal sensitive technological capabilities possessed by the law enforcement community and may allow individuals who are the subject of investigation wherein this equipment/technology is used to employ countermeasures to avoid detection by law enforcement. This would not only potentially endanger the lives and physical safety of law enforcement officers and other individuals, but also adversely impact criminal and national security investigations. That is,

disclosure of this information could result in the FBI's inability to protect the public from terrorism and other criminal activity because, through public disclosures, this technology has been rendered essentially useless for future investigations. In order to ensure that such wireless collection equipment/technology continues to be available for use by the law enforcement community, the equipment/technology and any information related to its functions, operation, and use shall be protected from potential compromise by precluding disclosure of this information to the public in any manner including but not limited to: in press releases, in court documents, during judicial hearings, or during other public forums or proceedings. Accordingly, the Minnesota Bureau of Criminal Apprehension agrees to the following conditions in connection with its acquisition and use of the Harris Corporation equipment/technology:

1. By entering into this agreement, the Minnesota Bureau of Criminal Apprehension affirms that it has statutory authority to lawfully employ this technology and will do so only in support of public safety operations or criminal investigations.
2. The Minnesota Bureau of Criminal Apprehension assumes responsibility for operating the equipment/technology in accordance with Federal law and regulation and accepts sole liability for any violations thereof, irrespective of the Federal Bureau of Investigation approval, if any, for the sale of the equipment/technology.
3. The Minnesota Bureau of Criminal Apprehension will ensure that operators of the equipment have met the operator training standards identified by the FBI and are certified to conduct operations.
4. The Minnesota Bureau of Criminal Apprehension will coordinate with the FBI in advance of its use of the wireless collection equipment/technology to ensure de-confliction of respective missions.
5. The Minnesota Bureau of Criminal Apprehension will not distribute, disseminate, or otherwise disclose any information concerning the wireless collection equipment/technology or any software, operating manuals, or related technical documentation (including its technical/engineering description(s) and capabilities) to the public, including to any non-law enforcement individuals or agencies.
6. The Minnesota Bureau of Criminal Apprehension will not distribute, disseminate, or otherwise disclose any information concerning the wireless collection equipment/technology or any software, operating manuals, or related technical documentation (including its technical/engineering description(s) and capabilities) provided to it to any other law enforcement or government agency without the prior written approval of the FBI. Prior to any approved distribution, dissemination, or comparable disclosure of any information concerning the wireless collection equipment/technology or any software, manuals, or related technical documentation related to such equipment/technology, all materials shall be marked "Law Enforcement Sensitive, For Official Use Only - Not to be Disclosed Outside of the Minnesota Bureau of Criminal Apprehension."

7. The Minnesota Bureau of Criminal Apprehension shall not, in any civil or criminal proceeding, use or provide any information concerning the Harris Corporation wireless collection equipment/technology, its associated software, operating manuals, and any related documentation (including its technical/engineering description(s) and capabilities) beyond the evidentiary results obtained through the use of the equipment/technology including, but not limited to, during pre-trial matters, in search warrants and related affidavits, in discovery, in response to court ordered disclosure, in other affidavits, in grand jury hearings, in the State's case-in-chief, rebuttal, or on appeal, or in testimony in any phase of civil or criminal trial, without the prior written approval of the FBI. If the Minnesota Bureau of Criminal Apprehension learns that a District Attorney, prosecutor, or a court is considering or intends to use or provide any information concerning the Harris Corporation wireless collection equipment/technology, its associated software, operating manuals, and any related documentation (including its technical/engineering description(s) and capabilities) beyond the evidentiary results obtained through the use of the equipment/technology in a manner that will cause law enforcement sensitive information relating to the technology to be made known to the public, the Minnesota Bureau of Criminal Apprehension will immediately notify the FBI in order to allow sufficient time for the FBI to intervene to protect the equipment/technology and information from disclosure and potential compromise.

Notification shall be directed to the attention of:

Assistant Director  
Operational Technology Division  
Federal Bureau of Investigation  
Engineering Research Facility  
Building 27958A, Pod A  
Quantico, Virginia 22135  
(703) 985-6100

and

Unit Chief  
Tracking Technology Unit  
Operational Technology Division  
Federal Bureau of Investigation  
Engineering Research Facility  
Building 27958A, Pod B  
Quantico, Virginia 22135  
(703) 985-6840

8. In addition, the Minnesota Bureau of Criminal Apprehension will, at the request of the FBI, seek dismissal of the case in lieu of using or providing, or allowing others to use or provide, any information concerning the Harris Corporation wireless collection equipment/technology, its associated software, operating manuals, and any related documentation (beyond the evidentiary results obtained through the use of the equipment/technology), if using or providing such information would potentially or actually compromise the equipment/technology. This point supposes that the agency has some control or influence over the prosecutorial process. Where such is not the case, or is limited so as to be inconsequential, it is the FBI's expectation that the law enforcement

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agency identify the applicable prosecuting agency, or agencies, for inclusion in this agreement.

9. A copy of any court order in any proceeding in which the Minnesota Bureau of Criminal Apprehension is a party directing disclosure of information concerning the Harris Corporation equipment/technology and any associated software, operating manuals, or related documentation (including its technical/engineering description(s) and capabilities) will immediately be provided to the FBI in order to allow sufficient time for the FBI to intervene to protect the equipment/technology and information from disclosure and potential compromise. Any such court orders shall be directed to the attention of:

Assistant Director  
Operational Technology Division  
Federal Bureau of Investigation  
Engineering Research Facility  
Building 27958A, Pod A  
Quantico, Virginia 22135  
(703) 985-6100

and

Unit Chief  
Tracking Technology Unit  
Operational Technology Division  
Federal Bureau of Investigation  
Engineering Research Facility  
Building 27958A, Pod B  
Quantico, Virginia 22135  
(703) 985-6840

10. The Minnesota Bureau of Criminal Apprehension will not publicize its acquisition or use of the Harris Corporation equipment/technology or any of the capabilities afforded by such equipment/technology to the public, other law enforcement agencies, or other government agencies, including, but not limited to, in any news or press releases, interviews, or direct or indirect statements to the media.
11. In the event that the Minnesota Bureau of Criminal Apprehension receives a request pursuant to the Freedom of Information Act (5 U.S.C. § 552) or an equivalent state or local law, the civil or criminal discovery process, or other judicial, legislative, or administrative process, to disclose information concerning the Harris Corporation wireless collection equipment/technology, its associated software, operating manuals, and any related documentation (including its technical/engineering description(s) and capabilities), the Minnesota Bureau of Criminal Apprehension will immediately notify the FBI of any such request telephonically and in writing in order to allow sufficient time for the FBI to seek to prevent disclosure through appropriate channels. Notification shall be directed to the attention of:

Assistant Director  
Operational Technology Division  
Federal Bureau of Investigation  
Engineering Research Facility  
Building 27958A, Pod A  
Quantico, Virginia 22135  
(703) 985-6100

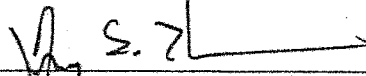
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and

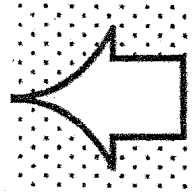
Unit Chief  
Tracking Technology Unit  
Operational Technology Division  
Federal Bureau of Investigation  
Engineering Research Facility  
Building 27958A, Pod B  
Quantico, Virginia 22135  
(703) 985-6840

The Minnesota Bureau of Criminal Apprehension's acceptance of the above conditions shall be evidenced by the signatures below of an authorized representative and wireless collection equipment operators of the Minnesota Bureau of Criminal Apprehension.

Sincerely,

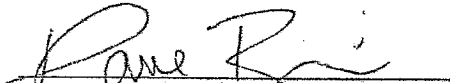


Amy S. Hess  
Assistant Director  
Operational Technology Division  
Federal Bureau of Investigation



HERE

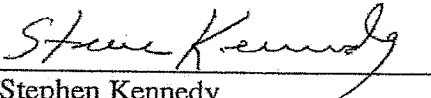
Acknowledged and agreed to this 12<sup>th</sup> day of June, 2012.



David Bjerga  
Assistant Superintendent  
Minnesota Bureau of Criminal Apprehension  
St. Paul, MN



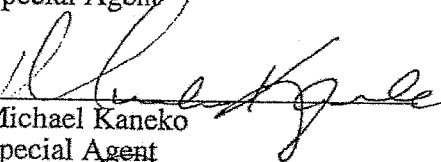
William O'Donnell  
Senior Special Agent



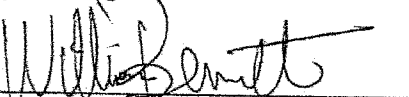
Stephen Kennedy  
Special Agent



Lance Lehman  
Special Agent



Michael Kaneko  
Special Agent



William Bennett  
Special Agent



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U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535-0001

June 5, 2012

David Bjerga  
Assistant Superintendent  
Minnesota Bureau of Criminal Apprehension  
1430 Maryland Avenue East  
St. Paul, MN 55106

Re: Acquisition of Wireless Collection Equipment/Technology and Non-Disclosure Obligations

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Dear Assistant Superintendent Bjerga:

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As you are aware, law enforcement agencies increasingly rely on wireless collection equipment/technology to conduct lawfully-authorized electronic surveillance. Disclosing the existence of and the capabilities provided by such equipment/technology to the public would reveal sensitive technological capabilities possessed by the law enforcement community and may allow individuals who are the subject of investigation wherein this equipment/technology is used to employ countermeasures to avoid detection by law enforcement. This would not only potentially endanger the lives and physical safety of law enforcement officers and other individuals, but also adversely impact criminal and national security investigations. That is,

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Page 1 of 6

disclosure of this information could result in the FBI's inability to protect the public from terrorism and other criminal activity because, through public disclosures, this technology has been rendered essentially useless for future investigations. In order to ensure that such wireless collection equipment/technology continues to be available for use by the law enforcement community, the equipment/technology and any information related to its functions, operation, and use shall be protected from potential compromise by precluding disclosure of this information to the public in any manner including but not limited to: [REDACTED]

[REDACTED]. Accordingly, the Minnesota Bureau of Criminal Apprehension agrees to the following conditions in connection with its acquisition and use of the Harris Corporation equipment/technology:

1. By entering into this agreement, the Minnesota Bureau of Criminal Apprehension affirms that it has statutory authority to lawfully employ this technology and will do so only in support of public safety operations or criminal investigations.
2. The Minnesota Bureau of Criminal Apprehension assumes responsibility for operating the equipment/technology in accordance with Federal law and regulation and accepts sole liability for any violations thereof, irrespective of the Federal Bureau of Investigation approval, if any, [REDACTED]
3. The Minnesota Bureau of Criminal Apprehension will ensure that operators of the equipment have [REDACTED]
4. The Minnesota Bureau of Criminal Apprehension will [REDACTED] to ensure de-confliction of respective missions.
5. The Minnesota Bureau of Criminal Apprehension will not distribute, disseminate, or otherwise disclose any information concerning the [REDACTED] to the public, including to any non-law enforcement individuals or agencies.
6. The Minnesota Bureau of Criminal Apprehension will not distribute, disseminate, or otherwise disclose any information concerning [REDACTED] provided to it to any other law enforcement or government agency without the prior written approval of the FBI. Prior to any approved distribution, dissemination, or comparable disclosure of any information concerning [REDACTED] related to such equipment/technology, all materials shall be marked "Law Enforcement Sensitive, For Official Use Only - Not to be Disclosed Outside of the Minnesota Bureau of Criminal Apprehension."

7. The Minnesota Bureau of Criminal Apprehension shall not [REDACTED]

[REDACTED]

Notification shall be directed to the attention of:

[REDACTED]  
Federal Bureau of Investigation  
[REDACTED]

and

[REDACTED]  
Federal Bureau of Investigation  
[REDACTED]

8. In addition, the Minnesota Bureau of Criminal Apprehension will, [REDACTED]

[REDACTED]

- [REDACTED]
9. A copy of any court order in any proceeding in which the Minnesota Bureau of Criminal Apprehension is a party directing disclosure of information concerning the Harris Corporation [REDACTED]

will immediately be provided to the FBI in order to allow sufficient time for the FBI to intervene to protect the equipment/technology and information from disclosure and potential compromise. Any such court orders shall be directed to the attention of:

[REDACTED]  
Federal Bureau of Investigation  
[REDACTED]

and

[REDACTED]  
Federal Bureau of Investigation  
[REDACTED]

10. The Minnesota Bureau of Criminal Apprehension will not publicize its acquisition or use of the Harris Corporation equipment/technology or any of the capabilities afforded by such equipment/technology to the public, other law enforcement agencies, or other government agencies, including, but not limited to, [REDACTED]

11. In the event that the Minnesota Bureau of Criminal Apprehension receives a request pursuant to the Freedom of Information Act (5 U.S.C. § 552) or an equivalent state or local law, the civil or criminal discovery process, or other judicial, legislative, or administrative process, to disclose information concerning the Harris Corporation [REDACTED]

[REDACTED] the Minnesota Bureau of Criminal Apprehension will immediately notify the FBI of any such request telephonically and in writing in order to allow sufficient time for the FBI to seek to prevent disclosure through appropriate channels. Notification shall be directed to the attention of:

[REDACTED]  
Federal Bureau of Investigation  
[REDACTED]

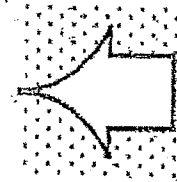
and

[REDACTED]  
Federal Bureau of Investigation  
[REDACTED]

The Minnesota Bureau of Criminal Apprehension's acceptance of the above conditions shall be evidenced by the signatures below of an authorized representative and wireless collection equipment operators of the Minnesota Bureau of Criminal Apprehension.

Sincerely,

[Redacted Signature]  
Assistant Director  
Federal Bureau of Investigation



HERE

Acknowledged and agreed to this 10<sup>th</sup> day of June, 2012.

David Bjerga  
David Bjerga  
Assistant Superintendent  
Minnesota Bureau of Criminal Apprehension  
St. Paul, MN

[Redacted Signature]  
[Redacted Signature]  
[Redacted Signature]  
[Redacted Signature]  
[Redacted Signature]  
[Redacted Signature]  
[Redacted Signature]  
[Redacted Signature]

**HARRIS GOVERNMENT COMMUNICATIONS SYSTEMS  
TERMS AND CONDITIONS OF LEASE FOR DOMESTIC  
WIRELESS EQUIPMENT, SOFTWARE, AND SERVICES**

THIS LEASE ("Lease") is made and effective on 8/18/19 by and between Harris Government Communications Systems ("Harris" or "Lessor") and the Minnesota Bureau of Criminal Apprehension ("Company Name" or "Lessee")

1. Definitions: In addition to the terms defined elsewhere, the following terms used herein have the following meanings:

- a. "Equipment" includes, but is not limited to, hardware (including components), software, firmware and services.
- b. "Schedules" are attachments to the Agreement.

2. Schedules. The agreement includes the following schedules:

- a. "Schedule A" - the itemized listing of all equipment delivered with the Lease Agreement.
- b. "Schedule B" - the term, payment schedule, and pricing for the Lease Agreement.
- c. "Schedule C" - special provisions (if necessary) to address circumstances outside of the standard Terms and Conditions for Lease.

3. Restricted Use. All Equipment sold by Harris provides the Lessee with a capability that is restricted and otherwise controlled under applicable sections of United States Code Title 18: Use of Equipment is strictly governed by applicable federal, state and local law associated with electronic surveillance. The Lessee's obligation to protect Equipment includes, but not limited to, the names of specific products, pricing, technical and performance data. The Lessee shall not disclose, distribute, or disseminate any information regarding Lessee's lease or use of Harris Equipment to the public in any manner including but not limited to: in press releases, in court documents and/or proceedings, Internet, or during other public forums or proceedings.

The Lessee warrants that it has legal authority to lawfully employ the Equipment and will do so only in such a manner and for such purposes. The Lessee also warrants that it has obtained the requisite coordination for the acquisition and use of the Equipment with the appropriate U.S. Government agencies. Harris assumes no liability for any use, misuse or improper use of the Equipment and makes no representations as to Equipment suitability for any specific application. Lessee shall not transfer, sell or assign the Equipment and/or Software without the prior written consent of Harris.

- a. Release of Information. The Lessee shall not in any civil or criminal proceeding, use or provide any information concerning Harris Equipment beyond the evidentiary results obtained through the use of Equipment without the prior written consent of Harris. The Lessee shall notify Harris if it receives a request pursuant to the Freedom of Information Act (a U.S.C. section 552) or an equivalent state or local law, the civil or criminal discovery process, or other judicial, legislative, or administrative process to disclose information regarding Equipment and shall not release or otherwise provide any information concerning the Equipment without Harris' prior written consent.

- b. Loss of Equipment. In the event that any of the Equipment leased under this Lease is lost or stolen, the Lessee shall contact the Harris Help Desk at 1-800-356-5297 within 3 business days. Lessee shall provide the Part Number and Serial Number of the Equipment and a summary of facts surrounding the incident. Failure to comply with this requirement may result in Harris terminating this Lease for default or exercising other rights under applicable law.

4. Acceptance. This Lease is effective as of the date specified above. No modification to this Lease shall be made unless agreed to in writing by both Lessor and Lessee.

5. Taxes. In addition to the payments under this Lease, Lessee agrees to pay all taxes, fees, and filing costs related to the use of the Equipment, even if billed after the end of the term of this Lease or any Schedules. If Lessor is required to file and pay any tax, fee or levy due to Lessee's use or lease of Equipment, Lessee agrees to reimburse Lessor immediately. Lessor will notify Lessee of any tax or similar responsibility that Lessee is required to file and pay directly to the appropriate collector.

6. Shipping and Delivery. Unless otherwise stated in the Lease, the Lease price in Schedule B includes freight charges.

7. Title and Risk of Loss. The Equipment is, and shall at all times be and remain, the sole and exclusive property of Lessor, and the Lessee shall have no right, title or interest therein or thereto except as expressly set forth in this Lease. Risk of loss for Equipment leased under the Lease will pass to Lessee upon receipt of Equipment.

8. Schedules: Delivery and Acceptance

- a. Each Schedule incorporated by this Lease shall be governed by the terms and conditions of this Lease, as well as the individual terms and conditions set forth in such individual schedule.
- b. The termination of this Lease will not affect any Schedule executed prior to the effective date of such termination.
- c. The Parties may modify the Schedules as necessary to, for instance, add equipment or to upgrade equipment.
- d. Unless specifically rejected upon delivery, Equipment shall be deemed accepted by Lessee.

9. Payment Terms. Scheduled lease payments (as specified in the Schedule B) will begin thirty (30) days after execution of this Agreement. Payments will be due in arrears on the same day of each subsequent month, unless otherwise specified on the applicable Schedule. Lessee also agrees that THIS IS AN UNCONDITIONAL, NON-CANCELABLE LEASE FOR THE MINIMUM TERM INDICATED ON SCHEDULE B OF THIS LEASE. All payments to Lessor are net and are not subject to set off or reduction by Lessee.

**HARRIS GOVERNMENT COMMUNICATIONS SYSTEMS  
TERMS AND CONDITIONS OF LEASE FOR DOMESTIC  
WIRELESS EQUIPMENT, SOFTWARE, AND SERVICES**

10. Lease Buyout Option. Lessee has the right to request a Lease Buyout quote at any point during the Lease term. Harris will provide the Lease Buyout quote and Lessee has the option to exercise this quote to take full ownership and title to the equipment after the purchase. Such purchase shall be accomplished by a separate agreement signed by the Parties.

11. Annual Maintenance Agreement. Lessor provides maintenance for the Leased equipment for the term of the Lease and the cost of such is included in the lease payments. Maintenance includes:

a. Help desk support throughout the lease term for Equipment. Technical support is available Monday through Friday during normal business hours (Eastern Time) excluding holidays via the help desk support center at [REDACTED]

b. Lessor will provide notification of and free access to Software upgrades when available.

**12. Limited Warranty.**

a. Lessor warrants the Equipment leased hereunder as of the date of delivery to Lessee to be substantially free from defects in material and workmanship. Lessor's liability under this Limited Warranty will commence on the date of Acceptance of the individual item of Equipment and will terminate upon end of Lease period. Lessee shall provide written notice of any defects to Lessor upon discovery of any warranty issue. Lessee's written notice of the alleged defect must include a description of the defect with detailed information reasonably sufficient for Lessor to identify the defect and determine its probable cause. Equipment that Lessee claims to be defective must be available to Lessor for inspection and testing. Lessor, upon confirmation of the defect as identified by Lessee will promptly correct such defects by repair or replacement, at its option, without charge. Defective articles shall not be returned to Lessor without the prior written authorization. Call 1-800-958-5297 to obtain a Return Material Authorization (RMA) number. Specifically excluded from the terms of this Limited Warranty are any defects which occur as a result of:

- I. Acts of God, such as floods, hurricanes, tornados, etc.
- II. Physical impact, crash or foreign object damage, improper installation, use, maintenance, storage, modification or alteration by the Lessee, any Lessee subcontractor or Lessee's customer, whether within or without Lessee's possession and control.
- III. Lessee's (or its customer's) operation of the leased Equipment with any accessory equipment or part not specifically approved by Lessor, even if Lessee furnishes clear and convincing evidence that such accessory equipment or part was not a cause of the defect.
- IV. Normal wear and tear. (Lessee recognizes that certain parts have a limited service life and will wear out through normal use).

b. Lessor shall not be liable to Lessee in any way for defects in or damages to items not provided by Lessor, even if the leased Equipment causes the claimed damage.

c. For purposes of this Limited Warranty, a "defect" is defined as a failure of any unit or component manufactured or supplied by Lessor.

d. CLAIMS UNDER THIS LIMITED WARRANTY ARE WAIVED UNLESS MADE WITHIN THE WARRANTY PERIOD.

e. LESSOR'S LIABILITY FOR BREACH OF THIS LIMITED WARRANTY IS EXPRESSLY LIMITED TO THE REPAIR, REPLACEMENT, OR REFUND OF AMOUNTS PAID UNDER THE LEASE OF SUCH DEFECTIVE EQUIPMENT. LESS A REASONABLE CHARGE FOR USE IN NO EVENT WILL LESSOR OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES BY REASON OF ANY BREACH OF WARRANTY OR DEFECT IN MATERIALS OR WORKMANSHIP.

f. THIS LIMITED WARRANTY CONSTITUTES LESSOR'S SOLE AND EXCLUSIVE LIABILITY HEREUNDER AND LESSEE'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE OR NON-CONFORMING EQUIPMENT, SERVICES. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, ANY IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OR CONDITION ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR CUSTOM OR TRADE USAGE. LESSEE AGREES THAT NO CIRCUMSTANCE CAUSING LESSEE EXCLUSIVE AND LIMITED REMEDIES TO FAIL IN THEIR ESSENTIAL PURPOSE WILL INCREASE OR EXTEND ANY LESSOR WARRANTY.

**13. Use of Lessor's Proprietary Information.**

a. Protection of Lessor Proprietary Information. Lessee shall use Lessor Proprietary Information only as necessary for Lessee's performance under the Lease. Lessee shall hold the Lessor Proprietary Information confidential and shall not disclose Lessor Proprietary Information to any third party, without Lessor's written permission. Requests for permission to disclose Lessor Proprietary Information shall identify the specific information to be released, the medium to be used, and the purpose for release. Lessee shall submit such a request to Lessor at least 30 days before the proposed date for release. Lessee shall return to Lessor, or destroy and certify as destroyed, all Lessor Proprietary Information upon completion of Lessee's performance under the Lease, Lessor's written request, or termination of the Lease, whichever is earliest.



**HARRIS GOVERNMENT COMMUNICATIONS SYSTEMS  
TERMS AND CONDITIONS OF LEASE FOR DOMESTIC  
WIRELESS EQUIPMENT, SOFTWARE, AND SERVICES**

b. **License Rights.** This Lease does not confer or grant, in any manner, any license or right under any patent, trademark, trade secret, maskwork, copyright or other intellectual property right held by Lessor, unless specifically set forth in the body of the Lease. Any intellectual property license or other authorization extended by express grant from Lessor to Lessee as a result of the Lease is limited by the necessities of Lessee's performance hereunder. Any such license shall terminate upon completion of Lessee's performance hereunder or termination of the Lease, whichever is earlier.

**14. Intellectual Property Rights and Licenses.**

a. **Consent and Funding with the Lease.** Lessor grants Lessee a limited, nontransferable (except as expressly provided herein), nonexclusive license to use the software (firmware, and associated documentation, as further described in 14.b) provided by Lessor and necessary to use the Equipment leased hereunder. Lessor is under no obligation to supply updates to any software provided hereunder except where Lessor has expressly agreed to do so in writing.

b. This license is limited to object code programs and related documentation only and does not apply to any of the corresponding source code or program listings.

c. Lessee acknowledges that Lessor (or its licensor) has valuable property rights in the software provided pursuant to this Lease, and that the software is and continues to be the sole and exclusive property of Lessor or its licensor. Lessee will obtain no rights, title or interests in or to the software except as expressly allowed herein. All rights, title and interest in patents, copyrights and trade secrets in relation to the software is and continues to be vested in Lessor or its licensor.

d. The software may be used only in conjunction with the Equipment leased hereunder. Lessee may not rent, lease, transfer, network, display, or distribute the software, nor may Lessee reverse engineer, disassemble, decompile, modify, alter, translate, or adapt the software or create any derivative thereof, except where expressly agreed to by Lessor in writing.

**15. Infringement.** Lessee shall indemnify, defend, and hold Lessor and its respective officers, directors, agents, and employees harmless against losses for any allegation of or suit or action for infringement of any United States or foreign patent, copyright, trademark, or other intellectual property right arising out of Lessee's use of or modifications, whether authorized or not, to the Leased Equipment. Lessee shall at its own expense either procure for itself the right to continue using the alleged infringing work, replace it with non-infringing work, or modify work so that it becomes non-infringing.

**16. Excusable Delay.**

a. Lessor will be excused from performance under the Lease and will not be liable to Lessee for delay in performance attributable, in whole or in part, to any cause beyond its reasonable control, including, but not limited to, actions or inactions of government whether in its sovereign or contractual capacity, judicial action, war, civil disturbance, insurrection, sabotage, act of public enemy or terrorism, labor difficulties, failure or delay in delivery by Lessor's suppliers or subcontractors, transportation difficulties, shortage of energy, materials, labor or equipment, accident, fire, flood, storm or other act of nature, delays caused by Lessee's fault or negligence or where compliance with any applicable environmental laws or regulation by Lessor is not reasonably technologically or economically feasible, or would otherwise require Lessor to change its manufacturing process.

b. In the event of an excusable delay, Lessor will make commercially reasonable efforts to notify Lessee of the nature and extent of such delay and Lessor will be entitled to schedule an extension on at least a day-for-day basis.

**17. Default.** If Lessee fails to make lease payments or other amount herein provided within fifteen (15) days after the same is due and payable, or if Lessee fails to observe, keep or perform any other provision of this Lease required to be observed, kept or performed by Lessee, Lessor shall have the right to exercise any one or more of the following remedies:

- To sue for and recover all lease payments, and other payments then accrued or thereafter accruing.
- Terminate this lease, void the software license and take possession of the Equipment, without demand or notice, wherever same may be located, without any court order or other process of law. Lessee hereby waives any and all damages occasioned by such taking of possession.
- To pursue any other remedy at law or equity.

**18. Export and Re-Export Restrictions.**

a. Lessee acknowledges that the Equipment leased to it by Lessor may be subject to export controls under the laws of the United States. Lessee shall not export or re-export the Equipment, technology, or products provided under this Lease.

b. To the extent any technical data is exchanged between the parties, the Lessee represents and warrants that no technical data furnished to it by the Lessor shall be disclosed to any foreign nation, firm, or country, including foreign nationals, whether or not employed by or associated with the Lessee, nor shall any technical data be exported from the United States without first complying with all requirements of the International

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Traffic in Arms Regulations (ITAR), or the Export Administration Regulations (EAR), including the requirement for obtaining any export license if applicable. The Lessee shall first obtain the written consent of the Lessor prior to submitting any request for authority to export any such technical data. The Lessee will, to the fullest extent permitted by applicable law, defend and hold the Lessor harmless for all claims, demands, damages, costs, fines, penalties, attorney's fees, and all other expenses arising from failure of the Lessee to comply with this Section 19 or with the ITAR and EAR.

19. **Limitation of Liability.** NOTWITHSTANDING ANYTHING IN THIS LEASE TO THE CONTRARY, UNDER NO CIRCUMSTANCES WILL LESSOR BE LIABLE TO LESSEE FOR (A) ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES REGARDLESS OF THE CAUSE, EVEN IF SUCH DAMAGES ARE FORESEEABLE, OR (B) LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR LOSS OF USE EVEN IF LESSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION WILL APPLY TO ANY CLAIM OR CAUSE OF ACTION WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR BREACH OF WARRANTY). IN NO EVENT WILL HARRIS LIABILITY TO LESSEE OR ANY PARTY CLAIMING THROUGH LESSEE EXCEED THE ACTUAL AMOUNT OF LEASE/PURCHASE PAYMENTS ACTUALLY PAID BY LESSEE TO LESSOR FOR ANY EQUIPMENT SUPPLIED HEREUNDER. THIS SECTION WILL SURVIVE THE TERM OR EXPIRATION OF THIS LEASE. LESSEE AGREES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW TO HOLD LESSOR HARMLESS AGAINST ALL LOSS OR LIABILITY FROM CLAIMS BY LESSEE OR A THIRD PARTY ARISING OUT OF OR RELATING TO LESSEE'S INSTALLATION, OPERATION, OR USE OF THE EQUIPMENT PROVIDED PURSUANT TO THIS LEASE.

20. **Applicable Law, Venue, and Jurisdiction.** The Lease, and any disputes arising out of the performance of or related to it, will be governed by and interpreted in accordance with the laws of the State of Florida, USA, without regard to its conflict of law principles. The Parties specifically exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to the Lease, to the contractual relationship created under the Lease, and to the construction, validity, enforcement, and interpretation of the Lease. The parties agree that the exclusive venue for any action arising out of or related to the Lease will be in any court of competent jurisdiction located in Brevard County, Florida, and each Party irrevocably submits to the jurisdiction of each such court in any such action and waives any objection it may now or hereafter have to venue or personal jurisdiction in each such court. The prevailing party in any action related to the dispute or interpretation of the Lease will be entitled to recover its reasonable attorney's fees incurred in pursuing the action, including those fees incurred throughout all bankruptcy and appellate proceedings.

21. **Jury Waiver.** Lessee and Lessor further agree, to the extent permitted by law, to waive all rights to a trial by jury of any action relating to the dispute or interpretation of the Lease, whether sounding in contract, tort, or otherwise. The Parties specifically acknowledge that this waiver is made knowingly and voluntarily after an adequate opportunity to negotiate its terms and that such waiver is material consideration for this Lease.

22. **Compliance with Applicable Laws.** Lessee agrees to comply with all applicable Federal, State, and local laws, regulations, rules, and orders. Lessee shall procure all necessary licenses and permits, and shall be responsible to pay all fees and other required charges.

**23. Indemnity and Insurance.**

a. Lessee shall indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including reasonable attorney's fees and costs, arising out of, connected with, or resulting from Lessee's use of the Equipment, including without limitation, the manufacture, selection, delivery, possession, use, operation, or return of the Equipment.

b. Lessee shall maintain adequate insurance to protect the Equipment while the Equipment is in the Lessee's possession. Lessee shall provide such proof of insurance to Lessor prior to delivery of Equipment.

**24. General Provisions.**

a. **Publicity.** Neither party will, without the prior written consent of the other party: (a) issue any news release, public announcement, denial or confirmation of this Lease or its subject matter; or (b) in any manner advertise or publish the fact of this Lease.

b. **Assignment.** Lessee will not assign any of its rights under this Lease, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner. Any purported assignment of rights in violation of this Section is null and void.

c. **Enforceability.** If any provision of this Lease is held invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions will, to the extent of such invalidity, illegality, or unenforceability, be severed, but without in any way affecting the remainder of such provision or any other provision contained herein, all of which will continue in full force and effect.

d. **No Waiver.** Waiver or failure by Lessor to enforce any of the terms or conditions hereunder or the delay in exercise of any of its remedies or any terms or condition herein, will not be a future waiver of any such right, or be a waiver of any other term, condition or remedy contained herein.

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e. Notices: All notices must be in writing and will be effective when received by (1) personal delivery, (2) registered, certified, or nationally recognized overnight mail, proof of receipt requested, and (3) facsimile, if confirmed within three (3) business days by one of the other methods herein, at the addresses or facsimile numbers indicated or to such other addresses or facsimile numbers as the parties may specify by giving notice pursuant hereto. A copy of all notices must be sent to: [REDACTED]

f. Survivability: The following provisions shall survive the completion or termination of this Agreement: Section 3 (Restricted Use); Section 12 (Limited Warranty); Section 13 (Intellectual Property, Rights, and Licenses); Section 16 (Infringement); Section 18 (Export and Re-export Restrictions); Section 19 (Limitation of Liability); Section 20 (Applicable Law, Venue and Jurisdiction); Section 21 (Jury Waiver); Section 23 (Indemnity and Insurance) and Section 24 (General Provisions).

25. Entire Lease Agreement: The Lease Agreement supersedes all previous proposals, negotiations, conversations, and understandings, whether oral or written, and constitutes the sole and entire agreement between the parties pertaining to the subject matter hereof. No modification or deletion of, or addition to, these terms, will be binding unless made in writing and signed by duly authorized representatives of both parties.

[REDACTED]

Lessee  
[REDACTED]

**Schedule A**

Leased Line Items

<u>Item #</u>	<u>Description</u>	<u>Quantity</u>
[REDACTED]	[REDACTED]	1
[REDACTED]	[REDACTED]	1
[REDACTED]	[REDACTED]	1
[REDACTED]	[REDACTED]	1
[REDACTED]	[REDACTED]	1
[REDACTED]	[REDACTED]	1
[REDACTED]	[REDACTED]	1
TRAIN-EO	Training - East Coast (full-on-only)	1

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**Schedule B**

**Payment Schedule**

Summary: 36 month lease with \$1 buyout

Payment #	Due Date	Amount	Payment #	Due Date	Amount
1	10/1/2014	[REDACTED]	19	4/1/2016	[REDACTED]
2	11/1/2014	[REDACTED]	20	5/1/2016	[REDACTED]
3	12/1/2014	[REDACTED]	21	6/1/2016	[REDACTED]
4	1/1/2015	[REDACTED]	22	7/1/2016	[REDACTED]
5	2/1/2015	[REDACTED]	23	8/1/2016	[REDACTED]
6	3/1/2015	[REDACTED]	24	9/1/2016	[REDACTED]
7	4/1/2015	[REDACTED]	25	10/1/2016	[REDACTED]
8	5/1/2015	[REDACTED]	26	11/1/2016	[REDACTED]
9	6/1/2015	[REDACTED]	27	12/1/2016	[REDACTED]
10	7/1/2015	[REDACTED]	28	1/1/2017	[REDACTED]
11	8/1/2015	[REDACTED]	29	2/1/2017	[REDACTED]
12	9/1/2015	[REDACTED]	30	3/1/2017	[REDACTED]
13	10/1/2015	[REDACTED]	31	4/1/2017	[REDACTED]
14	11/1/2015	[REDACTED]	32	5/1/2017	[REDACTED]
15	12/1/2015	[REDACTED]	33	6/1/2017	[REDACTED]
16	1/1/2016	[REDACTED]	34	7/1/2017	[REDACTED]
17	2/1/2016	[REDACTED]	35	8/1/2017	[REDACTED]
18	3/1/2016	[REDACTED]	36	9/1/2017	[REDACTED]
			Buyout	TBD	\$1
Total Quarterly Payment (x3) =		[REDACTED]			
Total Annual Payment (x12) =		[REDACTED]			

\*\*\* For late payments the Lessee will be assessed \$100 late fee.

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Schedule C

Special Provisions

1. **End of Lease - Equipment Ownership.** Not later than sixty (60) days prior to the expiration of the lease Term, Lessee shall provide written notice of its intent to purchase leased equipment upon expiration thereof and with a one dollar (\$1.00) purchase provision as shown in Schedule B; provided Lessee is not in default. Lessee shall purchase and take title to the equipment at the end of the Term for such amount plus any applicable taxes and fees. If the purchase provision stated provides for a fair market value purchase provision and provided Lessee is not in default, Lessee has the provision to purchase the equipment for its fair market value. Lessor may determine fair market value of the equipment in its sole reasonable judgment.
2. **End of Lease - Equipment Return.** Not later than sixty (60) days prior to the expiration of the lease Term, Lessee shall provide written notice of its intent to return leased equipment upon expiration thereof, provided Lessee is not in default. Lessee shall return the equipment in good working order to a location designated by Lessor at Lessee's expense, within thirty (30) days of the expiration of the lease Term. Upon delivery Lessor shall inspect the equipment and provide written confirmation of notice of any outstanding issues - equipment damage, missing items, non-working items - within ten (10) days of delivery. If applicable, Lessor and Lessee agree to negotiate in good faith the settlement of any outstanding issues on a case by case basis. Lessee agrees to seek appropriation of funds to support any settlement.
3. **Equipment Upgrades.** Upon Lessor's receipt of Lessee's request for quote, Lessor shall provide an updated draft Schedule B showing the new payment schedule, with any supporting information, for Lessee's consideration to upgrade leased equipment. If the parties mutually agree to the terms and conditions for upgrade, an amendment to this Agreement along with an updated Schedule B shall be executed. In addition, Lessee shall provide any corresponding purchase order documentation supporting the upgrade before commencement of work.
4. **Equipment Upgrades - Default.** At any time during the Term, if Lessee defaults in accordance with Section 13 ("Default") of the Agreement, Lessee shall promptly return upgraded equipment in good working condition at Lessee's expense upon receipt of Lessor's written request.
5. **Refurbished Equipment.** Lessor reserves the right to lease refurbished equipment for the purposes of this Agreement; provided however, Section 9 ("Limited Warranty") remains in full force and effect.
6. **Termination upon Non-Appropriation Event**
  - a. For each Lease, Lessee represents and warrants that (a) it has appropriated and budgeted Legally Available Funds to make all Lease Payments required pursuant to such Lease for the remainder of the fiscal year in which the Lease Term commences; (b) it currently intends to make Lease Payments for the full Lease Term as scheduled on the applicable Payment Schedule (Schedule B) so long as funds are appropriated for each succeeding fiscal year by its governing body; and (c) during the 10 fiscal years prior to the date of the applicable Lease, its governing body has not failed (for whatever reason) to appropriate amounts sufficient to pay its obligations that are subject to annual appropriation. Lessee reasonably believes that moneys in an amount sufficient to make all Lease Payments can and will lawfully be appropriated and made available therefore.
  - b. If Lessee's governing body fails to appropriate sufficient funds in any fiscal year for Lease Payments and other amounts to be paid under a Lease in the next succeeding fiscal year, then a "Non-Appropriation Event" shall have occurred. If a Non-Appropriation Event occurs, then: (a) Lessee shall give Lessor written notice at least 30 days prior to the end of the then current fiscal year of such Non-Appropriation Event and provide written evidence of such failure by Lessee's governing body; (b) on the Return Date, Lessee shall return to Lessor all, but not less than all, of the Equipment and/or Software covered by the affected Lease, at Lessee's sole expense, in accordance with Section C, Article 2 hereof; and (c) the affected Lease shall terminate on the Return Date without penalty or expense to Lessee, provided that Lessee shall pay all Lease Payments and other amounts payable under the affected Lease for which funds shall have been appropriated, and provided further that Lessee shall pay month-to-month lease at the rate set forth in the affected Lease for each month or part thereof that Lessee fails to return the Equipment under this Section 6.b. "Return Date" means the last day of the fiscal year for which appropriations were made for the Lease Payments due under a Lease.

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**Schedule A**

Leased Line Items

<u>Item #</u>	<u>Description</u>	<u>Quantity</u>
[REDACTED]	[REDACTED]	1
[REDACTED]	[REDACTED]	1
[REDACTED]	[REDACTED]	2
[REDACTED]	[REDACTED]	1
[REDACTED]	[REDACTED]	2
[REDACTED]	[REDACTED]	2
[REDACTED]	[REDACTED]	1
[REDACTED]	[REDACTED]	2
TRAIN-EC	Training - East Coast (full on only)	1

From: [REDACTED]  
Subject: Disclosure Request  
Date: October 23, 2014 at 4:07 PM  
To: andrew.evans@state.mn.us

Hello Andrew,

(U/LES) Thank you for talking with me yesterday about your pending disclosure request. As stated in our conversation, the protection of cell site simulator (CSS) information is a concern for all law enforcement agencies in the U.S. In light of the importance of the lawful usage of the CSS gear, my unit would like to assist you in protecting the data associated with the CSS gear from exposure to counter measures in criminal, terrorism, and foreign intelligence investigations. The first layer of protection for the CSS gear is the Non Disclosure Agreement (NDA), which your agency has signed in order to receive the CSS gear. From our conversation yesterday, my understanding is that you are being asked to disclose all or part of the NDA. In order to clarify our position, I have attached a letter that the FBI has created for the purpose of articulating the law enforcement and legal support for protecting the NDA. We can send a signed copy of the letter to a government official, if you believe that will assist you in protecting the NDA. Please note that the letter is marked (LES).

(U/LES) In addition, you mentioned that the requestor has claimed that other disseminations of CSS information have appeared in the public view, which classifies them as "public record" pursuant to Minnesota's laws, and therefore are subject to disclosure by your agency. When possible, would you be willing to send a sample of such information as we may be able to clarify the circumstances of the dissemination? Some disseminations may have been conducted unlawfully and therefore should not be considered "public record" or be subject to further authentication. In addition, we would like to be in a position to assist you in determining the scope and type of your pending response, so if we could set up a meeting with our FBI legal counsel and your office, that would be greatly appreciated.

Thank you.

[REDACTED]  
Supervisory Special Agent  
[REDACTED]  
[REDACTED]

UNCLASSIFIED - FOR OFFICIAL USE ONLY - LAW ENFORCEMENT SENSITIVE

This correspondence should be treated as law enforcement sensitive (LES) and is "FOR OFFICIAL USE ONLY" (FOUO).

*LAW ENFORCEMENT SENSITIVE (LES): The information in this document is the property of the Federal Bureau of Investigation (FBI) and may be distributed within the Federal Government (and its contractors), U.S. intelligence, law enforcement, public safety or protection officials and individuals with a need to know. Distribution beyond these entities without FBI Operational Technology Division authorization is prohibited. Precautions should be taken to ensure this information is stored and/or destroyed in a manner that precludes unauthorized access. Information bearing the LES caveat may not be used in legal proceedings without first receiving authorization from the originating agency. Recipients are prohibited from subsequently posting the information marked LES on a website on an unclassified network.*

[REDACTED]



**From:** Evans, Andrew (DPS) andrew.evans@state.mn.us  
**Subject:** BCA Documents - Cellular Exploitation Equipment  
**Date:** December 5, 2014 at 2:38 PM  
**To:** [REDACTED]

SSA [REDACTED]

Attached is a copy of what the BCA intends to release in relation to our ongoing discussions related to our contract with Harris Corporation and the NDA we have with the FBI.

Please let me know if you have any questions.

Sincerely,

**DREW EVANS** | ASSISTANT SUPERINTENDENT



BUREAU OF CRIMINAL APPREHENSION

1430 MARYLAND AVENUE EAST, ST. PAUL, MN 55106

651.793.1108 | [Andrew.Evans@state.mn.us](mailto:Andrew.Evans@state.mn.us) | [Follow BCA](#)



BCA Cellular Exploitation  
Equipment.pdf