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GUIDELINES FOR THE REGULATION OF VOICE OVER INTERNET PROTOCOL (VOIP) OPERATORS AND LAWFUL INTERCEPT REQUIREMENTS

The following guidelines are prepared to assist the Government in establishing the legal and regulatory framework for Voice over Internet Protocol (“VoIP”), as well as requirements for telecommunications carriers, Internet service providers, and interconnected VoIP providers to provide lawful intercept capabilities to law enforcement agencies. These guidelines are necessary in light of the increased activity of VoIP operators in the **(Country Name)** telecommunications market. These guidelines seek to ensure that the interests of the local economy, licensed operator(s), and consumers are taken into consideration. It should be stated that some concepts discussed herein, although intended for VoIP, may also need to be added to the regulations governing the PSTN as well. Examples of this include lawful intercept, and requirements for a universal service fund.

DESCRIPTION

1. VoIP is an emerging technology. The term “VoIP” refers to transmission of voice over packet based networks. The IP suffix signifies the packet based protocol used; the “Internet Protocol”. The term VoIP also refers to all types of Internet Protocol based one-way or two-way voice services, including both interconnected and non-interconnected services, provided in whole or in part over broadband connection via data transmissions, including without limitation the public Internet, a corporate intranet, a managed network, or other actual or virtual dedicated circuits or capacity such as an international private line. The term VoIP also includes Voice over Frame Relay, voice over ATM, packet voice, packetized voice, and all equivalent or similar services and applications.

EXISTING FRAMEWORKS

2. The Government should not relax or remove any direct or indirect restrictions that it may already have on VoIP services and applications without first ensuring that the current legal and contractual rights of all parties are fully recognized and satisfied.

LICENSING AND TAXATION

3. The Government shall adopt laws requiring all providers of VoIP services and applications (either wholesale or retail) to one or more customers to apply for and obtain an appropriate license before commencing VoIP service. Each provider should be required to obtain an appropriate license before commencing VoIP service. Each provider of VoIP services should be required to provide certain minimum information to



the Government with regard to such provider's location, service offerings, service quality, network, and 24/7 contact information.

4. The licensing and taxation regimes applicable to VoIP providers should be non-discriminatory when compared to the legal and regulatory regime governing non-VoIP providers of similar or equivalent services or applications.
5. At a minimum, the Government should adopt laws requiring each licensed VoIP provider to have a bona fide local business presence and to accept service of process at such location or through another designated and accessible local entity.
6. The Government should adopt laws stating that a person or entity directly or indirectly providing VoIP services within the jurisdiction without fully complying with all licensing and related requirements is thereby deemed to consent to accept service of process within the jurisdiction and to be subject to the judicial system within the jurisdiction.
7. A licensed operator providing a broadband connection to a customer shall be entitled to shut down such broadband connection in the event the customer takes service from a VoIP provider which does not comply with all licensing and related requirements within the jurisdiction. This ensures that the licensed operator is not disadvantaged by its network being used for no charge.
8. The providers of local telephone services whose networks are being used to convey VoIP traffic should not be restricted from undertaking network management activities to promote efficient bandwidth usage by customers while removing incentives for users to engage in bandwidth usage which was not reasonably contemplated by the local operator's rate plans and applicable cost recovery mechanisms within the jurisdiction.
9. A person providing only VoIP services may also be required to make a contribution to a fund set up for the purpose of supporting universal service within the jurisdiction in a non-discriminatory manner when compared to other providers of similar or equivalent service which are also required to contribute to such a fund. It is expected that fixed and mobile providers would already be required to make contributions to a universal service fund. If this is not the case, it is recommended that such a fund be created as a way to ensure that funds are available for use to provide telecommunications services to underserved areas and populations. All providers of telecommunications services should contribute to this fund.
10. The Government should adopt laws making it a misdemeanour criminal offence to provide VoIP services or applications within the jurisdiction without complying with all licensing and related requirements.
11. Each VoIP provider should be required to coordinate with national law enforcement authorities to ensure that such authorities are able to enforce the laws.



NUMBERS

12. The Government should establish a unique block of telephone numbers for assignment to VoIP users so that all parties can easily distinguish VoIP calls from all other types of traffic, and VoIP providers should port numbers to competing carriers consistent with the porting requirements.

CONSUMER ISSUES

13. Each VoIP provider shall be required to offer an emergency voice calling service capability for all customers that is reasonably equivalent in and reliability to the emergency voice calling capability offered by the incumbent local telephone operator.
14. Each VoIP provider should be required to comply with all local consumer protection laws, including provisions in the local operator's license, and to provide appropriate disclosures to customers regarding the potential effect of power loss on the availability of VoIP services.
15. Each VoIP provider should be required offer its customers termination on all licensed networks.
16. The Government should adopt laws granting licensed operators a private right of action against any VoIP operator, which does not comply with all licensing and related requirements. Such licensed operators shall be entitled to enhanced damages for the hard caused by such VoIP provider, including without limitation lost revenues, stranded investment, bandwidth usage congestion, network management costs, or other increased costs. Licensed operators should be permitted to rely upon any reasonable methodology for estimating damages.
17. Each VoIP provider should be required to post a bond with the licensed operator in an amount sufficient to cover reasonably expected claims by customers for refunds, overcharges, or inferior service should the VoIP provider refuse to grant appropriate remedies or cease providing service without satisfying such claims.
18. In any case where a VoIP provider is reselling or rebilling VoIP services provided by another entity, or providing VoIP services in partnership with another entity, all such VoIP providers shall be independently subject to these requirements.

LAWFUL INTERCEPT

19. A telecommunications carrier, Internet service provider and/or provider of VoIP service shall ensure that its equipment, facilities, or services that provide a customer or



subscriber with the ability to originate, terminate, or direct communications are capable of (1) expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to intercept, to the exclusion of any other communications, all wire and electronic communications carried by the carrier within a service area to or from equipment, facilities, or services of a subscriber of such carrier concurrently with their transmission to or from the subscriber's equipment, facility, or service, or at such later time as may be acceptable to the government; (2) expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to access call-identifying information that is reasonably available to the carrier--(a) before, during, or immediately after the transmission of a wire or electronic communication (or at such later time as may be acceptable to the government); and (b) in a manner that allows it to be associated with the communication to which it pertains; (3) delivering intercepted communications and call-identifying information to the government, pursuant to a court order or other lawful authorization, in a format such that they may be transmitted by means of equipment, facilities, or services procured by the government to a location other than the premises of the carrier; and (4) facilitating authorized communications interceptions and access to call-identifying information unobtrusively and with a minimum of interference with any subscriber's telecommunications.

20. Any person or entity that accesses the Internet, and sends data over the Internet, whether voice or otherwise, using secured encryption must provide the government with the decryption key for such encrypted data pursuant to a court order or other lawful authorization.