

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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	)	
	)	
In the Matter of	)	File No. ITC-214-20111228-00386
	)	
Telecom Italia Sparkle of North America, Inc.	)	
	)	
Application for international Section 214 authorization to provide International Facilities-Based Services to Cuba	)	

**PETITION TO ADOPT CONDITIONS TO  
AUTHORIZATIONS AND LICENSES**

The Department of Justice (DOJ) submits this Petition to Adopt Conditions to Authorizations and Licenses (Petition), pursuant to Section 1.41 of the Federal Communications Commission (Commission) rules.<sup>1</sup> Through this Petition, DOJ advises the Commission that it has no objection to the Commission approving the authority sought in the above-referenced proceeding, provided that the Commission conditions its approval on the assurance of Telecom Italia Sparkle of North America, Inc. (TISNA) to abide by the commitments and undertakings set forth in the April 23, 2013 Letter of Assurances (LOA), which is attached hereto. In the above-referenced proceeding, the Applicant petitioned the Commission for authorization to provide International Facilities-Based Services to Cuba under Section 214 of the Communications Act of 1934, as amended.

The Commission has long recognized that law enforcement, national security, and public safety concerns are part of its public interest analysis, and has accorded deference to the views of other U.S. government agencies with expertise in those areas. *See In the Matter of Comsat*

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<sup>1</sup> 47 C.F.R. § 1.41.

*Corporation d/b/a Comsat Mobile Communications, etc.*, 16 FCC Rcd. 21,661, 21707 ¶ 94 (2001).

After discussions with representatives of the Applicant in connection with the above-referenced proceedings, DOJ has concluded that the additional commitments set forth in the LOA will help ensure that DOJ and other agencies with responsibility for enforcing the law, protecting the national security, and preserving public safety, can proceed appropriately to satisfy those responsibilities. Accordingly, DOJ advises the Commission that it has no objection to the Commission granting the application in the above-referenced proceeding, provided that the Commission conditions its consent on compliance by TISNA with the LOA.

Respectfully submitted,

/S/ Richard C. Sofield  
Richard C. Sofield  
U.S. Department of Justice  
Director - Foreign Investment Review Staff  
National Security Division  
600 E Street, NW Rm 10000  
Washington, D.C. 20004

April 26, 2013



TELECOM ITALIA GROUP

Telecom Italia Sparkle of North America, Inc.

April 23, 2013

Assistant Attorney General for National Security  
National Security Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
ttelecom@usdoj.gov

Re: Pending application by Telecom Italia Sparkle of North America, Inc. (TISNA) for authorization under Section 214 of the Communications Act of 1934, as amended, FCC ITC-214-20111108-00344

Dear Sir or Madam:

This letter outlines the commitments made by Telecom Italia Sparkle of North America, Inc. (TISNA), Telecom Italia Sparkle S.p.A. (TIS), and Telecom Italia S.P.A. (TI) (collectively Telecom Italia) to the U.S. Department of Justice (DOJ) in order to address national security, law enforcement, and public safety concerns raised with regard to TISNA's application to the Federal Communications Commission (FCC of Commission) for authority to provide international facilities-based and resold services to Cuba in connection with existing authority to provide facilities-based and resale services to all international points under Section 214 of the Communications Act of 1934, as amended.

TISNA is an existing U.S. corporation with authorization from the FCC to provide global or limited global facilities-based and resale services (Sections 63.18(e)(1) and 63.18(e)(2)) to all international points under Section 214 of the Communications Act of 1934, as amended. TISNA currently provides international wholesale services (Voice, Data and IP) to other carriers as well as information service providers and systems integrators. TISNA now seeks authorization from the FCC to provide international facilities-based and resold services to Cuba (which is currently on FCC's Exclusion List for International Section 214 Authorizations). Pursuant to Section 63.18(e)(3) of the Commission's Rules, TISNA filed a separate Section 214 application (ITC-214-20120427-00112) seeking authorization for such services to Cuba.

Telecom Italia confirms that it will comply with all applicable lawful intercept statutes, regulations, and requirements, including the Communications Assistance for Law Enforcement Act (CALEA) and its implementing regulations, and will comply with all court orders and other

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legal process for lawfully authorized electronic surveillance. Telecom Italia further agrees that it will promptly notify DOJ, at the address listed above, before it seeks to commence the sale (or resale) of any type of communications services in the U.S. not described in this letter, or if there are any other material changes in any of the facts as represented in this letter.

TISNA agrees that, within 90 days of the signing of this letter, TISNA will submit to DOJ a U.S. Security Policy, which shall be subject to DOJ review and non-objection. TISNA shall implement this Policy within 120 days of DOJ's non-objection. Such Security Policy shall at a minimum:

- Provide for lawful intercept capabilities. TISNA may include the use of a U.S. Trusted Third Party outsourcing partner to implement TISNA's Lawful Intercept capability. Such Trusted Third Party shall be subject to prior DOJ review and non-objection. TISNA agrees to provide at least 30 days advance notice to DOJ in the event TISNA plans to provide retail end-user telecommunications services in the United States, and in that event TISNA agrees to establish U.S.-based lawful intercept capabilities approved by DOJ to the extent U.S.-based lawful intercept capabilities do not already exist.
- Provide that, for all TISNA customer billing records, subscriber information, and any other related information used, processed, or maintained in the ordinary course of business relating to telecommunications services offered in the U.S. (U.S. Records), TISNA will store either originals or copies of originals in the U.S. For these purposes, U.S. Records shall include information subject to disclosure to a U.S. Federal or state governmental entity under the procedures specified in Sections 2703(c) and (d) and Section 2709 of Title 18 of the U.S. Code.
- Provide measures to ensure that TISNA, its parents and affiliates, comply with U.S. law regarding the unauthorized collection, interception, storage, or use of U.S. Records and U.S. Domestic Communications and such additional measures as are necessary to ensure that there is otherwise no unauthorized access (i.e., contrary to U.S. law) to such U.S. Records and U.S. Domestic Communications. For the purposes of this letter, "Domestic Communications" means: (a) Wire Communications or Electronic Communications (whether stored or not) from one U.S. location to another U.S. location; and (b) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the United States. "Electronic Communication" has the meaning given it in 18 U.S.C. § 2510(12). "Wire Communication" has the meaning given it in 18 U.S.C. § 2510(1).
- Provide for a U.S. Law Enforcement Point of Contact (POC), who shall be a resident U.S. citizen (not dual citizen) or Lawful Permanent Resident and subject to DOJ review and non-objection.
- Provide that the designated POC will have access to all U.S. Records, and will make such records available promptly, and in any event no later than five business days, in response to lawful US process.<sup>1</sup>
- Provide for a U.S. Security Officer for purposes of this Agreement, who shall be a resident U.S. citizen (not dual citizen) or Lawful Permanent Resident and subject to DOJ review and non-objection, and shall be responsible for ensuring compliance with this Agreement. The Security Officer may be the same individual as the POC at the company's discretion.

<sup>1</sup> This statement does not supersede or replace TISNA's other duties to comply with any applicable FCC requirements and regulations regarding the storage and protection of customer records, including but not limited to requirements related to the storage and protection of Customer Proprietary Network Information.



- Provide that the Security Officer will have sufficient authority and ability to comply with all aspects of this Agreement and the Security Policy.
- Provide for screening of personnel with access to U.S. facilities, equipment, records or domestic communications, with such screening procedures subject to DOJ review and non-objection.
- Provide for accompanying procedures and/or process flow charts for the implementation of lawful intercept on U.S. networks.
- Require timely delivery to DOJ, when requested, of lawful intercept-related documentation, including network diagrams, architectures, equipment lists, personnel, and any other information that DOJ may deem appropriate for purposes of this Agreement. Require the immediate reporting to the Security Officer of any known or suspected violation of this Agreement. The Policy shall provide that such reporting be anonymous. The Security Officer shall promptly report any known or suspected violations of this Agreement to DOJ.

TISNA agrees that it will fully comply with the Security Policy described above, and Telecom Italia agrees that it will fully support TISNA's compliance with this Agreement and take all steps necessary to support TISNA's compliance with this Agreement. Telecom Italia also agrees to ensure that U.S. Records (as described above) are not made subject to mandatory destruction under any foreign laws.

Telecom Italia agrees that it will not, directly or indirectly, disclose or permit disclosure of or access to U.S. Records, domestic communications, or any information (including the content of communication) pertaining to a wiretap or electronic surveillance order, pen/trap order, subpoena, or other lawful demand by a U.S. law enforcement agency for U.S. Records or lawfully authorized electronic surveillance to any person if the purpose of such disclosure or access is to respond to the legal process or request on behalf of a non-U.S. government, without first satisfying all pertinent requirements of U.S. law and obtaining the express written consent of DOJ or the authorization of a court of competent jurisdiction in the U.S. The term "non-US government" means any government, including an identified representative, agent, component or subdivision thereof, that is not a local, state or federal government in the U.S. Any such requests or legal process submitted by a non-US government to Telecom Italia shall be referred to the DOJ as soon as possible, and in no event later than five (5) business days after such request or legal process is received by or known to Telecom Italia, unless the disclosure of the request or legal process would be in violation of U.S. law or an order of a court of the U.S.

Telecom Italia agrees that in the event the commitments set forth in this letter are breached, in addition to any other remedy available at law or equity, the DOJ may request that the FCC modify, condition, revoke, cancel, or render null and void any relevant license, permit, or other authorization granted by the FCC to Telecom Italia, or any successor-in-interest. Nothing herein shall be construed to be a waiver by Telecom Italia of, or limitation on, its right to oppose or comment on any such request.

Nothing in this letter is intended to excuse Telecom Italia from its obligations to comply with any and all applicable legal requirements and obligations, including any and all applicable statutes, regulations, requirements, or orders.

We understand that, upon execution of this letter by an authorized representative or attorney for Telecom Italia, DOJ shall notify the FCC that it has no objection to the FCC's grant of the above-referenced application.

Sincerely,

Telecom Italia S.P.A.

Name: Damiano Toselli  
Title: Head of Security



Telecom Italia Sparkle S.p.A.

Name: Elisabetta Ripa  
Title: CEO



Telecom Italia Sparkle of North America, Inc.

Name: Mark Gasbarra  
Title: CEO



Rome, 16/04/2013