

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

)	
)	
)	
In the Matter of)	File No. ITC-214-20120607-00150
)	
Phonesty Inc.)	
)	
Application for authorization under Section)	
214 of the Communications Act of 1934, as)	
amended)	

**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.¹ 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 Phonesty Inc. (Phonesty) to abide by the commitments and undertakings set forth in the December 19, 2012 Letter of Assurances (LOA), which is attached hereto. In the above-referenced proceeding, the Applicant petitioned the Commission for authority under Section 214 of the Communications Act of 1934, as amended, to provide facilities-based and resale services in the United States.

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

¹ 47 C.F.R. § 1.41.

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 Phonesty 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

January 8, 2013



Phonesty, Inc. - 4704 L'Enfant Plaza, Ste 400 - Washington, DC

12/19/12

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

**Re: Pending Application by Phonesty, Inc. for Authorization
Under Section 214 of the Communications Act of 1934
FCC ITC-214-20120607-00150**

Dear Ms. Monaco:

This letter outlines the commitments made by Phonesty, Inc. to the U.S. Department of Justice (DOJ) in order to address national security, law enforcement, and public safety concerns raised with regard to Phonesty's application to the Federal Communications Commission (FCC) for authority to provide resale service to all authorized international points under Section 214 of the Communications Act of 1934. Phonesty currently plans to offer three general types of conference calling services to residential customers, charitable organizations, and small to medium businesses.

Phonesty confirms that before it begins providing telecommunications services that are subject to the Communications Assistance for Law Enforcement Act (CALEA), it will implement a solution or solutions for lawfully authorized electronic surveillance for such services in compliance with CALEA and its implementing regulations. Phonesty also agrees that it will comply with all other statutes, regulations, and requirements regarding electronic surveillance.

Phonesty agrees to designate a U.S. citizen resident in the U.S. or a person with permanent U.S. resident status as a point of contact to receive service of process for U.S. records and to support U.S. law enforcement agencies' surveillance needs.

Phonesty also agrees that for all 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), Phonesty will store either originals or copies in the U.S. Phonesty further agrees that its designated law enforcement point of contact will have access to, and will make such records available promptly and in any event no later than five business days, in the U.S. in response to lawful U.S. process.¹ 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. Phonesty also agrees to ensure that U.S. Records are not made subject to mandatory destruction under any foreign laws.

Phonesty 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 communications) 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 in response to legal process or a 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-U.S. 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-U.S. government to Phonesty shall be

1

This statement does not supersede or replace Phonesty'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.


referred to DOJ as soon as possible, and in no event later than five business days after such request or legal process is received by or known to Phonesty, 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.

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

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

Phonesty understands that, upon execution of this letter by an authorized representative or attorney for Phonesty, DOJ shall notify the FCC that it has no objection to the FCC's grant of its application.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Trinkwalder", is written over a horizontal line.

Name: Florian Trinkwalder
Title: President

For Phonesty, Inc.