

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

In the Matter of)
)
Application by Swisstok Telnet USA, Inc.)
For Global and Limited Global) ITC-214-20160404-00137
Facilities-based Authority And Global)
And Limited Global Resale Authority)
Pursuant to Section 214 of the)
Communications Act of 1934, as amended)

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

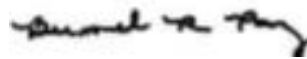
The U.S. Department of Justice (“USDOJ”), to include its components, the National Security Division (“NSD”) and the Federal Bureau of Investigation (“FBI”), submits this Petition to Adopt Conditions to Authorizations and Licenses (“Petition”), pursuant to Section 1.41 of the Federal Communications Commission (“Commission”) rules.¹ Through this Petition, the USDOJ 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 Swisstok Telnet USA, Inc. (“Swisstok”) to abide by the commitments and undertakings set forth in its May 26, 2017 Letter of Agreement (“LOA”), a copy of which is attached hereto.

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 Swisstok in connection with the above- referenced proceeding, the USDOJ, NSD and FBI have concluded that the additional commitments set forth in the LOA will help ensure that the FBI, which has the responsibility of enforcing the law, protecting the national security, and preserving public safety, can proceed appropriately to satisfy those responsibilities. Accordingly, the USDOJ 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 with the LOA.

Respectfully submitted.



Bermel R. Paz
U.S. Department of Justice
National Security Division
Foreign Investment Review Staff
Bicentennial Building
600 E Street, NW, Rm 10007
Washington, D.C. 20004

June 2, 2017



swisstok

May 26, 2017

Assistant Attorney General for National Security
United States Department of Justice
National Security Division
950 Pennsylvania Avenue NW,
Washington, DC 20530

Subject: FCC Case Number ITC-215-20160404-00137
Application by Swisstok Telnet USA Inc. for Global and Limited Global
Facilities-based Authority and Global and Limited Global Resale authority
pursuant to Section 214 of the Communications Act of 1934, as amended.

Sir/Madam:

This Letter of Agreement (“LOA” or “Agreement”) outlines the commitments being made by Swisstok Telnet USA Inc (“Swisstok”) to the U.S. Department of Justice (“USDOJ”), including the National Security Division (“NSD”) and the Federal Bureau of Investigation (“FBI”), in order to address national security, law enforcement, and public safety concerns raised with regard to Swisstok’s application to the Federal Communications Commission (“FCC” or “Commission”) seeking global and limited global facilities-based authority and global and limited global resale authority pursuant to Section 214 of the Communications Act of 1934, as amended.

Swisstok agrees to comply with all applicable lawful interception statutes, regulations, and requirements, including the Communications Assistance for Law Enforcement Act (“CALEA”), 47 U.S.C. 1001 et seq., and its implementing regulations, as well as comply with all court orders and other legal process for lawfully authorized electronic surveillance. Swisstok will provide USDOJ, NSD and FBI with a report on the status of its implementation of lawful- interception capabilities, including the status of its compliance with CALEA, within sixty (60) days after obtaining consent by the FCC and every thirty (30) days thereafter, up until the time when Swisstok has fully established and implemented lawful-interception capabilities. Upon completion of the development of its lawful-interception capabilities, Swisstok will request the Federal Bureau of Investigation (“FBI”) to send its CALEA Implementation Unit to conduct a CALEA-compliance test.¹ Once a compliance test is scheduled, Swisstok will provide notice of the scheduled date.

Swisstok agrees to notify USDOJ, NSD and FBI in writing, at least 30 days in advance, of the date on which it expects to be capable of providing communications service, either directly or via one or more third-party underlying carriers or service providers, and of any material change to its then-current services portfolio. (As of the date of execution of this letter, Swisstok represents that it does not currently provide any services, and does not

¹ Swisstok understands that such a request can be made by contacting the general helpdesk for the CALEA Implementation Unit at (855) LECALEA (532-2532).

anticipate developing or otherwise arranging for the ability to do so until the first quarter of 2018 at the earliest.)

Swisstok agrees that it will not, directly or indirectly, disclose or permit disclosure of or access to U.S. records² or domestic communications³ or any information (including call content and call data) pertaining to a wiretap order, pen/trap and trace order, subpoena, or any other lawful demand by a U.S. law enforcement agency for U.S. records 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. government⁴ without first satisfying all pertinent requirements of U.S. law and obtaining the express written consent of USDOJ, or the authorization of a court of competent jurisdiction in the U.S. Any such requests for legal process submitted by a non-U.S. government to Swisstok shall be referred to USDOJ/NSD as soon as possible, but in no event later than five business days after such request or legal process is received by or made known to Swisstok, unless disclosure of the request or legal process would be in violation of U.S. law or an order of a court of the United States.

Swisstok agrees to ensure that U.S. records are not made subject to mandatory destruction under any foreign laws. The location of the U.S. records' storage facility will be provided to USDOJ, NSD and FBI in writing at least 30 days in advance of the time in which Swisstok anticipates generating U.S. records, provided that if U.S. records are being generated at the time of consummation of the transaction, that Swisstok will have 30 days following consummation to provide such information.

Swisstok agrees to designate and maintain a U.S. Law Enforcement Point of Contact ("POC") in the U.S., preferably a U.S. citizen residing in the U.S., to receive service of process for U.S. records and, where possible, to assist and support lawful requests for surveillance or production of U.S. records by U.S. federal, state, and local law enforcement agencies ("Lawful U.S. Process"). This point of contact and his/her contact information will be provided in writing to the NSD and FBI within 15 days from the time Swisstok receives the FCC's grant of Swisstok's Section 214 application and will be subject to FBI and NSD approval. Swisstok also agrees to provide NSD and FBI at least 30 days prior written notice of any change in its POC, with all such changes also subject to NSD and FBI approval. In addition, Swisstok will give USDOJ, NSD, and FBI at least 30 days prior written notice of any change to its POC, and Swisstok's nominated replacement shall be subject to USDOJ, NSD and FBI review and approval. Swisstok also agrees that the designated POC will have access to all U.S. records, and, in response to lawful U.S. process, will make such records available promptly and, in any event, no later than five business days after receiving such

² "U.S. Records," as used herein, means Swisstok's customer billing records, subscriber information, and any other related information used, processed, or maintained in the ordinary course of business relating to the services offered by Swisstok in the U.S. For these purposes, U.S. Records also 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.

³ "Domestic Communications," as used herein, means: (1) 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 in 18 U.S.C. § 2510(12). "Wire Communication" has the meaning given in 18 U.S.C. § 2510(1).

⁴ 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.

lawful U.S. process. Swisstok will provide USDOJ with a copy of its System Security and Integrity (“SSI”) plans filed with the FCC.

Swisstok agrees to USDOJ/NSD/FBI requests for site visits and to approve all requests to conduct on-site interviews of Swisstok’s employees.

Swisstok agrees that it will report within 30 days to USDOJ all outsourced or off-shore service providers, including but not limited to services provided in relation to:

- Network operation center(s) (“NOC”);
- Network maintenance services;
- Customer support services;
- Any operation/service that could potentially expose U.S. domestic telecommunications infrastructure, U.S. customer data and records, call detail records (“CDRs”), or customer proprietary network information (“CPNI”); and
- Deployment of any network elements, hardware, software, core network equipment, and network management capabilities that are owned, managed, manufactured or controlled by a foreign government or non-public entities.

Swisstok also agrees to inform the USDOJ within thirty (30) days after any change in Swisstok’s ownership involving 10% or more of the percentage amount of ownership, including the names of the businesses or individuals associated with the change in ownership and the change in the percentage amount of ownership. Swisstok also will inform the USDOJ of any change in Swisstok’s ownership involving 10% or more of the percentage amount of ownership or control resulting in a change of a passive investor to an active one.

Finally, Swisstok agrees to provide an annual report to USDOJ, NSD, and FBI regarding the company’s compliance with this Agreement, to include:

- Certifications that there were no changes (where no changes were reported to USDOJ during the preceding year);
- Certification that Swisstok has been in CALEA compliance;
- Notice(s) regarding the company’s handling of U.S. records, domestic communications, and U.S. lawful process (i.e., whether handled properly and in accordance with the assurances contained herein);
- Recertification of any changes in the services that Swisstok provides, or confirmation that no additional services are being offered;
- Notification(s) of any relationships with foreign-owned telecommunications partners, including any peer relationships;
- Notification(s) of the installation and/or purchase or lease of any foreign-manufactured telecommunication equipment (including, but not limited to, switches, routers, software, hardware);
- Report(s) of any occurrences of cyber-security incidences, network and enterprise breaches, and unauthorized access to customer data and information;

- A re-identification of the name of and contact information of the POC; and
- Notifications regarding any other matter of interest to this LOA.

Annual report will be due every 31st day of January of each calendar year, beginning on January 31, 2018, and will be addressed to:

Assistant Attorney General for National Security
U.S. Department of Justice
National Security Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Attention: Team Telecom

Courtesy electronic copies of all notices and communications will also be sent to the following or individuals identified in the future to Swisstok by USDOJ: Bermel Paz, USDOJ (at Bermel.Paz@usdoj.gov); David Plotinsky, USDOJ (David.Plotinsky@usdoj.gov); and Daniel Kennelly, FBI (at daniel.kennelly@ic.fbi.gov).

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

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

Swisstok understands that, upon execution of this LOA by an authorized representative or attorney, or shortly thereafter, USDOJ shall notify the FCC that it has no objection to the FCC's consent to Swisstok's application.

Sincerely,
Alexander Eroshenko, CEO

