

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Marcatel Telecommunications, LLC	)	File No. ITC-214-20160819-00252
	)	
Application for Global or Limited	)	
Global Resale Authority Pursuant to	)	
Section 214 of the Communications	)	
Act of 1934, As Amended	)	

**PETITION TO ADOPT CONDITIONS  
TO AUTHORIZATION AND LICENSE**

Pursuant to Executive Order 13913, the National Telecommunications and Information Administration (NTIA) submits this Petition to Adopt Conditions to Authorization and License (Petition) on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee).<sup>1</sup> Through this Petition, and pursuant to section 1.41 of the Commission’s Rules, the Committee advises the Commission that it has no objection to the Commission approving the above-captioned application, provided that the Commission conditions its approval on the assurance of Marcatel Telecommunications, LLC (Marcatel) to abide by the commitments and undertakings set forth in the March 8, 2021 Letter of Agreement (LOA), a copy of which is attached hereto.<sup>2</sup>

Section 214 of the Communications Act provides that no carrier may provide telecommunications service to, from, or within the United States until the Commission determines that the present or future public interest, convenience and necessity will be served

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<sup>1</sup> Exec. Order No. 13913, § 9(h), 85 Fed. Reg. 19643, 19647-48 (2020). The Executive Order directs the Committee to “assist the [Commission] in its public interest review of national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector.” *Id.* § 3(a), 85 Fed. Reg. at 19643.

<sup>2</sup> 47 C.F.R. § 1.41.

thereby.<sup>3</sup> As part of the public interest analysis of section 214 applications, the Commission considers whether any such application raises national security, law enforcement, foreign policy, or trade policy concerns related to the applicant's foreign ownership.<sup>4</sup> With regard to these concerns, the Commission has long sought the expertise of the relevant Executive Branch agencies and has accorded deference to their expertise when they have identified such concerns in a particular application.<sup>5</sup>

After discussions with representatives of Marcatel in connection with the above-captioned application, the Committee has concluded that the additional commitments set forth in the LOA will help ensure that those agencies with responsibility for enforcing the law, protecting the national security, and preserving public safety can proceed appropriately to satisfy those responsibilities.

Accordingly, NTIA on behalf of the Committee advises the Commission that the Committee has no objection to the Commission granting the above-captioned application, provided that the Commission conditions its consent on compliance with the March 8, 2021 LOA attached to this filing.

Respectfully submitted,



Kathy Smith  
Chief Counsel

National Telecommunications and  
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March 15, 2021

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<sup>3</sup> 47 U.S.C. § 214(a).

<sup>4</sup> See *Market Entry and Regulation of Foreign-affiliated Entities*, Report and Order, 11 FCC Rcd 3873, 3888, 3955, ¶¶ 38, 216-19 (1995).

<sup>5</sup> *Id.* at 3955, ¶ 219.

March 8<sup>th</sup>, 2021

Chief, Foreign Investment Review Section (FIRS)  
Deputy Chief, Compliance and Enforcement (FIRS)  
On Behalf of the Assistant Attorney General for National Security  
United States Department of Justice  
National Security Division  
175 N Street, NE  
Washington, DC 20530

Subject: FCC No: ITC-214-20160819-00252, TT 16-052  
Marcatel Telecommunications, LLC  
Application by Marcatel Telecommunications LLC for authority  
pursuant to Section 214 of the Communications Act of 1934, as  
amended, to provide global or limited global facilities-based  
services.

Dear Sir/Madam:

This Letter of Agreement (“LOA” or “Agreement”) sets forth the commitments that Marcatel Telecommunications, LLC (“Marcatel”) makes to the U.S. Department of Justice (“USDOJ”) to address national security and law enforcement risks arising from the above-referenced application to the Federal Communications Commission (“FCC”) requesting authority to provide global or limited global facilities-based services between the United States and permissible international points pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and the implementing regulation at 47 C.F.R. § 63.18(e)(1), (2).<sup>1</sup> Marcatel has a pre-existing international Section 214 authorization to provide global or limited global resale service, ITC-214-20120913-00230, granted on February 20, 2013. This LOA will apply to all services Marcatel offers in the United States.

Marcatel certifies as true and correct, under penalties outlined in 18 U.S.C. § 1001, all statements Marcatel or its representatives have made to USDOJ, including the Federal Bureau of Investigation (“FBI”), the Department of Homeland Security, the Department of Defense, and the FCC in the course of the review of the above-referenced application that was conducted pursuant to Executive Order 13913,<sup>2</sup> and it hereby adopts those statements as the basis for this LOA.

### **Definitions**

1. For purposes of this LOA, the following definitions apply:

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<sup>1</sup> See FCC No: ITC-214-20160819-00252.

<sup>2</sup> Exec. Order No. 13913, 85 Fed. Reg. 19643 (Apr. 8, 2020).

a. “Access” means: (1) to enter a location, or (2) to obtain, read, copy, edit, divert, release, affect, alter the state of, or otherwise view data or systems in any form, including through information technology (IT) systems, cloud computing platforms, networks, security systems, and equipment (software and hardware). For the avoidance of doubt, Access shall be construed broadly to include rather than exclude considered conduct.

b. “Call Detail Record” (“CDR”) means the data records or call log records that contain information about each call made by a user and processed by switch, call manager, or call server.

c. “Customer Proprietary Network Information” (“CPNI”) means as set forth in 47 U.S.C. § 222(h)(1).

d. “Date of FCC Approval” means the date on which the FCC publicly releases approval of the FCC Application.

e. “Domestic Communications” (“DC”) means:

- i. Wire Communications, or Electronic Communications (whether stored or not), from one location within the United States, including its territories, to another location within the United States; or
- ii. The U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the United States or its territories.

f. “Domestic Communications Infrastructure” (“DCI”) means:

- i. Any system that supports any communications originating or terminating in the United States, including its territories, including any transmission, switching, bridging, signaling, and routing equipment, and any associated databases or software (with the exception of commercial-off-the-shelf (“COTS”) software used for common business functions, *e.g.*, Microsoft Office) used by, or on behalf of<sup>3</sup>, Marcatel to provide, process, direct, control, supervise, or manage DC.

g. “Electronic Surveillance” means:

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<sup>3</sup> The phrase “on behalf of,” as used in this paragraph, does not include entities with which Marcatel has contracted with for peering, interconnection, roaming, long distance, wholesale network access, or other similar arrangements.

- i. The interception of wire, oral, or electronic communications as set forth in 18 U.S.C. § 2510(1), (2), (4) and (12) respectively, and electronic surveillance as set forth in 50 U.S.C. § 1801(f);
  - ii. Access to stored wire or electronic communications, as referred to in 18 U.S.C. § 2701-2713;
  - iii. Acquisition of dialing, routing, addressing, or signaling information through pen register or trap and trace devices or other devices or features capable of acquiring such information pursuant to law as set forth in 18 U.S.C. §§ 3121-3127 and 50 U.S.C. §§ 1841-1846;
  - iv. Acquisition of location-related information concerning a subscriber or facility;
  - v. Preservation of any of the above information pursuant to 18 U.S.C. § 2703(f); and
  - vi. Access to or acquisition, interception, or preservation of, wire, oral, or electronic communications or information as described in (i) through (v) above and comparable state laws.
- h. “Foreign” means non-United States, or its territories.
- i. “Government” means any government, or governmental, administrative, or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision, and any court, tribunal, judicial or arbitral body.
- j. “Internet Protocol Detail Record” (IPDR) means a log of network/user information, usage, performance, activities, and billing for IP-based services, including VoIP Services.
- k. “Lawful U.S. Process” means U.S. federal, state, or local court orders, subpoenas, warrants, processes, directives, certificates or authorizations, and other orders, legal process, statutory authorizations and certifications for Electronic Surveillance, physical search and seizure, production of tangible things or Access to or disclosure of DC, call-associated data, transactional data, Subscriber Information, or associated records.
- l. “Managed Network Service Provider” or “MNSP” means any third party that has Access to Principal Equipment, U.S. Records, or DC for the purpose of:
- i. network operation; provisioning of Internet and telecommunications services; routine, corrective, and

preventative maintenance, including switching, routing, and testing; network and service monitoring; network performance, optimization, and reporting; network audits, provisioning, creation and implementation of modifications or upgrades; or

- ii. provision of DC or operation of DCI, including: customer support; Operations Support Systems (“OSS”); Business Support Systems (BSS); Network Operations Centers (“NOCs”); information technology; cloud operations/services; 5G (SDN, NFV, Applications); and datacenter services and operations.

m. “Network Operations Center” or “NOC” means any locations, facilities, or equipment performing network management, monitoring, accumulating accounting and usage data, maintenance, user support, or other operational functions for DC.

n. “Offshore” means performing obligations of this LOA using entities and personnel outside of the territorial limits of the United States, whether or not those entities or personnel are employees of Marcatel.

o. “Outsource” means, with respect to U.S. Records, DCI, or DC, supporting the services and operational needs of Marcatel at issue in this LOA using contractors or third parties.

p. “Personally Identifiable Information” or “PII” means any information that uniquely identifies and correlates to a natural person or can be used to distinguish or trace a natural person’s identity, alone, including his or her name, social security number, or biometric records, or when combined with other personal or identifying information that is linked or linkable to a specific individual, including date and place of birth, or parent's surname.

q. “Principal Equipment” means all telecommunications and information network equipment (*e.g.*, hardware, software, platforms, operating systems, applications, protocols) that supports core telecommunications or information services, functions, or operations.

r. “Security Incident” means:

- i. Any known or suspected breach of this LOA, including a violation of any approved plan, policy or procedure under this LOA;
- ii. Any unauthorized Access to, or disclosure of, U.S. Records, DC, or DCI;

- iii. Any unauthorized Access to, or disclosure of, information obtained from or relating to Government entities; or
- iv. Any one or more of the following which affect the company's computer network(s) or associated information systems:
  - A. Unplanned disruptions to a service or denial of a service;
  - B. Unauthorized processing or storage of data;
  - C. Unauthorized modifications to system hardware, firmware, or software; or
  - D. Attempts from unauthorized sources to Access systems or data if these attempts to Access systems or data may materially affect company's ability to comply with the terms of this LOA.
- s. "Sensitive Personal Data" means sensitive personal data as set forth in 31 C.F.R. § 800.241 (2020).
- t. "Subscriber Information" means any information of the type referred to and accessible subject to the procedures set forth in 18 U.S.C. § 2703(c)(2) or 18 U.S.C. § 2709, as amended or superseded.
- u. "U.S. Records" means the Marcatel's customer billing records, Subscriber Information, PII, Sensitive Personal Data, CDR/IPDRs, CPNI, and any other information used, processed, or maintained in the ordinary course of business related to the services offered by Marcatel within the United States, including information subject to disclosure to a U.S. federal or state governmental entity under the procedures set forth in 18 U.S.C. § 2703(c), (d) and 18 U.S.C. § 2709.

### **Personnel**

2. Marcatel agrees to designate and maintain U.S. law enforcement points of contact ("LEPOC") in the United States who will be subject to prior approval by USDOJ, including the FBI. The LEPOC shall be a U.S. third-party compliance vendor, subject to USDOJ approval, unless USDOJ otherwise agrees in writing. The LEPOC must be approved by USDOJ to receive service of Lawful U.S. 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. Within 15 days from the Date of FCC Approval, Marcatel will provide the following identifying information about the proposed vendor: the company's name and owner, business address, website, and what services it will provide. USDOJ will object or non-object within 15 days of receiving the information.

3. Marcatel agrees to notify USDOJ, including the FBI, in writing at least 30 days prior to modifying the LEPOC for USDOJ and FBI objection or non-objection. For those cases involving the unexpected firing, resignation, or death of the LEPOC, written notice will be provided within five days of such event. Under these circumstances, USDOJ and FBI will object or not object to the replacement LEPOC within 30 days of notification.

4. Marcatel agrees that the designated LEPOC 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, will respond to the request no later than five days after receiving such Lawful U.S. Process unless USDOJ grants an extension.

5. Marcatel agrees to implement, either directly or through a vendor, a process to screen existing and newly hired Marcatel personnel and any personnel of an approved Outsourced or Offshored service provider performing under an agreement with Marcatel. The personnel screening process shall include background investigations, public criminal records checks, or other analogous means to ascertain a person's trustworthiness. Marcatel further agrees to provide USDOJ with a written description of this personnel-screening process no later than 60 days after the Date of FCC Approval for USDOJ objection or non-objection within 60 days.

### **Lawful U.S. Process and Requests for Information**

7. Marcatel agrees to comply with all applicable lawful interception statutes, regulations, and requirements, as well as comply with all court orders and Lawful U.S. Process for lawfully authorized Electronic Surveillance. Marcatel agrees to provide USDOJ with a copy of its policy for compliance with the Communications Assistance for Law Enforcement Act ("CALEA"), 47 U.S.C. §§ 1001-1010 at least 30 days prior to offering services covered by CALEA, for USDOJ objection or non-objection within 30 days.

8. Marcatel agrees to provide notice of any material modification to its lawful intercept capabilities to USDOJ within 30 days of such modification and will re-certify its compliance with CALEA no more than 60 days following its notice to USDOJ of any new facilities, services, or capabilities.

9. Marcatel agrees to comply with all court orders and Lawful U.S. Process, including process relating to Electronic Surveillance.

10. Upon receipt of any Lawful U.S. Process, Marcatel agrees to place any and all information responsive to the Lawful U.S. Process within the territorial boundaries of the United States and otherwise provide information to the requesting officials, in a manner and time consistent with the Lawful U.S. Process.



11. Marcatel agrees not to provide, or otherwise allow the disclosure of, or Access to, U.S. Records, DC, or any call content or call data information, to any Foreign Government, Foreign entity, or any Foreign person (including Marcatel employees and service providers), without prior written consent of USDOJ or a court of competent jurisdiction in the United States. Marcatel may submit PII of foreign persons for USDOJ objection or non-objection to receive the disclosure of, or Access to, U.S. Records, DC, or any call content or call data information. USDOJ will respond within 60 days of the submission.

12. Marcatel agrees not to disclose the receipt of Lawful U.S. Process, or compliance with Lawful U.S. Process, to any Foreign Government, Foreign entity, or any person not authorized under the Lawful U.S. Process or written consent of USDOJ (including Marcatel employees and service providers), without prior written consent of USDOJ or a court of competent jurisdiction in the United States.

13. Marcatel agrees to refer any requests for information from a Foreign person or a Foreign Government, including any legal process from a Foreign Government, to USDOJ as soon as possible, but in any event no later than five days after such a request, or legal process, is received by, or made known to, Marcatel, unless disclosure of the request, or legal process, would be in violation of U.S. law or in violation of an order of a court of competent jurisdiction in the United States.

14. Marcatel agrees not to comply with such requests from Foreign Governments and Foreign persons without prior written consent of USDOJ or an order of a court of competent jurisdiction in the United States.

15. Marcatel agrees to ensure that U.S. Records are not subject to mandatory destruction under any Foreign laws.

### **Unauthorized Access, Security Incidents, and Traffic Monitoring**

16. Marcatel agrees to take all practicable measures including, but not limited to, those detailed in this LOA, to prevent unauthorized Access to U.S. Records, DC, and the DCI.

17. Marcatel agrees to take all practicable measures including, but not limited to, those detailed in this LOA, to prevent any unlawful use or disclosure of information relating to U.S. Records or DC.

18. Marcatel agrees to draft: (1) a Network System Security Plan (“NSSP”); (2) a Cybersecurity Plan (which will be included as part of the NSSP); and (3) a Network/Traffic Monitoring Plan. Marcatel will provide these plans to USDOJ within 60 days of the Date of FCC Approval of this LOA for USDOJ objection or non-objection. USDOJ will object or not object within 90 days of receipt of Marcatel’s submission.

19. Marcatel agrees that the NSSP will address, among other things, information security, remote access, physical security, cybersecurity, third-party

contractors, Outsourcing and Offshoring, maintenance and retention of system logs, protection of Lawful U.S. Process, protection of U.S. Records obtained by Marcatel in the ordinary course of business, and Marcatel's specific plan regarding new contracts or amendments to existing contracts with third-party providers requiring those third parties to notify Marcatel in the event of a breach or loss of U.S. Records within a specified time period after discovery, not to exceed 48 hours from the time of discovery.

20. Marcatel agrees that the Network/Traffic Monitoring Plan will include, among other things, a process for vetting prospective customers and suppliers; call and network traffic data monitoring; and a procedure for handling the discovery of anomalous traffic patterns.

21. Marcatel agrees to provide to USDOJ updated network diagrams to include all owned, leased, shared or otherwise-used facilities, Points of Presence (PoPs), and NOCs within 60 days from the Date of FCC Approval.

22. Marcatel agrees to notify USDOJ at least 30 days prior to changing the location for storage of U.S. Records for USDOJ objection or non-objection within 30 days. Such notice shall include:

- a. A description of the type of information to be stored in the new location, including how long the Records will be maintained;
- b. The custodian of the information (even if such custodian is Marcatel);
- c. The location where the information is to be stored;
- d. Updated Cybersecurity, NSSP, and Network/Traffic Monitoring Plans for the new location; and
- e. The factors considered in deciding to store that information in the new location.

23. Marcatel agrees not to store U.S. Records in a location outside of the United States without the prior written consent of USDOJ. If Marcatel currently holds any U.S. Records in a location outside of the United States, Marcatel agrees to submit the non-U.S. location to USDOJ for objection or non-objection within 30 days of the Date of FCC Approval. USDOJ will object or not object within 60 days of receipt of Marcatel's submission.

## **Reporting Incidents and Breaches**

24. Marcatel agrees to report to USDOJ promptly, and in any event no later than 48 hours, after it learns of information that reasonably indicates a known or suspected:

- a. A Security Incident;

- b. Unauthorized Access to, or disclosure of, any information relating to services provided by Marcatel, or referring or relating in any way to Marcatel's customers in the United States or its territories;
- c. Any unauthorized Access to, or disclosure of, U.S. Records or DC in violation of federal, state, or local law;
- d. Any felony (an offense carrying a maximum potential sentence of a term of imprisonment of more than a year) conviction, U.S. or foreign, of the Applicant, any company officers/directors, or any individual/company with 5% or greater ownership interest in Marcatel;
- e. A financial institution unilaterally closing any of Marcatel's accounts and the reason given by the financial institution for the closure; or
- f. Any material breach of the commitments made in this LOA.

25. Marcatel agrees to require any third-party service provider to disclose to Marcatel any data breach of any U.S. Records or DC, or any loss of U.S. Records, whether from a data breach, or other cause, within 48 hours of the third party discovering the breach or loss.

26. Marcatel agrees to notify USDOJ, including the points of contact (POC) listed in this LOA, in writing of any of the Security Incidents or breaches described in this LOA. Such notification shall take place no later than 72 hours after Marcatel or any third party providing Outsourced or Offshored services to Marcatel discovers the incident, intrusion, or breach has taken or is taking place, or sooner when required by statute or regulations.

27. Marcatel agrees to notify the FBI and U.S. Secret Service, as provided in 47 C.F.R. § 64.2011, within 7 business days after reasonable determination that a person without authorization, or in exceeding its authorization, has gained Access to, used, or disclosed CPNI, and shall electronically report the matter to the central reporting facility through the following portal: <https://www.cpnireporting.gov/>

## **Principal Equipment**

28. Within 30 days of the Date of FCC Approval, Marcatel agrees to provide USDOJ a Principal Equipment List for USDOJ objection or non-objection. USDOJ will object or not object within 60 days of receipt of Marcatel's submission.

29. The Principal Equipment List shall include the following:

- a. A complete and current list of all Principal Equipment, including:

- i. a description of each item and the functions supported,
  - ii. each item's manufacturer, and
  - iii. the model and/or version number of any hardware or software.
- b. Any vendors, contractors, or subcontractors involved in providing, installing, operating, managing, repairing, or maintaining the Principal Equipment.

30. Marcatel agrees to notify USDOJ in writing at least 30 days prior to introducing any new Principal Equipment or modifying any of the Principal Equipment for USDOJ objection or non-objection. USDOJ will object or non-object to such new Principal Equipment or modification to the Principal Equipment within 30 days of receipt of notice.

31. Marcatel agrees to provide USDOJ with the names of providers, suppliers, and entities that will perform any maintenance, repair, or replacement that may result in any introduction of new Principal Equipment or modification to the Principal Equipment or systems or software used with or supporting the Principal Equipment. USDOJ will object or non-object to the nominated providers, suppliers, and entities selected by Marcatel within 30 days of receipt of notice.

### **Outsourced and Offshored Services**

32. Within 30 days from the Date of FCC Approval, Marcatel agrees to provide USDOJ a list of all Outsourced or Offshored service providers that provide services to Marcatel for USDOJ objection or non-objection. USDOJ will object or not object within 60 days of receipt of Marcatel's submission.

33. The list should include any Outsourced or Offshored service provider that provides:

- a. MNSP services;
- b. NOC(s) services;
- c. Network maintenance services;
- d. Billing or customer support services;
- e. Any operation or service that could potentially expose the DCI, DC, or U.S. Records, to include CPNI such as CDR/IPDRs; and
- f. Deployment of any network elements, hardware, software, core network equipment, or network management capabilities that are owned, managed,

manufactured, or controlled by a Foreign Government or non-public entities.

34. Marcatel agrees to notify USDOJ in writing no less than 30 days prior to the use of any new Outsourced or Offshore service providers that will provide any of the services described in this LOA.

35. USDOJ agrees to object or non-object to any new Outsourced or Offshore service providers, within 30 days of receiving notice.

### **Network Operations Centers**

36. Within 30 days from the Date of FCC Approval, Marcatel agrees to provide USDOJ the location of any non-U.S. NOC (including any non-U.S. NOCs currently in use) used by Marcatel for USDOJ objection or non-objection. USDOJ will object or not object within 60 days of receipt of Marcatel's submission.

37. Marcatel agrees to notify USDOJ in writing at least 60 days prior to changing the location of its NOCs for USDOJ objection or non-objection.

### **Change in Ownership and Service Portfolio**

38. Marcatel agrees to provide USDOJ notice of any changes to its business, including but not limited to corporate structure changes, ownership changes, corporate name changes, business model changes, corporate headquarters location changes, or business operation location changes no less than 30 days in advance of such change. Marcatel agrees to provide USDOJ notice within 30 days of initiating any bankruptcy proceeding or any other legal proceeding undertaken for the purpose of liquidating, reorganizing, refinancing, or otherwise seeking relief from all or some of Marcatel's debts.

39. Marcatel agrees to provide USDOJ notice of any material change to its current portfolio of services, including offering other services beyond its current service portfolio, no less than 30 days in advance of such change for USDOJ objection or non-objection. Such a notification shall include an updated Nssp, Cybersecurity Plan, and Network/Traffic Monitoring Plan, as appropriate.

40. Marcatel agrees to provide notice to USDOJ 30 days prior to offering facilities-based services (or other service that would involve the keeping of U.S. Records, or handling U.S. communications, or otherwise requires CALEA compliance) for USDOJ objection or non-objection within 30 days. Such a notification shall include an appropriately updated Nssp, Cybersecurity Plan, and Network/Traffic Monitoring Plan.

41. Marcatel agrees to provide lists of its peering agreements and interconnecting carriers and customers on August 1, 2021; February 1, 2022; August

1, 2022, February 1, 2023; February 1, 2024 and February 1, 2025. After the 2025 annual report, further lists will be produced on USDOJ request.

## **Financial and Compliance Audits**

42. Audit Requirements. Marcatel agrees to retain and pay for a neutral third-party financial audit for the fiscal year 2021, to include an audit of Marcatel's internal controls ("the Initial Audit"). Marcatel agrees that the deadlines and requirements for the Initial Audit will be as follows:

- a. Within 60 days from the Date of FCC Approval, Marcatel shall provide notice of its proposed third-party auditor for the Initial Audit to USDOJ.
- b. USDOJ shall have an opportunity to provide reasonable objections to the proposed auditor within 60 days of receiving Marcatel's notification of the proposed auditor.
- c. Once USDOJ and Marcatel mutually agree upon a third-party auditor for the Initial Audit, and after Marcatel receives USDOJ's written non-objection, Marcatel will designate the agreed-upon, neutral third-party auditor ("the Initial Designated Auditor").
- d. Thereafter, Marcatel shall consult with USDOJ on the Initial Audit's terms and scope of engagement, the documents being audited, and the auditing standards to be applied (collectively, the "Initial Audit Terms"), and Marcatel will reasonably address any concerns raised by USDOJ, with the final Initial Audit Terms being subject to USDOJ approval. USDOJ and Marcatel will reasonably negotiate any concerns raised by Marcatel to the Initial Audit Terms. The Initial Designated Auditor will circulate to USDOJ and Marcatel the final Initial Audit Terms once they are approved by both USDOJ and Marcatel. The Initial Audit Terms shall allow for direct communication between USDOJ and the Initial Designated Auditor, without notice to or participation of Marcatel.
- e. Marcatel shall ensure that the Initial Audit report generated by the Initial Designated Auditor is promptly provided to USDOJ directly by the Initial Designated Auditor at the same time the Initial Audit report is provided by the Initial Designated Auditor to Marcatel.
- f. The Initial Audit's final report will be due no later than 180 days after either the close of Marcatel's fiscal year or the date on which the Initial Designated Auditor circulated the final Initial Audit Terms, whichever is later, unless other arrangements are approved by USDOJ, and will be issued by a Certified Public Accountant ("CPA"). The Initial Audit's final report will include a statement that the audit was conducted in accordance with generally accepted

auditing standards and an identification of the United States as the country of origin of those standards.

- g. Following the Initial Audit, unless otherwise directed by USDOJ, a subsequent audit (“the Subsequent Audit”) will be conducted for fiscal year 2022. Thereafter, USDOJ may request an audit (a “Requested Audit”). Marcatel shall retain and pay for a neutral third-party financial auditor for the Subsequent and Requested Audits. The deadlines and requirements for a Subsequent Audit or Requested Audit will include the following:
  - i. Marcatel shall provide notice of the proposed CPA to USDOJ each subsequent year following the completion of an audit or financial review, within 120 days of the submission of the preceding year’s final audit or financial review report, if the auditor has changed from the person/firm most recently designated or if USDOJ has notified Marcatel of an objection to the retention of the same person/firm.
  - ii. Should USDOJ object to the retention of the same person/firm for subsequent financial audit, USDOJ shall have an opportunity to provide reasonable objections within 90 days of the submission of the preceding year's final audit. USDOJ shall have an opportunity to provide reasonable objections to a newly proposed CPA within 60 days of receiving Marcatel’s notification of a newly proposed CPA.
  - iii. Once USDOJ and Marcatel mutually agree upon a neutral third-party CPA for a Subsequent or Requested Audit, USDOJ shall be consulted on the terms and scope of the review engagement, the documents being reviewed, and the review standards to be applied, including whether a review of internal controls should be conducted (“Subsequent Terms”). Marcatel will reasonably address any concerns raised by USDOJ, with the final Subsequent Terms being subject to USDOJ approval. USDOJ and Marcatel will reasonably negotiate any concerns raised by Marcatel to the Subsequent Terms.
  - iv. Marcatel shall ensure that the final Subsequent Audit and/or Requested Audit reports generated by the CPA are promptly provided to the USDOJ directly by the CPA at the same time the CPA provides Marcatel the final Subsequent and/or Requested Audit report.
  - v. The final results for Subsequent Audit and/or Requested Audit(s) will be due no later than 180 days after either the close of the fiscal year to which the review relates or the date on which the CPA circulated the Subsequent Terms, whichever is later, unless other arrangements are approved by USDOJ, and will be issued by a

CPA. The final report for a Subsequent Audit and/or Requested Audit will include a statement that the audit was conducted in accordance with generally accepted auditing standards or generally accepted review standards and an identification of the United States as the country of origin of those standards.

- vi. Marcatel agrees to negotiate in good faith with USDOJ to resolve any national security or law enforcement concerns that USDOJ may raise with respect to the results of any third-party audit. USDOJ shall be granted the right to exclusively meet with the auditors at any time, upon USDOJ's request.

43. Marcatel agrees to pay for and undergo a neutral third-party compliance audit of LOA compliance (including any plan, policy, or procedure approved under this LOA) for each of the first two years following the Date of FCC Approval (the "Compliance Audits"). Marcatel agrees to designate an auditor that is mutually acceptable to USDOJ and Marcatel. Marcatel agrees to nominate a compliance auditor at least 120 days before the due date of the annual report. USDOJ will object or non-object within 30 days of the nomination. USDOJ shall be consulted on the terms and scope of the review engagement and the review standards to be applied, and Marcatel will submit its proposed scope of work ("SOW") agreement with the auditor within 15 days of the USDOJ non-objection to the auditor for USDOJ approval or non-approval. The SOW shall allow for direct communication between USDOJ and the Compliance Auditor, without notice to or participation of Marcatel. Unless otherwise agreed to by USDOJ, the Compliance Audit report shall be submitted to USDOJ by the auditor at the same time it is submitted to Marcatel, on or before the due date for the annual report in 2022 and 2023.

### **Annual Report**

44. Marcatel agrees to provide an annual report to USDOJ regarding the company's compliance with this LOA, to include:

- a. Certification that there were no changes during the preceding year (where no changes were reported to USDOJ during the year);
- b. Notice(s) regarding the company's handling of U.S. Records, DC, and Lawful U.S. Process (*i.e.*, whether handled properly and in accordance with the assurances contained herein) including a list of individuals with access to U.S. Records and Lawful U.S. Process;
- c. 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);



- d. Notification(s) of any relationships with Foreign-owned telecommunications partners, including any network peering (traffic exchange) relationships or use of interconnecting carriers;
- e. Updated NISSP, Cybersecurity Plan, and Network/Traffic Monitoring Plan;
  - i. Report(s) of any occurrences of Security Incidents, including but not limited to Cybersecurity incidences, network and enterprise breaches, violations of any approved plan, policy, or procedure under this LOA, and unauthorized Access to U.S. Records;
- f. Re-identification of the location(s) where Marcatel stores U.S. Records;
- g. Recertification of the services that Marcatel provides or confirmation that no additional services are being offered;
- h. Recertification that the location of all NOCs has been approved by USDOJ;
- i. Re-identification of the name and contact information of the LEPOC and all persons or entities with Access to U.S. Records;
- j. List of customers;
- k. List of U.S. Government contracts (including loans and grants);
- l. Lists of peering agreements and interconnecting carriers;
- m. Reports of financial and compliance audits required by this LOA;
- n. Notification of all filings or notices to the FCC in the prior year, and a copy of these filings if requested by USDOJ;
- o. Certification of compliance with CALEA and any other applicable U.S. lawful interception statutes, regulations, and requirements;
- p. A description of the services that Marcatel provides in the United States and the specific services provided using the domestic and international Section 214 authorizations as well as services provided in the United States that do not require Section 214 authority; and
- q. Notification of any reasonably foreseeable matter that would give rise to an obligation under this LOA.

The annual report will be due annually on the Date of FCC Approval. Marcatel agrees to send electronic copies of the annual report and all notices and communications required under this LOA to the following individuals or any other individuals that USDOJ identifies to Marcatel in the future: Christine Quinn, USDOJ (at [Christine.Quinn3@usdoj.gov](mailto:Christine.Quinn3@usdoj.gov)); Loyaan Egal, USDOJ and Eric Johnson, USDOJ (at [Compliance.Telecom@usdoj.gov](mailto:Compliance.Telecom@usdoj.gov)). Upon USDOJ request, Marcatel agrees to provide USDOJ with paper copies of any annual report, notices, or communications required under this LOA.

## **Site Visits**

45. Marcatel agrees to permit USDOJ's requests for site visits at locations owned, leased, or otherwise used by Marcatel, and approve all requests to conduct interviews of Marcatel's employees and officers and review its records.

## **Miscellaneous**

46. Marcatel agrees to permit disclosure of confidential information submitted to the FCC pursuant to 47 C.F.R. § 0.442 to Federal government departments, agencies, and offices whose principals are listed in Exec. Order 13913 § 3.

47. If USDOJ finds that the terms of this LOA are inadequate to resolve any national security or law enforcement concerns, Marcatel agrees to resolve these concerns, according deference to USDOJ's views on the need for modification. Rejection of a proposed modification shall not alone be dispositive, but failure to resolve national security or law enforcement concerns may result in a recommendation that the FCC modify, condition, revoke, cancel, terminate, or render null and void any relevant license, permit, or other authorization granted by the FCC to Marcatel or its successors-in-interest, or any other appropriate enforcement action required to address the risks.

48. Marcatel agrees that in the event that Marcatel breaches the commitments set forth in this LOA, to include conduct contrary to timely USDOJ objection to any notice submitted pursuant to this LOA, a recommendation may be made that the FCC modify, condition, revoke, cancel, enter other declaratory relief, or render null and void any relevant license, permit, or other authorization granted by the FCC to Marcatel or its successors-in-interest, in addition to pursuing any other remedy available by law or equity.

49. For purposes of counting days in this LOA, the day of the event that triggers the period is excluded, but every day thereafter is counted, including intermediate Saturdays, Sundays, and legal holidays. Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

# marcatel.

TELECOMMUNICATIONS LLC

50. Marcatel understands that, upon execution of this LOA by an authorized representative or attorney, or shortly thereafter, the FCC will be notified that there is no objection to grant of the application.

Representative Name: **Gerardo A. Medellin**

Representative Title: **Assistant Secretary**

Representative Signature: \_\_\_\_\_

