

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

In the Matter of )  
 )  
eKaleo, Inc. ) **ITC-214-20171201-00215**  
Application for authority to provide )  
resale service between the United States )  
and permissible international points )  
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.<sup>1</sup> 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 eKaleo, Inc. (“eKaleo”) to abide by the commitments and undertakings set forth in the November 16, 2018 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).

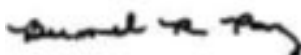
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<sup>1</sup> 47 C.F.R. § 1.41.

After discussions with representatives of eKaleo 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,

SANCHITHA JAYARAM  
Chief, Foreign Investment Review Staff  
National Security Division  
United States Department of Justice



BERMEL R. PAZ  
National Security Division  
United States Department of Justice  
3 Constitution Square  
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November 16, 2018



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Letter of Agreement

To: Assistant Attorney General for National Security

11/16/2018

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eKaleo, Inc

Date 11/16/2018

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

Subject: FCC # ITC-214-20171201-00215  
Application by eKaleo, Inc. for authority to provide resale service between the United States and permissible international points.

Dear Sir/Madam:

This Letter of Agreement (“LOA” or “Agreement”) outlines the commitments being made by eKaleo, Inc. (“eKaleo”) to the U.S. Department of Justice (“USDOJ”) in order to address national security, law enforcement, and public safety concerns raised with regard to eKaleo’s application to the Federal Communications Commission (“FCC” or “Commission”) for authority to provide resale service between the United States and permissible international points pursuant to Section 214 of the Communications Act of 1934, as amended.

eKaleo adopts as true and correct all statements eKaleo or its representatives have made to USDOJ or other Team Telecom member agencies and the FCC in the course of the review of the above-referenced application, and it hereby adopts those statements as the basis for this LOA.

1. For purposes of this LOA, the following definitions apply:
  - a. “eKaleo” means eKaleo, Inc. or its successors-in-interest.
  - b. “Access” or “Accessible” means the ability to physically or logically undertake any of the following actions: (a) to read, copy, divert, or otherwise obtain non-public information or technology from or about software, hardware, a database or other system, or a network; (b) to add, edit, delete, reconfigure, provision, or alter information or technology stored on or by software, hardware, a system or network; and (c) to alter the physical or logical state of software, hardware, a system or network.
  - c. “Customer Proprietary Network Information” (CPNI) shall mean as defined in 47 U.S.C. § 222(h)(1).
  - d. “Date of this LOA” shall mean the date on which the Letter of Agreement is executed by eKaleo.
  - e. “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.

f. “Domestic Communications Infrastructure” means any systems, equipment, hardware, software or applications that capture or control, or transmit the flow of Domestic Communications on behalf of eKaleo, including information technology supporting such networks.

g. “Electronic Communication” has the meaning provided in 18 U.S.C. § 2510(12).

h. “Electronic Surveillance” means: (a) the interception of wire, oral, or electronic communications as defined in 18 U.S.C. § 2510(1), (2), (4) and (12), respectively, and electronic surveillance as defined in 50 U.S.C. § 1801(f); (b) Access to stored wire or electronic communications, as referred to in 18 U.S.C. § 2701 *et seq.*; (c) 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 defined in 18 U.S.C. § 3121 *et seq.* and 50 U.S.C. § 1841 *et seq.*; (d) acquisition of location-related information concerning a subscriber or facility; (e) preservation of any of the above information pursuant to 18 U.S.C. § 2703(f); and (f) access to or acquisition, interception, or preservation of, wire, oral, or electronic communications or information as described in (a) through (e) above and comparable state laws.

i. “Foreign” means non-United States.

j. “Geolocation Data” means any information collected by eKaleo from its customers regarding a customer or the customer’s device location.

k. “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.

l. “Internet Protocol Detail Record” means a streaming data protocol used by operations support systems and business support systems to collect and record a user’s data traffic statistics on a network.

m. “Internet Search Information” includes any data collected by eKaleo about its customer’s internet browsing or online purchasing activities through any mechanism permitted by the services offered by eKaleo.

n. “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 Domestic Communications, call-associated data, transactional data, subscriber information, or associated records.

o. "Network Elements" means a facility, equipment, software, hardware or applications used in the provision of telecommunications services, including features, functions and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing, receiving and/or aggregating customer data, and collection or used in the transmission, routing, or other provision of telecommunications services.

p. "Network Management Capabilities" means software or applications used to manage or monitor network operations.

q. "Network Operations Center" means any locations and facilities performing network management, monitoring, accumulation of accounting and usage data, maintenance, user support, or other operational functions for Domestic Communications.

r. "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 United States.

s. "Offshoring" means performing obligations of this Agreement through the use of entities and personnel outside of the territorial limits of the United States, whether those entities or personnel are employees of eKaleo or its subsidiaries, or third parties.

t. "Outsource" or "Outsourcing" means, with respect to Domestic Communications, supporting the services and operational needs of eKaleo at issue in this LOA through the use of contractors or third parties.

u. "Principal Equipment" means any equipment, hardware, software, or applications capable of controlling Domestic Communications, as well as device controllers, signal routing and transfer routers, devices that perform network or element management, fiber optic line termination and multiplexing, core and edge routing, network protection, radio network control, mobility management, or lawful intercept functions, and non-embedded software necessary for the proper monitoring, administration and provisioning of any such equipment. This definition may be modified from time to time by USDOJ as may be necessary due to changes in technology, business model, management, structure of services offered, or governance of the Domestic Communications.

v. "Security Incident" means (1) any known or suspected breach of this agreement, including a violation of any approved policy or procedure under this Agreement, or (2) any unauthorized access to, or disclosure of, Personally Identifiable Information, or (3) any unauthorized access to, or disclosure of, information obtained



from or relating to Government Entities, or (4) any one or more of the following which affect eKaleo'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 changes 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 eKaleo's ability to comply with the terms of this Agreement.

w. "U.S. Records" means eKaleo's customer billing records, subscriber information, text, Internet Protocol Detail Record, Internet Search Information Geolocation Information, CPNI, and any other related information used, processed, or maintained in the ordinary course of business relating to the services offered by eKaleo in the United States, including information subject to disclosure to a U.S. federal or state governmental entity under the procedures specified in 18 U.S.C. § 2703(c) and (d) and 18 U.S.C. § 2709.

x. "Wire Communication" has the meaning provided in 18 U.S.C. § 2510(1).

2. eKaleo confirms that it will 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 Lawful U.S. Process for lawfully authorized Electronic Surveillance.

3. Upon receipt of any Lawful U.S. Process, eKaleo shall place within the territorial boundaries of the United States any and all information requested by the Lawful U.S. Process within the period of time for response specified in the Lawful U.S. Process, or as required by law, and shall thereafter comply with the Lawful U.S. Process.

4. eKaleo agrees to notify USDOJ, at least 30 days in advance, of any change to its current services portfolio or any peering relationships or joint ventures with foreign companies providing data aggregation or reselling services. eKaleo also agrees to notify USDOJ, at least 30 days in advance, of plans to offer any 5G-based equipment or services in the U.S. or Cuba for its objection or non-objection.

5. eKaleo agrees that it will not, directly or indirectly, disclose or permit disclosure of or Access to U.S. Records or Domestic Communications or any information (including call content and call data) pertaining to a wiretap order, pen/trap and trace order, subpoena, or any other Lawful U.S. Process demand 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 entity 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 United States. Any such requests for legal process submitted by a non-U.S. Government entity to eKaleo shall be referred to USDOJ as soon as possible, but in no event later than five (5) business days after such request or legal process is received by or made known to eKaleo, unless disclosure of the request or legal process



would be in violation of U.S. law or an order of a court of competent jurisdiction in the United States.

6. eKaleo agrees to draft: (1) a NIST-Compliant Cyber Security Plan; and (2) Network Systems Security Plan ("NSSP"), which will be forwarded to USDOJ within 60 days of the Date of this LOA for objection or non-objection. The NSSP shall address, but not be limited to, information security, remote access, physical security, cyber-security, 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 eKaleo from their customers or through the provision of services, and eKaleo's specific plan regarding new contracts or any amendments to existing contracts with third-party providers of services to require those third parties to notify eKaleo in the event of a breach or loss of U.S. Records within a specified time period after discovery, not to exceed five (5) business days from the date of discovery.

7. eKaleo agrees to require any third-party provider of services to disclose any data breach of any U.S. Records, 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. To the extent that eKaleo has current agreements with any third-party providers of services with access to U.S. Records, eKaleo agrees to amend those agreements to require those third parties to make disclosure of breaches or loss of U.S. Records consistent with this paragraph, and shall forward copies of those amended agreements to USDOJ points of contacts listed in paragraph 19 within five (5) business days of executing those amendments.

8. eKaleo agrees to report within five (5) days upon discovery of any Security Incident to the Federal Bureau of Investigation ("FBI"). It also agrees to notify the FBI and the U.S. Secret Service within seven (7) business days upon learning that a person or entity without authorization, or in exceeding their or its authorization, has intentionally gained access to, used, or disclosed any of its customers' CPNI or that of a third-party used by eKaleo, and shall report the matter to the central reporting facility through the following portal:

<https://www.cpnireporting.gov/cpni/content/disclaimer.seam>

9. eKaleo agrees to designate and maintain a U.S. law enforcement point of contact ("LEPOC") in the United States who will be subject to prior approval by the USDOJ, including the FBI. The LEPOC shall be a U.S. citizen residing in the United States unless USDOJ agrees in writing otherwise, and the LEPOC must be approved by the FBI to receive service 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. This LEPOC and his/her contact information will be provided to USDOJ within 15 days from the date eKaleo receives the FCC's approval of the transfer. eKaleo also agrees to provide USDOJ at least 30 days prior written notice of any change in its LEPOC, with all such changes subject to the approval of USDOJ, including the FBI. In addition, eKaleo will give USDOJ, including the FBI, at least 30 days prior written notice of any change to its LEPOC, and eKaleo's nominated replacement shall be subject to USDOJ's, including the FBI, review and approval. eKaleo also 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, no later than five (5) business days after receiving such Lawful U.S. Process unless granted an extension by USDOJ.

10. eKaleo agrees to provide USDOJ within 60 days from the date eKaleo receives its FCC authorization a list of all Principal Equipment. eKaleo further agrees to notify USDOJ, including the FBI, at least 30 days in advance, of any introduction of new Principal Equipment or changes/modification to any of its Principal Equipment, including the names of providers, suppliers, and entities that will perform any maintenance, repair, or replacement that may result in any material modification to its Principal Equipment or systems or software used with or supporting the Principal Equipment. USDOJ shall object or non-object to such new Principal Equipment or change/modification to the Principal Equipment within 30 days of receipt of notice.

11. eKaleo agrees to provide USDOJ within 60 days from the date eKaleo receives its FCC authorization with the number, types, and model of phones it uses, sold, and sells in the U.S..

12. eKaleo agrees to notify USDOJ of plans to operate a Network Operation Center outside of the U.S. for objection or non-objection by USDOJ. eKaleo further agrees to obtain pre-approval from USDOJ prior to using its remote access capabilities.

13. eKaleo agrees to notify USDOJ, including the points of contact listed in paragraph 19, of any breaches of this agreement, as well as Security Incidents such as, but not limited to cyber-security incidents, intrusions or breaches of Network Elements. The notification shall take place no later than five (5) days after eKaleo or any third-party providing Outsource or Offshore services to eKaleo discovers the incident, intrusion or breach takes place, or sooner when required by statute or regulations.

14. eKaleo agrees that should the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) reinstitute sanctions on telecommunication services to Cuba, eKaleo will immediately cease its operations or services to Cuba and notify USDOJ of its compliance within 30 days. eKaleo further agrees not to provide services to individuals, entities, and vessels appearing in the OFAC sanction list.

15. eKaleo agrees to permit USDOJ requests for site visits and approve all requests to conduct on-site interviews of eKaleo employees.

16. eKaleo agrees that it will provide USDOJ notice at least 30 days in advance of all Outsourced or Offshore service providers, including but not limited to services provided in relation to:

- Network Operation Center(s);
- Network maintenance services;
- Customer support services;





- Any operation/service that could potentially expose Domestic Communications Infrastructure, U.S. Records to include CPNI such as call detail records (“CDRs”); 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.

USDOJ shall object or non-object to Outsourced or Offshore service providers within 30 days of receipt of notice.

17. eKaleo agrees to provide USDOJ with notice of any changes to its business, including but not limited to corporate structure changes, ownership changes, corporate name changes, business model changes, corporate headquarter location changes, or business operation location changes within 30 days in advance of such change.

18. eKaleo agrees to designate one individual as “Compliance Officer” to oversee compliance with the terms of this LOA, who shall be a person at the executive-level of the company with sufficient experience, and eKaleo shall notify USDOJ of the identity of this individual no later than 15 days after the Date of this LOA.

19. eKaleo agrees to provide an annual report to USDOJ regarding the company’s compliance with this Agreement, to include:

- Certifications that there were no changes (where no changes were reported to USDOJ, including the FBI, during the preceding year);
- Certification that eKaleo has been in CALEA compliance;
- Notice(s) regarding the company’s handling of U.S. Records, Domestic Communications, and Lawful U.S. Process (i.e., whether handled properly and in accordance with the assurances contained herein) including list of individuals with access to U.S. CDRs;
- Recertification on any changes in the services that eKaleo provides or confirmation that no additional services are being offered;
- Notification(s) of any relationships with foreign-owned telecommunications partners, including any peer relationships;
- Updated list of eKaleo’s Principal Equipment, vendors and suppliers;
- Updated NSSP;
- Updated NIST-Compliant Cyber Security Plan;
- Summary of cyber security and cloud incidents reported to USDOJ as well as the actions and resolutions undertaken by eKaleo;



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- 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 Security Incidents, network and enterprise breaches, and unauthorized access to customer data and information;
- A re-identification of the name of and contact information of the LEPOC; and
- Notifications regarding any other matter of interest to this LOA.

The annual report will be due every 31<sup>st</sup> day of January of each calendar year, beginning on January 31, 2019, and will be addressed to:

Assistant Attorney General for National Security  
U.S. Department of Justice  
National Security Division  
Three Constitution Square, 175 N Street NE,  
Washington, DC 20002

Attention: FIRS/Team Telecom Staff

Courtesy electronic copies of all notices and communications will also be sent to the following or individuals identified in the future to eKaleo by USDOJ: Bermel Paz, USDOJ (at [Bermel.Paz@usdoj.gov](mailto:Bermel.Paz@usdoj.gov)); Loyaan Egal, USDOJ (at [Loyaan.Egal@usdoj.gov](mailto:Loyaan.Egal@usdoj.gov)) and FIRS Team (at [FIRS-TT@usdoj.gov](mailto:FIRS-TT@usdoj.gov)).

20. eKaleo agrees that in the event that the commitments set forth in this letter are breached, USDOJ may request the FCC to modify, condition, revoke, cancel, terminate or render null and void any relevant license, permit, or other authorization granted by the FCC to eKaleo or its successors-in-interest, in addition to any other remedy available at law or equity.

21. eKaleo 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 eKaleo's application.

Sincerely,

\_\_\_\_\_  
Carlos Antonio Caeres  
eKaleo, Inc.