



June 1st, 2020

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

Subject: FCC # ITC-214-20190619-00124
Application by Pivotel America Inc. for authority pursuant to Section 214 of the Communications Act of 1934, as amended, to provide facilities-based and resale services between the United States and permissible international points.

Dear Sir/Madam:

This Letter of Agreement (“LOA”) sets forth the commitments that Pivotel America Inc. (“Pivotel”) makes to the U.S. Department of Justice (“USDOJ”), following a review by USDOJ, the Department of Homeland Security, and the Department of Defense (with USDOJ, collectively the “Agencies”), to address national security, law enforcement, and public safety concerns arising from Pivotel’s application to the Federal Communications Commission (“FCC”) requesting authority to provide facilities based and resale service 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 regulations at 47 C.F.R. § 63.18(e)(1), (2).

Pivotel adopts as true and correct all statements Pivotel or its representatives have made to USDOJ or other 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.

Definitions

1. For purposes of this LOA, the following definitions apply:
 - a. “Access” means the ability to undertake physically or logically any of the following actions:
 - (i) 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;

- (ii) To add, edit, delete, reconfigure, provision, or alter information or technology stored on or by software, hardware, a system or network; or
- (iii) To alter the physical or logical state of software, hardware, a system or network.

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 this LOA” means the date on which Pivotel executes this LOA.

e. “Domestic Communications” or “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 Pivotel system that physically is located in the United States, including its territories, including any transmission, switching, bridging, and routing equipment, and any associated 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 of¹, Pivotel to provide, process, direct, control, supervise, or manage DC.

g. “Electronic Surveillance” means:

- (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);

¹ The phrase “on behalf of,” as used in this paragraph, does not include entities with which Pivotel has contracted for peering, interconnection, roaming, long distance, wholesale network access, or other similar arrangements.

- (ii) Access to stored wire or electronic communications, as referred to in 18 U.S.C. § 2701 et seq.;
 - (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 et seq. and 50 U.S.C. § 1841 et seq.;
 - (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. “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.
- k. “Managed Network Service Provider” or “MNSP” means any third party that has Access to Principal Equipment 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.

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

m. “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 Pivotal.

o. “Outsource” means, with respect to DC, supporting the services and operational needs of Pivotal 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, including any “personal identifier information” as set forth in 31 C.F.R. § 800.402(c)(6)(vi)(B).

q. “Principal Equipment” means all primary telecommunications and information network (*e.g.*, wireline, wireless, subsea, satellite, LAN, WAN, WLAN, SAN, MAN, IP, MPLS, FR, Wi-Fi, 3G/4G/LTE, 5G, etc.) equipment (*e.g.*, hardware, software, platforms, OS, applications, protocols) that supports core telecommunications or information services (*e.g.*, voice, data, text, MMS, FAX, video, Internet, OTT, Apps), functions (*e.g.*, network/element management, maintenance, provisioning, NOC, etc.), or operations (*e.g.*, OSS/BSS, customer support, billing, backups, cloud services, etc.), including but not limited to routers, servers, circuit switches or soft-switches, PBXs, call processors, databases, storage devices, load balancers, radios, smart antennas, transmission equipment (RF/Microwave/Wi-Fi/Fiber Optic), RAN, SDR, equalizers/amplifiers, MDF, digital/optical cross-connects, PFE, multiplexers, HLR/VLR, gateway routers, signaling, Network Function Virtualizations, hypervisors, EPC, BSC, BT, or eNodeB, and any other such equipment, whether physical or virtual, that performs the functions of the equipment described in this definition that Pivotal may use during the normal course of business.

r. “Security Incident” means:

- (i) Any known or suspected breach of this LOA, including a violation of any approved policy or procedure under this LOA;

- (ii) Any unauthorized Access to, or disclosure of, PII;
- (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. "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.

t. "U.S. Records" means Pivotel's customer billing records, Subscriber Information, PII, CDRs, CPNI, and any other information used, processed, or maintained in the ordinary course of business related to the services offered by Pivotel 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. Pivotel 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 USDOJ, including the Federal Bureau of Investigation ("FBI"). The LEPOC shall be a U.S. citizen residing in the United States or its territories unless USDOJ otherwise agrees in writing. The LEPOC must be approved by the FBI 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.

3. Pivotel agrees to provide the LEPOC's PII to USDOJ within fifteen (15) days from when the FCC approves Pivotel's application.

4. Pivotel agrees to notify USDOJ, including the FBI, in writing at least thirty (30) days prior to modifying its LEPOC for USDOJ and FBI objection or non-objection.

5. Pivotel 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 (5) days after receiving such Lawful U.S. Process unless USDOJ grants an extension.

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

Lawful U.S. Process and Requests for Information

7. Pivotal 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. §§ 1001-1010, and its implementing regulations, as well as comply with all court orders and other Lawful U.S. Process for lawfully authorized Electronic Surveillance. Pivotal further agrees to certify to USDOJ its CALEA compliance within thirty (30) days from the Date of this LOA.

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

9. Pivotal 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, Pivotal 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. Pivotal agrees not to provide, or otherwise allow the disclosure of, or Access to, U.S. Records, Domestic Communications, or any call content or call data information, to any Foreign Government or any Foreign Person not approved by USDOJ pursuant to Paragraph 22, without prior written consent of USDOJ, or a court of competent jurisdiction in the United States.

12. Pivotal agrees not to disclose the receipt of Lawful U.S. Process, or compliance with Lawful U.S. Process, to any Foreign Government, or any person not authorized under the Lawful U.S. Process, without prior written consent of USDOJ, or a court of competent jurisdiction in the United States.

13. Pivotel agrees to refer any requests for information described in Paragraph 11 from a Foreign Person not approved by USDOJ pursuant to Paragraph 22 or a Foreign Government, including any legal process from a Foreign Government, to USDOJ as soon as possible, but in no event later than five (5) days after such a request, or legal process, is received by, or made known to, Pivotel, 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. Pivotel 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. Pivotel agrees to ensure that U.S. Records are not subject to mandatory destruction under any Foreign laws.

Unauthorized Access and Security Incidents

16. Pivotel agrees to take all practicable measures to prevent unauthorized Access to U.S. Records, DC, and the DCI.

17. Pivotel agrees to take all practicable measures to prevent any unlawful use or disclosure of information relating to U.S. Records or DC.

18. Pivotel agrees to draft: (1) a NIST-Compliant Cyber Security Plan; and (2) an updated version of the Network System Security Plan (“NSSP”), which Pivotel will provide to USDOJ within sixty (60) days of the Date of this LOA for objection or non-objection.

19. Pivotel agrees that the NSSP will address, among other things, 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 Pivotel in the ordinary course of business, and Pivotel’s specific plan regarding new contracts or amendments to existing contracts with third-party providers requiring those third parties to notify Pivotel 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. Pivotel agrees to provide to USDOJ updated network diagrams to include all facilities, devices, Points of Presence (PoPs), and NOCs within sixty (60) days from the Date of this LOA.

21. Pivotel agrees to notify USDOJ at least thirty (30) days prior to changing the location for storage of U.S. Records for USDOJ objection or non-objection. Such notice shall include:

- a. A description of the type of information to be stored in the new location;
- b. The custodian of the information (even if such custodian is Pivotel);
- c. The location where the information is to be stored; and

d. The factors considered in deciding to store that information in the new location.

22. Pivotel agrees to notify USDOJ of all Foreign Persons, including employees, vendors, contractors, MNSPs, or other entities or individuals that Pivotel intends to allow Access to U.S. Records, DC, or DCI. Pivotel agrees to make such notification no less than thirty (30) days prior to the date for which Pivotel is seeking such Access be granted for USDOJ objection or non-objection. Pivotel further agrees to provide the PII to USDOJ for each Foreign Person identified as requiring such Access.

Reporting Incidents and Breaches

23. Pivotel agrees to report to USDOJ promptly, and in any event no later than 72 hours, after if it learns of information that reasonably indicates:

- a. A Security Incident;
- b. Unauthorized Access to, or disclosure of, any information relating to services provided by Pivotel, or referring or relating in any way to Pivotel's customers in the United States or its territories;
- c. Any unauthorized Access to, or disclosure of, DC in violation of federal, state, or local law; or
- d. Any material breach of the commitments made in this LOA.

24. Pivotel agrees to require any third-party service provider to disclose to Pivotel 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.

25. Pivotel agrees to notify USDOJ, including the points of contact (POC) listed in Paragraph 38, in writing of any of the Security Incidents or breaches described in Paragraphs 23 or 24 of this LOA. Consistent with Paragraph 23, the notification shall take place no later than 72 hours after Pivotel or any third party providing Outsourced or Offshored services to Pivotel discovers the incident, intrusion, or breach has taken or is taking place, or sooner when required by statute or regulations.

26. Pivotel agrees to notify the FBI and U.S. Secret Service as provided in Section 47 C.F.R. § 64.2011 within seven (7) business days after reasonable determination that a person without authorization, or in exceeding their authorization, has gained Access to, used, or disclosed CPNI, or that of a third party used by Pivotel, and shall electronically report the matter to the central reporting facility through the following portal:

<https://www.cpnireporting.gov/cpni/content/disclaimer.xhtml?dswid=8089>

Principal Equipment

27. Pivotel agrees to provide USDOJ within thirty (30) days from the date Pivotel receives the FCC's approval, a Principal Equipment List for USDOJ objection or non-objection. 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, or maintaining the Principal Equipment.

28. Pivotal agrees to notify USDOJ in writing at least thirty (30) days prior to introducing any new Principal Equipment or modifying any of its Principal Equipment for USDOJ objection or non-objection.

29. Pivotal 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 modification to its Principal Equipment or systems or software used with or supporting the Principal Equipment. USDOJ will object or non-object to such new Principal Equipment or modification to the Principal Equipment within thirty (30) days of receipt of notice.

Outsourced and Offshored Services

30. Pivotal agrees to provide the USDOJ within thirty (30) days from the date Pivotal receives the FCC's approval, a list of all Outsourced or Offshored service providers that provide services to Pivotal for USDOJ objection or non-objection. The list should include any Outsourced or Offshored service provider that provides services for:

- a. MNSP services;
- b. NOC(s);
- c. Network maintenance services;
- d. Billing or customer support services;
- e. Any operation or service that could potentially expose the DCI, Domestic Communications, or U.S. Records to include CPNI such as CDRs; and
- f. Deploying 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.

31. Pivotal agrees to notify USDOJ in writing no less than thirty (30) days prior to the use of any new Outsourced or Offshore service providers that will provide any of the services described in Paragraph 30(a)-(f).

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

Network Operations Centers

33. Pivotel agrees to notify USDOJ in writing at least sixty (60) days prior to changing the location of its Network Operations Centers for USDOJ objection or non-objection.

Peering Agreements and Interconnecting Carriers

34. Pivotel agrees to provide USDOJ with lists of its existing peering agreements and interconnecting carriers on a biannual basis beginning six (6) months from the Date of this LOA.

35. Pivotel agrees to provide additional lists of its peering agreements and interconnecting carriers within fourteen (14) Days upon USDOJ request.

Change in Ownership and Service Portfolio

36. Pivotel 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 headquarter location changes, or business operation location changes no less than thirty (30) days in advance of such change. Pivotel also agrees to provide USDOJ notice within thirty (30) days of initiating any bankruptcy proceeding or any other legal proceeding undertaken for the purpose of reorganizing, refinancing, or otherwise seeking relief from all or some of Pivotel's debts.

37. Pivotel agrees to provide USDOJ notice of any material change to its current portfolio of services offering, including offering other services beyond its current service portfolio or offering any end-user or 5G-based services, no less than thirty (30) days in advance of such change for USDOJ objection or non-objection.

Annual Report

38. Pivotel 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;
- 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) or interconnection relationships;
- e. Updated network diagrams showing all facilities, devices, PoPs, and NOCs,
- f. Updated NISSP and NIST-Compliant Cyber Security Plan;

- g. Report(s) of any occurrences of Security Incidents including but not limited to cyber-security incidences, network and enterprise breaches, and unauthorized access to U.S. Records;
- h. A re-identification of the location that Pivotel stores U.S. Records;
- i. Recertification of the services that Pivotel provides or confirmation that no additional services are being offered;
- j. A re-identification of the name of and contact information of the LEPOC; and
- k. Notification of any reasonably foreseeable matter that would give rise to an obligation under this LOA.

The annual report will be due one year after the Date of the LOA and every year thereafter. Pivotel 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 DOJ identifies to Pivotel in the future: Lee Licata, USDOJ (at Lee.Licata@usdoj.gov); Loyaan Egal, USDOJ and Eric Johnson, USDOJ (at Compliance.Telecom@usdoj.gov). Upon USDOJ request, Pivotel agrees to provide USDOJ with paper copies of any annual report, notices, or communications required under this LOA.

Site Visits

39. Pivotel agrees to permit USDOJ's requests for site visits and approve all requests to conduct on-site interviews of Pivotel employees.

Miscellaneous

40. If USDOJ finds that the terms of this LOA are inadequate to resolve any national security, law enforcement, or public safety concerns, Pivotel agrees to resolve USDOJ's concerns, according deference to the USDOJ's views on the need for modification. Rejection of a proposed modification shall not alone be dispositive, but failure to resolve national security, law enforcement, or public safety concerns may result in a request 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 Pivotel or its successors-in-interest, or any other appropriate enforcement action required to address the concern.

41. Pivotel agrees that in the event that Pivotel breaches the commitments set forth in this LOA, to include conduct contrary to timely USDOJ objection to any notice submitted pursuant to this LOA, USDOJ may request 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 Pivotel or its successors-in-interest, in addition to pursuing any other remedy available by law or equity.

42. 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.

43. Pivotel understands that, upon execution of this LOA by an authorized representative or attorney, or shortly thereafter, USDOJ agrees to notify the FCC that it does not object to the FCC's consent to Pivotel's application.

Sincerely,



Robert Sakker
President and Secretary
June 1st, 2020
Pivotel America Inc.