



Cascabel Networks LLC

August 12, 2014

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

Unit Chief, Science and Technology Policy and Law Unit
Federal Bureau of Investigation
935 Pennsylvania Ave, NW
Room 7350
Washington, DC 20535

Re: Pending application by Cascabel Networks, LLC for the transfer of control of authority issued pursuant to Section 214 of the Communications Act of 1934, as amended (FCC file number ITC-T/C-20130514-00136 (re: FCC file number ITC-214-20070425-00160); and TT 13-26).

Dear Mr. Carlin,

This letter of agreement ("Agreement") outlines the commitments made by Cascabel Networks, LLC ("Cascabel" or "the company") to the U.S. Department of Justice ("DOJ"), including the Federal Bureau of Investigation ("FBI"), in order to address national security, law enforcement, and public safety concerns raised with regard to the company's application to the Federal Communications Commission ("FCC" or "Commission") for the transfer of control of authority granted to Cascabel under Section 214 of the Communications Act of 1934, as amended ("Section 214"), pursuant to the Commission's rules, Title 47, Code of Federal Regulations, Section 63.24, given a change in Cascabel's ownership (FCC ITC-T/C-20130514-00136; TT 13-26).

Prior to January 1, 2011, Carlos Flores (a U.S. citizen) and Miguel Angel Ballesteros (a Mexican citizen) solely owned Cascabel and held Cascabel's Section 214 authority for Global or Limited Global Facilities-Based and Resale Services pursuant to Sections 63.18(e)(1) and 63.18(e)(2) of the Commission's rules, 47 C.F.R. §§ 63.18(e)(1) and 63.18(e)(2) (file number ITC-214-20070425-00160). On January 1, 2011, Carlos Flores and Miguel Angel Ballesteros transferred their ownership interests in Cascabel to Simon Masri (a Mexican citizen now owning

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a 30.5 percent interest),¹ Ricardo Flores (a U.S. citizen now owning a 30.5 percent interest),² Salomon Masri (a Mexican citizen now owning a 30.5 percent interest),³ and Ernesto Polin (a Mexican citizen now owning an 8.5 percent interest).⁴ Following the transfer of ownership interests, neither Carlos Flores and Miguel Angel Ballesteros nor Simon Masri, Ricardo Flores, Salomon Masri, and Ernesto Polin sought the reassignment or transfer of Cascabel's Section 214 authority to Simon Masri, Ricardo Flores, Salomon Masri, and Ernesto Polin. Such a reassignment or transfer is the subject of Cascabel's instant application with the FCC.⁵

Cascabel, which is headquartered in Houston, Texas, and incorporated in Delaware, currently only provides international termination of voice over internet protocol ("VoIP") traffic originated by unaffiliated carrier customers in the U.S. to carrier customers on a private contractual basis (i.e., not on a common carrier basis).⁶ The majority of traffic serviced by Cascabel terminates in Mexico and the rest of Latin America. Although Cascabel only provides services to other carriers and does not serve as a provider or carrier of record for any calls, Cascabel has the capability of providing lawful interception of packet-based communications.

Operations, Records, and Law Enforcement Requests. Cascabel agrees that it will inform DOJ within 60 days after its business model changes to provide telecommunications services in the U.S. aside from those identified herein, including notice of any provision by Cascabel of service to the destination countries in which Cascabel has foreign-carrier affiliations through Members owning more than 25 percent of Cascabel. In addition, Cascabel confirms that, for any services requiring compliance with the Communications Assistance for Law Enforcement Act ("CALEA"), 47 U.S.C. §§ 1001-1010, Cascabel will comply with CALEA.

¹ Simon Masri is also known as Simon A. Masri; Simon Masri Askenazi; Simon Askenazi Masri; Simon Askenazi; Simon M. Askenazi; and Simon Masri A.

² Ricardo Flores is also known as Ricardo J. Flores; Ricardo Javier Flores; Ricardo Javier F.; Flores Gonzalez Ricardo Javier; and Ricardo Javier Flores Gonzalez.

³ Salomon Masri is also known as Salmon A. Masri; Salomon Masri Askenazi; Salomon Askenazi Masri; Salomon Askenazi; Salomon M. Askenazi; and Salomon Masri A.

⁴ Ernesto Polin is also known as Ernesto Javier Polin; Ernesto J. Polin; Ernesto Javier Polin Moreno; and Ernesto Polin Moreno.

⁵ Cascabel is currently operating pursuant to Special Temporary Authority issued by the FCC (file number ITC-STA-20130514-00137).

⁶ Although Cascabel is not a foreign carrier, it is affiliated with foreign carriers (i.e., any carrier authorized within a foreign country to engage in the provision of international telecommunications services offered to the public in that country) through the ownership interests of its Members. Should the FCC grant Cascabel's instant application, Cascabel would be authorized to provide service to the destination countries in which it has foreign-carrier affiliations through Members who own more than 25 percent of Cascabel – Simon Masri, Ricardo Flores, and Salomon Masri, who all own sufficient interests in Bicentel SA de CV (Mexico).

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Cascabel agrees that it will not directly or indirectly disclose or permit disclosure of or access to U.S. Records⁷ or Domestic Communications⁸ or any information (including call content and call data) pertaining to a wiretap order, pen/trap and trace order, subpoena, or any other lawful request by a U.S. law enforcement agency for U.S. Records to any person if the purpose of such disclosure or access is to respond to the legal process or request on behalf of a non-U.S. government⁹ without first satisfying all pertinent requirements of U.S. law and obtaining the express written consent of DOJ, or the authorization of a court of competent jurisdiction in the U.S. Any such requests for legal process submitted by a non-U.S. government to Cascabel shall be referred to DOJ as soon as possible, but in no event later than five business days after such request or legal process is received by or made known to Cascabel unless disclosure of the request or legal process would be in violation of U.S. law or an order of a court of the U.S. Cascabel also agrees to ensure that U.S. Records are not made subject to mandatory destruction under any foreign laws; provided, however, that Cascabel shall only be required to retain U.S. Records to the extent required under U.S. Law.

Further, Cascabel further agrees to designate a U.S. Law Enforcement Point of Contact ("LE POC") in the U.S., preferably a U.S. citizen, to receive service of process for U.S. Records and, where possible, to assist and support lawful requests for surveillance or production of U.S. Records by U.S. federal, state, and local law enforcement agencies ("Lawful U.S. Process"). Cascabel will give notice of its LE POC to DOJ for approval within 14 days after the execution of this Agreement. In addition, Cascabel will give DOJ at least 30 days' notice of any change to its LE POC, and will provide DOJ with contact and personal identifying information for the designated individual; such nominated LE POC shall be subject to DOJ review and approval. When possible, Cascabel will provide advance notice of any change to its LE POC. Cascabel also agrees that the designated LE POC will have access to all U.S. Records, and, in response to Lawful U.S. Process, will make such records available within five business days after receiving such Lawful U.S. Process unless a later response date is indicated on such Lawful U.S. Process or agreed upon by the requesting entity.

⁷ "U.S. Records," as used herein, means Cascabel's customer billing records, subscriber information, and any other related information used, processed, or maintained in the ordinary course of business relating to the services offered by Cascabel in the U.S. For these purposes, U.S. Records also shall include information subject to disclosure to a U.S. federal or state governmental entity under the procedures specified in Sections 2703(c) and (d) and Section 2709 of Title 18 of the U.S. Code.

⁸ "Domestic Communications," as used herein, means: (1) Wire Communications or Electronic Communications (whether stored or not) from one U.S. location to another U.S. location; and (b) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the United States. "Electronic Communication" has the meaning given in 18 U.S.C. § 2510(12). "Wire Communication" has the meaning given in 18 U.S.C. § 2510(1).

⁹ The term "non-US government" means any government, including an identified representative, agent, component or subdivision thereof, that is not a local, state, or federal government in the U.S.

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Access to Information, Facilities, and Personnel. Cascabel, and any owner of Cascabel, shall permit the DOJ, and such other U.S. Government agency representatives designated by the DOJ, to inspect books and records, equipment, servers, and facilities and premises owned or leased by Cascabel or any owner of Cascabel to the extent business relating to Cascabel's FCC-licensed activity takes place at such location(s). Where Cascabel possesses the authority to permit such access, Cascabel also agrees to make available to the DOJ, and such other U.S. Government agency representatives designated by the DOJ, any third-party books and records, equipment, servers, facilities (including third-party offshore or outsourced facilities), and premises to the extent business relating to Cascabel's FCC-licensed activity takes place at such location(s). Ordinarily, the DOJ will provide Cascabel with fourteen (14) days advance notice, but Cascabel shall afford the DOJ such access during normal business hours without advance notice in extraordinary circumstances.

Cascabel, and any owner of Cascabel, shall permit the DOJ, and such other U.S. Government agency representatives designated by the DOJ, to conduct confidential interviews, of owners, ownership groups, employees, or contractors of Cascabel concerning compliance with this Agreement and any other law enforcement concerns.

Audit Requirements. Cascabel will retain and pay for a neutral third-party financial audit (e.g., of total assets, total liabilities, total net assets, cash flows, accounts payable/receivable records, investments, tax liabilities, beginning and ending net assets, including its corporate bank accounts and loans) for the fiscal year 2014,¹⁰ to include an audit of Cascabel's internal controls ("the Initial Audit"). The deadlines and requirements for the Initial Audit will be as follows:

- Within sixty (60) days from the execution date of this Agreement, Cascabel shall provide notice of its proposed third-party auditor for the Initial Audit to the DOJ.
- The DOJ shall have an opportunity to provide reasonable objections to the proposed auditor within sixty (60) days of receiving Cascabel's notification of a proposed auditor.
- Once the DOJ and Cascabel mutually agree upon a third-party auditor, and after Cascabel receives DOJ's written non-objection, Cascabel will designate the agreed-upon, neutral, third-party auditor ("the Initial Designated Auditor").
- Thereafter, Cascabel shall consult with the DOJ on the Initial Audit's terms and scope of engagement, the financial statements being audited, and the auditing standards to be applied (collectively, the "Initial Audit Terms") and Cascabel will reasonably address any concerns raised by the DOJ, with the final Initial Audit Terms being subject to DOJ approval. The DOJ and Cascabel will reasonably negotiate any concerns raised by Cascabel to the Initial Audit Terms. The Initial Designated Auditor will circulate to DOJ and Cascabel the final Initial Audit Terms once they are approved by both DOJ and Cascabel.

¹⁰ Cascabel's fiscal year is from January 1 to December 31, annually.

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- Cascabel shall ensure that the Initial Audit report generated by the Initial Designated Auditor promptly is provided to the DOJ directly by the Initial Designated Auditor, at the same time the Initial Audit report is provided by the Initial Designated Auditor to Cascabel.
- The Initial Audit's final report will be due no later than 180 days after either the close of Cascabel'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 DOJ, 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 U.S. as the country of origin of those standards.

Following the Initial Audit, unless otherwise directed by the DOJ, subsequent audits will be conducted annually for each of the next two (2) fiscal years, up to and including fiscal year 2016. Thus, Cascabel shall retain and pay for subsequent neutral third-party financial audits (e.g., of total assets, total liabilities, total net assets, cash flows, accounts payable/receivable records, investments, tax liabilities, beginning and ending net assets, including its corporate bank accounts and loans) for fiscal years 2015 and 2016 ("Subsequent Audit(s)"), to include an audit of Cascabel's internal controls for fiscal year 2015. Thereafter, for fiscal years 2017 and 2018, an audit or financial review ("Requested Review"), as designated by DOJ, shall be conducted pursuant to the terms described in this paragraph if DOJ so requests within 90 days of DOJ's receipt of a final audit or financial-review report for the preceding fiscal year. The deadlines and requirements for each Subsequent Audit or Requested Review will mirror those for the Initial Audit, and include:

- Cascabel shall provide notice of the proposed auditor to DOJ 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 DOJ has notified Cascabel of an objection to the retention of the same person/firm.
- Should DOJ object to the retention of the same person/firm for subsequent audit(s) or financial review(s), the DOJ shall have an opportunity to provide reasonable objections within 90 days of the submission of the preceding year's final audit or financial-review report. The DOJ shall have an opportunity to provide reasonable objections to a newly proposed auditor within sixty (60) days of receiving Cascabel's notification of a newly proposed auditor.
- Once the DOJ and Cascabel mutually agree upon a neutral third-party auditor ("the Designated Auditor"), the DOJ shall be consulted on the terms and scope of engagement, the financial statements being audited, and the auditing standards to be applied, including whether an audit of internal controls should be conducted, for the Subsequent Audit(s) and/or Requested Review(s), (collectively, the "Subsequent Terms"). Cascabel will reasonably address any concerns raised by the DOJ, with the final Subsequent Audit

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Terms being subject to DOJ approval. The DOJ and Cascabel will reasonably negotiate any concerns raised by Cascabel to the Subsequent Audit Terms.

- Cascabel shall ensure that the final Subsequent Audit and/or Requested Review reports generated by the Designated Auditor are promptly provided to the DOJ directly by the Designated Auditor at the same time that the final Subsequent Audit report is provided to Cascabel by the Designated Auditor.
- The final results for Subsequent Audits and/or Requested Review(s) will be due no later than 180 days after either the close of the fiscal year to which the audit or review relates or the date on which the Designated Auditor circulated the Subsequent Terms, whichever is later, unless other arrangements are approved by the DOJ, and will be issued by a CPA. The final report for a Subsequent Audit and/or Requested Review will include a statement that the audit was conducted in accordance with generally accepted auditing standards and an identification of the U.S. as the country of origin of those standards.

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

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

Notice of Termination of Accounts. Cascabel agrees to notify DOJ within thirty (30) days after any termination of accounts in the name of Cascabel by a financial institution, and the reason given by such financial institution for such termination.

Company Point of Contact. Within 30 days of this Agreement's execution, Cascabel will provide notice to the DOJ of a point of contact ("Company POC") within the company to or with whom communications regarding this Agreement may be sent or engaged. Thereafter, Cascabel will provide notice to the DOJ of any changes to the Company POC within 30 days of such change.

Annual Report. Cascabel agrees to provide Annual Reports to the DOJ regarding the company's compliance with the specific terms of this Agreement, to include a summary of the content of any notices sent to the DOJ during the prior year pursuant to this Agreement. The Annual Report also shall include reports of network and enterprise breaches and unauthorized access to customer data and information; the name of and contact information for the current LE POC and Company POC; and confirming Cascabel's compliance with CALEA. These annual



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reports will be due on the anniversary date of this Agreement's execution and should be addressed to the following:

Assistant Attorney General for National Security
U.S. Department of Justice
National Security Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Attn.: Team Telecom, Foreign Investment Review Staff
Electronic mail: ttelecom@usdoj.gov

Unit Chief, Science and Technology Policy and Law Unit
Federal Bureau of Investigation
935 Pennsylvania Ave, NW
Room 7350
Washington, DC 20535

Courtesy electronic copies of all notices and communications also should be sent to the following, or to such other persons identified to Cascabel by DOJ in the future: Kristin Taylor of the DOJ (at kristin.taylor@usdoj.gov); Richard Sofield of the DOJ (richard.sofield2@usdoj.gov); and Jonathan Frenkel of the FBI (at jonathan.frenkel@ic.fbi.gov).

Termination of Agreement. The Agreement may be terminated at any time by a written agreement signed by Cascabel and DOJ. DOJ shall notify the FCC of the Agreement's termination within 60 days of such termination.

Six years from the anniversary date of the Agreement's execution, Cascabel may request that DOJ initiate a confidential review and assessment to determine whether the Agreement should be terminated ("Termination-Assessment Request"). DOJ shall notify Cascabel in writing of its decision regarding the Agreement's termination within 180 days after receiving a Termination-Assessment Request from Cascabel. Thereafter, Cascabel may submit a Termination-Assessment Request to DOJ annually.

General. Aside from other remedies or actions already in existence and available to DOJ, Cascabel agrees that, in the event that the commitments set forth in this Agreement are breached, in addition to any other remedy available at law or equity, the DOJ may request that the FCC modify, condition, revoke, cancel, or render null and void any relevant license, permit, or other authorization granted by the FCC to Cascabel or any successors-in-interest. Nothing herein shall be construed to be a waiver by Cascabel of, or limitation on, its right to oppose or comment on any such request. This Agreement and all commitments hereunder shall expire upon surrender or cancellation of Cascabel's Section 214 authority.



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Further, nothing in this Agreement is intended to excuse Cascabel from its obligations to comply with any and all applicable legal requirements and obligations, including any and all applicable statutes, regulations, requirements, or orders.

Cascabel understands that, upon execution of this Agreement by an authorized representative or attorney for Cascabel, or shortly thereafter, the FCC shall be notified by the DOJ that it has no objection to the FCC's grant of the application by Cascabel at issue herein where such authorization is made conditional upon Cascabel's compliance with this Agreement.

Sincerely,

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

Simon Masri
Manager and President
Cascabel Networks, LLC