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Ministry of Communications and Information Technology

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GUIDELINES ON PROVISION OF IGW FACILITY SERVICES

RESPONSE TO CONSULTATION FROM MYANMAR CENTRE FOR RESPONSIBLE BUSINESS

We are writing in response to the consultation on the draft Guidelines on the Provision of International Gateway Facility Services.

First of all, we would like once again to thank the Ministry for the open and consultative way in which it is proceeding on this issue, and for arranging this current consultation process. As ever, we hold up MCIT as a model for other Ministries to emulate when drafting policy and technical rules. We are grateful for the invitation to attend the Naypyidaw consultation on 5 January although we would have welcomed a little more notice, and believe that it general it is better to hold face to face consultations later in the consultation period to allow stakeholders to familiarize themselves with the issues.

We hope that the Ministry will revert to its earlier good practice of publishing all the responses it receives to this consultation.

Concerning the draft Guidelines themselves we welcome the overall approach to liberalization, which should serve to enhance the security of the network, thereby further enabling the enjoyment of various human rights through more reliable and continuous connectivity.

Our concerns and questions are closely related to our wider concerns about the gaps in Myanmar's legal framework concerning data protection and lawful interception (LI), as detailed in Chapter 4.3. (Privacy) and 4.4 (Surveillance) of MCRB's ICT Sector-Wide Impact Assessment (available at www.mcrb.org.mm).

We understand that draft regulations on LI will shortly be the subject of public consultation, and we note that Article 38 refers to the licensee making '*necessary technical arrangements in line with ETSI standard ES 201158 v1.2.1 for lawful inception requirements*'. We welcome the implication that ETSI

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standards will be used for IGW facilities, and look forward to commenting on a draft law as soon as possible.

We believe that the following points in the draft guideline require further attention:

Storage and Preservation of Traffic Records

29. The licensee shall develop and implement a plan for data storage capacity sufficient to ensure capture and preservation of traffic records; such data storage plan to be filed with and reviewed by the Department."

We recommend that companies should not be required to file a plan with the Department for the capture and preservation of data until Myanmar has adopted the necessary legal frameworks for data privacy and lawful interception which respect human rights. Such a framework needs to define the reason for storing traffic records, the length for which they should be stored, and who can access them and for what purpose. Such definitions should be set by government, and not left to the discretion of individual companies.

We therefore recommend that the Guidelines be amended to read

*29. The licensee shall develop and implement a plan for data storage capacity sufficient to ensure capture and preservation of traffic records **to comply with relevant legal requirements; such a data storage plan should be filed with and reviewed by the Department.**"*

and that the Department should advise licensees to await the approval of the relevant regulations before submitting a data storage plan.

Registration of Customers

39. The Licensee shall maintain a register containing records of all customers and their individual particular information; such register shall be made available for inspection by the Department. The individual particular information should include the customer's name, address, registration number, and details of the services provided, such as, but not limited to, international leased circuit speeds and destinations.

40. The register shall be kept for a period of not less than six (6) months from the date of termination of the services to the customer.

We believe that the Guidelines should clarify the reason for keeping this register, and the circumstances under which it would be inspected by the Department.

We also believe that, having established the purpose for retention of the data, the Guidelines should establish a maximum period for retention after which the data should be destroyed securely, in the line with the principle that personal data should be retained no longer than is necessary for the purpose you obtained it for. We therefore recommend that the Department amend these paragraphs appropriately

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39. The Licensee shall maintain a register containing records of all customers and their individual particular information; such register shall be made available for inspection by the **Department for the purposes of [PURPOSE TO BE SPECIFIED]**. The individual particular information should include the customer's name, address, registration number, and details of the services provided, such as, but not limited to, international leased circuit speeds and destinations.

40. The register shall be kept for a period of not less than six (6) months **AND NOT MORE THAN [X] MONTHS** from the date of termination of the services to the customer.

Or alternatively

40. The register **shall be kept for a period of six (6) months from the date of termination** of the services to the customer.

Thank you again for the opportunity to comment and we look forward to commenting on the draft Lawful Interception Regulations.

On this subject, you may recall that the SWIA included a Recommendations on The Characteristics of a Rights respecting Model for LI in the Annex to the SWIA's Executive Summary. This Recommendation and the Principles are available in English and Burmese and we hope that they have been helpful to inform the draft LI rules for Myanmar.

<http://www.myanmar-responsiblebusiness.org/pdf/SWIA/ICT/Executive-Summary-and-Recommendations.pdf?v=1>

http://www.myanmar-responsiblebusiness.org/pdf/SWIA/ICT/Executive-Summary-and-Recommendations_my.pdf

Given that this debate is very topical, including in the United Kingdom and the USA, the Institute of Human Rights and Business has recently re-packaged these as an Occasional Paper for wider consumption for governments and other stakeholders beyond Myanmar. The Paper, which puts the issue in a wider context, is available at <http://www.ihrb.org/publications/reports/lawful-interception.html>

Yours sincerely

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