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Law and Order Select Committee
Parliament Buildings
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**Submission on the Telecommunications
(Interception Capability and Security) Bill**

Introduction

1. Vector Limited ("Vector") welcomes the opportunity to make this submission on the Telecommunications (Interception Capability and Security) Bill ("the Bill"), introduced to Parliament on 8 May 2013.
2. While Vector broadly supports the submission of the Telecommunications Carriers' Forum ("TCF"), of which Vector Communications is a member, it does not support the TCF's recommendation to automatically extend the proposed compliance duties in the Bill to over-the-top service providers. Vector's view on this matter is discussed below.
3. No part of this submission is confidential and Vector is happy for it to be made publicly available.
4. Vector's contact person for this submission is:

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Tiered nature of compliance duties

5. Vector supports the tiered nature of compliance duties proposed in the Bill. In particular, Vector strongly supports the proposal to have lower-level compliance duties for network operators with fewer than 4,000 customers, with "customer" being defined in section 13(7) as "a person who has an account or a billing relationship with the network operator". This is consistent with the objectives of the Bill to "reduce the obligations on some network operators" and "not impose unnecessary compliance costs" on the telecommunications industry.

6. The above proposal ensures that the Bill will not impose substantial costs on smaller network operators, who would otherwise be required to have "full interception capability". Vector particularly notes the Commerce Commission's *Annual Telecommunications Monitoring Report 2012* which indicates that 92% of home internet connections are carried across only four providers (combining Vodafone and TelstraClear).¹
7. Further, the tiered approach would ensure monitoring costs for regulators and compliance costs for industry participants are kept to a minimum. Otherwise, smaller network operators would endure a disproportionate financial impact due to their scale, and this in turn would be detrimental to the promotion of competition in the telecommunications industry.

OTT service providers

8. Vector does not support the TCF proposal or any other proposals to automatically extend the proposed duties to cover all over-the-top ("OTT") service providers, many of which are based overseas. It would be impractical and onerous, if not impossible, for the relevant government agencies to identify, let alone police, the compliance of global OTT service providers. This would lead to increased costs in the implementation and maintenance of the new regime that could filter down to end-users.
9. Furthermore, Vector understands that network operators and internet service providers ("ISPs") with full interception capability would, in many situations, be able to intercept specific traffic that traverses their networks and gateways, including that from OTT service providers.
10. The Bill's coverage, as currently drafted, is consistent with the approaches used in determining liability in respect of the Telecommunications Development Levy, which excludes potentially liable overseas parties, and the unlicensed use of WiFi spectrum by end-users. In both cases, the cost of policing would simply be too high without any overriding benefits.
11. Importantly, many of the innovative applications in telecommunications in the coming years are expected to be driven by OTT service providers. Imposing a barrier to the delivery of these services would at best be a 'tax on innovation', putting in jeopardy New Zealand's fast follower aspirations, and at worst would exclude New Zealand from the benefits of these innovations altogether.
12. The TCF proposal that would apply the same duties to OTT service providers, if accepted, would also lead to significant network neutrality issues. There is no practical consequence for the OTT service provider located outside New Zealand

¹ <http://www.comcom.govt.nz/assets/Telecommunications/Market-Monitoring/2012-Annual-Telecommunications-Report-3-May-2013.pdf>, page 20

from non-compliance unless the legislation also enabled the Minister to direct network operators to block all traffic relating to that OTT service provider. In Vector’s view, this is not a desirable direction for New Zealand to take.

Notification of Registrar by infrastructure-level service providers

13. Section 23 of the Bill states that:

A network operator that provides an infrastructure-level service must. . .(b) ensure that the Registrar is advised of the names of any new customer—at least 10 working days before providing or activating the infrastructure-level service to the customer.

14. Vector understands this obligation applies to “network operator A” (as defined under “wholesale network service”) and each other downstream network operator in the supply chain.

15. There may be numerous network operators involved (in differing capacities) in delivering a service to an end-user which relies in whole or in part on an infrastructure-level service from network operator A, but the obligation under section 23 only applies in certain scenarios, as illustrated in Table 1.

Table1: Infrastructure-level services

	Scenario	NO A	NO B	NO C	SP	EU	
						NOA	REG
1	NO A supplies ILS to EU directly	Y	-	-	-	K	K
2	NO A supplies ILS to NO B for interconnect	Y	N	-	-	K	K
3	NO A supplies ILS to NO B for own use	Y	N	-	-	K	K
4	NO A supplies ILS to NO B who resells the unmanaged service to EU	Y	Y	-	-	U	K
5	NO A supplies ILS to SP who resells the unmanaged service to EU	Y	-	-	N/A	U	U
5	NO A supplies ILS to NO B who supplies a managed service to EU	Y	N	-	-	U	NR
6	NO A supplies ILS to NO B who resells the unmanaged service to NO C who in turn supplies a managed service to EU	Y	Y	N	-	U	NR
7	NO A supplies ILS to NO B who supplies a managed service to NO C or SP who in turn supplies a managed service to EU	Y	N	N	N/A	U	NR

ILS = Infrastructure-level service

NO = Network operator; SP = Service Provider; EU = End-user; REG = Registrar

Y = existing obligation under section 23

N or N/A = no obligation under section 23

K = ID of EU known to party; U = ID of EU unknown to party

NR = ID of EU not required as a managed service is ultimately provided

16. Vector would like to understand if these scenarios provide the intended outcome if the Registrar is expecting to learn the identity of the end-user through the operation of section 23, where:
 - a. It is unlikely that each input infrastructure-level service network operator would be aware of the end-to-end nature of the service or the identity of the end-user beyond its own direct downstream customer;
 - b. There is no obligation under section 23 on a service provider to inform the Registrar of the name of its customer (i.e. the end-user);
 - c. Under the proposed regime, the Registrar could perceivably receive multiple notifications relating the same input infrastructure-level service without having any ability of linking them together (except for timing and logic); and
 - d. It is likely that the Registrar would receive notices for infrastructure-level services from upstream network operators that ultimately are delivered as managed services by downstream network operator(s) or service providers.

17. Vector considers that several changes to the Bill could be considered to avoid reporting duplication (and unnecessary reporting costs), reduce confusion, and ensure registry data integrity:
 - a. An originating network operator providing a new infrastructure-level service to another network operator or service provider who is already registered as a customer of that originating network operator should not be required to advise the Registrar of the additional infrastructure-level service;
 - b. The obligation under section 23 should apply equally to network operators and service providers as both may resell or retail infrastructure-level services to end-users; and
 - c. The network operator or service provider who is billing the infrastructure-level services to the end-user should be responsible for advising the Registrar.

18. Alternatively, if it is the intent that only the originating network operator should advise the Registrar of a new infrastructure-level service, then the originating network operator must have some enforceable means of obtaining the name of the last infrastructure-level service customer in the supply chain in order to meet their obligations in a meaningful way.

Yours sincerely

A handwritten signature in blue ink that reads "R. Girdwood".

Bruce Girdwood

Manager Regulatory Affairs