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PROCLAMATION No. 761/2012.

A PROCLAMATION ON TELECOM FRAUD OFFENCE

WHEREAS, considering that telecom fraud is increasing and wide-spreading from time to time thereby encumbering the telecom industry to play an essential role in the implementation of peace, democratization and development programs of the country;

WHEREAS, recognizing that telecom fraud is a serious threat to the national security beyond economic losses;

WHEREAS, it has became imperative to legislate adequate legal provisions since the laws presently in force in the country are not sufficient to prevent and control telecom fraud;

NOW, THEREFORE, in accordance with Article 55(1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

PART ONE

GENERAL

1. Short Title

This Proclamation may be cited as the “Telecom Fraud Offence Proclamation No. 761/2012".
2. Definitions

In this Proclamation, unless the context otherwise requires:

1/ "telecom service" means public switched telecom service, cellular mobile service, internet service, satellite telephone service, data communication service, telecom-centers or resale service, mobile or fixed private radio service, very small aperture terminal (VSAT) service, cable installation and maintenance service, telecom switches installation and maintenance service, the transmission or reception through the agency of electricity or electromagnetism of any sounds, signs, signals, writing, images or intelligence of any nature by wire, radio, optical fiber, satellite or other electromagnetic systems or any other service designated as telecom service by the Ministry; and may not include broadcasting service and intercom connection;

2/ "telecom equipment" means any apparatus used or intended to be used for telecom service, and includes its accessory and software;

3/ "call-back service" means the use of dial tone of a foreign telecom operator for international connection without the knowledge of the domestic telecom operator or fraudulently making international calls in to apparent domestic calls and shall include services that are identified as call-back by the International Telecommunication Union;

4/ "Ministry" means the Ministry of Communication and Information Technology;

5/ "telecom service provider" means the Ethio-Telecom or any other person authorized to provide telecom service;

6/ "police" means the Federal Police or, as the case may be, regional state police;

7/ "regional state" means any state referred to in Article 47 (1) of the Constitution of the Federal Democratic Republic of Ethiopia and includes the Addis Ababa and Dire Dawa city administrations;
8/ "person" means a physical or juridical person;

9/ any expression in the masculine gender includes the feminine.

PART TWO

TELECOM FRAUD OFFENCES

3. Offences Related to Telecom Equipments

1/ Without prejudice to the provision of sub-article (3) of this Article, whosoever manufactures, assembles, imports or offers for sale any telecom equipment without obtaining prior permit from the Ministry commits an offence and shall be punishable with rigorous imprisonment from 10 to 15 years and with fine from BIRR 100,000 to BIRR 150,000.

2/ Without prejudice to the provision of sub-article (3) of this Article, whosoever uses or holds any telecom equipment without obtaining prior permit from the Ministry commits an offence and shall be punishable with rigorous imprisonment from 1 to 4 years and with fine from BIRR 10,000 to BIRR 40,000.

3/ The Ministry shall, in consultation with concerned bodies, prescribe types of telecom equipment the manufacturing, assembling, importation, sale or the use of which may not require permits, and set their technical standards.

4. Offences Related to the Provision of Telecom Service

Whosoever provides telecom service without having a valid license issued in accordance with the appropriate laws commits an offence and shall be punishable with rigorous imprisonment from 7 to 15 years and with fine equal to three times the revenue estimated to have been earned by the person during the period of time he provided the service.

5. Offences Related to Interception and Access

Whosoever without the authorization of the service provider or lawful user, or any other competent authority:

1/ obstructs or interferes with any telecom network, service or system,
2/ 

3/ 

6. Using Telecom Service for Illegal Purpose

Whosoever:

1. uses or causes the use of any telecom network or apparatus to disseminate any terrorizing message connected with a crime punishable under the Anti-Terrorism Proclamation No. 652/2009, or obscene message punishable under the Criminal Code; or

2. uses or causes the use of the telecom service or infrastructure provided by the telecom service provider for illegal purpose; commits an offence and shall be punishable with rigorous imprisonment from 3 to 8 years and with fine from Birr 30,000 to Birr 80,000.

7. Offence Related to Fraud of Service Charge

Whosoever:

1. fraudulently obtains telecom service without payment of a lawful charge thereof; or

2. obtains telecom service by means of fraudulent payment charged to another person; commits an offence and shall be punishable with rigorous imprisonment from 5 to 10 years and with fine equal to three times the charge estimated to have been avoided by the act.
8. Offences Related to Call-Back Service

1/ Whosoever provides call-back service commits an offence and shall be punishable with rigorous imprisonment from 5 to 10 years and with fine equal to five times the revenue estimated to have been earned by the person during the period of time he provided the call-back service.

2/ Whosoever intentionally or by negligence obtains any call-back service shall be punishable with imprisonment from 3 months to 2 years and with fine from Birr 2,500 to Birr 20,000.

9. Offences Related to Illegal Telecom Operators

1/ Whosoever:
   a) establishes any telecom infrastructure other than the telecom infrastructure established by the telecom service provider; or
   b) bypasses the telecom infrastructure established by the telecom service provider and provides any domestic or international telecom service; commits an offence and shall be punishable with rigorous imprisonment from 10 to 20 years and with fine equal to ten times the revenue estimated to have been earned by him during the period of time he provided the service.

2/ Whosoever intentionally or by negligence obtains any telecom service from an illegal operator stipulated under sub-article (1) of this Article commits an offence and shall be punishable with imprisonment from 3 months to 2 years and with fine from Birr 2,500 to Birr 20,000.

10. Other Offences

1/ Whosoever illegally manipulates or duplicates SIM cards, credit cards, subscriber identification numbers or data or sales or otherwise distributes illegally duplicated SIM cards, credit cards, subscriber identification numbers or data commits an offence and shall be punishable with rigorous imprisonment from 10 to 15 years and with fine from Birr 100,000 to Birr 150,000.
2/ Whosoever:

a/ by connecting any equipment to a public pay telephone or by using any other means obtains services which are not normally available through the public pay telephone; or

b/ obtains or causes others to obtain telecom service from the telecom service provider by presenting false or forged service agreement or by fraudulently using the identity code of another person or by using any other fraudulent means;

... commits an offence and shall be punishable with rigorous imprisonment from 3 to 8 years and with fine from Birr 30,000 to Birr 80,000.

3/ Whosoever provides telephone call or fax services through the internet commits an offence and shall be punishable with rigorous imprisonment from 3 to 8 years and with fine equal to five times the revenue estimated to have been earned by him during the period of time he provided the service.

4/ Whosoever intentionally or by negligence obtains the service stipulated under subarticle (3) of this Article commits an offence and shall be punishable with imprisonment from 3 months to 2 years and with fine from Birr 2,500 to Birr 20,000.

11. Offence Committed by Juridical Person

Where any juridical person commits an offence stipulated under this Proclamation, it shall be punishable with a fine the amount of which shall be equal to ten times the fine stipulated for the offence.

12. Confiscation of Property

The court, in deciding the penalty of an offender under this Proclamation, shall give additional order for the confiscation of any telecom equipment used in the perpetration of the offence.
PART THREE

MISCELLANEOUS PROVISIONS

13. Establishment of Technical Task Force

In order to prevent, investigate and control telecom fraud offence a national technical task force comprising members drawn from the concerned bodies shall be established.

14. Covert Search

Police may request the court in writing for covert search warrant where a telecom fraud offence has been committed or where he has reasonable ground that a telecom fraud is likely to be committed.

15. Admissibility of Evidence

Without prejudice to the admissibility of other evidences to be produced in accordance with the Criminal Procedure Code and other relevant laws, the following shall be admissible in court in relation to telecom fraud offences:

1/ digital or electronic evidences;
2/ evidences gathered through interception or surveillance; and
3/ information obtained through interception conducted by foreign law enforcement bodies.

16. Jurisdiction

The Federal High Court shall have first instance jurisdiction over telecom fraud offences provided under this Proclamation.

17. Repealed and Inapplicable Laws

1/ Sub- article (1), (2) and (3) of Article 25 of the Telecommunication Proclamation No. 49/1996 (as amended by Proclamation No. 281/2002) are hereby repealed.

2/ No law or customary practice shall, in so far as it is inconsistent with this Proclamation, be applicable with respect to matters provided for under this Proclamation.
18. **Power to Issue Regulation**

The Council of Ministers may issue regulation necessary for the implementation of this Proclamation.

19. **Effective Date**

This Proclamation shall come into force on the date of publication in the Federal Negarit Gazeta.

Done at Addis Ababa, this 4th day of September, 2012.

Girma Woldegiorgis

President of the Federal Democratic Republic of Ethiopia