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1 April 2014

Office of the High Commissioner for Human Rights
United Nations Office
CH-11 Geneva 10
Switzerland

Re: Request for information in preparation for the report requested in General Assembly resolution 68/167, "The right to privacy in the digital age"

Dear Sir or Madam:

The Telecommunications Industry Dialogue is pleased to provide information to the Office of the High Commissioner for Human Rights to be considered during the drafting of its report to the Human Rights Council and the General Assembly pursuant to General Assembly resolution 68/167.

The Telecommunications Industry Dialogue is a group of telecommunications operators and vendors who jointly address freedom of expression and privacy in the telecommunications sector in the context of the UN Guiding Principles on Business and Human Rights. The companies that are currently participating in the Industry Dialogue are Alcatel-Lucent, AT&T, Millicom, Nokia Solutions and Networks, Orange, Telefonica, Telenor Group, TeliaSonera, and Vodafone Group. These companies have a global footprint, providing telecommunications services and equipment to consumers, businesses, and governments in nearly 100 countries worldwide. In March of 2013, the Industry Dialogue adopted a set of Guiding Principles which explore the interaction and boundaries between a government's duty to protect human rights and the corporate responsibility of telecommunications companies to respect human rights. It also entered into a two-year collaboration with the multi-stakeholder Global Network Initiative aimed at finding a shared and practical approach to promoting freedom of expression and privacy around the world.

1. Challenges that business enterprises experience in relation to government policies and practices regarding domestic and extraterritorial surveillance and/or interception of digital communications, particularly as regards their responsibility to respect human rights

The Telecommunications Industry Dialogue would like to highlight two particular challenges that information and communications technology (ICT) companies face in relation to government policies and practices regarding interception of communications and/or access to communications related data as companies seek to respect human rights. First, as a condition of operating in certain countries, governments may require unrestricted direct access into companies' infrastructure for the purpose of interception of communications and/or access to communications related data, leaving the company without any operational or technical control of its technology. UN Special Rapporteur for freedom of opinion and expression Frank La Rue highlighted this problem in his 2013 report to the Human Rights

Council and the General Assembly and recommended that states refrain from imposing such a requirement on business enterprises.¹

It is the position of the Industry Dialogue that government agencies should be required to obtain assistance from companies when they exercise their lawful powers to access communications data in accordance with international standards; e.g., companies should retain the operational and technical means of giving it. This ensures that the company controls its own operating environment, and it provides a degree of transparency and accountability on the part of government agencies. Where governments already have the capacity to obtain direct access to communications, interception of communications and/or access to communications related data should be subject to ongoing oversight by an independent judiciary or other independent government authorities.

Second, in the experience of the Telecommunications Industry Dialogue, many countries lack a clear and transparent legal framework regarding government interception of communications and/or access to communications related data, and provisions for adequate, independent oversight of this power are often absent. This presents particular challenges in some markets, in which the law does not clearly establish the form that a government request for user data should take. Where the rule of law is weak and corruption is prevalent, the problem may be compounded, reducing the options available to companies as they seek to balance the need to comply with local law with their responsibility to respect customers' rights.

2. Measures that business enterprises can take to ensure that they minimize negative impacts on the right to privacy that may stem from government requests or mandates regarding the surveillance of communications, their interception and collection of personal data, and good practices in this regard

The participating companies believe that taking part in initiatives such as the Telecommunications Industry Dialogue presents business enterprises in the telecommunications sector with a valuable platform to exchange best practices, learning, and tools that advance freedom of expression and privacy.

On March 12, 2013 the *Telecommunications Industry Dialogue on Freedom of Expression and Privacy Guiding Principles* were published. These Guiding Principles set out a number of measures that companies can take to minimize negative impacts on customer privacy, including creating policies and processes to evaluate and handle government requests that may have an impact on users' freedom of expression and privacy, conducting human rights impact assessments and using due diligence processes to identify and mitigate risks to these rights, and examining options for implementing relevant grievance mechanisms, among other commitments.

Through their participation in the Industry Dialogue, companies share best practices and tools for implementing the Guiding Principles into their company operations. The Industry Dialogue also engages in constructive dialogue with stakeholders to collectively seek globally applicable solutions to best protect and respect freedom of expression and privacy. For the text of the Guiding Principles and more information on the Telecommunications Industry Dialogue, please visit our Web site, <http://www.telecomindustrydialogue.org>.

¹ Report of the UN Special Rapporteur for freedom of opinion and expression, Frank La Rue, A/HRC/23/40, April 2013, paras. 73 and 96.

3. Measures needed at the domestic and international level in order to enable business enterprises to fully meet their responsibilities to respect human rights, and specifically the right to privacy, with regard to digital communications

The United Nations and other supranational organizations play a vital role in promoting the international legal standards that guide companies' actions as they seek to respect the human rights of customers and other users. All government powers to intercept communications and/or access to communications related data should be founded on a clear and transparent legal framework that accommodates advances in technology and is in accordance with the rule of law. This framework should provide for adequate and independent judicial or government oversight. The pertinent laws and regulations, as well as how they are interpreted and applied, should be publicly available and subject to debate that includes all interested stakeholders.

Business enterprises look to organizations such as the United Nations for support in promoting the adoption of these standards in the domestic law of member states. By furthering the consolidation and development of international standards through reports, resolutions and other tools at their disposal, international organizations also support business enterprises in meeting their responsibility to respect users' privacy as technological advances continue.

Finally, the advancement of freedom of expression and privacy globally can best be achieved through engagement between governments, business enterprises, civil society, investors, supra-national organizations and other affected stakeholders. The United Nations and other regional organizations have a unique capacity to convene governments and other stakeholders to discussions aimed at exploring the most effective means of protecting and respecting the right to privacy. The Telecommunications Industry Dialogue has benefitted from participating in discussions at the Second Annual UN Forum on Business and Human Rights and the Internet Governance Forum, among others, and will continue to take part in these and similar events in the future.

The Telecommunications Industry Dialogue thanks you for the opportunity to provide its perspective and will receive the forthcoming report with interest.

Sincerely yours,



Yves Nissim
Chair of the Telecommunications Industry Dialogue
Orange



Lisl Brunner
Facilitator