

Proclamation No. -----/2012

A PROCLAMATION ON TELECOM FRAUD OFFENCES

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

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

WHEREAS it has become 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

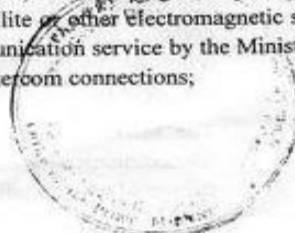
1. Short Title

This Proclamation may be cited as the "Telecom Fraud Offences Proclamation No. -----/2012".

2. Definitions

In this Proclamation, unless the context otherwise requires:

- 1/ "telecommunication service" means public switched telecommunication 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, telecommunication 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 telecommunication service by the Ministry; and shall not include broadcasting service and intercom connections;



- 2/ "telecommunication equipment" means any apparatus used or intended to be used for telecommunication services, and includes its accessory and software;
- 3/ "call-back service" means the use of dial tone of a foreign telecommunication operator for international connections without the knowledge of the domestic telecommunication operator or fraudulently making international calls into apparent domestic calls and shall include services that are identified as call-back by the International Telecommunication Union;
- 4/ "Ministry" means the Ministry of Information and Communication Technology;
- 5/ "telecommunications service provider" means the Ethio-Telecom or any other person authorized to provide telecommunication 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

Offences Related to Telecommunication Equipment

- 1/ Without prejudice to sub-article (3) of this Article, whosoever manufactures, assembles, imports or offers for sale any telecommunication equipment without obtaining prior permit from the Ministry commits an offence and shall, unless it entails a more severe penalty under any other law, 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 sub-article (3) of this Article, whosoever uses or holds any telecommunication equipment without obtaining prior permit from the Ministry commits an offence and shall, unless it entails a more severe penalty under any other law, 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 telecommunication equipment the manufacturing, assembling, importation, sale or the use of which shall not require permits, and set their technical standards.



4. **Offences Related to the Provision of Telecommunication Service**

Whosoever provides telecommunication services 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 provider or lawful user, or any other competent authority:

- 1/ obstructs or interferes with any telecommunication networks, services or system;
- 2/ intercepts or illegally obtains access to any telecommunication system; or
- 3/ intercepts, alters, destroys or otherwise damages the contents of telephone calls, data, identification code or any other personal information of subscribers;

commits an offence and shall, unless it entails a more severe penalty under any other law, be punishable with rigorous imprisonment from 10 to 15 years and with fine from Birr 100,000 to Birr 150,000.

6. **Offences Related to Unlawful Use of Telecommunication Service**

Whosoever:

- 1/ uses or causes the use of any telecommunications 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 telecommunication service or infrastructure provided by the telecommunication service provider for any other illegal purpose;

commits an offence and shall, without prejudice to the provisions of the Criminal Code relating to the determination of penalties in case of concurrent offences, be punishable with rigorous imprisonment from 3 to 8 years and with fine from Birr 30,000 to Birr 80,000.



7. **Offences Related to Fraud of Charges**

Whosoever:

- 1/ fraudulently obtains any telecommunications service without payment of a lawful charge thereof; or
- 2/ obtains any telecommunications 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 is punishable with imprisonment from 3 months to 2 years and with fine from Birr 2,500 to Birr 20,000.

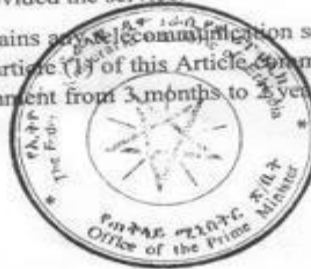
9. **Offences Related to Illegal Telecom Operators**

1/ Whosoever:

- a) establishes any telecommunication infrastructure other than the telecommunication infrastructure established by the telecommunication service provider; or
- b) bypasses the telecommunication infrastructure established by the telecommunication service provider and provides any domestic or international telecommunication 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 telecommunication 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, unless it entails a more severe penalty under any other law, 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 cause others to obtain telecommunication service from the telecommunication 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, unless it entails a more severe penalty under any other law, 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 sub-article (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 sentencing an offender under this Proclamation, shall give additional order for the confiscation of any telecommunication equipment used in the perpetration of the offence.

PART THREE
MISCELLANEOUS PROVISIONS

13. **Establishment of Technical Taskforce**

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

14. **Covert Search**

A police officer may request the court in writing for covert search warrant where he has reasonable grounds to believe that a telecom fraud offence has been committed or is likely to be committed.

15. **Admissibility of Evidences**

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. **Court Jurisdiction**

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



17. **Repeal and Inapplicable Laws**

- 1/ Sub-articles (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, regulations, directives or practices shall, in so far as they are inconsistent with this Proclamation, be applicable with respect to matters provided for by this Proclamation.

18. **Effective Date**

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

Done at Addis Ababa, this ----- day of -----, 2012.

GIRMA WOLDEGHORGIS
PRESIDENT OF THE FEDERAL DEMOCRATIC
REPUBLIC OF ETHIOPIA

