U.S. Opens Lines of Communication to Cuba — Revisions to Cuba Regulations Provide Opportunities for Telecom Industry

Further to the *GT Alert* of April 2009 (*White House Continues Momentum on Relaxing Cuban Restrictions*), the Department of the Treasury, Office of Foreign Assets Control (OFAC) has issued final regulations implementing certain revisions in U.S. policy towards Cuba impacting the telecom industry.

The final regulations, effective as of September 3, 2009, carry special significance for U.S. commercial trade in the areas of telecommunications and satellite radio/television services, as they provide new business opportunities for telecommunications services in Cuba. In tandem with the new OFAC regulations, the U.S. Department of Commerce, Bureau of Industry and Security (BIS) has amended the Export Administration Regulations (EAR) to create a new export license exception authorizing the export and reexport to Cuba of donated personal communications devices to improve the flow of information to and from the Cuban people.

Specifically, OFAC has amended the Cuban Assets Control Regulations ("Cuba Regulations") to implement certain provisions of the Omnibus Appropriations Act, 2009, as well as to implement revisions called for in President Obama's Presidential Memorandum of April 13, 2009, loosening certain U.S. restrictions on Cuba in support of democracy and human rights.

In addition, to further encourage communications access to the Cuban people, the Commerce Department has revised the scope of its licensing policy regarding telecommunications. BIS will review, on a case-by-case basis, export license applications for all items necessary to provide efficient and adequate telecommunications links between the United States and Cuba, as consistent with the April 13, 2009 Presidential Memorandum.

BIS has also amended the EAR to include new License Exception Consumer Communication Devices (CCD), intended to effectuate efficient and adequate telecommunications services between the United States and Cuba. Specifically, License Exception CCD authorizes the export or reexport to Cuba of certain commodities and software related to basic personal communications, with certain conditions.

The telecom-related revisions include the following:

- U.S. telecommunications network providers are now permitted to enter into agreements to establish fiber optic cable and satellite telecommunications facilities linking the United States and Cuba.

- The U.S. government may issue specific licenses for the establishment of facilities to provide fiber optic and cable telecommunications services linking third countries and Cuba, provided such facilities are necessary to provide efficient and adequate telecommunications services between Cuba and the United States.
- U.S. telecommunications service providers are authorized to enter into and operate under roaming service agreements with Cuba's telecommunications service providers.
- U.S. companies are authorized to enter into contracts and make payment under contracts with third country service providers for telecom services to particular individuals in Cuba (so long as the users in Cuba are not prohibited senior communist party and government of Cuba officials).
- A new General License authorizes travel to Cuba for the sales and marketing of telecommunications-related items. Under the General License for travel for sales and marketing of telecom, authorized travelers may participate in professional meetings, commercial marketing, sales negotiation, accompanied delivery, or servicing in Cuba of telecommunications items authorized for export.
- U.S. exporters may export certain donated items under License Exception CCD, which authorizes items (related to basic personal communications that are widely available for retail purchase in the United States, such as mobile phones, cellular and satellite telephones, computers and software, satellite receivers and digital music and video players, and digital cameras).
- The Department of Commerce, BIS has revised its Cuba licensing policy to remove the requirement that exports to Cuba be part of a Federal Communications Commission (FCC)-approved project in order to receive BIS authorization. BIS now will review, on a case-by-case basis, all items necessary to provide efficient and adequate telecommunications links between the United States and Cuba.

U.S. entities availing themselves of the provisions described above must adhere to certain reporting and recordkeeping requirements, which may differ depending on the transaction and related circumstances, but generally require all export-related documentation to be maintained for five years from the date of export or travel to Cuba.

Furthermore, exports of any telecommunications items that do not fit under a license exception, continue to require specific export licenses from BIS, and computers and software controlled for export from the United States due to encryption capabilities remain subject to export licensing restrictions.

It is important to note that the currently applicable maximum allowable settlement rate (termination charge) of $0.60 per minute established by the Department of State and implemented by the FCC in 1993 remains in effect for delivery of telephone calls between the United States and Cuba. As of the publication of this *Alert*, that 1993 settlement rate limitation has not been changed and Cuba has not been incorporated into the FCC's international settlement rate benchmarks policy, under which settlement rates are capped by country at FCC-established amounts based on the economic development status of each foreign country. While we expect the FCC to consult with the Department of State to implement some change to the settlement benchmarks, it remains to be seen what action the FCC will take.

This *GT Alert* was prepared by the attorneys listed below. Questions about these regulatory changes can be directed to any of these professionals. Export controls or U.S. sanctions matters can be directed to Greenberg Traurig's Export Controls Group. Questions regarding telecommunications matters can be directed to the firm's Technology, Media & Telecommunications Group.

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