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FCC Proposes to Relax Limitations on Telecom Service to Cuba

On Nov. 24, 2015, the U.S. Federal Communications Commission (FCC) released a public notice inviting comments on its proposal to remove Cuba from its Exclusion List. If implemented, Cuba's removal from the Exclusion List would allow U.S. telecommunication carriers to provide facilities-based telecommunications services from the United States to Cuba without first obtaining a separate country-specific Section 214 authorization. Carriers may obtain from the FCC Section 214 authority to provide global facilities-based service between the U.S. and all countries not on the Exclusion List. At this time, Cuba remains the sole country on the FCC's Exclusion List.

Possible Removal of Cuba from the Exclusion List

Importantly, the FCC's request for comments does not yet constitute a definitive removal of Cuba from the Exclusion List. The FCC will accept public comments on its proposal through Dec. 24, 2015, after which the Commission will review the public input received and determine whether to proceed with Cuba's removal from the Exclusion List. Nevertheless, the FCC's proposal appears in line with recent Administration steps to reestablish diplomatic relations with Cuba and ease certain provisions of the U.S. embargo against Cuba. As of the date of this Alert, at least two U.S. parties have submitted comments to the FCC, both in support of Cuba's removal from the Exclusions List.

The removal of Cuba from the Exclusion List would permit U.S. carriers with existing global Section 214 authorizations to begin establishing services to Cuba, and would allow carriers applying for global Section 214 authorization in the future to acquire facilities to serve all countries, including Cuba. However, it would not eliminate U.S. government-imposed ceilings on international settlement rates for terminating U.S.-originated telephone calls to Cuba. The FCC has established "benchmarks" for payment levels to foreign telecom providers to terminate U.S. traffic. The FCC benchmark for Cuba is nominally \$0.19 per minute. However, at this time no U.S. carrier pays that amount. The standard settlement rate to Cuba remains \$0.60, and the FCC allows U.S. carriers to pay Cuba's state-owned telecommunications provider, ETECSA,

\$0.60 per minute pursuant to a waiver granted to a U.S. carrier several years ago. That waiver remains available to other U.S. carriers. In the event the FCC finalizes Cuba's removal from the Exclusion List, a number of U.S. companies are expected to join several U.S. telecommunications companies that have already entered into service agreements with ETECSA.

U.S. Sanctions Developments

In the event the FCC removes Cuba from its Exclusion List, U.S. telecommunications providers may also be able to avail themselves of recent amendments to the U.S. sanctions regulations permitting certain limited Cuba-related transactions. The new U.S. government measures expand general licenses for telecommunications and internet-based services, specifically by authorizing certain U.S. persons to establish business presences in Cuba for the purpose of providing authorized telecommunications and internet-based services.

Recognize the Limitations of Permissible Cuba Activities

U.S. businesses and individuals interested in pursuing business opportunities in Cuba should continue to exercise caution and carefully review the sanctions and export provisions to determine whether proposed activities are permissible. Although recent U.S. government measures have eased certain restrictions on doing business with Cuba, the U.S. embargo against Cuba remains in place. It will be critical for U.S. persons doing business with Cuba to implement sanctions and export compliance programs to avoid even inadvertent violations of the relevant laws.

If you would like further information about the possible removal of Cuba from the FCC's Exclusion List, existing and potential opportunities to provide telecommunications service to Cuba, or Cuba-related transactions in general, please contact us.

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