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TELECOMMUNICATIONS LAW UPDATES

INCREASED INTERNATIONAL COMPETITION LEADS TO RULE CHANGES

In a continuing effort to eliminate regulations that are unnecessary because of increasing competition, the FCC has gradually relaxed a number of rules and procedures that apply to U.S. carriers that offer international services. Many of the FCC rules for international carriers have been aimed at protecting competing U.S. carriers from being "whipsawed" by their foreign counterparts. Whipsawing occurs when a foreign carrier with market power attempts to obtain higher rates for termination of telecommunications services in its market by playing one U.S. carrier off against another. Commitments made by WTO member countries in the 1997 WTO Basic Telecom Agreement, however, have sparked significant changes in international telecommunications markets. Many of those markets once dominated by monopoly carriers are becoming increasingly competitive. This change has led to decreased rates and better services, and has persuaded the FCC that certain regulations no longer are needed to protect U.S. carriers and consumers. Two recent FCC orders reflect this recognition.

Further Streamlining of International Common Carrier Regulations

On March 23, 1999, the FCC issued, as part of its biennial review to eliminate unnecessary regulations, an order that further streamlined the process for applying for authority to provide international services. The FCC's streamlined application process allows eligible applicants to obtain authorizations on an expedited basis without

a formal written order. For example, the order eliminates the requirement for a carrier to obtain prior approval for purely *pro forma* assignments and transfers of control of authorizations, *i.e.*, intracorporate transactions in which there is no change in the ultimate control of the carrier. The order also (1) reduces the waiting period for granting streamlined applications to 14 days from 35; (2) no longer removes applications from the streamlined process upon the filing of oppositions; (3) simplifies the process by which users of private lines can obtain authorization to provide switched service; and, (4) authorizes use of non-U.S. undersea cable systems by any authorized facilities-based carrier without specific approval.

The recent order also makes a new category of carriers eligible for streamlining — carriers that contract with non-facilities-based foreign carriers for termination. Foreign carriers without any facilities are unlikely to have the power to affect U.S. competition adversely. A U.S. carrier, therefore, can now seek FCC confirmation that the foreign carrier lacks market power to create a whipsaw effect, to establish its eligibility for streamlining.

Reform of International Settlements Policy

In an order adopted on April 15, 1999, the FCC also concluded that its International Settlements Policy (ISP) and associated rules will not apply to arrangements between U.S. carriers and foreign carriers that lack market power. To protect U.S. carriers from whipsawing, the ISP requires that

all U.S. carriers pay the same settlement rates (the rates paid to foreign carriers to terminate service in a foreign market) on a particular route. (A different FCC policy, known as "accounting rate benchmarks," imposes a ceiling on the amount of such settlement rates and was not changed by this order.) However, in the period since the WTO Basic Telecom Agreement, competition has flourished on many routes, and settlement rates and consumer prices for services on these routes have plummeted. The FCC has concluded that where foreign carriers lack the market power to command anticompetitive rates, the ISP requirement of uniform settlement rates should be eliminated, freeing U.S. carriers to negotiate individualized settlement arrangements with non-monopoly foreign carriers. The elimination of the ISP in these circumstances allows one U.S. carrier to bargain for better rates than its U.S. competitors offering the same service.

The FCC also eliminated the ISP uniformity requirement where the settlement rates are at least 25% lower than the FCC-established benchmarks for that route. Where negotiated rates have fallen that low, the application of the ISP provides a disincentive for a U.S. carrier to attempt to negotiate lower rates because such negotiations would benefit the carrier's competitors equally. This change allows smaller competitors to negotiate even lower rates to help them compete. Routes to Canada,

Denmark, France, Germany, Hong Kong, the Netherlands, Norway, Sweden, and the United Kingdom currently qualify for relief under this rule.

The FCC's intent in removing these regulatory burdens is to allow market forces rather than regulation to dictate the rates and services offered in international markets where competition has begun to occur. Eliminating these regulations should permit carriers to enter the market more easily and react more quickly to changes in competition by negotiating arrangements that suit their needs. As unnecessary regulation diminishes, the FCC envisions a continued increase in competition internationally.

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Though these two orders continue to remove certain regulatory burdens on international service, significant regulation still remains in this area, including the application of the ISP on routes where competition has yet to develop and settlement rate benchmarks for the termination of services in foreign markets. However, these two recent orders demonstrate the FCC's determination to deregulate the offering of international services when competitive realities change. As competition continues to develop, it is likely that the regulatory burdens on the offering of international telecommunications services will continue to decrease.

This letter is for general informational purposes only and does not represent our legal advice as to any particular set of facts, nor does this letter represent any undertaking to keep recipients advised as to all relevant legal developments. For further information on these or other telecommunications matters, please contact one of the lawyers listed below:

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