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Telecommunications Law Update

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FCC Sends Letters of Inquiry to Entities That May Have Failed to File FCC Form 499 Regarding Universal Service Fund and Other Contributions

On March 30, 2004, the Investigations and Hearings Division of the FCC's Enforcement Bureau sent letters of inquiry to a number of service providers in an effort to confirm that all carriers providing interstate telecommunications services have registered with the FCC as required by section 64.1195 of the FCC's rules (47 C.F.R. § 64.1195). This rule provides that all carriers that are providing, or will provide "interstate telecommunications services" must file a Telecommunications Reporting Worksheet (FCC Form 499) with the Universal Service Administrator. Form 499 requires that each carrier provide information regarding its total end-user revenues so that the Universal Service Administrator can determine how much the carrier must contribute to the federal Universal Service Fund ("USF"), as well as other federal support mechanisms. For purposes of this filing requirement, "interstate telecommunications services" generally include the following: (1) cellular telephone and paging services; (2) mobile radio services; (3) operator services; (4) personal communications services

(PCS); (5) access to interexchange services; (6) special access services; (7) WATS; (8) toll-free service; (9) 900 service; (10) message telephone service (MTS); (11) private line service; (12) telex; (13) telegraph; (14) video services; (15) satellite service; (16) resale of interstate services; (17) payphone services; (18) frame relay services; and (19) ATM service.

In its recent letters of inquiry, the Enforcement Bureau appears to have targeted entities that it believes may act as resellers of other carriers' services, but that have not filed an FCC Form 499. As noted above, under FCC rules, all entities that resell interstate telecommunications services to the public are subject to the Form 499 filing requirement and, potentially, to mandatory contributions to the USF.

It appears, however, that a significant number of the entities targeted by the Bureau in its recent investigation do not, in fact, function as resellers, but instead either (1) are end users of interstate

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telecommunications services purchased from other carriers, or (2) resell the purchased services purely as “information services.” Unlike telecommunications services, “information services” (also known as “enhanced services”) generally include services that offer the capability for generating, acquiring storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, or that employ computer processing applications that act on the format, content, code, protocol, or similar aspects of a subscriber’s transmitted information. FCC rules exempt from USF filing and contribution requirements entities that do not resell telecommunications services to the public and entities that provide solely “information services.” Therefore, it may be important to demonstrate to the Enforcement Bureau the nature of the services provided to customers in order to respond effectively to such an inquiry.

In most cases, the Bureau has given the recipients of its letters until April 16th to respond. Such entities must either provide the registration information required by FCC Form 499, or explain why they are exempt from the Form 499 registration requirement.

If you would like more information regarding the FCC Form 499 filing requirements, please feel free to contact any of the lawyers listed below:

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