PUBLIC NOTICE

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Modification of Process to Accept Applications for Service to Cuba and Related Matters

By the International Bureau:

The Commission has received a letter dated January 12, 2010, from the U.S. Department of State detailing policy guidance on licensing the provision of telecommunications service between the United State and Cuba.[1] A copy of the letter is attached.

The State Department letter rescinds its 1993 policy guidance to the Commission and replaces it with the guidance outlined below. State recommends that the Commission use the following policy guidelines in reviewing proposals for telecommunications services between the United States and Cuba:

a) The Commission should apply its International Settlements Policy (ISP) and the appropriate benchmark settlement rate with respect to proposals for the provision of telecommunications services to Cuba; however, in implementing this recommendation, the Commission should be prepared, to the extent necessary, to grant waivers reasonably limited in duration to enable carriers within its jurisdiction to provide telecommunications service between the United States and Cuba.

b) The Commission should send applications for the provision of telecommunication services between the United States and Cuba to the State Department for review. If the State Department does not object within 30 days of receipt, the Commission should assume that the State Department does not object to the grant of the application on foreign policy grounds.

The State Department letter notes that nothing in the guidance should be interpreted as establishing a policy to authorize investment in Cuba's domestic infrastructure. In addition, applications approved by the Commission may also need to be licensed, as appropriate, by the Office of Foreign Assets Control (OFAC) at the Treasury Department and/or the Bureau of Industry and Security (BIS) at the Department of Commerce.[2]

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[1] *See* Letter from Ambassador Philip Verveer U.S. Coordinator for International Communications and Information Policy, U.S. Department of State to Julius Genachowski, FCC Chairman, dated January 12, 2010.

[2] On September 3, 2009, the Bureau of Industry and Security (BIS) and the Office of Foreign Assets (OFAC) announced they had adopted modified regulations for implementing the Cuban Democracy Act in September 2009. *See* "Commerce Dept. Implements President's Directive to Ease Restrictions on Humanitarian Aid, Gift Parcels to Cuba," http://www.bis.doc.gov/news/2009/bis_press09032009.htm; "U.S. Department of Treasury Fact Sheet: Treasury Amends Cuban Assets Control Regulations To Implement the President's Initiative on Family Visits, Remittances, and Telecommunications," http://www.treas.gov/press/releases/tg273.htm. The new regulations were published in the Federal Register on September 8, 2009. Department of Commerce, Bureau of Industry and Security, 15 CFR Parts 736, 740 and 746, 74 Fed. Reg. 45985 (Sept. 8, 2009); Department of the Treasury, Office of Foreign Assets Control, 31 CFR Part 515, 74 Fed. Reg. 46000 (Sept. 8, 2009).

The Commission will act upon applications to provide facilities-based telecommunications services between the United States and Cuba consistent with the guidance set out in the 2010 State Department letter (attached to this Public Notice) and Commission's policies and rules.[3]

In order to implement the new guidance, the Commission will retain Cuba on the Exclusion List. The Exclusion List for international section 214 applications identifies countries and facilities that are not covered by the grant of global section 214 authority under section 63.18(e)(1) of the Commission's rules.[4] Carriers desiring to serve countries or use facilities included on the Exclusion List must file a separate application pursuant to section 63.18(e)(3).[5] Cuba will continue to be identified on the list as a country for which a separate application is required pursuant to section 63.18(e)(3). The Commission will process applications for the provision of services to Cuba on a non-streamlined basis and coordinate with the State Department prior to action as provided in the State Department letter.

In addition, in order to implement the guidance in the State Department letter, the Commission will continue to apply to Cuba the International Settlements Policy (ISP), which currently applies to Cuba and certain other countries,[6] and the 1997 Benchmarks Policy,[7] both subject to requests by U.S. carriers reasonably limited in duration for limited waivers based upon the unique circumstances presented. The ISP governs how U.S. carriers negotiate with foreign carriers for the exchange of international traffic in order to prevent foreign carriers with market power from discriminating or using threats of discrimination or other anticompetitive actions, against competing U.S. carriers as a strategy to obtain pricing concessions regarding the exchange of international traffic.[8] The Commission's 1997 *Benchmarks Order* established benchmark rates U.S. carriers are permitted to pay foreign carriers for terminating traffic. The goal of the Benchmarks Policy has been to reduce substantially above-cost settlement rates paid by U.S. carriers to foreign carriers for termination of international traffic.[9]

For further information, contact James Ball, David Krech, or Imani Ellis-Cheek, Policy Division, International Bureau, at 202-418-1460.

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[3] *See* 47 C.F.R. Part 63.

[4] *See* Streamlining the Section 214 Authorization Process & Tariff Requirements, IB Docket No. 95-118, FCC 96-79, 11 FCC Rcd 12,884 (1996).

[5] 47 C.F.R. §63.18(e)(3). *See also* 47 C.F.R. §63.22(c).

[6] *See* 47 CFR § 64.1002. *See also International Settlements Policy Reform: International Settlement Rates*, IB Docket Nos. 02-234 and 96-21, First Report and Order, 19 FCC Rcd 5709 (2004).

[7] In the Matter of International Settlement Rates, IB Docket No. 96-261, Report & Order, FCC 97-280, 12 FCC Rcd 19806 (1997) (*Benchmarks Order*).

[8] *See 2004 ISP Reform Order, 19 FCC Rcd 5709,* 47 CFR § 64.1002

[9] Cuba is classified as a lower middle income country, for which the Commission has established a benchmark termination rate of $0.19 to be achieved during a transition period ending in January 2001. *See Benchmarks Order,* 19 FCC Rcd 5709. For various reasons, direct telecommunications service between the U.S. and Cuba ceased prior to completion of the transition process. The last established settlement rate for direct telecommunications to Cuba was $0.60 per minute.

United States Department of State

Washington, D.C. 20520

January 12, 2010

Dear Chairman Genachowski:

This letter replaces the July 22, 1993, policy guidance previously provided by this Department to the Federal Communications Commission (FCC) on licensing the provision of telecommunications services to Cuba. The President announced on April 13, 2009, several changes to United States' Cuba policy that are designed to facilitate greater contact between separated family members in the United States and Cuba and increase the flow of information to the Cuban people, including through greater telecommunications links. The President directed the Secretaries of the Treasury and Commerce, in consultation with the Secretary of State, to take such actions as necessary to:

- Authorize U.S. telecommunications network providers to enter into agreements to establish fiber-optic cable and satellite telecommunications facilities linking the U.S. and Cuba.

- License U.S. telecommunications service providers to enter into and operate under roaming service agreements with Cuba's telecommunications service providers.

- License U.S. satellite radio and satellite television service providers to engage in transactions necessary to provide services to customers in Cuba.

- License persons subject to U.S. jurisdiction to activate and pay U.S. and third-country service providers for telecommunications, satellite radio, and satellite television services provided to individuals in Cuba, except certain senior Communist Party and Cuban government officials.

- Authorize, consistent with national security concerns, the export or re-export to Cuba of donated personal communications devices such as mobile phone systems, computers and software, and satellite receivers through a license exemption.

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
Washington, DC

In September 2009, the Departments of Treasury and Commerce published new regulations under their respective regulatory regimes to implement the President's announcement. These regulations are designed to promote the free flow of information between Cuba and the United States through greater telecommunications links.

As a result of these changes, State is rescinding its 1993 policy guidance to the Commission and replacing it with the guidance outlined below. State recommends that the Commission use the following policy guidelines in reviewing proposals for telecommunications services between the United States and Cuba:

a) The Commission should apply its International Settlements Policy (ISP) and the appropriate benchmark settlement rate with respect to proposals for the provision of telecommunications services to Cuba; however, in implementing this recommendation, the Commission should be prepared, to the extent necessary, to grant waivers reasonably limited in duration to enable carriers within its jurisdiction to provide telecommunications service between the United States and Cuba.

b) The Commission should send applications for the provision of telecommunication services between the United States and Cuba to the State Department for review. If the State Department does not object within 30 days of receipt, the Commission should assume that the State Department does not object to the grant of the application on foreign policy grounds.

Nothing in this guidance should be interpreted as establishing a policy to authorize investment in Cuba's domestic infrastructure. All applications approved by the FCC may also need to be licensed, as appropriate, by the Office of Foreign Assets Control (OFAC) at the Treasury Department and/or the Bureau of Industry and Security (BIS) at the Department of Commerce.

The Department of State appreciates the close cooperation of the Commission throughout the years in implementing our telecommunications policy towards Cuba.

Sincerely yours,

Philip L. Verveer
Ambassador
U.S. Coordinator for International
Communications & Information Policy