

Changes to Cuba Embargo Will Give Telecom and Satellite Providers More Opportunities

by Nancy A. Fischer and Michael J. Noonan

On September 8, 2009, the Office of Foreign Assets Control (“OFAC”) of the Department Treasury and the Bureau of Industry and Security (“BIS”) of the Department of Commerce issued final rules in the Federal Register amending the Cuba Sanctions program and the Export Administration Regulations (“EAR”) to increase the range of telecommunications services that can be provided between the United States and Cuba and exports and re-exports of items to implement those services, as well as authorizing related payments and travel. These are included in a larger set of rule changes implementing the President’s April 13, 2009, directive to promote contact between family members and the flow of information between the two countries.

The new OFAC rule removes the policy directive requiring individual licenses for the provision of telecommunications services and authorizes certain telecommunications services, contracts, related payments, and travel-related transactions by general licenses. Of primary importance is the addition of satellite (including radio and TV) and cellular services as covered technologies. Certain additional transactions involving third countries and related to the provision of services between Cuba and the U.S. will now be permitted but will require specific licenses.

Below is a brief summary of the relevant OFAC revisions:

- Telecommunications services providers subject to U.S. jurisdiction are generally licensed:
 - to make payments in connection with the provision of telecommunications services between the United States and Cuba and the provision of satellite radio or satellite television services to Cuba; and,
 - to enter into and perform (including making payments) roaming services agreements with telecommunications services providers in Cuba.

- Transactions in connection with establishing facilities to provide telecommunications services linking the United States and Cuba, including fiber-optic cable and satellite facilities, are authorized by general license.
- Persons subject to U.S. jurisdiction may contract with and pay non-Cuban telecommunications services providers to provide services to particular individuals in Cuba (other than prohibited Government officials or Communist Party members). This authorizes telecommunications providers to contract directly with individuals in Cuba to provide services and authorizes payments for telecommunications services by U.S. persons on behalf of individuals in Cuba.
- Travel and travel-related transactions incident to authorized telecommunications transactions are now authorized by two general licenses. One license authorizes transactions incident to Commerce-approved export of telecommunications items and the other travel transactions incident to participation in telecommunications-related professional meetings.

In addition to the sanctions changes implemented by OFAC, BIS amended the EAR to authorize case-by-case review of exports and re-exports of all items (commodities and technologies and software) necessary to provide telecommunications services, including satellite radio and satellite television, between the U.S. and Cuba, including links through third countries. BIS has also created and amended license exceptions authorizing the donation of computers, phones, and related items commonly used for communication.

U.S. providers of telecommunications, satellite, and satellite TV and radio services interested in expanding services in Cuba or introducing services to Cuba should be aware that the general licenses authorized under the new regulations are not exhaustive and contain certain reporting and notification requirements. In addition, OFAC will continue to require specific licenses for certain transactions. Export and re-export of items (commodities, technologies, and software) necessary to implement effective telecommunications services, which now includes satellite TV and radio services, between the United States and Cuba continue to require BIS approval for items controlled by the EAR.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors of this alert.

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