



**OFAC AND BIS ISSUE NEW REGULATIONS FOR
TELECOMMUNICATIONS TRANSACTIONS INVOLVING CUBA**

**OFAC: New Rules for Financial Transactions Relating to the Provision of
Telecommunications Services and Facilities Between the United States and Cuba**

On September 3, 2009, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC")—which regulates financial transactions with sanctioned countries and persons—released its long-awaited revisions to the Cuban Assets Control Regulations ("CACR"), which are scheduled for publication in the *Federal Register* on September 8, 2009, but which took effect September 3, 2009. Among the notable new provisions in the CACR are:

- (1) A general license authorizing transactions incident to the provision of telecommunications services between the United States and Cuba (New CACR 515.542(b)):** "All transactions, including but not limited to payments, incident to the provision of telecommunications services between the United States and Cuba, the provision of satellite radio or satellite television services to Cuba, or the entry into and performance under roaming service agreements with telecommunications services providers in Cuba, by a telecommunications services provider that is a person subject to U.S. jurisdiction are authorized." Essentially, this categorical permission (no specific licenses are required) permits persons subject to U.S. jurisdiction to enter into roaming agreements with ETECSA (provider of Cubacel and C-Com brand mobile services in Cuba).
- (2) A general license authorizing payments by persons subject to U.S. jurisdiction to facilitate service to permitted individuals in Cuba (New CACR 515.542(c)):** "All persons subject to U.S. jurisdiction are authorized to enter into, and make payments under, contracts with non-Cuban telecommunications services providers, or particular individuals in Cuba, for telecommunications services provided to particular individuals in Cuba, provided that such individuals in Cuba are not prohibited officials of the Government of Cuba, as defined in § 515.337 of this part, or prohibited members of the Cuban Communist Party, as defined in § 515.338 of this part. The authorization in this paragraph includes, but is not limited to, payment for activation, installation, usage (monthly, pre-paid, intermittent, or other), roaming, maintenance, and termination fees." Essentially, this categorical permission (no specific licenses are required) permits persons subject to U.S. jurisdiction to pay for a non-prohibited Cuban's mobile subscription or prepaid service.
- (3) A general license for telecommunications facilities linking the United States to Cuba (New CACR 515.542(d)(1)):** "Transactions incident to the establishment of facilities to provide telecommunications services linking the United States and Cuba, including but not limited to fiber-optic cable and satellite facilities, are authorized." Consequently, a

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company need not seek a specific license or permission to engage in such a transaction, but must comply with the notification and other requirements of the new CACR provisions. Note that this provision applies to transactions involving the United States and Cuba only. Connectivity to third countries kicks the analysis into CACR 515.542(d)(2), discussed below.

(4) A specific licensing requirement for telecommunications facilities linking third countries and Cuba (New CACR 515.542(d)(2)): “Specific licenses may be issued on a case-by-case basis authorizing transactions incident to the establishment of facilities to provide telecommunications services linking third countries and Cuba, including but not limited to fiber-optic cable and satellite facilities, provided that such facilities are necessary to provide efficient and adequate telecommunications services between the United States and Cuba.”

(5) A general license for professional meetings for commercial telecommunications transactions (New CACR 515.564(a)(3)): “[T]ransactions directly incident to participation in professional meetings for the commercial marketing of, sales negotiation for, or performance under contracts for the provision of the telecommunications services, or the establishment of facilities to provide telecommunications services, authorized by paragraphs (b), (c), or (d)(1) of § 515.542 of this part by a telecommunications services provider that is a person subject to U.S. jurisdiction are authorized, provided that: (i) The traveler is regularly employed by a telecommunications services provider that is a person subject to U.S. jurisdiction or by an entity duly appointed to represent such a provider; and (ii) The traveler’s schedule of activities does not include free time, travel, or recreation in excess of that consistent with a full work schedule.” Travel may require post-trip reporting to OFAC but no longer requires trip-specific licenses.

BIS: New Rules for Exportation and Re-Exportation of Telecommunications-Related Equipment, Technology, and Software to Cuba

Also on September 3, 2009, the U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”)—which regulates exports of U.S.-origin goods and technology of a commercial nature but which could have military applications (i.e., “dual-use items”)—released its Cuba-related amendments to the Export Administration Regulations, which take effect immediately. Specifically, BIS has revised EAR 746.2(b)(2) to allow for case-by-case review of exports or reexports of all items necessary to provide efficient and adequate telecommunications links between the United States and Cuba, including links to provide satellite radio or satellite television services to Cuba. Eligible items now include any item (commodity, technology, or software) necessary to provide efficient and adequate telecommunications links between the United States and Cuba, including links established through third countries and links to provide satellite radio or satellite television services to Cuba. Consequently, exportation or reexportation of U.S.-origin goods or technology will continue to require transaction-specific BIS licenses.

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BIS also created a new, narrowly tailored License Exception for Consumer Communications Devices (CCD) to authorize the export and reexport to Cuba of donated consumer communications devices that are necessary to provide efficient and adequate telecommunications services between the United States and Cuba. License Exception CCD does not authorize U.S.-owned or -controlled entities in third countries to engage in reexports of foreign produced commodities to Cuba for which no license would be issued by the Treasury Department pursuant to 31 CFR § 515.559. Eligible end-users for items exported or reexported pursuant to License Exception CCD do not include designated Cuban Government and Communist Party officials. Qualifying items are commodities and software (except encryption source code) related to basic personal communications devices that are widely available for retail purchase in the United States, including wireless handsets and SIM cards.

Finally, heavy packers will be pleased to know that BIS has lifted the 44-pound limit on luggage taken to Cuba in connection with permitted travel.

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For more information about these Cuba-related developments or, more generally, U.S. economic sanctions and U.S. export controls, please contact:

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