

Court Case Counsels Caution for International Telecommunications Carriers

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As the Securities Exchange Commission ("SEC") and the Department of Justice ("DOJ") continue to aggressively pursue investigations under the Foreign Corrupt Practices Act of 1977 (the "FCPA"), international telecommunications carriers are particularly at risk. International terminations often involve relationships with foreign governments or with state-owned telecommunications carriers. With these types of carrier partners, an international carrier may be subject to the FCPA, and its dealings with the terminating entity may be limited by U.S. law.

The SEC and the DOJ have been very aggressive in many aspects of their enforcement actions, including their broad interpretation of the law. A recent decision by the United States Court of Appeals for the 11th Circuit, in [United States v. Joel Esquenazi and Carlos Rodriguez](#), highlights the government's broad interpretation of what commercial enterprises are deemed governmental "instrumentalities" subject to the proscriptions of the FCPA against certain payments to and transactions with foreign officials. In the case, the court found that principals of a Miami telecommunications company, Terra Telecommunications ("Terra"), which resells international long distance telephone services, could be subject to the FCPA because the state-owned entity with whom they dealt qualified as a foreign official under the FCPA.

Kelley Drye's Corporate Finance and Securities practice group has prepared this [client advisory on the court's decision](#). The Advisory describes the Eleventh Circuit's fact-dependent approach to defining "instrumentality" and highlights the quandary confronting international telecom carriers in identifying which of their business counterparts abroad will be considered "foreign officials" under the FCPA.