

FCC Proposes Further Easing of Regulations on Telecommunications Service Providers on the U.S. – Cuba Route

February 16, 2016

The thawing of relations between the U.S. and Cuba continues to spark Federal Communications Commission (FCC or Commission) action to relax regulations - and thereby further open opportunities for carriers - on the U.S.-Cuba route. On Friday, the FCC proposed yet another measure to ease regulatory requirements on carriers seeking to provide international telecommunications to Cuba. By [Notice of Proposed Rulemaking](#) (NPRM), the FCC is soliciting comment on a proposal to eliminate one of a few remaining restrictions on facilities-based switched voice service to Cuba. Specifically, the FCC is considering removing the nondiscrimination requirement of its International Settlement Policy (ISP) which is typically also imposed as a condition on carriers seeking to pay above-benchmark settlement rates to Cuban carriers. The FCC also seeks comment on other related issues such as whether operating agreements between U.S. carriers and Cuban carriers should continue to be routinely available for public inspection. Comments and reply comments on the NPRM will be due 30 and 45 days, respectively, after the NPRM is published in the Federal Register.

In response to U.S. State Department guidance over the last few years, the FCC has been easing regulatory obligations on the provision of telecommunications on the U.S.-Cuba route. The FCC had long required carriers to abide by the requirements of the ISP - which was designed to prevent foreign carriers possessing market power from discriminating or using threats to obtain pricing concessions from competing U.S. providers - and its Benchmarks Settlement Policy - which governs the rates U.S. carriers can pay to foreign carriers for termination of U.S. traffic. One of three key provisions of the ISP is the requirement that all carriers must receive the same effective accounting rate and date for that rate - the "nondiscrimination" requirement. For service to Cuba this means that the terms and conditions of operating agreements, for facilities-based switched voice service, between a U.S. carrier and Cuban carrier with market power, must be identical to equivalent terms of other U.S. carriers providing similar services on the route. Most recently, in January 2016, [the FCC removed Cuba from its international Section 214 exclusions list](#). As a result U.S. carriers are no longer required to seek separate authority from the FCC to provide facilities-based service to Cuba and carriers holding global international section 214 authority can immediately begin serving Cuba.

The FCC now seeks comment on whether removing application of the ISP's nondiscrimination provision, and the nondiscrimination condition imposed on Benchmark Settlement Policy waivers, on the U.S.-Cuba route will serve the public interest. The public is also invited to comment on other actions the Commission can take to further open the U.S.-Cuba route and whether operating agreements between U.S. and Cuban carriers should continue to be routinely available to the public.

This latest proposed action is consistent with the FCC's easing, earlier this year, of the process for obtaining international Section 214 authority to serve Cuba and, over the past few years, waiver grants, which permit payment of above-benchmark settlement rates. The NPRM received nearly unanimous approval at the Commission, with Chairman Wheeler and all of the Commissioners except Michael O'Rielly approving this latest proposed action. O'Rielly, in a concurring statement, expressed concern about the proposal to remove the nondiscrimination provision, noting that he did not see changed circumstances warranting relaxed regulation. We continue to see an easing of regulations on the U.S.-Cuba route but the road ahead for U.S. carriers is not completely open. The FCC is not proposing to lift the Benchmark Settlement Policy for Cuba and carriers seeking to enter into operating agreements at above-benchmark settlement rates still must obtain an FCC waiver and agree to other conditions including, for now, the nondiscrimination requirement. However, in light of the FCC's recent actions and current proposal, it appears the trend in the Commission's easing of regulation on the U.S.-Cuba route is likely to continue. As relations between the U.S. and Cuba continue to improve, carriers should expect to see increased opportunities on the U.S.-Cuba route. Carriers interested in positioning themselves to take advantage of any new opportunities should consider participating in this rulemaking proceeding.