

## **FHH Telecom Law September, 2007**

### **Section 214 Certificate Needed For International Roaming**

*By Donald J. Evans  
evans@fhhlaw.com  
703-812-0430*

This summer, in a rather unheralded order, the FCC wrapped up a proceeding it had initiated in March of 2004 to consider reforms of the rules governing some aspects of international communications. The world of mobile communications used to be almost entirely a domestic affair, but increasingly U.S. carriers must be aware of the arcane rules applicable to international communications. Of most significance to CMRS carriers was the FCC's determination that roaming is a "telecommunications service" which, under certain circumstances, requires prior FCC authorization before it can be engaged in.

Many customers these days take their cell phones with them when they go to foreign countries, and, though the roaming fees can be quite steep (something the European Union has been trying to rectify), these customers have usually been able to place phone calls without regulatory alarms sounding. Roaming has historically fallen into a regulatory limbo, since some people view it as a mere billing arrangement, others as a telecom service provided by the foreign carrier, and others as a telecom service provided by the home carrier. So it's been unclear whether any authorization at all was necessary to provide roaming or, if so, who had to obtain it.

The FCC has now come down squarely in camp Number Three. Under the ruling in Docket 04-47, the provision of roaming to a U.S. carrier's customer abroad is actually a service provided by the home carrier. Because CMRS (and other) carriers must have a so-called "Section 214 certificate" in order to provide international telecommunications services, CMRS carriers must have such a certificate if they permit their customers to roam internationally.

Given the previously prevailing confusion about this issue, many CMRS carriers had not bothered to obtain such a certificate, but they would be wise to do so now if they permit their customers to roam abroad. The process of obtaining a certificate is relatively painless (except for the \$825 FCC fee) and is typically granted routinely in a few weeks. On the positive side, the FCC hinted that in the future it plans to streamline Section 214 certification for CMRS carriers so that at some point it may not be necessary to file for and obtain a company-specific certificate.

The FCC also cleared up several other nagging questions which arise in the context of system sales. For one, the FCC confirmed that the sale of an international customer base will be treated as the assignment of Section 214 assets rather than a discontinuation of service by the original carrier. This means that a small additional layer of regulatory review will be required of CMRS carriers who dutifully obtain a Section 214 certificate and then later sell their system and its customer base. The customers are now "international" customers, so the sale requires Section 214 review as well as the ordinary review applicable to a CMRS license sale.

Second, the FCC reduced the notice time for actual discontinuance of international service from 60 days to 30.

Third, they clarified that reductions of ownership interests in a Section 214-certificated entity from above 50% to below 50% constitute a transfer of control which might require prior FCC approval.

And finally, they confirmed that subsidiaries of a parent company with a Section 214 certificate can rely on the parent's certificate, but only so long as the sub is wholly-owned by the parent.

The FCC's order is also significant for our foreign friends: if U.S. CMRS customers are roaming when they are abroad, then foreign carriers' customers are also roaming when they are here. That means that foreign carriers really should have their own Section 214 authorizations from the FCC to permit their customers to roam here. We wonder how many of them have signed up.